



**MEETING AGENDA
SESSION OF THE CITY COMMISSION
CITY OF KISSIMMEE
CITY HALL, COMMISSION CHAMBERS
101 CHURCH STREET, KISSIMMEE, FLORIDA 34741-5054
TUESDAY, DECEMBER 19, 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 Employee of the Month for December

4. PUBLIC HEARINGS - FIRST AND SECOND READINGS

5. PUBLIC HEARINGS

5.A Program Year 2022-2023 Community Development Block Grant Consolidated Annual Performance and Evaluation Report

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 5, 2023, meeting

7.B Extension of Temporary Construction Easement with Osceola County School Board for Lancaster Ranch Park

7.C Temporary Construction Easement with Toho Water Authority for Lancaster Ranch Park

7.D Additional Hurricane Housing Recovery Program Funding

7.E Subrecipient Agreement with Kissimmee Oaks Housing I, Inc.

7.F Architectural and Engineering Continuing Services Agreements

7.G Ministerial Approval - Police Pension Board Appointment

7.H Disposal of City Assets

7.I Memorandum of Understanding with Toho Water Authority for Lancaster Ranch Park

7.J Satisfaction of Mortgage and Security Agreement and Promissory Note for 924 Determination Way

7.K 2023 Affordable Housing Advisory Committee (AHAC) Incentives Strategies Report

7.L Letter of Agreement with Cirrus at Kissimmee Gateway Airport

7.M Justice Assistance Grant Award

7.N Grant Application for Urban Areas Security Initiative

- 7.O Intake and Pump Station Easement with Toho Water Authority
- 7.P Temporary Construction Easement with Toho Water Authority for the Toho Reservoir Intake and Pump Station Project
- 7.Q Budget Amendment for Traffic Signal Design and Construction
- 7.R Ground Lease Agreement with KUA at Kissimmee Gateway Airport
- 7.S Addition of Two New Positions in Fleet Division

8. DISCUSSION ITEMS

- 8.A 2024 City Commission Meeting Calendar

9. HEAR CITY OFFICIALS

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

10. ADJOURNMENT

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

In accordance with Florida 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

Employee of the Month for December

Request

Request that the City Commission join the City Manager in recognizing James Lietz, Creative Designer II, as December's Employee of the Month.

Explanation

The City is pleased to honor James Lietz as Employee of the Month for December. James is a Creative Designer II for the Strategic Communications division, and he recently passed his third anniversary with the City. James is a talented content producer who brings much expertise to our City. He has redesigned many of our logos, event signs, and social media headers – meeting the City's branding standards and enhancing our image. He has even redesigned our police car wraps and uniform patches which were overdue for a revamp. This saved the City money by not outsourcing the work. James is also an integral part of our Emergency Operations Center and has been deployed many times, which often included overnight stays during situations. He and the production team are also at every signature City event. Much of this work is above and beyond James' regular duties. He also willingly shares his knowledge about his processes – a real team player. For being a 'behind the scenes' kind of guy, James' influence is in many aspects of the City's image. The City would like to recognize him for the positive ambassador that he is.

Department: Human Resources & Risk Management

Presenter: Mike Steigerwald

Attachment(s):

None

ITEM 5.A

Program Year 2022-2023 Community Development Block Grant Consolidated Annual Performance and Evaluation Report

Request

Approval of the Program Year 2022-2023 Community Development Block Grant Consolidated Annual Performance and Evaluation Report.

Explanation

The Consolidated Annual Performance and Evaluation Report (CAPER) is required by the U.S. Department of Housing and Urban Development (HUD) to evaluate the City of Kissimmee's use of the Community Development Block Grant (CDBG) funds for the previous year. The report provides a summary of the accomplishments and an accounting of the allocation and expenditure of the CDBG funds. For the Program Year 2022-2023, the City of Kissimmee received \$732,540 in funding. Throughout the year, funds were provided to local partners, and they were spent on addressing the city's affordable housing, public services, and public facilities and infrastructure previously identified goals and priority needs. This is a summary of the PY2022 activities, funding, and accomplishments:

- Allocated \$80,000 for code enforcement activities intended to assist in the preservation of the existing housing stock and relevant commercial structures. It was anticipated that the activities were going to generate over 700 notices and about 5-10 qualified households would benefit from this project. Accomplishments: 640 cases were handled. Of those, 136 were residential, and 0 owners were assisted with repairs on their homes due to code enforcement issues.
- Allocated \$109,881 for a variety of public services for housing and non-housing benefits to income-qualified households through programs implemented internally or through local housing and supportive service providers. It was anticipated that approximately 50 qualified households would receive benefit from public service activities. Accomplishments: 543 persons were assisted.
- \$300,000 was allocated for the new construction of or rehabilitation of an existing public facility to benefit homeless households seeking or receiving care through the local homeless care system. It was anticipated that 50-75 homeless persons or families would benefit from activities funded by this project. Accomplishments: On going
- Allocated \$96,151 for activities involving minor and moderate housing rehabilitation repairs to assist owner-occupied, income-qualified households. It was anticipated that 10-15 income qualified households would benefit from this project. Accomplishments: On going

In addition, the City completed one project in the prior year: In PY18, the City allocated funding from different years to the Hudson Street Improvements project, which entailed the paving of one of the last remaining dirt roads within the City limits. Proposed improvements also include the addition of sidewalks as well as necessary drainage improvements. With the improvements to the local street, 15 homes will have the benefit of a safer street that has improved access to pedestrian features. Accomplishments: 1 road

As required by the City's CDBG Citizen Participation Plan, the report was made available for public comment on Friday, December 1 through Monday, December 18, 2023. No public comments were received.

City of Kissimmee

This report and related documents will be submitted to HUD for final approval. If requested by HUD, staff will make minor corrections without further review by the City Commission unless those corrections are substantive changes affecting the intent of the report.

Recommendation

Approve the Program Year 2022-2023 Community Development Block Grant Consolidated Annual Performance and Evaluation Report.

REQUESTED CITY COMMISSION ACTION:

Approve

Department: Development Services

Presenter: Frances DeJesus

Attachment(s):

1. CAPER2023



2021 CONSOLIDATED ANNUAL PERFORMANCE AND EVALUATION REPORT
DECEMBER 19, 2023

CR-05 - Goals and Outcomes

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

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

The City of Kissimmee was allocated \$732,540 in funding by HUD for Program Year (PY) 2022-2023. This past year was the third year under the 5 Year Consolidated Plan covering 2020-2025. Taking into consideration that mostly everyone has been personally impacted by the Coronavirus (COVID), the City of Kissimmee and its partners continued to make significant contributions to provide safe, decent and affordable housing, a suitable living environment, and economic opportunities especially to those in vulnerable situations such as the homeless and those at-risk of becoming homeless.

The disparity between income earned and housing costs has resulted in a great number of individuals and families living in area hotels/motels. The City has determined that this is a high priority need that will be addressed using all available resources. In addition, the disparity between household income and housing and other living expenses results in a significantly high percentage of the city's population to be financially burdened and threatened with homelessness. Currently, much of the city's employment opportunity is in service-related fields that pay lower wages. In Program Year 2022, the City allocated available public service funding and other resources to provide job training/educational opportunities to citizens in an effort to permanently move them from low wage jobs to higher paying, permanent employment opportunities. Throughout the year, funds were provided to local partners and spent to address those goals and priority needs accordingly. CDBG funds were allocated as follows:

- \$80,000 for code enforcement activities intended to assist in the preservation of the existing housing stock and relevant commercial structures. It was anticipated that the activities were going to generate over 700 notices and about 5-10 qualified households would benefit from this project. Accomplishments: 640 cases were handled. Of those, 136 were residential and 0 owners were assisted with repairs on their homes due to code enforcement issues.
- \$109, 881 was funding allocated for a variety of public services for housing and non-housing benefits to income qualified households through programs implemented internally or through local housing and supportive service providers. It was anticipated that approximately 50 qualified households would receive benefit from public service activities. Accomplishments: 543 persons were assisted.
- \$300,000 was allocated for the new construction or rehabilitation of a new or existing public facility to benefit homeless households seeking or receiving care through the local homeless care system. It was anticipated that 50-75 homeless persons or families would

benefit from activities funded by this project. Accomplishments: On going

- \$96,151 was set aside for activities involving minor and moderate housing rehabilitation repairs to assist owner-occupied, income-qualified households. It was anticipated that 10-15 income qualified households would benefit from this project. Accomplishments: 3 units, on going

In addition, the City completed one project from a prior year: In PY18, the City allocated funding from different years to the Hudson Street Improvements project, which entailed the paving of one of the last remaining dirt roads within the City limits. Proposed improvements also include the addition of sidewalks as well as necessary drainage improvements. With the improvements to the local street, 15 homes will have the benefit of a safer street that has improved access to pedestrian features. Accomplishments: 1 road, 15 homes

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

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

Goal	Category	Source / Amount	Indicator	Unit of Measure	Expected – Strategic Plan	Actual – Strategic Plan	Percent Complete	Expected – Program Year	Actual – Program Year	Percent Complete
Affordable Housing	Affordable Housing Homeless	CDBG: \$0 / SHIP: \$	Homeowner Housing Added	Household Housing Unit	75	0	0.00%	0	0	0.00%
Affordable Housing	Affordable Housing Homeless	CDBG: \$96,151 / SHIP: \$500,000	Homeowner Housing Rehabilitated	Household Housing Unit	0	10	0.00%	10	3	30%
Affordable Housing	Affordable Housing Homeless	CDBG: \$0 / SHIP: \$0	Tenant-based rental assistance / Rapid Rehousing	Households Assisted	0	0	0.00%	0	0	0.00%

Affordable Housing	Affordable Housing Homeless	CDBG: \$44,940 / SHIP: \$0	Homelessness Prevention	Persons Assisted	785	0	0.00%	25	488	1,952.00%
Economic Development	Non-Housing Community Development	CDBG: \$0	Public service activities other than Low/Moderate Income Housing Benefit	Persons Assisted	250	190	76.00%	0	0	0.00%
Housing Preservation	Affordable Housing	CDBG: \$0 / SHIP: \$0	Rental units rehabilitated	Household Housing Unit	250	0	0.00%	0	0	0.00%
Housing Preservation	Affordable Housing	CDBG: \$96,151 / SHIP: \$395,000	Homeowner Housing Rehabilitated	Household Housing Unit	25	5	20.00%	10	0	0.00%
Housing Preservation	Affordable Housing	CDBG: \$0 / SHIP: \$0	Buildings Demolished	Buildings	20	0	0.00%	0	0	0.00%
Housing Preservation	Affordable Housing	CDBG: \$0 / SHIP: \$0	Housing Code Enforcement/Foreclosed Property Care	Household Housing Unit	700	136	19.43%	700	136	19.43%
Program Administration	Program Administration	CDBG: \$146,508 / HOME: \$31,997 / SHIP: \$77,732	Other	Other	1	1	100.00%	1	0	0.00%

Public Facilities and Infrastructure Development		CDBG: \$0	Public Facility or Infrastructure Activities other than Low/Moderate Income Housing Benefit	Persons Assisted	10	1	10.00%	0	0	0.00%
Public Facilities and Infrastructure Development		CDBG: \$	Public Facility or Infrastructure Activities for Low/Moderate Income Housing Benefit	Households Assisted	0	0	0.00%	1	15	1,500.00%
Public Services	Affordable Housing Homeless Non-Homeless Special Needs Non-Housing Community Development	CDBG: \$	Public service activities other than Low/Moderate Income Housing Benefit	Persons Assisted	213	55	25.82%	50	55	110.00%
Public Services	Affordable Housing Homeless Non-Homeless Special Needs Non-Housing Community Development	CDBG: \$	Public service activities for Low/Moderate Income Housing Benefit	Households Assisted	124	488	393.55%	25	488	1,952.00%

Public Services	Affordable Housing Homeless Non-Homeless Special Needs Non-Housing Community Development	CDBG: \$	Homeless Person Overnight Shelter	Persons Assisted	0	0	0.00%	0	0	0.00%
Public Services	Affordable Housing Homeless Non-Homeless Special Needs Non-Housing Community Development	CDBG: \$	Overnight/Emergency Shelter/Transitional Housing Beds added	Beds	0	0	0	0	0	0

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

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

The PY 2020-2025 Consolidated Plan identified Affordable Housing Development; Housing Preservation; Economic Development; Public Services; Public Facilities and Improvements; and Planning and Administration as six general goals to be addressed during the 5-year program period. The City of Kissimmee selected not-for profit partners and allocated its PY 2022 funds to successfully provide the following activities: affordable housing, public services (navigation and outreach for homeless persons, summer camp program for homeless children, support services to provide job training/educational opportunities. Most of the public service activities identified as priorities in the 2022 Annual Action Plan were implemented accordingly. However activity intended to provide emergency rental to individuals participating in job training/educational programs did not move forward due to lack of demand. Those households are more in need of ongoing rental assistance while they go through

school; however, that use is ineligible under CDBG. The non-profit agency responsible for this activity has approached the City asking to re-allocate the funds to another activity. If approved, this will be done through a the substantial amendment process.

Other activities that are taking longer to complete are the new construction or rehabilitation of a new or existing public facility to benefit homeless households seeking or receiving care through the local homeless care system and the activities involving minor and moderate housing rehabilitation repairs to assist owner-occupied, income qualified households. It is expected that these activities will be completed in PY2023.

CR-10 - Racial and Ethnic composition of families assisted

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

91.520(a)

	CDBG
White	451
Black or African American	85
Asian	0
American Indian or American Native	2
Native Hawaiian or Other Pacific Islander	9
Total	547
Hispanic	137
Not Hispanic	410

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

Narrative

The racial/ethnic groups distribution in the City of Kissimmee is as follows: White (52%), Black or African American (9.7%), American Indian and Alaska Native (0.2%), Asian (2.8%), Native Hawaiian and Other Pacific Islander (0%) and mixed (15.6%). The Hispanic population is 70.1%. The persons assisted with CDBG funds were representative of the City's racial/ethnic population breakdown.

CR-15 - Resources and Investments 91.520(a)

Identify the resources made available

Source of Funds	Source	Resources Made Available	Amount Expended During Program Year
CDBG	public - federal	732,540	TBD
Other	public - federal	777,320	TBD
Other	public - state	777,320	TBD

Table 3 - Resources Made Available

Narrative

Identify the geographic distribution and location of investments

Target Area	Planned Percentage of Allocation	Actual Percentage of Allocation	Narrative Description
City of Kissimmee	80	100	All of the funds were used to address the needs within the city limits of Kissimmee.

Table 4 – Identify the geographic distribution and location of investments

Narrative

The City leveraged the CDBG dollars received from the Department of Housing and Urban Development (HUD) with other federal and state dollars to address the housing and community needs of its low and moderate income residents. The partners that participated in the program had funding of their own for part of their program so the CDBG were not used solely.

Leveraging

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

The City leveraged the CDBG dollars received from the Department of Housing and urban Development (HUD) with other federal and state dollars to address the housing and community needs of its low and moderate income residents. Th epartners that participated in the program leverage their funding for part of the program.

CR-20 - Affordable Housing 91.520(b)

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

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

Table 5 – Number of Households

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

Table 6 – Number of Households Supported

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

The City of Kissimmee did not allocate CDBG funds for the direct production of affordable housing. Instead the funds were allocated to support and maintain affordable housing through code enforcement and housing preservation.

The City allocated \$96,151 for activities involving minor and moderate housing rehabilitation repairs to assist owner-occupied, income qualified households. It was anticipated that 10-15 income qualified

households will benefit from this project. None of the rehabs have been identified nor completed. However, it is expected that completion will happen by the end of the PY23.

Discuss how these outcomes will impact future annual action plans.

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

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

Number of Households Served	CDBG Actual	HOME Actual
Extremely Low-income	547	0
Low-income	0	0
Moderate-income	0	0
Total	547	0

Table 7 – Number of Households Served

Narrative Information

All of the assisted households using PY22 funds so far have been extremely low income. It is expected that as some of the projects that are awaiting completion will assist low and moderate income households.

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

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

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

The Homeless Services Network of Central Florida is the lead agency for the HUD Continuum of Care for the area including Osceola, Seminole, and Orange Counties, including the Cities of Orlando, Kissimmee, and Sanford. The City of Kissimmee consults with the Homeless Services Network of Central Florida at least once annually to discuss the current needs of Kissimmee's homeless population and how funding could be spent to benefit this population and their families. The City of Kissimmee Commission is committed to battling the homeless population in the City. Programs addressing the homeless needs are often provided financial support with CDBG and other City funding sources.

Addressing the emergency shelter and transitional housing needs of homeless persons

The City of Kissimmee partners with many organizations and nonprofit agencies that assist the homeless. During PY2022, the City continued its successful relationship with the Hope Partnership by partially funding the position of Street Outreach Advocate. This staff person served 488 homeless individuals at different levels. These are individuals that meet the definition of literally homeless, living in cars, in the woods, or in other places, not meant for human habitation. Of those, 13 were housed in permanent supportive housing. Hope Partnership navigated these individuals to prepare them for housing. If all goes well, they can stay in their new home indefinitely. Generally, these individuals pay 30% of their fixed disability income for their housing.

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

The City of Kissimmee has a program that provides mortgage and rental assistance to prevent homelessness. Even though CDBG funds were not allocated to this activity during PY22, the City provided one month of rent or mortgage, and/or utilities, not to exceed \$1,200 or 3 months, in order to prevent eviction or foreclosure through limited subsistence payments. assistance to 25 households through the State Housing Initiatives Partnership (SHIP) program. The Osceola Council on Aging also has

programs that are able to assist such as the Low Income Home Energy Assistance Program (LIHEAP), utility payments and access to the food pantry.

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

The Community Hope Center, which is one of the City's sub-recipients, has a dedicated staff that helps to identify homeless individuals and those precariously housed individuals and families in the City. Some of the persons assisted are able to enter into permanent supportive housing paying only 30% of their fixed income in housing. In 2020, the Commission directed to develop a Request for Proposal (RFP) to seek a respondent that would assist with the City's goal of moving clients from homelessness to permanent housing quickly through temporary, hotel/motel based or other suitable emergency non-congregate shelter and support services to individuals experiencing homelessness. A location was identified in June 2023 and the project evolved into a hotel conversion that includes an affordable rental housing component in addition to the non-congregate homeless facility. The environmental process has not been completed yet as the City is still awaiting the receipt of the AUGF for the project. The City has not been able to commit part of its CDBG, CDBG-CV 1 and all of its CDBG-CV3, and HOME allocations.

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

Actions taken to address the needs of public housing

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

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

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

Actions taken to provide assistance to troubled PHAs

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

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

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

The City of Kissimmee maintains an Affordable Housing Advisory Committee (AHAC) that reviews policies, procedures, and ordinances for their impact on the development of housing, particularly affordable housing. strategies set out in Florida Statutes, Sec. 420.9076 (4)(a)-(k) as well as additional strategies not listed in the statute. The AHAC recommends incentives to remove these barriers in order to incentivize the development of affordable housing.

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

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

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

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

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

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

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

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

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

to determine where possible leveraging opportunities may exist.

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

The City of Kissimmee continued to strengthen its relationship with several private rental providers and many non-profit agencies serving the low and moderate income households within our community. The City of Kissimmee is a member of the Osceola Social Services Network. The Network's goal is to foster new partnerships and strengthen existing ones while providing opportunities for agency leadership to assess community needs, strategically plan, and implement change in the community. The discussion includes an update on what is going on with health and social services in Osceola County.

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

The City of Kissimmee completed its updated Analysis of Impediments to Fair Housing Choice in 2020. As the City's demographics continue to change, the City takes on initiatives to overcome the impacts of the impediments identified in the analysis. During the last couple of years, in April, the City and the Osceola County Association of Realtors have partnered to host the Fair Housing Drawing Contest to highlight Fair Housing Month. This event is used to educate the participants on the meaning of fair housing and what are the basic concepts to identify discriminatory treatment and how to address it.

In PY22, the City partnered with Community Legal Services of Mid-Florida to host a fair housing talk with program participants from the Osceola Council on Aging. The attendees were mostly concerned about the rising cost of housing.

CR-40 - Monitoring 91.220 and 91.230

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

The performance of each CDBG subrecipient is reviewed by the City of Kissimmee to ensure production and accountability, to ensure compliance with the federal requirements and to evaluate the organization's performance in delivering the programs with the CDBG funds. In-person monitoring activities were not conducted during PY 2022. However, staff maintained a "hands-on" approach throughout the year and closely oversaw the activities of its subrecipients by monitoring their performance through "desk" reviews.

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

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

The City of Kissimmee encourages citizens, public agencies, and other interested parties to review the contents of its draft CAPER and to submit written comments. A draft of the document was available at the City of Kissimmee Development Services Department office located at 101 Church Street, Kissimmee, FL 34741. Comments on the report were accepted in writing or via e-mail during a 15 day comment period from Friday, December 1 through Monday, December 18, 2023. No comments were received.

The City Commission held a Public hearing in the City Commission Chambers located at City Hall, 101 Church Street, Kissimmee, FL 34741 on Tuesday, December 19, 2022 at 6:00 PM to obtain input and comments. Persons with disabilities requiring special accommodations to participate were asked to call the Development Services Department office to make special arrangements prior to the meeting.

CR-45 - CDBG 91.520(c)

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

The City of Kissimmee did not meet the timeliness test by the deadline of August 15, 2023, as required by HUD due to a few major projects being delayed. Steps have been put in place in order to meet timeliness on August 2, 2024.

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

No

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

CR-45 - CDBG 91.520(c)

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

The City of Kissimmee did not meet the timeliness test by the deadline of August 15, 2023, as required by HUD due to a few major projects being delayed. Steps have been put in place in order to meet timeliness on August 2, 2024.

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

No

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

CR-58 – Section 3

Identify the number of individuals assisted and the types of assistance provided

Total Labor Hours	CDBG	HOME	ESG	HOPWA	HTF
Total Number of Activities	0	0	0	0	0
Total Labor Hours	0	0	0	0	0
Total Section 3 Worker Hours	0	0	0	0	0
Total Targeted Section 3 Worker Hours	0	0	0	0	0

Table 8 – Total Labor Hours

Qualitative Efforts - Number of Activities by Program	CDBG	HOME	ESG	HOPWA	HTF
Outreach efforts to generate job applicants who are Public Housing Targeted Workers	0	0	0	0	0
Outreach efforts to generate job applicants who are Other Funding Targeted Workers.	0	0	0	0	0
Direct, on-the job training (including apprenticeships).	0	0	0	0	0
Indirect training such as arranging for, contracting for, or paying tuition for, off-site training.	0	0	0	0	0
Technical assistance to help Section 3 workers compete for jobs (e.g., resume assistance, coaching).	0	0	0	0	0
Outreach efforts to identify and secure bids from Section 3 business concerns.	0	0	0	0	0
Technical assistance to help Section 3 business concerns understand and bid on contracts.	0	0	0	0	0
Division of contracts into smaller jobs to facilitate participation by Section 3 business concerns.	0	0	0	0	0
Provided or connected residents with assistance in seeking employment including: drafting resumes, preparing for interviews, finding job opportunities, connecting residents to job placement services.	0	0	0	0	0
Held one or more job fairs.	0	0	0	0	0
Provided or connected residents with supportive services that can provide direct services or referrals.	0	0	0	0	0
Provided or connected residents with supportive services that provide one or more of the following: work readiness health screenings, interview clothing, uniforms, test fees, transportation.	0	0	0	0	0
Assisted residents with finding child care.	0	0	0	0	0
Assisted residents to apply for, or attend community college or a four year educational institution.	0	0	0	0	0
Assisted residents to apply for, or attend vocational/technical training.	0	0	0	0	0
Assisted residents to obtain financial literacy training and/or coaching.	0	0	0	0	0
Bonding assistance, guaranties, or other efforts to support viable bids from Section 3 business concerns.	0	0	0	0	0
Provided or connected residents with training on computer use or online technologies.	0	0	0	0	0

Promoting the use of a business registry designed to create opportunities for disadvantaged and small businesses.	0	0	0	0	0
Outreach, engagement, or referrals with the state one-stop system, as designed in Section 121(e)(2) of the Workforce Innovation and Opportunity Act.	0	0	0	0	0
Other.	0	0	0	0	0

Table 9 – Qualitative Efforts - Number of Activities by Program

Narrative

None of the activities that were allocated funds from PY 2022 triggered Section 3 requirements.

ITEM 7.A**Approval of City Commission Minutes from the December 5, 2023, meeting****Request**

Request Commission approval of the December 5, 2023, Commission Minutes.

Explanation

Minutes of the Commission meeting held on December 5, 2023 are attached for approval.

Recommendation

Approval of the City Commission meeting minutes for December 5, 2023.

REQUESTED CITY COMMISSION ACTION:

Approve

Department: City Commission

Presenter:

Attachment(s):

1. (S) Commission Minutes - December 5 2023



**MEETING MINUTES
SESSION OF THE CITY COMMISSION
CITY OF KISSIMMEE
CITY HALL, COMMISSION CHAMBERS
101 CHURCH STREET, KISSIMMEE, FLORIDA 34741-5054
TUESDAY, DECEMBER 5, 2023 AT 6:00 PM**

1. MEETING CALLED TO ORDER

Members Present: Vice-Mayor Olga Castano, Angela Eady, Carlos Alvarez, III, Janette Martinez

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

Members Absent: Mayor-Commissioner Olga Gonzalez

Vice-Mayor Castano 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

- 3.A Recognition of Goodwin Realty & Associates, Inc., for their 50-year business anniversary
Presentation of award to Linda Goodwin-Nicols honoring her firm's extraordinary achievement in reaching 50 years in business.

Tom Tomerlin, Economic Development Director, made a presentation honoring Linda Goodwin and her 50 + years of service in the City as well as her time serving as a City Official. Ms. Goodwin was presented with an award of recognition and was joined by family, community leaders, co-workers, and friends.

Ms. Goodwin thanked the City Commission for this recognition and told a story about 1973, the year Goodwin Realty opened. Ms. Goodwin expressed her sincerest appreciation and thanked the Commission and the citizens for the opportunity to serve.

- 3.B Recognition of Lewis Music Store, LLC, for their 50-year business anniversary
Presentation of an award to Lewis family for their firm's extraordinary achievement in reaching 50-years in business.

The Lewis Family was unable to attend the meeting tonight and their recognition will be scheduled for a future meeting in January.

4. PUBLIC HEARINGS - FIRST AND SECOND READINGS

None.

5. PUBLIC HEARINGS

None.

6. HEAR AUDIENCE

John Cortes, 216 Old Mill Circle, Kissimmee, brought forth a few concerns including: the condition of the roads in Country Creek Estates, homeless individuals congregating and

dumping garbage behind the abandoned golf course off 192, and loud music in cars passing by as well as the use of cellphones while driving; recommended increasing the citations for cellphone usage while driving.

City Manager Steigerwald stated the City has plans underway for City-wide repaving and will verify if Country Creek Estates is on the list for priority. He commented that the golf course has had a lot of reported activity, and he will ensure that KPD continues to monitor the area and work collectively with other surrounding law enforcement to patrol the grounds. He will also investigate getting a fence installed on the premises.

Ted Baker, 806 Person Street, Kissimmee, has been to the Commission several times concerning wanting speed bumps in the neighborhood, "Kids at Play" signage as well as speed limits signs. He stated the potholes, and the pedestrian bridge were not yet fixed. He would appreciate the commission continuing to work on these issues.

Commissioner Eady asked if there was a four way stop at the corner of Hill and Person Street. Mr. Baker confirmed that it was just a stop sign. City Manager Steigerwald informed Commissioner Eady that the Public Works Director, Ashley Willis, approved the speed bumps request, and we can investigate additional stop signs as a deterrent for speeding. Director Willis will check with his team on when the work will begin. Commissioner Martinez reiterated to Mr. Baker that the speedbumps have been approved and will be installed.

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.

Commissioner Martinez made a motion to approve the Consent Agenda minus item 7.F. Commissioner Alvarez seconded the motion.

Motion carries 4 - 0.

Discussion held under Item 7.F. after it was removed from the Consent Agenda.

- 7.A Approval of City Commission Minutes from November 7, 2023, and November 21, 2023
Request Commission approval of the November 7th and November 21st Commission Minutes.
- 7.B Amphitheater shade purchase for Lakefront Park
Approval to purchase amphitheater shade cover for the Veteran's Lawn stage at the Kissimmee Lakefront Park from REP Services, Inc. using Sales Tax and Land and Water Grant funds totaling \$193,874.89.
- 7.C Transfer of funds for the completion of the Rescue Remount project
Approval to transfer \$16,021 from the Fire Department Vehicle Maintenance account to project ST2304 to complete the Rescue Remount Project.
- 7.D FOF Osceola Commerce Center Final Plat
Approval of the FOF Osceola Commerce Center final plat (DRC# SR-23-0009). This final plat merges multiple underlying parcels into a single lot, facilitating further development.

- 7.E Community Development Block Grant FY2023 Funding and Subrecipient Agreements
Acceptance of the Community Development Block Grant (CDBG) FY2023 allocation from the U.S. Department of Housing and Urban Development (HUD) in the amount of \$841,265, approval for the Mayor to execute contract #20240116 (Funding Agreement) and authorize staff to draft subrecipient agreements with the recommended public service agencies.
- 7.F Amendment to the Franchise Agreement with Waste Management of Orlando Inc.
Approval and execution of contract #20240120, a Franchise Agreement extension between the City of Kissimmee, Florida and Waste Management of Orlando, Inc.

City Manager Steigerwald stated this is a request to extend and execute the agreement with Waste Management for an additional five (5) years and additional renewals thereafter. Attached as (Exhibit "A") is a handout for Commission review containing multiple emails expressing concerns with the renewal of the agreement. City Manager Steigerwald reminded the Commission that initially the City planned to provide these services in-house but quickly learned that after Covid it was not feasible given consistent delays and increased expenses. A re-analysis was conducted by a consultant which concluded outsourcing with Waste Management was the most beneficial.

Public Works Director Ashley Willis introduced Jose Boscan, Government Affairs Manager for Waste Management. Mr. Boscan discussed the business operations and services provided by the organization. He discussed overage fees in detail, and what would warrant an additional fee. Mr. Boscan further explained that the company removes the fee once the recommended changes have been made by the customer and have even reimbursed customers who quickly correct the issue. Waste Management works hard to service the accounts and help them with right-sizing and offers the opportunity to work with customers to solve those issues.

Commissioners individually engaged in open discussion with Mr. Boscan and the City Manager regarding the complaints received inside of Exhibit "A". The complainants who wrote in did not attend tonight's meeting and Commissioner Martinez requested the board give them an opportunity to come and be heard at the next meeting. Commissioner Eady stated that they had an opportunity to come tonight, and we should move forward with approving the contract so that we do not further delay the services since the contract is expiring soon. Mr. Boscan answered additional questions from the various Commissioners regarding franchise fees, annual rate increases, Waste Management recommendations provided to customers, and past examples of overage fees. City Manager Steigerwald confirmed only speaking to one out of the six (6) complainants.

Commissioner Eady made a motion to approve the Waste Management Contract as written. Commissioner Alvarez seconded the motion.

Motion carried 4 - 0.

- 7.G Application for Internship Grant for Kissimmee Gateway Airport
Approval to apply for an Internship Grant from the Florida Airports Council for Kissimmee Gateway Airport.

7.H Grant Application for Airfield Markings Project

Approval to apply for a Public Transportation Grant Agreement from the Florida Department of Transportation for an Airfield Pavement Markings Project and amend the budget accordingly.

7.I Budget Amendment and Reclassification of an Airport Position

Approval of a budget amendment to reclassify a vacant Airport Technician II position to an Airport Maintenance Manager position at the Kissimmee Gateway Airport.

7.J Quiet Title to 310 N. Beaumont Avenue

Approval to commence litigation to quiet title to 310 N. Beaumont Ave.

8. DISCUSSION ITEMS

8.A Renewal of the Osceola Legislative Effort Agreement

Staff requests Commission direction on whether or not the City should continue to participate in the joint lobbying with the Osceola Legislative Effort (OLE) and execute contract #20240125.

City Manager Steigerwald explained this item was continued from the last meeting to give the Commission the opportunity to hear the terms. It is a joint contract between Osceola County, the School District, the City of Saint Cloud, and the City. The City's portion of the cost would be \$40,000. It is a two-year extension with an option to not participate in the FY2025 agreement if the Commission desires to not include it in next year's budget.

Commissioner Eady made a motion to approve the OLE Agreement for \$40,000. Commissioner Martinez seconded the motion.

AYE: Commissioner Castano, Commissioner Eady, Commissioner Martinez

NAY: Commissioner Alvarez

Motion carried 3 - 1.

8.B Haven on Vine Apartments FY 2023-2024 Annual Operating Budget

Approval for the FY23-24 Annual Operating Budget for the Haven on Vine Apartments

City Manager Steigerwald stated moving forward to renovate the units at the Haven. Need to have a budget proposed.

Desiree Matthews reviewed the budget and complimented the Commission on making the decision to fund this unique project. She reviewed the request for \$800,000 to fund two (2) full-time positions which include a Property Manager, and a maintenance person as well as two (2) part-time positions to support operations. The funding request additionally includes all utilities: water, electricity, sewer, cable, Wi-Fi, trash, and all operating expenses such as general maintenance of the property grounds. Since the property will not be fully occupied while we wait for HUD funding, the budget has been modified from \$1,000,000 to \$800,000.

Commissioner Alvarez made a motion to adopt the FY23-24 Budget for the Haven on Vine at a total of \$800,000.00. Commissioner Eady seconded the motion.

AYE: Commissioner Alvarez, Commissioner Castano, Commissioner Eady, Commissioner Martinez
NAY: None

Motion carried 4 - 0.

9. HEAR CITY OFFICIALS

9.A CITY MANAGER

City Manager Steigerwald requested the Commission discuss the Holiday Incentive Payment (Exhibit "B"). This incentive is given to the employees for being conservative with budgets and eliminating wasteful spending; this is given to the employees as a Holiday Incentive Payment. The cost to the City will be \$162,000.00 from Reserves as a one-time payment for full and part-time employees.

Commissioner Martinez made a motion to approve.

After Commission discussion, a motion was made by Commissioner Eady to bring the full-time employee incentive to a net payment of \$200 from the proposed net \$150 and a net of \$100 from the proposed net \$75.00 for part-time employees. Employees with less than one (1) year of service would receive half of the net incentive as listed. Commissioner Alvarez seconded the motion.

Motion carried 4 - 0.

9.B CITY ATTORNEY

Nothing.

9.C CITY COMMISSION

Commissioner Eady, Alvarez, Martinez and Castano invited everyone to the Festival of Lights Parade in downtown Kissimmee this Saturday, December 9, 2023; it is a great event full of fun for the entire family and you don't want to miss it. The activities begin at 4:30 p.m. and the parade will start at 7:30 p.m.

10. ADJOURNMENT

There being no further business to come before the Commission, Vice-Mayor Castano adjourned the meeting at 6:50 PM.

MAYOR-
COMMISSIONER

ATTEST:

CITY CLERK

Exhibit "A"

Hand-outs Waste Management Concerns

Citizen's Comments: Alicia Kelly, Zack Parsons, Kristin Spivey, Niles Chalifoux,
Gourav Mukherjee, John Fields
Item 7.F. (Consent)

Exhibit "A"

1

Hand-out 7.F.
12/5/2023

Linda Hansell

From: Alicia Kelly <alicia@schoolfieldproperties.com>
Sent: Tuesday, December 5, 2023 12:48 PM
To: Olga Gonzalez; Olga Castano; Angela Eady; Carlos Alvarez, III; Janette Martinez
Cc: Linda Hansell; Olga Sanchez de Fuentes
Subject: WM Franchise Agreement
Attachments: WMattach1.pdf; WM overageattach2.pdf

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

Good afternoon. Unfortunately, I will not be able to attend this evening's city commission meeting; but wanted to reach out to each of you regarding an issue that I hope you will take under consideration. Please accept this correspondence and its attachments as my request that the commission pull Item #7.F (Amendment to the Franchise Agreement with Waste Management of Orlando, Inc.) from the consent agenda for tonight's commission meeting. I request that the commission reconsider this agreement as it unfairly burdens commercial property owners within the city's jurisdiction. As you are likely aware, commercial property owners within the city's jurisdiction have no choice but to utilize Waste Management for commercial solid waste disposal. In contrast, property owners in the county's jurisdiction are not bound by a similar requirement and are instead able to negotiate with various vendors to obtain the best services/rates for commercial solid waste disposal (dumpster service).

The proposed amendment on this evening's agenda provides for an increase in fees effective 01/01/24, and more importantly, allows for a continuance of "container overage charges". The proposed fees exceed those within the market area. For your convenience and consideration, I've attached a breakdown of the fees we pay to another vendor for the same services within the county in comparison to the proposed WM Kissimmee fees (attachment 1). Please note that in addition to the Dumpster Service fees on attachment 1, there are additional city/county taxes & transfer fees on the WM Kissimmee fees (which are incorporated into the overall costs on the county rate comparison in attachment 1).

More concerning is the imposition of "container overage charges" we started receiving on our KUA billing's for WM "overages" this year. Please note, there is no documentation of these supposed "overages". I've requested documentation from city staff, but have not received any supporting documents to justify the overages. Instead, we are left with no way to dispute the charges and face termination of services if not paid. I've attached redacted billings for several months at **some** of our properties to give you a better idea of the abusive, opportunistic, and wholly egregious overage fees we've paid. We've paid thousands this year in overage fees.

Again, I would request that the commission remove this item from tonight's agenda and reconsider its contract with Waste Management for commercial solid waste disposal.

Sincerely,
Alicia N. Kelly, Esq.
Schoolfield Properties
101 Park Place Blvd Suite 3
Kissimmee FL 34741
Office: (407) 847 3099
Cell: (407) 414 2566
Fax: (407) 847 2850

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	Size	Frequency	Rate	WM Kissimmee Rate
560 E. Osceola Pkwy	8	2	\$ 443.39	\$ 551.05
102 Park Place Blvd	8	2	\$ 443.39	\$ 551.05
101 Park Place Blvd.	4	1	\$ 80.84	\$ 172.45
2264 E. Irlo Bronson Mem HW	8	1	\$ 213.77	\$ 287.39



Customer Service: 407-933-9800
Outage Reporting: 407-933-9898
www.kua.com



PAY BILL

Customer Name: SCHOOLFIELD PROPERTIES, INC.
Service Address: 1501 KELLEY AVENUE HSMTR
Bill Date: 05/15/23
Next Scheduled Read Date: 06/07/23



BILL SUMMARY

Previous Balance	-	Payments	+	Adjustments	+	Current Charges	=	Balance Due
------------------	---	----------	---	-------------	---	-----------------	---	-------------

CURRENT CHARGES

KUA ELECTRIC SERVICE	
Electric	
Fuel Adjustment	
Customer Charge	
CITY OF KISSIMMEE CHARGES	
Storm Water Charge	
Dumpster Service	\$698.35
CITY/COUNTY TAXES & TRANSFER FEE	\$12.61
TOTAL CURRENT CHARGES	

ADJUSTMENTS	\$875.00
Dumpster Overflow Charge	\$875.00

Silverthorn

USAGE DETAILS

Electric - Commercial
Daily Avg. [redacted] Day
Use One Year Ago [redacted]
Daily Avg. Cost [redacted]

KWH

M J J A S O N D J F M A M

METER DATA

Meter #:	[redacted]
Current:	[redacted] on 05/08/23
Previous:	[redacted] on 04/07/23
Total Usage:	[redacted] h
Days Of Service:	[redacted]

MESSAGE from KUA

PLEASE BE ADVISED:

Following a March public hearing, Kissimmee Utility Authority updated its Electric Service Tariffs. The updates are meant to reduce certain fees that are no longer necessary due to efficiencies gained through our AMI system. **EFFECTIVE MAY 1, 2023**, we are now asking our customers that require service at their location to pay for the trip. To learn more visit kua.com/rates.



Customer Service: 407-933-9800
Outage Reporting: 407-933-9898
www.kua.com

SCAN TO



PAID BILL

Customer ID - Account ID:

Customer Name: SCHOOLFIELD PROPERTIES, INC.

Service Address: 1501 KELLEY AVENUE HSMTR

Bill Date: 06/15/23

Next Scheduled Read Date: 07/06/23

BILL SUMMARY

Previous Balance - Payments + Adjustments + Current Charges = Balance Due

CURRENT CHARGES

KUA ELECTRIC SERVICE

Electric

Fuel Adjustment

Customer Charge

CITY OF KISSIMMEE CHARGES

Storm Water Charge

Dumpster Service

\$698.35

CITY/COUNTY TAXES & TRANSFER FEE

\$11.55

TOTAL CURRENT CHARGES

ADJUSTMENTS

Dumpster Overflow Charge

\$250.00

\$250.00

Silberthorn

USAGE DETAILS

Electric - Commercial

KWH

Daily Avg.

Use One Year Ago -

Daily Avg. Cost -

J J A S O N D J F M A M J

METER DATA

Meter #:

Current:

Previous:

Total Usage:

Days Of Service:

06/07/23

on 05/08/23

MESSAGE from KUA



Visit kua.com/save for tips on managing summer energy bills

Visite kua.com/save para obtener consejos sobre cómo administrar las facturas eléctricas de verano





Customer Service: 407-933-9800
Outage Reporting: 407-933-9898
www.kua.com

SCAN TO



PAY BILL

Customer ID - Account ID: [REDACTED]
Customer Name: SCHOOLFIELD PROPERTIES, INC.
Service Address: 1501 KELLEY AVENUE HSMTR
Bill Date: 07/13/23
Next Scheduled Read Date: 08/04/23

BILL SUMMARY

Previous Balance - Payments + Adjustments + Current Charges = Balance Due

CURRENT CHARGES

KUA ELECTRIC SERVICE

Electric [REDACTED]
Fuel Adjustment [REDACTED]
Customer Charge [REDACTED]

CITY OF KISSIMMEE CHARGES

Storm Water Charge [REDACTED]
Dumpster Service \$698.35

CITY/COUNTY TAXES & TRANSFER FEE \$10.66

TOTAL CURRENT CHARGES [REDACTED]

ADJUSTMENTS \$250.00
Dumpster Overflow Charge \$250.00

Silverthorn

USAGE DETAILS

Electric - Commercial

Daily Avg. [REDACTED] Day
Use [REDACTED] y
Daily Avg. Cost [REDACTED]

KWH

J A S O N D J F M A M J J

METER DATA

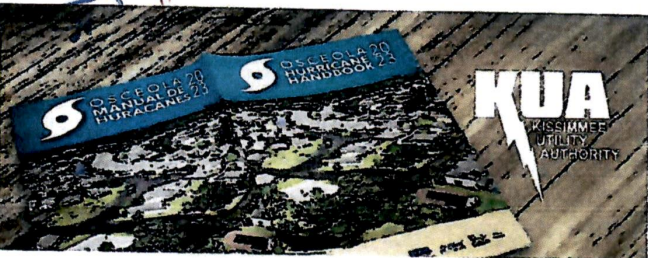
Meter #: [REDACTED]
Current: [REDACTED] 07/06/23
Previous: [REDACTED] 06/07/23
Total Usage: [REDACTED]
Days Of Service: [REDACTED]

MESSAGE from KUA

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Outage Reporting: 407-933-9898
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SCAN TO



PAY BILL

Customer ID - Account ID:

Customer Name:

Service Address:

Bill Date:

Next Scheduled Read Date:

EVERGREEN CAPITAL, LLC
461 W OAK STREET HSMTR
07/24/23
08/12/23

BILL SUMMARY

Previous Balance - Payments + Adjustments + Current Charges = Balance Due

CURRENT CHARGES

KUA ELECTRIC SERVICE

Electric

Fuel Adjustment

Customer Charge

CITY OF KISSIMMEE CHARGES

Storm Water Charge

Dumpster Service

\$973.16

CITY/COUNTY TAXES & TRANSFER FEE

\$95.43

TOTAL CURRENT CHARGES

ADJUSTMENTS

\$375.00

Dumpster Overflow Charge

\$375.00

Evergreen

USAGE DETAILS

Electric - Commercial

Daily Avg. - h/Day

Use One Year Ago

Daily Avg. Cost

KWH

J A S O N D J F M A M J J

METER DATA

Meter #:

Current:

Previous:

Total Usage:

Days Of Service:

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Page 1 of 2





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Outage Reporting: 407-933-9898
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SCAN TO



PAY BILL

Customer ID - Account ID:

Customer Name:

Service Address:

Bill Date:

Next Scheduled Read Date:

SCHOOLFIELD PROPERTIES, INC.

1362 E VINE STREET DUMP

08/11/23

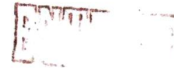
BILL SUMMARY

Previous Balance	-	Payments	+	Adjustments	+	Current Charges	=	Balance Due
------------------	---	----------	---	-------------	---	-----------------	---	-------------

CURRENT CHARGES

CITY OF KISSIMMEE CHARGES	\$973.16
Dumpster Service	\$973.16
TOTAL CURRENT CHARGES	\$973.16
ADJUSTMENTS	\$250.00
Dumpster Overflow Charge	\$250.00

mcm



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WIN \$150

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CALENDAR ART CONTEST

¡CONVOCATORIA!

¡Envía tu obra de arte para el
Concurso de arte del calendario de KUA
a partir del 21 de agosto!

GANAR \$150

Visita kua.com/calendar



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www.kua.com

SCAN TO



PAY BILL

Customer ID - Account ID: [REDACTED]
Customer Name: SCHOOLFIELD PROPERTIES, INC.
Service Address: 1362 E VINE STREET DUMP
Bill Date: 07/13/23
Next Scheduled Read Date:

BILL SUMMARY

Previous Balance	-	Payments	+	Adjustments	+	Current Charges	=	Balance Due
[REDACTED]		[REDACTED]		[REDACTED]		[REDACTED]		[REDACTED]

CURRENT CHARGES

CITY OF KISSIMMEE CHARGES	\$973.16
Dumpster Service	\$973.16
TOTAL CURRENT CHARGES	\$973.16
ADJUSTMENTS	\$125.00
Dumpster Overflow Charge	\$125.00

MESSAGE from KUA

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Page 1 of 2



Customer Service: 407-933-9800
Outage Reporting: 407-933-9898
www.kua.com



Customer ID - Account ID: [REDACTED]
Customer Name: SCHOOLFIELD PROPERTIES, INC.
Service Address: 1362 E VINE STREET DUMP
Bill Date: 05/15/23
Next Scheduled Read Date:



BILL SUMMARY

Previous Balance [REDACTED] - Payments [REDACTED] + Adjustments [REDACTED] + Current Charges [REDACTED] = Balance Due [REDACTED]

CURRENT CHARGES

CITY OF KISSIMMEE CHARGES	\$973.16
Dumpster Service	\$973.16
TOTAL CURRENT CHARGES	\$973.16
ADJUSTMENTS	\$250.00
Dumpster Overflow Charge	\$250.00

mcm



MESSAGE from KUA

PLEASE BE ADVISED:

Following a March public hearing, Kissimmee Utility Authority updated its Electric Service Tariffs. The updates are meant to reduce certain fees that are no longer necessary due to efficiencies gained through our AMI system. **EFFECTIVE MAY 1, 2023**, we are now asking our customers that require service at their location to pay for the trip. To learn more visit kua.com/rates.

Page 1 of 2 (BATCH 1)



Customer Service: 407-933-9800
Outage Reporting: 407-933-9898
www.kua.com



Customer ID - Account ID: [REDACTED]
Customer Name: SCHOOLFIELD PROPERTIES, INC.
Service Address: 201-203 BROADWAY EL/CN
Bill Date: 05/11/23
Next Scheduled Read Date: 06/06/23

BILL SUMMARY

Previous Balance - Payments + Adjustments + Current Charges = Balance Due

CURRENT CHARGES

KUA ELECTRIC SERVICE
Electric [REDACTED]
Fuel Adjustment [REDACTED]
Customer Charge [REDACTED]

CITY OF KISSIMMEE CHARGES
Storm Water Charge [REDACTED]
Dumpster Service \$162.20

CITY/COUNTY TAXES & TRANSFER FEE \$74.91

TOTAL CURRENT CHARGES [REDACTED]

ADJUSTMENTS \$100.00

Dumpster Overflow Charge \$100.00

USAGE DETAILS

Electric - Commercial

[REDACTED] Day
[REDACTED] kWh/Day

KWH

M J J A A O N D J F M A M

METER DATA

Meter #: [REDACTED]
Current: [REDACTED] 05/11/23
Previous: [REDACTED] 04/05/23
Total Usage: [REDACTED] Wh
Days Of Service: [REDACTED]

Broadway



MESSAGE from KUA

PLEASE BE ADVISED:

Following a March public hearing, Kissimmee Utility Authority updated its Electric Service Tariffs. The updates are meant to reduce certain fees that are no longer necessary due to efficiencies gained through our AMI system. **EFFECTIVE MAY 1, 2023**, we are now asking our customers that require service at their location to pay for the trip. To learn more visit kua.com/rates.





Customer Service: 407-933-9800
Outage Reporting: 407-933-9898
www.kua.com

SCAN TO



Customer ID - Account ID: [REDACTED]
Customer Name: SCHOOLFIELD PROPERTIES, INC.
Service Address: 201-203 BROADWAY EL/CN
Bill Date: 08/10/23
Next Scheduled Read Date: 09/01/23

BILL SUMMARY

Previous Balance - Payments + Adjustments + Current Charges = Balance Due

CURRENT CHARGES

KUA ELECTRIC SERVICE
Electric [REDACTED]
Fuel Adjustment [REDACTED]
Customer Charge [REDACTED]

CITY OF KISSIMMEE CHARGES
Storm Water Charge [REDACTED]
Dumpster Service \$162.20

CITY/COUNTY TAXES & TRANSFER FEE \$88.07

TOTAL CURRENT CHARGES [REDACTED]

ADJUSTMENTS \$200.00
Dumpster Overflow Charge \$200.00

USAGE DETAILS

Electric - Commercial KWH
Daily Avg. [REDACTED]
Use One Year Ago - [REDACTED]
Daily Avg. Cos [REDACTED]
A A O N D J F M A M J J A

METER DATA

Meter #: [REDACTED]
Current: [REDACTED] on 08/03/23
Previous: [REDACTED] on 07/05/23
Total Usage: [REDACTED] kWh
Days Of Service: [REDACTED]

Handwritten: Broadway

MESSAGE from KUA

CALL FOR ENTRIES!
Submit your artwork for
KUA's Calendar Art Contest starting Aug. 21!
WIN \$150
Visit kua.com/calendar

30TH ANNIVERSARY
CALENDAR ART CONTEST

¡CONVOCATORIA!
¡Envía tu obra de arte para el
Concurso de arte del calendario de KUA
a partir del 21 de agosto!
GANAR \$150
Visita kua.com/calendar



Customer Service: 407-933-9800
Outage Reporting: 407-933-9898
www.kua.com

SCANTO



Customer ID - Account ID: [REDACTED]
Customer Name: SCHOOLFIELD PROPERTIES, INC.
Service Address: 201-203 BROADWAY EL/CN
Bill Date: 04/11/23
Next Scheduled Read Date: 05/06/23

BILL SUMMARY

Previous Balance - Payments + Adjustments + Current Charges = Balance Due

CURRENT CHARGES

KUA ELECTRIC SERVICE

Electric [REDACTED]
Fuel Adjustment [REDACTED]
Customer Charge [REDACTED]

CITY OF KISSIMMEE CHARGES

Storm Water Charge [REDACTED]
Dumpster Service \$162.20

CITY/COUNTY TAXES & TRANSFER FEE \$64.92

TOTAL CURRENT CHARGES

ADJUSTMENTS

Dumpster Overflow Charge \$100.00

USAGE DETAILS

Electric - Commercial

Daily Avg. [REDACTED] kWh/Day

Use One Year Ago [REDACTED] kWh/Day

Daily Avg. Cost - [REDACTED]

KWH

A M J J A A O N D J F M A

METER DATA

Meter #: [REDACTED]
Current: [REDACTED] on 04/05/23
Previous: [REDACTED] on 03/05/23
Total Usage: [REDACTED] kWh
Days Of Service: [REDACTED]

Broadway



MESSAGE from KUA

NOTICE A TREE INTERFERING WITH POWER LINES?

¿Observa un árbol que interfiere con las líneas eléctricas?

You can submit a tree trimming request online by visiting kua.com/treerequest or call us at 407-933-9898.
Puede enviar una solicitud de poda de árboles en línea visitando kua.com/treerequest o llámenos al 407-933-9898.





Customer Service: 407-933-9800
Outage Reporting: 407-933-9898
www.kua.com



Customer ID - Account ID: [REDACTED]
Customer Name: SCHOOLFIELD PROPERTIES, INC.
Service Address: 0 RIDGE STREET GB/VLITE
Bill Date: 10/18/23
Next Scheduled Read Date:

BILL SUMMARY

Previous Balance - Payments + Adjustments + Current Charges = Balance Due

CURRENT CHARGES

KUA ELECTRIC SERVICE

Outdoor Lighting Charge
Fuel Adjustment

CITY OF KISSIMMEE CHARGES

Dumpster Service \$486.58

CITY/COUNTY TAXES & TRANSFER FEE \$12.30

TOTAL CURRENT CHARGES

ADJUSTMENTS \$125.00

Dumpster Overflow Charge \$125.00

MESSAGE from KUA

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Hurricane Season is here. Be prepared.

To download your bilingual copy visit kua.com/storm or pick up a free printed copy in our Carroll Street lobby.



Linda Hansell

From: Zack Parsons <parsonszack@hotmail.com>
Sent: Tuesday, December 5, 2023 1:26 PM
To: Olga Gonzalez; Olga Castano; Angela Eady; Carlos Alvarez, III; Janette Martinez
Cc: Linda Hansell; Olga Sanchez de Fuentes; Mike Steigerwald
Subject: Waste Management Franchise Agreement Discussion

Follow Up Flag: Follow up
Flag Status: Flagged

EXTERNAL EMAIL: This email originated from outside of the organization. DO NOT REPLY, CLICK LINKS, or OPEN ATTACHMENTS unless you recognize the sender and know the content is safe

Good afternoon,

I wanted to take a moment to request that you reconsider the proposed amendment to the franchise agreement with Waste Management of Orlando, Inc. It is my understanding (upon my basic research) that the original agreement is so old, that there is no confirmed original copy of this agreement from which to refer to and that the can has been kicked through time without a true understanding of the agreement. Many other local business owners and I have been burdened by exponentially growing costs of garbage disposal (specifically in the commercial & light-industrial realm). The overage charges are accumulating into the thousands of dollars per location, per year, as illegal dumping becomes a more chronic problem in the city. It is unfair for the businesses to absorb all of these costs. These costs become even more ironically painful when compared to the garbage fees seen around the rest of the county, which are roughly 40% less when compared to similar yardage rates. We need to consider other options instead of consistently kicking the can down the road for the next generation of commissioners to resolve.

Thank you,

Zack Parsons
Orange Blossom Outdoor Pest & Lawn Spray, LLC
Z Family Assets, LLC
Osceola Beverage, LLC
Ray C Parsons Architect, LLC
Parking Lot Pro Florida, LLC
Latitude 28 Real Estate Brokerage, Inc. - Florida
Cell: 352-262-2336
email: parsonszack@hotmail.com

3

Hand-out 7.F

Linda Hansell

Subject: FW: Consent agenda Item 7.F- WM Contract
Attachments: KUA bills.pdf

-----Original Message-----

From: Kristin Spivey <kvspivey@gmail.com>
Sent: Tuesday, December 5, 2023 1:41 PM
To: Olga Gonzalez <OLGA.GONZALEZ@kissimmee.gov>
Cc: Olga Castano <OLGA.CASTANO@kissimmee.gov>; Angela Eady <Angela.Eady@kissimmee.gov>; Carlos Alvarez, III <CARLOS.ALVAREZ@kissimmee.gov>; Janette Martinez <Janette.Martinez@kissimmee.gov>; Mike Steigerwald <MIKE.STEIGERWALD@kissimmee.gov>
Subject: Consent agenda Item 7.F- WM Contract

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

Good afternoon,

I am writing to you because there is an item on the consent agenda that I feel needs to be pulled and renegotiated, if not reconsidered as a whole. I will not be able to attend tonight's meeting because of a school engagement that my daughter must attend, but I hope that you will make record of this email for the Commission's consideration.

Approval of Item 7.F extends the Franchise Agreement with Waste Management of Orlando, Inc. is not in your commercial constituents' best interests. It is my understanding that approval of this item would implement an increase in fees and uphold the outrageous overage charges that are on our KUA bills each month.

My husband and I own commercial real estate in the Historic Downtown Kissimmee area, and specifically the location at 131 Broadway Ave (the building that is home to Buchito Cuban Cafe). This dumpster is consistently being hit with overage charges that amount to more than the entire dumpster bill most months. In an area riddled with illegal dumping, dumpsters blocked by cars parked in no parking zones (which on W. Monument Ave the paint designating parking spots and non-parking zones is so faded you can't even see these "marked" areas), it would be in our business's best interest to be able to shop solid waste dumpster providers that offer lower fees and overage charges, yet we are bound to Waste Management and its current contract, which is HIGHER than it's competitors. So, I ask that my commissioners question and negotiate this contract and this company's higher-than-market fees on our behalf.

I have attached copies of the past 5 KUA bills with the overage charges highlighted. This is just a fraction of the total fees for the year.

Please reconsider your contract with Waste Management and the negative impact that it has on small business owners in the City Limits.

I look forward to hearing the outcome of this item after tonight's meeting.

Have a great afternoon,

Kristin Spivey
127 Broadway LLC
(407)415-0134



Customer Service: 407-933-9800
Outage Reporting: 407-933-9898
www.kua.com



Customer ID - Account ID:
Customer Name:
Service Address:
Bill Date:
Next Scheduled Read Date:

002168161-000382110
127 BROADWAY, LLC
2 W MONUMENT AVENUE
06/13/23
07/05/23



PAY BILL

BILL SUMMARY

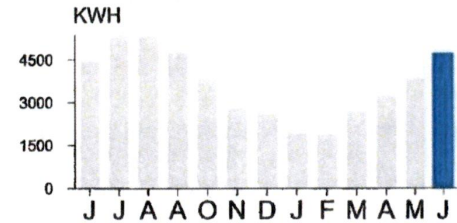
Previous Balance \$939.74 - Payments \$939.74 + Adjustments \$100.00 + Current Charges \$1,035.49 = Balance Due \$1,135.49

CURRENT CHARGES

KUA ELECTRIC SERVICE	\$567.87
Electric	\$637.61
Fuel Adjustment	-\$80.82
Customer Charge	\$11.08
CITY OF KISSIMMEE CHARGES	\$309.69
Storm Water Charge	\$9.80
Dumpster Service	\$299.89
CITY/COUNTY TAXES & TRANSFER FEE	\$157.93
TOTAL CURRENT CHARGES	\$1,035.49
ADJUSTMENTS	\$100.00
Dumpster Overflow Charge	\$100.00

USAGE DETAILS

Electric - Commercial
Daily Avg. - 153.16 kWh/Day
Use One Year Ago - 148.83 kWh/Day
Daily Avg. Cost - \$18.32



SERVICE TYPE

	Meter Id	Current Read Date	Current Read	Previous Read Date	Previous Reading	Meter Mult.	Billed Usage	Days of Service
Electric	0156884972	06/06/23	140,401	05/06/23	135,653	1	4,748	31
Demand	0156884972	06/06/23	14.46	05/06/23	13.62	1	14.46	31

MESSAGE from KUA



Visit kua.com/save for tips on managing summer energy bills

Visite kua.com/save para obtener consejos sobre cómo administrar las facturas eléctricas de verano



Page 1 of 2



PO Box 423219
Kissimmee, FL 34742-3219

Customer ID - Account ID
002168161-000382110

Past Due Pay Now
\$0.00

Late Fee After
07/01/23
\$31.02

Total Amount Due 07/01/23

\$1,135.49

5511001136 PRESORT 1136 1 AV 0.468 P1C5



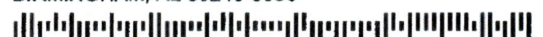
127 BROADWAY, LLC
117 BROADWAY
KISSIMMEE FL 34741-5713



0025681736

Make Checks Payable To:

KISSIMMEE UTILITY AUTHORITY
DEPT. 96
P.O. BOX 2252
BIRMINGHAM, AL 35246-0096



0021681610003821100001135490001166512023070100



Customer Service: 407-933-9800
Outage Reporting: 407-933-9898
www.kua.com



Customer ID - Account ID:
Customer Name:
Service Address:
Bill Date:
Next Scheduled Read Date:

002168161-000382110
127 BROADWAY, LLC
2 W MONUMENT AVENUE
07/11/23
08/03/23



BILL SUMMARY

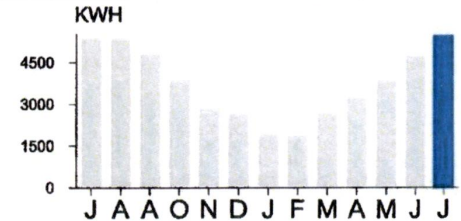
Previous Balance \$1,135.49 - Payments \$1,135.49 + Adjustments \$200.00 + Current Charges \$1,076.22 = Balance Due \$1,276.22

CURRENT CHARGES

KUA ELECTRIC SERVICE	\$591.04
Electric	\$740.75
Fuel Adjustment	-\$160.79
Customer Charge	\$11.08
CITY OF KISSIMMEE CHARGES	\$309.69
Storm Water Charge	\$9.80
Dumpster Service	\$299.89
CITY/COUNTY TAXES & TRANSFER FEE	\$175.49
TOTAL CURRENT CHARGES	\$1,076.22
ADJUSTMENTS	\$200.00
Dumpster Overflow Charge	\$200.00

USAGE DETAILS

Electric - Commercial
Daily Avg. - 190.20 kWh/Day
Use One Year Ago - 179.20 kWh/Day
Daily Avg. Cost - \$20.38



SERVICE TYPE

	Meter Id	Current Read Date	Current Read	Previous Read Date	Previous Reading	Meter Mult.	Billed Usage	Days of Service
Electric	0156884972	07/05/23	145,917	06/06/23	140,401	1	5,516	29
Demand	0156884972	07/05/23	14.63	06/06/23	14.46	1	14.63	29

MESSAGE from KUA

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Be prepared.

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Page 1 of 2



PO Box 423219
Kissimmee, FL 34742-3219

Customer ID - Account ID
002168161-000382110

Past Due Pay Now
\$0.00

Late Fee After
07/29/23
\$32.60

Total Amount Due 07/29/23

\$1,276.22

Pa

1476.22



0025780663

4702002460 PRESORT 2460 1 AV 0.495 P1C9



127 BROADWAY, LLC
117 BROADWAY
KISSIMMEE FL 34741-5713

Make Checks Payable To:

KISSIMMEE UTILITY AUTHORITY
DEPT. 96
P.O. BOX 2252
BIRMINGHAM, AL 35246-0096



0021681610003821100001276220001308822023072990



Customer Service: 407-933-9800
Outage Reporting: 407-933-9898
www.kua.com



Customer Name: 127 BROADWAY, LLC
Service Address: 2 W MONUMENT AVENUE
Bill Date: 08/10/23
Next Scheduled Read Date: 09/01/23



BILL SUMMARY

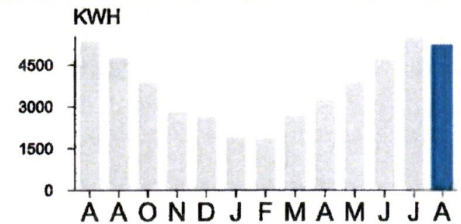
Previous Balance \$1,276.22 - Payments \$1,476.22 + Adjustments \$646.90 + Current Charges \$1,036.25 = Balance Due \$1,483.15

CURRENT CHARGES

KUA ELECTRIC SERVICE	\$560.14
Electric	\$702.48
Fuel Adjustment	-\$153.42
Customer Charge	\$11.08
CITY OF KISSIMMEE CHARGES	\$309.69
Storm Water Charge	\$9.80
Dumpster Service	\$299.89
CITY/COUNTY TAXES & TRANSFER FEE	\$166.42
TOTAL CURRENT CHARGES	\$1,036.25
ADJUSTMENTS	\$646.90
Dumpster Overflow Charge	\$600.00
Additional Waste Charge	\$46.90

USAGE DETAILS

Electric - Commercial
Daily Avg. - 180.37 kWh/Day
Use One Year Ago - 185.17 kWh/Day
Daily Avg. Cost - \$19.32



SERVICE TYPE

	Meter Id	Current Read Date	Current Read	Previous Read Date	Previous Reading	Meter Mult.	Billed Usage	Days of Service
Electric	0156884972	08/03/23	151,148	07/05/23	145,917	1	5,231	29
Demand	0156884972	08/03/23	14.90	07/05/23	14.63	1	14.90	29

MESSAGE from KUA

CALL FOR ENTRIES!
Submit your artwork for
KUA's Calendar Art Contest starting Aug. 21!
WIN \$150
Visit kua.com/calendar

30TH ANNIVERSARY
KUA
KISSIMMEE UTILITY AUTHORITY
CALENDAR ART CONTEST

¡CONVOCATORIA!
¡Envía tu obra de arte para el
Concurso de arte del calendario de KUA
a partir del 21 de agosto!
GANA \$150
Visita kua.com/calendar

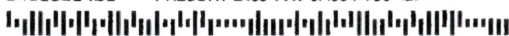
Page 1 of 2



PO Box 423219
Kissimmee, FL 34742-3219

Customer ID - Account ID 002168161-000382110	Past Due Pay Now \$0.00	Late Fee After 08/28/23 \$30.90
Total Amount Due 08/28/23		\$1,483.15

0450002433 PRESORT 2433 1 AV 0.495 P1C9



127 BROADWAY, LLC
117 BROADWAY
KISSIMMEE FL 34741-5713

Pd 8/21



0025880078

Make Checks Payable To:

KISSIMMEE UTILITY AUTHORITY
DEPT. 96
P.O. BOX 2252
BIRMINGHAM, AL 35246-0096



0021681610003821100001483150001514052023082890



Customer Service: 407-933-9800
Outage Reporting: 407-933-9898
www.kua.com



PAY BILL

Customer Name:
Service Address:
Bill Date:
Next Scheduled Read Date:

127 BROADWAY, LLC
2 W MONUMENT AVENUE
09/11/23
10/02/23



BILL SUMMARY

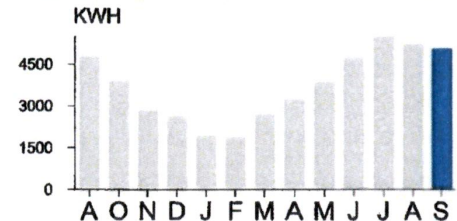
Previous Balance	-	Payments	+	Adjustments	+	Current Charges	=	Balance Due
\$1,483.15		\$1,483.15		\$600.00		\$1,011.01		\$1,611.01

CURRENT CHARGES

KUA ELECTRIC SERVICE	\$540.71
Electric	\$677.63
Fuel Adjustment	-\$148.00
Customer Charge	\$11.08
CITY OF KISSIMMEE CHARGES	\$309.69
Storm Water Charge	\$9.80
Dumpster Service	\$299.89
CITY/COUNTY TAXES & TRANSFER FEE	\$160.61
TOTAL CURRENT CHARGES	\$1,011.01
ADJUSTMENTS	\$600.00
Dumpster Overflow Charge	\$600.00

USAGE DETAILS

Electric - Commercial
Daily Avg. - 174.00 kWh/Day
Use One Year Ago - 165.51 kWh/Day
Daily Avg. Cost - \$18.65



SERVICE TYPE

	Meter Id	Current Read Date	Current Read	Previous Read Date	Previous Reading	Meter Mult.	Billed Usage	Days of Service
Electric	0156884972	09/01/23	156,194	08/03/23	151,148	1	5,046	29
Demand	0156884972	09/01/23	16.69	08/03/23	14.90	1	16.69	29

MESSAGE from KUA

CALL FOR ENTRIES!
Submit your artwork for
KUA's Calendar Art Contest starting Aug. 21!
WIN \$150
Visit kua.com/calendar

3TH KUA
ANNIVERSARY
CALENDAR ART CONTEST

¡CONVOCATORIA!
Envía tu obra de arte para el
Concurso de arte del calendario de KUA
a partir del 21 de agosto!
GANA \$150
Visita kua.com/calendar

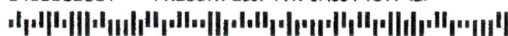
Page 1 of 2



PO Box 423219
Kissimmee, FL 34742-3219



5450002857 PRESORT 2857 1 AV 0.495 P1C11



127 BROADWAY, LLC
117 BROADWAY
KISSIMMEE FL 34741-5713

Customer ID - Account ID 002168161-000382110	Past Due Pay Now \$0.00	Late Fee After 09/29/23 \$29.83
Total Amount Due 09/29/23		\$1,611.01



0025973977

Make Checks Payable To:

KISSIMMEE UTILITY AUTHORITY
DEPT. 96
P.O. BOX 2252
BIRMINGHAM, AL 35246-0096



0021681610003821100001611010001640842023092940



Customer Service: 407-933-9800
Outage Reporting: 407-933-9898
www.kua.com



PAY BILL

Customer Name: 127 BROADWAY, LLC
Service Address: 2 W MONUMENT AVENUE
Bill Date: 10/10/23
Next Scheduled Read Date: 11/01/23

BILL SUMMARY

Previous Balance \$1,611.01 - Payments \$1,611.01 + Adjustments \$500.00 + Current Charges \$943.85 = Balance Due \$1,443.85

CURRENT CHARGES

KUA ELECTRIC SERVICE	\$490.72
Electric	\$593.70
Fuel Adjustment	-\$114.06
Customer Charge	\$11.08
CITY OF KISSIMMEE CHARGES	\$310.35
Storm Water Charge	\$10.46
Dumpster Service	\$299.89
CITY/COUNTY TAXES & TRANSFER FEE	\$142.78
TOTAL CURRENT CHARGES	\$943.85
ADJUSTMENTS	\$500.00
Dumpster Overflow Charge	\$500.00

USAGE DETAILS

Electric - Commercial

Daily Avg. - 142.61 kWh/Day

Use One Year Ago - 126.16 kWh/Day

Daily Avg. Cost - \$15.83

KWH



SERVICE TYPE

	Meter Id	Current Read Date	Current Read	Previous Read Date	Previous Reading	Meter Mult.	Billed Usage	Days of Service
Electric	0156884972	10/02/23	160,615	09/01/23	156,194	1	4,421	31
Demand	0156884972	10/02/23	14.19	09/01/23	16.69	1	14.19	31

MESSAGE from KUA

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Page 1 of 2



PO Box 423219
Kissimmee, FL 34742-3219

Customer ID - Account ID
002168161-000382110

Past Due Pay Now
\$0.00

Late Fee After
10/28/23
\$26.98

Total Amount Due 10/28/23

\$1,443.85



0026067967

127 BROADWAY, LLC
117 BROADWAY
KISSIMMEE FL 34741-5713

Make Checks Payable To:

KISSIMMEE UTILITY AUTHORITY
DEPT. 96
P.O. BOX 2252
BIRMINGHAM, AL 35246-0096



0021681610003821100001443850001470832023102890

Linda Hansell

From: Niles Chalifoux <nchalifoux@chalifoux.biz>
Sent: Tuesday, December 5, 2023 2:02 PM
To: Olga Gonzalez; Olga Castano; Angela Eady; Carlos Alvarez, III; Janette Martinez
Cc: Linda Hansell; Olga Sanchez de Fuentes
Subject: WM Franchise Agreement

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

Good afternoon, Commissioners,

I will be unable to attend tonight's meeting but wanted to express our frustration with Waste Management. A few years ago, Waste Management implemented overage charges on their dumpsters. Since then, we have paid thousands in overage fees on multiple properties. These costs get passed onto the small businesses who lease. For comparison the properties we manage in the County, we do not pay for overages fees and being able to choose our provider we pay substantially less for the same service. Please keep in mind the small businesses in Kissimmee and reconsider the contract with Waste Management.

Thank you,
Niles Chalifoux

Sunray Management Group, LLC
1254 S. John Young
Kissimmee FL 34741
Phone (407)847-8077

Linda Hansell

From: Gourav Mukherjee <gourav@inarayan.com>
Sent: Tuesday, December 5, 2023 3:59 PM
To: Linda Hansell
Subject: Waste management

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I request you remove it from the consent agenda so there can be a bona fide discussion.

Thanks,
Gourav.
Sent from iPhone. Confidential.

6

Hand-out M.F

Linda Hansell

From: Mike Steigerwald
Sent: Tuesday, December 5, 2023 4:33 PM
To: Desiree Matthews; Austin Blake; Olga Sanchez de Fuentes; Ashley Willis
Subject: FW: Todays consent agenda

FYI

-----Original Message-----

From: John Fields <johnfields@jackfieldsagency.com>
Sent: Tuesday, December 5, 2023 3:59 PM
To: Mike Steigerwald <MIKE.STEIGERWALD@kissimmee.gov>
Cc: olga.gonzalez@kissimmee.gov.; Olga Castano <OLGA.CASTANO@kissimmee.gov>
Subject: Todays consent agenda

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 have been asked by multiple downtown business owners to ask you to pull the east management contract off of the consent agenda and bring it forward to public discussion in today's meeting.

Thank you,

Sent from John Fields

Exhibit "B"
Agenda Item Added
Employee Holiday Incident Payment
9.A.

REQUESTED AGENDA DATE: December 5, 2023

CATEGORY: City Manager Discussion Item

HOLIDAY INCENTIVE PAYMENT

REQUEST

This request is for Commission approval to utilize approximately \$162,000 from reserves for a one-time holiday incentive payment to all full-time and part-time employees.

EXPLANATION

Staff is requesting Commission consideration of a holiday incentive payment to reward employees for their efforts to contain costs and enhance revenues. Staff is recommending that all full-time employees with more than one year of service receive \$215 while all part-time employees with one year of service receive \$107.50. All employees with less than one year of service as of the date of the incentive payment will receive one-half of the above amounts depending upon whether the employee is a full-time or part-time employee. Within the General Fund, this is estimated to cost approximately \$128,000. The cost to the other funds would be approximately \$34,000 for a total cost to the City of \$162,000.

RECOMMENDATION

Based upon the projected fiscal year end results, staff requests Commission approval of a holiday incentive payment of \$215 for each full-time employee with more than one year of service (\$107.50 for less than one year) and \$107.50 for each part-time employee with more than one year of service (\$53.75 for less than one year) utilizing General Fund reserves of approximately \$128,000 and reserves from other operating funds of approximately \$34,000.

ITEM 7.B

Extension of Temporary Construction Easement with Osceola County School Board for Lancaster Ranch Park

Request

Approval to extend the Temporary Construction Easement between the Osceola County School Board and the City of Kissimmee at Lancaster Ranch Park.

Explanation

The Osceola County School Board and the City of Kissimmee have previously agreed to share an entrance at Pleasant Hill Elementary School off Jack Calhoun Drive for ingress and egress into the elementary school and Lancaster Ranch Park. The original Temporary Construction Easement went before the City Commission on July 5, 2022 and will need to be extended another 18 months due to delays in construction.

Recommendation

Approval to extend the Temporary Construction Easement between the Osceola County School Board and the City of Kissimmee at Lancaster Ranch Park.

REQUESTED CITY COMMISSION ACTION:

Approve

Department: Parks & Recreation

Presenter:

Attachment(s):

1. (S) Temporary Construction Easement Extension Lancaster Ranch

THIS INSTRUMENT PREPARED BY:
Curtis McGehee, Assistant City Attorney
City of Kissimmee, Florida
101 Church Street
Kissimmee, Florida 34741

Property Appraisers Parcel ID Number:
Portion of 19-25-30-0000-0040-0000

TEMPORARY CONSTRUCTION EASEMENT

THIS EASEMENT is made this _____ day of _____, 2023, by the Osceola County School Board (hereinafter referred to as the "Grantor"), a body corporate existing under the laws of the State of Florida, and its agents and assigns, whose address is 817 Bill Beck Boulevard, Kissimmee, FL 34744, in favor of the City of Kissimmee, Florida, a Florida Municipal Corporation, and its agents and assigns, whose address is 101 Church Street, Kissimmee, FL 34741 (hereinafter referred to as the "Grantee.")

WITNESSETH:

That for and in consideration of \$10.00, and the mutual benefits, covenants, and conditions herein contained, the receipt and sufficiency all of which is hereby acknowledged, Grantor hereby grants, bargains, sells, aliens, remises, releases, conveys and confirms unto the Grantee, its agents and assigns, this Temporary Construction Easement (hereinafter "Easement") for purposes of accessing Grantee's adjacent property in order to maintain such property and construct a public park (hereinafter "Work"). This Easement is granted to provide temporary ingress and egress by Grantee over and across the Easement Area and to perform all such necessary acts for the Work. This Easement shall expire 18 months after the Effective Date or upon completion of the Work whichever occurs first. Said Easement is legally described as lying and situated in the County of Osceola, State of Florida, to-wit: *See Exhibit "A"* attached hereto and by this reference incorporated herein. Title to the property described herein, as well as the legal description, has not been examined or approved by the City of Kissimmee or The City Attorney's Office.

By delivery of this Easement, Grantors covenants not to interfere with the conduct of the Work within the Easement.

Nothing contained herein shall be construed as creating any rights in the general public or as dedicating for public use any portion of the Easement Area. No easements, except that expressly set forth herein shall be implied by this Easement.

All covenants, terms, provisions, and conditions herein contained shall inure and extend to and be obligatory upon the successors, lessees, and assigns of the respective parties hereto.

IN WITNESS WHEREOF, the parties hereto have executed this Easement effective as of the date on which the last of Grantor or Grantee executes this Easement, as indicated below (the "Effective Date").

Signed, sealed and delivered
in the presence of:

**The Osceola County School Board
(Grantor)**

Print Name: Teresa Mangan

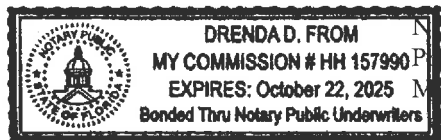
By D. Sharma
Print Name: DAVE SHARMA
Title: Chief Facilities Officer

Print Name: Tamara Pelt

STATE OF FLORIDA
COUNTY OF Osceola

The foregoing instrument was acknowledged before me this 7th day of December, 2023, by means of ☒ physical presence or ☐ online notarization, by Dave Sharma as Grantor - CFO for the Osceola County School Board, a body corporate existing under the laws of the State of Florida, who is personally known to me or has produced identification.

Notary Seal:



Notary: Drenda D. From
Print Name: Drenda D. From
My Commission Expires: October 22, 2025

[SIGNATURES CONTINUE ON FOLLOWING PAGE]

Signed, sealed and delivered
in the presence of:

Print Name: _____

Print Name: _____

The City of Kissimmee (Grantee)

By its Commission

By _____

Print Name: _____

Its Mayor (or Vice Mayor)

Attest: _____

Clerk (or Deputy Clerk)

STATE OF FLORIDA

COUNTY OF _____

The foregoing instrument was acknowledged before me this ____ day of _____, 2023, by means of
☐ physical presence or ☐ online notarization, by _____
as _____ for the City of Kissimmee, a body corporate existing under the laws of the State of
Florida, who is personally known to me or has produced identification.

Notary Seal:

Notary: _____

Print Name: _____

My Commission Expires: _____

LEGAL DESCRIPTION

A parcel of land being a portion of Section 32, Township 25 South, Range 29 East, Osceola County, Florida, and being more particularly described as follows:

Commence at the Northeast Corner of the West 1/8 of the Northeast 1/4 of Section 32, Township 25 South, Range 29 East, Osceola County, Florida; thence S00°17'27"W, along the East line of said West 1/8 of the Northeast 1/4, a distance of 1192.80 feet; thence departing said East line, run S89°28'03"W, a distance of 1159.93 feet to the Point of Beginning; continue S89°28'03"W, a distance of 450.00 feet to a point on the East Right of Way line of Pleasant Hill Road; thence N00°51'26"E, along said East Right of Way line, a distance of 30.00 feet; thence departing said East Right of Way line, run N89°28'03"E, a distance of 450.00 feet; thence S00°51'26"W, a distance of 30.00 feet to the Point of Beginning.

Containing 13,504 square feet or 0.310 acres, more or less.

SKETCH OF DESCRIPTION

SEE SHEET 2 OF 2 FOR SKETCH

LEGAL DESCRIPTION:

A parcel of land being a portion of Section 32, Township 25 South, Range 29 East, Osceola County, Florida, and being more particularly described as follows:

Commence at the Northeast Corner of the West 1/8 of the Northeast 1/4 of Section 32, Township 25 South, Range 29 East, Osceola County, Florida; thence S00°17'27"W, along the East line of said West 1/8 of the Northeast 1/4, a distance of 1192.80 feet; thence departing said East line, run S89°28'03"W, a distance of 1159.93 feet to the Point of Beginning; continue S89°28'03"W, a distance of 450.00 feet to a point on the East Right of Way line of Pleasant Hill Road; thence N00°51'28"E, along said East Right of Way line, a distance of 30.00 feet; thence departing said East Right of Way line, run N89°28'03"E, a distance of 450.00 feet; thence S00°51'28"W, a distance of 30.00 feet to the Point of Beginning.

Containing 13,504 square feet or 0.310 acres, more or less.

SURVEYOR'S NOTES:

THIS SKETCH IS NOT INTENDED TO REPRESENT A BOUNDARY SURVEY. NO CORNERS WERE SET AS A PART OF THIS SKETCH

BEARINGS SHOWN HEREON ARE BASED ON THE FLORIDA STATE PLANE COORDINATE SYSTEM, EAST ZONE. (NAD 83, 1990 ADJUSTMENT) AS DETERMINED FROM GLOBAL POSITIONING SYSTEM (GPS).

UNLESS OTHERWISE NOTED, PLAT INFORMATION IS EQUAL TO FIELD MEASURED DATA.

REQUESTED BY: CITY OF KISSIMMEE

SHEET 1 OF 2

DATE OF SURVEY	4/13/2022	REVISIONS	
SCALE	1" = 100'		
F.B.	PAGE		
SECTION	32		
TWP.	25 S., RND. 29 E.		
JOB NO.	17-229		

JOHNSTON'S
SURVEYING INC.

800 Gross Profile Parkway, Kissimmee, Florida 34744
Tel (407) 647-6110 Fax (407) 647-6110

[Signature] 4/13/2022

RICHARD D. BRADY, P.S.M. #5700 (DATE)

NOTE: NOT VALID WITHOUT RAISED SURVEYOR'S SEAL.

KPD Training Facility

25' 50'

Phase 1
Project Boundary

Pearson W.
Elementary School

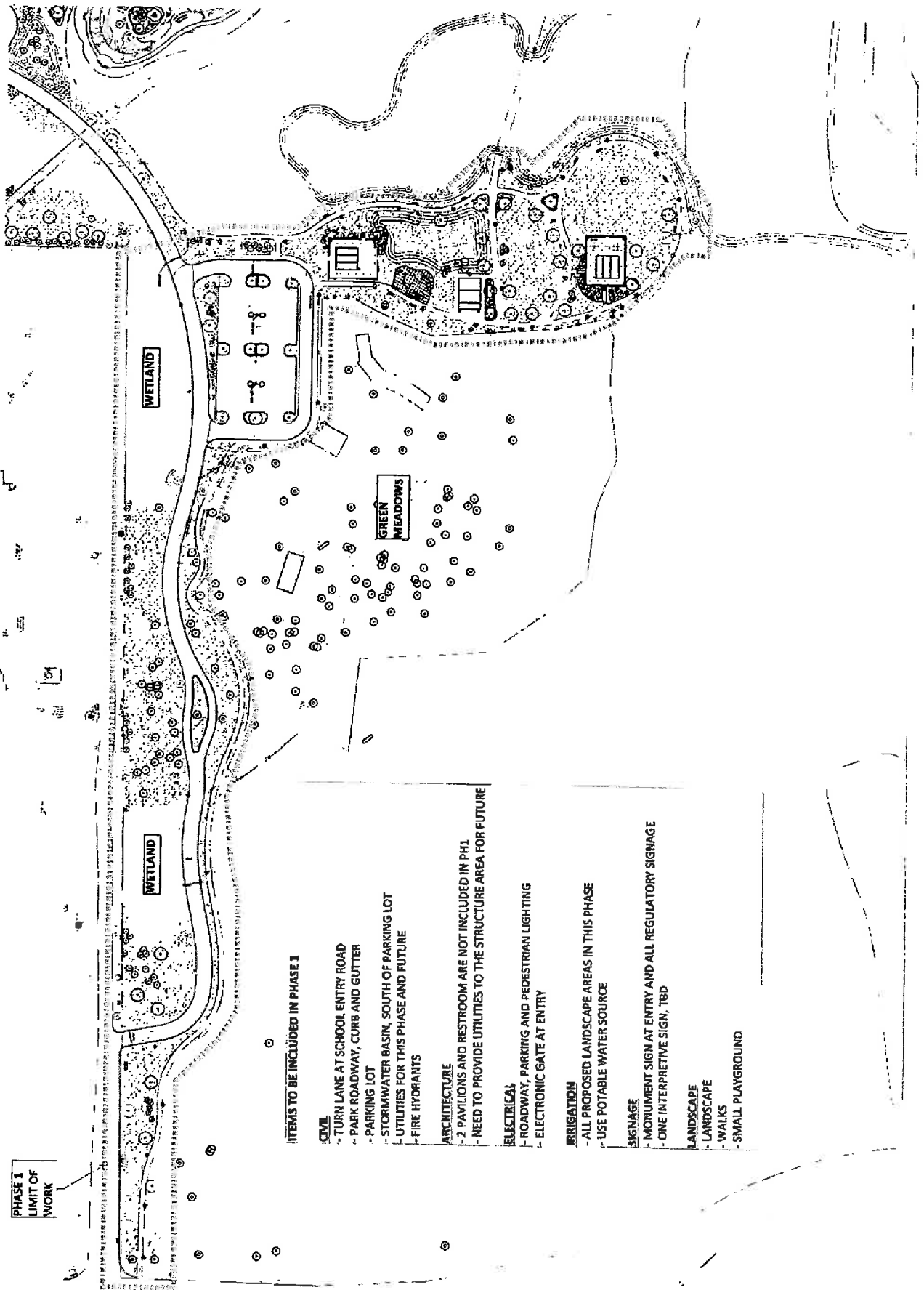
Jack Calhoun Dr.

Future Phase
Project Amenities

S Hoagland Blvd

Legend

- | | | |
|-----------------------|---------------------------------|---------------------------------|
| 1 Field House | 10 Dog Park (Small Dogs) | 17 Petting |
| 2 Event Lawn | 11 Picnics | 18 Open Meadows |
| 3 Paved Loop | 12 Kiosk / Games / Lunch | 19 Existing Wetland or Pond |
| 4 Media Shelter | 13 SCIFF Overlook | 20 Stormwater Retention Pond |
| 5 Restroom | 14 Creek Platform | 21 Wetlands |
| 6 The Oak Grove | 15 Stormwater Conveyance System | 22 Multiple Creek/Channel Trail |
| 7 Dog Park (Large) | 16 Boardwalk | 23 Park Road |
| 8 Dog Park (Big Dogs) | 19 Small Play Area | |



ITEM 7.C

Temporary Construction Easement with Toho Water Authority for Lancaster Ranch Park

Request

Approval of the Temporary Construction Easement between Toho Water Authority and the City of Kissimmee for ingress and egress to Lancaster Ranch Park to construct and install an underground reuse main pipeline

Explanation

The Toho Water Authority seeks to supply parts of the City with reuse water and requires a utility easement along the West boundary of Lancaster Ranch Park. The City of Kissimmee supports this project which will have no detrimental impact on Lancaster Ranch Park.

This temporary construction easement will be in place for 36 months or upon completion of work for temporary ingress and egress to the site for the purpose of constructing and installing an underground reuse main pipeline. Both City of Kissimmee and Toho Water Authority legal departments have reviewed and approved this Temporary Construction Easement.

Recommendation

Approval of a Temporary Construction Easement between Toho Water Authority and the City of Kissimmee for ingress and egress to Lancaster Ranch Park to construct and install an underground reuse main pipeline.

REQUESTED CITY COMMISSION ACTION:

Approve

Department: Parks & Recreation

Presenter:

Attachment(s):

1. (S) Temp Construction Easement to Toho for Water Main 11.6.23 FINAL

THIS INSTRUMENT PREPARED BY:

Office of the General Counsel
Tohopekalgia Water Authority
951 Martin Luther King Blvd.
Kissimmee, Florida 34741

Property Appraisers Parcel ID Number: 32-25-29-0000-0050-0000

----- (Space above this line for recording data) -----

TEMPORARY CONSTRUCTION EASEMENT

THIS EASEMENT is made and granted this _____ day of _____, 2023, by the **City of Kissimmee**, Florida, a Florida Municipal Corporation, and its agents and assigns hereinafter referred to as the "**Grantor**", whose address is 101 Church Street, Kissimmee, FL 34741, to the **Tohopekalgia Water Authority**, an independent special district, established and created pursuant to Chapter 189, Florida Statutes, by special act of the Florida Legislature, whose address is 951 Martin Luther King Blvd., Kissimmee, Florida 34741, hereinafter "**Toho**" or "**Grantee**".

WITNESSETH:

That for and in consideration of \$10.00, and the mutual benefits, covenants, and conditions herein contained, the receipt and sufficiency all of which is hereby acknowledged, Grantor hereby grants, bargains, sells, aliens, remises, releases, conveys and confirms unto the Grantee, its agents and assigns, this Temporary Construction Easement (hereinafter "Easement") for purposes of accessing Grantor's property in order to construct and install an underground reuse main pipeline (hereinafter "Work"). This Easement is granted to provide temporary ingress and egress by Grantee over and across the Easement Area and to perform all such necessary acts for the Work. This Easement shall expire the sooner of 36 months after the Effective Date or upon completion of the Work. Said Easement is legally described as lying and situated in the County of Osceola, State of Florida, to-wit: *See Exhibit "A"* attached hereto and by this reference incorporated herein. Title to the property described herein, as well as the legal description, has not been examined or approved by the City of Kissimmee or The City Attorney's Office.

By delivery of this Easement, Grantor covenants not to interfere with the conduct of the Work within the Easement. Notwithstanding the foregoing, Grantor shall not place any permanent structures or improvements, including but not limited to, buildings or foundations, on, over or across the Easement Area.

Nothing contained herein shall be construed as creating any rights in the general public or as dedicating for public use any portion of the Easement Area. No easements, except that expressly set forth herein shall be implied by this Easement.

Grantee will, at its sole cost and expense, restore the surface of all disturbed areas of the Easement Area to its original condition as near as is reasonably commercially practicable as a result of the damage or disturbance to which shall have been occasioned by the Work within the Easement Area, or other exercise by Grantee of its rights under this Easement.

All covenants, terms, provisions, and conditions herein contained shall inure and extend to and be obligatory upon the successors, lessees, and assigns of the respective parties hereto.

IN WITNESS WHEREOF, the parties hereto have executed this Easement effective as of the date on which the last of Grantor or Grantee executes this Easement, as indicated below (the "Effective Date").

Signed, sealed and delivered
in the presence of:

The City of Kissimmee (Grantor)
By its Board of Commissioners

Print Name: _____

By _____
Print Name: _____
Its Chairperson (or Vice-Chairperson)

Print Name: _____

Attest: _____
Clerk (or Deputy Clerk)

STATE OF FLORIDA
COUNTY OF _____

The foregoing instrument was acknowledged before me this ____ day of _____, 2023, by means of ☐ physical presence or ☐ online notarization, by _____ as _____ for the City of Kissimmee, a body corporate existing under the laws of the State of Florida, who is personally known to me or has produced identification.

Notary Seal:

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

[SIGNATURES CONTINUE ON FOLLOWING PAGE]

Signed, sealed and delivered
in the presence of:

**Tohopekaliga Water Authority
(Grantee)**

Print Name: _____

By _____
Print Name: _____
Title: _____

Print Name: _____

STATE OF FLORIDA
COUNTY OF _____

The foregoing instrument was acknowledged before me this ____ day of _____, 2023, by means of ☐ physical presence or ☐ online notarization, by _____ as _____ for the Tohopekaliga Water Authority, an independent special district existing under the laws of the State of Florida, who is personally known to me or has produced identification.

Notary Seal:

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

SKETCH OF DESCRIPTION

10 FT. TEMPORARY EASEMENT

LEGAL DESCRIPTION

10 ft. Temporary Easement

A parcel of land being a portion of Section 32, Township 25 South, Range 29 East, Osceola County, Florida, and being more particularly described as follows:

Commence at the intersection of the East Right of Way line of Jack Calhoun Drive with the South line of the Pleasant Hill Elementary School property as recorded in Official Records Book 819, Page 354 of the Public Records of Osceola County, Florida; thence run N89°27'38"E along said South line, a distance of 82.33 feet to a point on said East Right of Way line; thence along said East Right of Way line the following two (2) courses and distances; thence run S10°26'58"W, a distance of 36.11 feet; thence run S33°15'53"W, a distance of 13.02 feet to the Point of Beginning; thence continue S33°15'53"W along said East Right of Way line, a distance of 14.59 feet; thence departing said East Right of Way line, run S10°00'10"E, a distance of 30.12 feet; thence run S07°47'18"W, a distance of 171.90 feet; thence run S02°17'14"E, a distance of 169.80 feet; thence run S09°59'42"E, a distance of 240.18 feet; thence run S13°06'20"E, a distance of 213.33 feet to a Point on a non-tangent curve, concave to the West, having a Radius of 759.81 feet and a Central Angle of 24°32'12"; thence run Southerly, along the Arc of said curve, a distance of 325.38 feet (Chord Bearing = S20°18'15"E, Chord = 322.90 feet) to a point on the North line of an Osceola County Pond Tract as recorded in Official Records Book 5057, Page 2863; thence run N82°29'33"E along said North line, a distance of 10.00 feet to a Point on a non-tangent curve, concave to the West, having a Radius of 769.81 feet and a Central Angle of 24°24'55"; thence departing said North line, run Northerly, along the Arc of said curve, a distance of 328.04 feet (Chord Bearing = N20°14'12"W, Chord = 325.56 feet); thence run N13°06'20"W, a distance of 211.35 feet; thence run N09°59'42"W, a distance of 239.23 feet; thence run N02°17'14"W, a distance of 168.25 feet; thence run N07°47'18"E, a distance of 172.59 feet; thence run N10°00'10"W, a distance of 42.31 feet to the Point of Beginning.

Containing 11,562 square feet or 0.265 acres, more or less.

NOTES

BEARINGS AS SHOWN HEREON ARE BASED ON THE FLORIDA STATE PLANE COORDINATE SYSTEM, EAST ZONE, (NAD 83, 1990 ADJUSTMENT). THIS SURVEYOR HAS NOT MADE A SEARCH OF THE PUBLIC RECORDS FOR EASEMENTS, RESTRICTIONS, RESERVATIONS AND/OR RIGHT OF WAYS. THIS SKETCH IS NOT INTENDED TO REPRESENT A BOUNDARY SURVEY. NO CORNERS WERE SET AS A PART OF THIS SKETCH.

REQUESTED BY: **BLACK & VEATCH CORP.**

DATE OF SKETCH	03/20/2023	REVISIONS	
SCALE	1" = 100'	REVISED TITLE	09/18/23
F.B.	PAGE		
SECTION	32		
TWP.	25	S., RNG.	29 E.
JOB NO.	22-507	SHEET 1 OF 3	

JOHNSTON'S
SURVEYING INC.
900 Cross Prairie Parkway, Kissimmee, Florida 34744
Tel. (407) 847-2179 Fax (407) 847-6140

BARRY W. PREWITT, P.S.M. #5267 (DATE)

NOTE: NOT VALID WITHOUT RAISED SURVEYOR'S SEAL.

SKETCH OF DESCRIPTION

10 FT. TEMPORARY EASEMENT



SCALE 1"=100'

**PLEASANT HILL
ELEMENTARY SCHOOL**
PROPERTY PER O.R.B. 819, PAGE 354

SOUTH LINE OF PROPERTY PER O.R.B. 819, PAGE 354

20' DRAINAGE EASEMENT
PER P.R.B. 873, PAGE 241

POINT OF COMMENCEMENT

INTERSECTION OF THE
EAST R/W LINE OF
JACK CALHOUN DRIVE
WITH THE SOUTH LINE
OF PLEASANT HILL
ELEMENTARY SCHOOL

POINT OF BEGINNING

10 FT. TEMPORARY
EASEMENT

S33°15'53"W
14.59'
S10°00'10"E
30.12'

82.33'
N89°27'38"E

S10°26'58"W
36.11'
S33°15'53"W
13.02'

N10°00'10"W
42.31'

EAST R/W LINE

10'

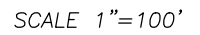
JACK CALHOUN DRIVE

SE 1/4 OF THE NW 1/4
SECTION 32-25-29

MATCH LINE

N13°06'20"W
S13°06'20"E

10 FT. TEMPORARY EASEMENT



SE 1/4 OF THE NW 1/4
SECTION 32-25-29

$L=328.04'$
 $R=769.81'$
 $\Delta=24^{\circ}24'55''$
 $CB=N20^{\circ}14'12''W$
 $CH=325.56'$

N82°29'33"E
10.00'

UNPLATTED LANDS

OSCEOLA COUNTY POND TRACT
PER O.R.B. 5057, PAGE 2863

15' K.U.A. UTILITY EASEMENT
PER O.R.B. 3539, PAGE 181

KNOWLES COURT

SOUTH LINE OF THE NW 1/4 OF SEC. 32-25-29
NORTH LINE OF THE SW 1/4 OF SEC. 32-25-29

SHEET 3 OF 3

ITEM 7.D

Additional Hurricane Housing Recovery Program Funding

Request

Acceptance of additional Hurricane Housing Recovery Program (HHRP) funding in the amount of \$157,796 and amend the FY 2023-2024 budget for the proposed use of the funds.

Explanation

On February 7, 2023, the City Commission accepted \$79,230 from the Florida Housing Finance Corporation for the Hurricane Housing Recovery Program (HHRP) for eligible local governments impacted by Hurricane Ian and/or Nicole. The Program was set up to run through the State Housing Initiatives Partnership (SHIP) Program.

Additional allocations have been received since then, including one on May 15th in the amount of \$54,800 and another one on November 28th in the amount of \$102,996. These funds have not been brought to the City Commission for acceptance or to request approval to budget for the use of the funds. Their commitment deadline is June 30, 2024, and their expenditure deadline is June 30, 2025.

Financial Information

Account #	Project #	Increase / Decrease	Budget	Actual
11200335 335500	SHIP HHRP	Increase	\$157,796	
11225103 503434	SHIP HHRP	Increase	\$157,796	

Financial Summary:

There is no fiscal impact on the General Fund since this is a grant-funded project.

Recommendation

Approval to accept the additional Hurricane Housing Recovery Program (HHRP) funding in the amount of \$157,796 and approve to amend the FY2023-2024 budget for the proposed use of the funds.

REQUESTED CITY COMMISSION ACTION:

Approve

Department: Development Services

Presenter:

Attachment(s):

City of Kissimmee

1. 22 23 HHRP Disbursement #3
2. 22 23 HHRP Disbursement #2

FLORIDA HOUSING FINANCE CORPORATION

Payment HHRP#3A

SHIP 2023-2024

Payment HHRP#3A

11/30/2023

Total disbursement: \$ 19,465,956

Local Government	County Share/ City Share	Local Government	County Share/ City Share	Local Government	County Share/ City Share
ALACHUA	-	FRANKLIN		ORANGE	984,868
Gainesville	-	GADSDEN	-	Orlando	270,862
BAKER	-	GILCHRIST	-	OSCEOLA	336,333
BAY	-	GLADES	-	Kissimmee	102,996
Panama City	-	GULF	-	St. Cloud	77,621
BRADFORD	-	HAMILTON	-	PALM BEACH	5,390
BREVARD	250,128	HARDEE	577,380	Boca Raton	
Cocoa	101	HENDRY	-	Boynton Beach	
Melbourne		HERNANDO	-	Delray Beach	
Palm Bay		HIGHLANDS	254,480	Wellington	
Titusville		HILLSBOROUGH	569,472	West Palm Beach	-
BROWARD	-	Tampa		PASCO	
Coconut Creek	-	HOLMES	-	PINELLAS	
Coral Springs	-	INDIAN RIVER	-	Clearwater	
Davie	-	JACKSON	-	Largo	
Deerfield Beach	-	JEFFERSON	-	St. Petersburg	
Ft. Lauderdale	-	LAFAYETTE	-	POLK	812,346
Hollywood	-	LAKE		Lakeland	
Lauderhill	-	LEE	-	Winter Haven	53,418
Margate	-	Cape Coral	3,059,096	PUTNAM	
Miramar	-	Ft. Myers	1,389,369	ST. JOHNS	-
Pembroke Pines	-	LEON	-	ST. LUCIE	-
Plantation	-	Tallahassee	-	Ft. Pierce	-
Pompano Beach	-	LEVY	-	Port St. Lucie	-
Sunrise	-	LIBERTY	-	SANTA ROSA	-
Tamarac	-	MADISON	-	SARASOTA	1,961,975
Weston	-	MANATEE	352,036	Sarasota	281,255
CALHOUN	-	Bradenton		SEMINOLE	460,530
CHARLOTTE	2,901,287	MARION	-	SUMTER	-
Punta Gorda	333,103	Ocala	-	SUWANNEE	-
CITRUS	-	MARTIN	-	TAYLOR	-
CLAY	-	MIAMI-DADE	-	UNION	-
COLLIER	1,203,649	Hialeah	-	VOLUSIA	1,530,463
Naples	63,481	Miami	-	Daytona Beach	287,782
COLUMBIA	-	Miami Beach	-	Deltona	368,455
DE SOTO	978,080	Miami Gardens	-	WAKULLA	-
DIXIE	-	North Miami	-	WALTON	-
DUVAL	-	MONROE	-	WASHINGTON	-
ESCAMBIA	-	NASSAU	-		
Pensacola	-	OKALOOSA	-		
FLAGLER		Crestview	-		
Palm Coast		Ft. Walton Beach	-		
FRANKLIN		OKEECHOBEE			

2022-2023 HHRP Allocation # 2

Local Government	Allocation	Payment #1
Lee	11,161,240.43	3,720,500.00
Cape Coral	4,597,275.00	1,532,500.00
Fort Myers	2,088,048.00	696,100.00
Charlotte	4,377,306.00	1,459,200.00
Punta Gorda	502,634.00	167,600.00
Sarasota	2,976,281.00	992,100.00
Sarasota	426,739.00	142,300.00
Volusia	2,286,357.00	762,200.00
Daytona Beach	429,896.00	143,300.00
Deltona	550,437.00	183,500.00
Collier	1,797,220.00	599,100.00
Naples	94,790.00	31,600.00
Orange	1,510,632.00	503,600.00
Orlando	415,458.00	138,500.00
DeSoto	1,513,310.00	504,500.00
Polk	1,088,878.00	363,000.00
Winter Haven	79,822.00	26,700.00
Osceola	536,064.00	178,700.00
Kissimmee	164,239.00	54,800.00
St. Cloud	123,777.00	41,300.00
Hardee	858,170.00	286,100.00
Seminole	687,750.00	229,300.00
Hillsborough	481,820.00	160,700.00
Tampa	171,850.00	57,300.00
Manatee	479,470.00	159,900.00
Highlands	377,220.00	125,800.00
Brevard	332,194.00	110,800.00
Cocoa	10,946.00	10,946.00
Total	40,119,823.43	13,381,946.00

ITEM 7.E

Subrecipient Agreement with Kissimmee Oaks Housing I, Inc.

Request

Approve and execute the contract number #2024-0109, HHRP Subrecipient Agreement between City of Kissimmee and Kissimmee Oaks Housing I, Inc. to pay for repair expenses resulting from Hurricane Ian.

Explanation

In the special legislative session held in December 2022, Florida Housing Finance Corp. was appropriated \$60 million in funding for the Hurricane Housing Recovery Program (HHRP) that will run through the State Housing Initiatives Program (SHIP). The funds were allocated to the 26 eligible counties impacted by Hurricane Ian and/or Nicole. The City of Kissimmee's allocation was \$237,026.

The City received a request from the Osceola Council on Aging (COA) for their project Kissimmee Oaks Housing I (DBA Oak Leaf Landings) for State Housing Initiatives Partnership funding assistance under the Disaster Relief Strategy. Thus, instead of the request being funded with SHIP funds, it will be considered for funding under HHRP.

Oak Leaf Landings suffered damaged during Hurricane Ian. The first floor apartments, common areas, and elevator shaft were flooded with groundwater and three apartments on the third floor had water coming through the ceiling/windows. The requested funds are to pay for the costs that were not covered by FEMA.

The HHRP funds will be given to the COA as a grant.

Financial Information

Account #	Project #	Increase / Decrease	Budget	Actual
11225103 503434	SHIP HHRP	Decrease	237,026	82,346.07

Financial Summary:

There is no fiscal impact on the General Fund since this is a grant-funded project.

Recommendation

Approve and execute the Subrecipient Agreement between City of Kissimmee and Kissimmee Oaks Housing I, Inc to pay for repair expenses resulting from Hurricane Ian.

REQUESTED CITY COMMISSION ACTION:

Approve

City of Kissimmee

Department: Development Services

Presenter:

Attachment(s):

1. (S) Kissimmee Oaks Housing I Contractor Agreement_HHRP2023

**CITY OF KISSIMMEE AND KISSIMMEE OAKS HOUSING I, INC
SUBRECIPIENT AGREEMENT FOR THE HURRICANE HOUSING RECOVERY
PROGRAM (HHRP)**

THIS AGREEMENT is made on this 11th day of December, 2023, between the **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 **KISSIMMEE OAKS HOUSING I, INC (DBA Osceola Council on Aging)** with a principal address of 2350 N Central Avenue, Kissimmee, Florida 34741 (hereinafter referred to as "SUBRECIPIENT").

WHEREAS, during the special legislative session held in December 2022, Florida Housing was appropriate \$60 million in funding for the Hurricane Housing Recovery Program (HHRP); and

WHEREAS, the City was a recipient of such funds due to the community recovery needs such as the payment of insurance deductibles for eligible applicants, removal of debris, demolition of storm damaged structures, emergency/interim repairs, relocation and rental assistance after Hurricane Ian and/or Nicole; and

WHEREAS, the City proposes to provide funding in the amount of *Ninety Thousand Three Hundred Forty Six Dollars and 07/100 Cents (\$90,346.07)* to the SUBRECIPIENT pursuant to the terms and condition in this Subrecipient Agreement (the "Agreement"); and

WHEREAS, the funds made available to the SUBRECIPIENT under this Agreement constitute a sub award of the City's HHRP award of which use must be in accordance with requirements imposed by the SHIP Statute 420.907-9079 and the SHIP rule at 67.37; and

WHEREAS, the City will carry out the program in accordance with the City of Kissimmee Local Housing Assistance Plan Disaster Strategy, Program Policies and Procedures and this agreement;

WHEREAS, the SUBRECIPIENT has legal authority to enter this agreement, and by signing this agreement, to assure the CITY that it will comply with all the requirements of the sub award described herein; and

NOW, THEREFORE, in consideration of the need for recovery from Hurricane Ian and the premises and mutual covenants described herein, the Parties hereto understand and agree as follows:

SECTION 1: RECITALS. The above recitals are true and correct and specifically incorporated herein, forming a material part of the Agreement.

SECTION 2: DEFINITIONS.

A. "Administrator" means the Housing and Community Development Division of the Development Services Department of the City, which shall act on behalf of the City in the execution, funding, and programmatic control of this Agreement.

B. "Approval by the City" or like term means written approval by the Administrator, Director, City Manager or designee, or the City Commission as may be required from time to time.

C. "Parties" shall mean both the City and SUBRECIPIENT.

D. "Program" is hereby defined as any one of the activities covered under this Agreement: Hurricane Housing Recovery Program.

E. "SUBRECIPIENT" shall mean **KISSIMMEE OAKS HOUSING I, INC** with whom this Agreement is entered, and a contract is executed.

F. "Days" shall refer to calendar days.

SECTION 3 – SCOPE OF SERVICES. As a condition of receiving this sub award, the CITY shall use the HHRP funds to refund the SUBRECIPIENT to cover the deductible and/or repairs to the building of the Oak Leaf Landings Apartments that occurred during Hurricane Ian as detailed in its program application which is attached hereto as "**Exhibit A**". The SUBRECIPIENT shall complete the activities in a manner satisfactory to the City and consistent with the terms of conditions of this agreement and applicable Rules and Statutes.

SECTION 4 - TERM OF AGREEMENT. This Agreement shall be for one (1) year from the date of execution.

SECTION 5 - BUDGET.

A. Budget

The City's HHRP funds shall be used solely for the stated purposes set forth in this Agreement, and expenditures shall be supported by contracts, invoices, vouchers and other data as appropriate, including any reports required by the City, evidencing costs incurred. Any and all program income earned on the Program funds shall be remitted to the City. If the Program funds are not expended in accordance with the terms, conditions and time period set forth in this Agreement, or the total amount of Program funds exceeds the eligible costs of the activity, the amounts improperly expended or not expended shall be returned to the City to refund within thirty (30) days after the expiration or termination of this Agreement. The City shall require delivery before payment is made for purchased goods, equipment or services unless the City obtains satisfactory security from the vendor.

Project costs shall be paid in accordance with the budget allocations outlined in "**Exhibit B**". All costs incurred must be fully documented. Any amendments to the budget must be approved in writing by both parties and be in accordance with the City's Agreement.

B. Program Income

Program income is defined at 420.9071 Definitions (24) "Program income" means the proceeds derived from interest earned on or investment of the local housing distribution and other funds deposited into the local housing assistance trust fund, proceeds from loan repayments, recycled funds, and all other income derived from use of funds deposited in the local housing assistance trust fund. It does not include recaptured funds as defined in subsection (25).

If the activity undertaken by the Subrecipient generates program income as defined above, the program income must be returned to the local government within 30 days of receipt.

SECTION 6 – PAYMENT.

It is expressly agreed and understood that the total amount to be paid by the City to the SUBRECIPIENT under this Agreement shall not exceed the maximum award for the applicable program.

Reimbursement of eligible expenses shall be made in accordance with performance using the **Request for Payment** form provided as "**Exhibit C**".

SECTION 7 – NOTICES.

Notices required by this Agreement shall be in writing and delivered via mail (postage prepaid), commercial courier, or personal delivery, or via facsimile or other electronic means. Any notice delivered or sent as aforesaid shall be effective on the date of delivery or sending. All notices and other written communications under this Agreement shall be addressed to the individuals in the capacities indicated below, unless otherwise modified by subsequent written notice.

Communication and details concerning this Agreement shall be directed to the following representatives:

CITY OF KISSIMMEE

Frances DeJesus, Housing and Community Development Manager
City of Kissimmee
101 Church Street
Kissimmee, FL 34741
(407) 518-2156
frances.dejesus@kissimmee.gov

KISSIMMEE OAKS HOUSING I, INC

Wendy Ford
700 Generation Point
Kissimmee, FL 34744
(407) 846-8541
fordw@osceola-coa.com

SECTION 8– PERFORMANCE MONITORING.

The City shall monitor the performance of the SUBRECIPIENT to ensure SUBRECIPIENT compliance with all of the requirements of this agreement, including the timeframes and performance goals associated with the activities. Substandard performance as determined by the City will constitute noncompliance with this agreement. If action to correct such substandard performance is not taken by the CITY within thirty (30) days after being notified by the City, the City may impose additional conditions on the SUBRECIPIENT and its use of HHRP funds, suspend or terminate this agreement, or initiate other remedies for noncompliance as appropriate and permitted by law.

SECTION 9- AMENDMENT AND TERMINATION.

A. Amendments

The City or SUBRECIPIENT may amend this agreement at any time provided that such amendments make specific reference to this agreement, are approved by the City's governing body, and are signed in writing by a duly authorized representative of the City and the SUBRECIPIENT. Such amendments shall not invalidate this agreement, nor relieve or release the City or SUBRECIPIENT from its obligations under this agreement. Amendments will generally be required when any of the following are anticipated: i) revision to the scope or objectives of the Program, including purpose or beneficiaries; ii) extending the time of the agreement. iii) revision that would result in the need for additional funding.

The City may, in its discretion, amend this agreement to conform with Federal, state or local governmental guidelines, policies and available funding amounts, or for other reasons. If such amendments result in a change in the funding, the scope of services, or schedule of the activities to be undertaken as part of this agreement, such modifications will be incorporated only by written amendment signed by both the City and SUBRECIPIENT.

B. Suspension or Termination

The City may terminate this agreement, in whole or in part, upon days' notice, whenever it determines that the SUBRECIPIENT has failed to comply with any term, condition, requirement, or provision of this agreement. Failure to comply with any terms of this agreement, include (but are not limited to) the following:

Failure to comply with any of the rules, regulations or provisions referred to herein, or such statutes, regulations, executive orders, guidelines, policies or directives as may become applicable at any time;

Failure, for any reason, of the SUBRECIPIENT to fulfill in a timely and proper manner its obligations under this agreement;

Ineffective or improper use of funds provided under this agreement; or

Submission by the SUBRECIPIENT to the City reports that are incorrect or incomplete in any material respect.

The City shall promptly notify the Subrecipient, in writing, of its determination and the reasons for the termination together with the date on which the termination shall take effect. Upon termination, the Local Government retains the right to recover any improper expenditures from the Subrecipient and the Subrecipient shall return to the Local Government any improper expenditures no later than thirty (30) days after the date of termination. The Local Government may, at its sole discretion, allow Subrecipient to retain or be reimbursed for costs reasonably incurred prior to termination, that were not made in anticipation of termination and cannot be canceled provided that said costs meet the provisions of this agreement.

SECTION 10– OTHER REQUIREMENTS TO COMPLY WITH STATE STATUTES, RULES AND THE TERMS AND CONDITIONS OF THE AWARD.

The HHRP funds available to the Subrecipient through this agreement constitute a subaward of the City's distribution under the HHRP program. This agreement includes terms and conditions of the City's HHRP award that are imposed on the Subrecipient, and the Subrecipient agrees to carry out its obligations in compliance with all of the obligations described in this agreement.

A. Duplication of Benefits

SUBRECIPIENT shall not carry out any of the activities under this agreement in a manner that results in a prohibited duplication of benefits as defined by Section 312 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 USC 5155) and described in Appropriations Act. The SUBRECIPIENT shall carry out the activities under this agreement in compliance with the City's procedures to prevent duplication of benefits. SUBRECIPIENT agrees to repay the City for the financial assistance if the Recipient receives subsequent benefits that are a duplication of benefits.

B. Drug-Free Workplace

SUBRECIPIENT must comply with drug-free workplace requirements in Subpart B of part 2429, which adopts the government wide implementation (2 CFR part 182) of sections 5152-5158 of the Drug- Free Workplace Act of 1988 (Pub. L. 100-690, Title V, Subtitle D; 41 U.S.C. 701-707).

C. Insurance & Bonding

SUBRECIPIENT shall carry sufficient insurance coverage to protect contract assets from loss due to theft, fraud and/or undue physical damage, or as a minimum shall purchase blanket fidelity bond covering all employees in an amount equal to reimbursements from the City. SUBRECIPIENT shall be responsible for all damages to person or property that occur on the job site or adjacent thereto as a result of SUBRECIPIENT's fault or negligence in connection with this Agreement. SUBRECIPIENT shall, prior to commencing work, furnish evidence to the City of required comprehensive liability insurance in an amount not less than \$1,000,000.00 and \$1,000,000.00 umbrella insurance naming the City as a certificate holder. Furthermore, all sub recipients utilized by SUBRECIPIENT shall provide proof of insurance to the City naming the City an additional insured.

SUBRECIPIENT shall also provide Workers' Compensation insurance coverage for all of its employees involved in the performance of this Agreement.

SUBRECIPIENT shall also provide the City of Kissimmee a copy of the Certificate of Insurance.

D. Audit Requirements

In the event that the SUBRECIPIENT expends a total amount of state financial assistance equal to or in excess of \$750,000 in any fiscal year of such SUBRECIPIENT, the SUBRECIPIENT must have a State single or project-specific audit for such fiscal year in accordance with Section 215.97, Florida Statutes; applicable rules of the Department of Financial Services; and Chapters 10.550 (local governmental entities) or 10.650 (nonprofit and for-profit organizations), Rules of the Auditor General. In determining the state financial assistance expended in its fiscal year, the Subrecipient shall consider all sources of state financial assistance, including state financial assistance received from the City 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.

In connection with the audit requirements addressed in this section, the SUBRECIPIENT shall ensure that the audit complies with the requirements of Section 215.97(8), Florida Statutes. This includes submission of a financial reporting package as defined by Section 215.97(2), Florida Statutes, and Chapters 10.550 (local governmental entities) or 10.650 (nonprofit and for-profit organizations), Rules of the Auditor General.

The SUBRECIPIENT shall retain all records pertinent to expenditures incurred under this Agreement for a period of five (5) years after the termination of all activities funded under this Agreement. Notwithstanding the above, if there is litigation, claims, audits, negotiations or other actions that involve any of the records cited and that have started before the expiration of the five-year period, then such records must be retained until completion of the actions and resolution of all issues, or the expiration of the ten-year period, whichever occurs later.

E. Disclosure

SUBRECIPIENT shall maintain records in accordance with Florida's Public Information Law (F.S. 119).

F. Financial and Program Management

SUBRECIPIENT shall maintain all financial records with adequate internal controls to permit the accurate, complete and timely disclosure of financial results.

G. Documentation and Record Keeping

1. Records to be Maintained

The SUBRECIPIENT shall retain all records pertinent to expenditures incurred under this Agreement for a period of five (5) years after the termination of all activities funded under this Agreement. Notwithstanding the above, if there is litigation, claims, audits, negotiations or other actions that involve any of the records cited and that have started before the expiration of the five-year period, then such records must be retained until completion of the actions and resolution of all issues, or the expiration of the ten-year period, whichever occurs later.

2. Access to Records

The City, Florida Housing Finance Corporation and its monitors shall have access to all records related to this award of funds.

3. Record Retention and Transmission of Records

Prior to close out of this agreement, the SUBRECIPIENT must transmit to the City records sufficient for the City to demonstrate that all costs under this agreement met the requirements of the award.

4. Client Data and Other Sensitive Information

SUBRECIPIENT is required to maintain data demonstrating client eligibility for activities provided under this agreement. Such data may include, but not be limited to, client name, address, income level or other basis for determining eligibility, and description of activities provided.

H. Close-out

The SUBRECIPIENT's obligation to the City shall not end until all closeout requirements are completed. Activities during this closeout period shall include, but are not limited to, making final payments and determining the custodianship of records.

I. Nondiscrimination

In accordance with the provisions of ss. 760.20-760.37, it is unlawful to discriminate on the basis of race, creed, religion, color, age, sex, marital status, familial status, national origin, or handicap in the award application process for eligible housing.

J. Conflict of Interest

The SUBRECIPIENT shall comply with all applicable federal, State and local Conflict of interest laws.

SECTION 11. OTHER REQUIREMENTS

A. Independent contractor

Nothing contained in this Agreement is intended to, or shall be construed in any manner, as creating or establishing the relationship of employer/employee between the parties. The eligible SUBRECIPIENT shall at all times remain an "independent contractor" with respect to the services to be performed under this Agreement. The City/County shall be exempt from payment of all Unemployment Compensation, FICA, retirement benefits, life

and/or medical insurance and Workers' Compensation Insurance, as the eligible Subrecipient is an independent Contractor.

B. Hold harmless

SUBRECIPIENT agrees to defend, indemnify and hold the City and Florida Housing Finance Corporation harmless from any and all claims, actions, suits, charges and judgments of any nature whatsoever which may arise from SUBRECIPIENT's performance or nonperformance of this Agreement. SUBRECIPIENT shall not be liable for acts of the City, its officers, agents or employees. Nothing in this paragraph shall be construed as a waiver by the City of its right to statutory sovereign immunity under Florida Statute §768.28.

SECTION 12 - SEVERABILITY.

If any provision of this Agreement is held invalid, the remainder of the Agreement shall not be affected thereby and all other parts of this Agreement shall nevertheless be in full force and effect.

SECTION 13 - WAIVER.

The City's failure to act with respect to a breach by SUBRECIPIENT does not waive its right to act with respect to subsequent or similar breaches. The failure of the City to exercise or enforce any right or provision shall not constitute a waiver of such right or provisions.

SECTION 14 - JURY TRIAL, VENUE & ATTORNEY FEES.

Venue of all actions shall lie in Osceola County, Florida. Each party waives the right to a jury trial. Each party agrees that the prevailing party shall be entitled to reimbursement of reasonable attorney fees, including court costs, from the opposing party. For the purpose of this Agreement, reasonable Attorney fees of the City Attorney shall be based on the fees regularly charged by a private Attorney with an equivalent number of years of professional experience who practices in Orange and Osceola County, Florida

SECTION 15 - ENTIRE AGREEMENT.

This Agreement constitutes the entire agreement between the City and SUBRECIPIENT for the use of funds received under this Agreement and it supersedes all prior or contemporaneous communications and proposals, whether electronic, oral, or written between the City and SUBRECIPIENT with respect to this Agreement.

SECTION 16 - APPLICABLE LAW.

This law applicable to this Agreement is hereby agreed to be the law of the State of Florida.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date first written above.

KISSIMMEE OAKS HOUSING I, INC

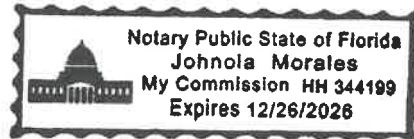
By: [Signature]
Signature

Title: President & CEO

State of Florida
County of Osceola

The foregoing instrument as acknowledged before me on this 11th day of December, 2023, by Wendy Ford.
He/She is personally known to me, or has produced his/her driver's license, or his/her [Signature] as identification, and did/did not take an oath.

[Signature]
Notary Public



CITY OF KISSIMMEE

By: _____
Olga Gonzalez, Mayor

Attest: _____
City Clerk

APPROVED AS TO FORM AND
LEGAL SUFFICIENCY:

City Attorney



FUNDING PROVIDED BY

City of Kissimmee
 City of St. Cloud
 Department of Agriculture
 Department of Children and Families
 Department of Economic Opportunity
 Department of Elder Affairs
 Department of Housing & Urban Development
 Heart of Florida United Way
 Osceola County Board of County Commissioners
 Senior Resource Alliance



*Serving Seniors,
 Disabled Adults, the
 Disadvantaged and
 Families in Poverty in
 Osceola County
 for 50 years.*

**EXHIBIT A
 DISASTER RELIEF - RENTAL HOUSING
 APPLICATION**

10/20/2023

Angelica Rodriguez
 VP of Housing
 Osceola County Council on Aging INC.
 700 Generation Point
 Kissimmee, FL 34744

Subject: Kissimmee Oaks I INC. Emergency Hurricane Ian Repairs

KISSIMMEE OAKS HOUSING I, INC. (DBA Oak Leaf Landings) is a corporation organized under the laws of the State of Florida, filed on November 12, 1993 and active today. It is a Corporation wholly owned and operated by the Osceola County Council on Aging INC. (DBA Osceola Council on Aging). This facility is under agreement with the Osceola County Government in cooperation with the Osceola County Emergency Management Department and Florida Department of Health to provide emergency shelter for Special Needs Clients during Federal and or Florida State declarations of emergency during storm (or other declared) events.

The first-floor apartments, common areas, and elevator shaft flooded with ground water and three apartments on the 3rd floor had water come through the ceiling/windows during the Hurricane Ian storm event. Unfortunately, not all of our initial costs were covered by FEMA, and the restoration done after the hurricane weren't effective. We currently need to do more restorative work at Oak Leaf Landings, and will need to displace residents. As a result, we are requesting the City of Kissimmee for help with funds specified below.

Vendor	Description	Amount
Total Roof Services	Roof Repairs	\$5,850.00
United Glass Service	3 rd floor Window Repair	\$1,820.00
Martin Environmental Solutions	Air quality Test	\$2,245.00
Pro Master Cleaning Restoration	Restoration	\$65,531.07
Westgate Towers	Hotel	\$6,900.00
Osceola Council on Aging	Administrative Fee	\$8,000.00
Total:		\$90,346.07

Pro Master's quote doesn't include the possibility of cutting walls due to the damage. If they cut the walls, the price will increase

Sincerely,

Angelica Rodriguez
 VP of Housing

Barney E. Veal Center
 700 Generation Point, Kissimmee, FL 34744
 Phone: 407-846-8532 · Fax: 407-846-8550
 email: info@osceola-coa.com · www.osceolagenerations.org

**City of Kissimmee
Disaster Assistance – Rental Projects Application**

A cover letter and ALL supporting documents should be included with your application

A. Organization Information

Name: Kissimmee Oaks Housing I Inc. DBA Oak Leaf Landings

Address: 2350 N Central Ave

City: Kissimmee Zip Code: 34741

Contact Person: Wendy Ford

Title: CEO/ President

Phone Number: 407-846-8541 Fax Number: 407-931-3411

B. Information about the damaged property:

Name of the Property: Kissimmee Oaks Housing I, Inc. DBA Oak Leaf Landings

Property Location

2350 N Central Ave Kissimmee, FL 34741

Parcel Identification Number: 16-25-29-1836-0001-0010

Description of the property:

Kissimmee Oaks Housing I Inc. is a corporation organized under the laws of the State of Florida, opened in 1998 and active today. It is a wholly owned and operated by the Osceola County Council on Aging Inc. (DBA Osceola Council on Aging). This facility is a HUD PRAC 202, which has 50 apartments catered for very low income seniors. It is under agreement with the Osceola County Government in cooperation with the Osceola County Emergency Management Department and Florida Department of Health to provide emergency shelter for Special Needs Clients during Federal and or Florida State declarations of emergency during storm (or other declared) events.

Total number of units in the Project: 50

Type of proposed units:

- ☐ Garden Apartments
- ☒ Mid-rise with elevator
- ☐ High Rise (a building comprise of 7 or more stories)
- ☐ Single Room Occupancy (SRO)
- ☐ Other – Specify: _____

C. Disaster Information

Type of the disaster:

☒ Hurricane ☐ Tornado ☐ Storm ☐ Fire ☐ Other: _____

Date of Disaster: September 28, 2023

Disaster damage or losses:

The first floor units, common areas and elevator shaft flooded with ground water. Three apartments on the 3rd floor had water come through the ceiling and windows. Water needed to be extracted from elevator shaft, hydraulic fluid was replaced, and the electrical short was fixed.

The rooftop needed a soft wash and sealant on all pitch pocket penetrations. The third floor hallway window needed to be resealed. A restoration company disinfected all areas on the first floor and placed machines to control humidity and dry wet walls and floors.

Has the property been inspected? ☒ YES ☐ NO

Name of Inspector: Marilyn Yazzie

Date of Inspection: 11.09.22 and 4.12.23

Please provide a copy of the inspection report.

D. Insurance information

Name of Insurance: Insurance Office of America

Property Insurance coverage:

Commercial Property Coverage, Commercial General Liability Coverage, Commercial Crime Coverage, Commercial Inland Marine Coverage, Commercial Auto Coverage, and Workers Comp.

Amount of Deductible:

☐ 0-\$50,000

☐ \$51,000-\$100,000

☐ Over \$100,000

☒ Other.Explain: Flood was not covered in the insurance

E. Proposed work:

Do you have a scope of work? ☒ YES, please submit. ☐ NO

What is the proposed project timeline (completion schedule) for project from conception to project closeout?

We estimate the scope of work to take about 30 days once the restoration company is scheduled.

Have you identified a contractor/subcontractor? ☒ YES ☐ NO

Did you obtain quotes from a qualified contractor? ☒ YES ☐ NO

The undersigned hereby certifies that he/she is duly authorized to negotiate, execute and deliver agreements, documents and other instruments in the name of and on behalf of the organization submitting this application for grant funds, and that the information contained in this application is, to the best of his/her knowledge, true, correct, complete, and represents the true intended usage of the funds for which the application is being submitted under penalty of law.


Authorized Signature

Windy Ford
Print Name

10/25/23
Date

August 8, 2023

Ms. Angelica Rodriguez-Perez
Vice President of Housing
Osceola Council on Aging
2350 North Central Avenue
Kissimmee, Florida 34741

**RE: Post Ian Renovation and Construction and Microbial IAQ Sampling Report
Osceola Council on Aging
Oak Leaf Landing Apartments
2350 North Central Avenue
Kissimmee, Florida
MartinEnviro Project No. 2023-MSC-0023**

Dear Ms. Rodriguez,

Martin Environmental Solutions Inc (MartinEnviro) is pleased to provide for your review, the attached Southeast Environmental Microbiological Laboratories' (SEEML), analytical report, (SEEML Reference No.230802029), which documents our August 1, 2023 collection of 18 non-viable fungal air samples, including two background outdoors air samples from the Osceola Council on Aging's, Oak Leaf Landing Apartments, located at 2350 North Central Avenue, Kissimmee, Florida, Orange County, Florida.

1.0 Background

On September 29, 2022, Orlando was impacted by Hurricane Ian, which due to the heavy rainfall and high winds caused the unprecedented flooding of Orange County, including the Osceola Council on Aging's apartment building. Flood waters entered the building at the ground level flooding the first-floor's laminate flooring, administrative offices, common areas and the community room, as well as all first-floor common corridors and residence apartments. Some third-floor apartments experienced water damage due to a roof system leak and or wind-blown rain, which entered apartments via the window and roof soffits. Initial response to the flooded building was conducted by PuroClean of Orlando, Florida on October 2, 2022, who positioned negative air machines, dehumidifiers and floor fans at the above building locations. The following day, Lift Pit Solutions, LLC of Orlando recovered flood waters from the building's first floor. In the interim since October 2022, 17 residents were moved to off-site and into temporary housing. Their furnishings decorative and personal items were placed in temporary storage, while their apartments underwent renovation construction repairs. Repairs addressed ceiling, window, leaks which damaged interior and exterior walls and floors. Resident apartment unit's ambient air was air scrubbed with negative air machines (NAMs) and interior walls were wiped with disinfectant, following the completion of construction repair activities.

General Environmental Issues and Consulting
Phase I Assessments
Phase II Assessments
Soil and Groundwater Sampling and Testing
Emergency Response and Source Removal
Contaminated Site Assessment and Remediation
Hazardous Waste Management

NEPA Screening
NEPA Environmental Assessments
Section 106 Reviews
Ecological Studies
OSHA and EPA Compliance
OSHA/Health & Safety Training
Industrial Hygiene

2.0 Investigative Purpose

The purpose of this sampling activity was to document the post construction, renovation repair microbial IAQ within the 16 residence apartments to determine whether there was a residual prevalence and predominance of environmental fungi within the ambient air at the sample locations. Analytical data generated by this sampling activity was used to determine if an adverse microbial IAQ trend was occurring within the ambient air at the sample locations and whether it represented a respiratory exposure risk to the residents, staff or employees.

3.0 Sample Methodology

Non-viable airborne fungal samples were collected via two, previously calibrated SKC Quik Take-30 air sample pumps, coupled to Air-O-Cell spore trap cassettes. Air-O-Cell sampling cassettes are designed for slit impaction sampling, allowing for the rapid collection and analysis of a wide range of airborne particles. Slit impaction sampling collects both viable and non-viable fungal spores, along with other potential allergen surrogates, such as mycelial and hyphal fragments, skin cells, plant pollen, fibers, etc. Total Fungal Spore (TFS) counts presented in the Air-O-Cell Cassette Analysis section of the attached laboratory reports consist of both viable and non-viable fungal spores, which are used for relative comparison between indoors and outdoors environmental fungal spore concentrations. Fungal spore samples were collected at the breathing height level for five (5.0) minutes at a rate of 15 liters per minute.

4.0 Analytical Methodology

Non-viable fungal air samples were submitted to SEEML Greenville, South Carolina Laboratory for microbiological (fungal) identification and quantification via light microscopy. Fungal spores were analyzed at 200X to 600X magnification, with the entire slide (100%) of the sample) being analyzed. SEEML is an American Industrial Hygiene Association (AIHA) certified laboratory and accredited by the AIHA for environmental microbiology. The enclosed Laboratory Sample Log documents sample identification, sample location, sample type, sample collection times, as well as other relevant field data.

5.0 Microbial Analytical Data Evaluation

Because of the ubiquity of fungi, suspect areas need to be evaluated against samples collected from non-suspect interior areas or outdoors. Identification of fungal organisms to the genus level is necessary in this evaluation to determine if indoor air has been influenced by exterior contamination. Generally, the genera of fungi collected from indoor air should match outdoor air and be present at levels of one-third to one-half of outdoor levels. Levels of genera higher than one-third to one-half may indicate inadequate air filtration. Fungal amplification may exist when specific fungal genera, absent, or found in low number counts in outdoors air, are found at significantly higher counts indoors. Dependent upon site specific circumstances, and environmental influencers, low or high indoor counts of different outdoors genera serve as an indicator that moisture is present at a sample location, or that there is a localized, and/or an adjacent or overhead location with an undetected intrusion source, which is promoting fungal activity.

6.0 Non-Viable Fungal Air Sample Collection

MartinEnviro's August 1, 2023 sampling activity included the collection of 14 non-viable fungal air samples from the building's first-floor resident apartments, and three samples from the third-floor apartments. Two outdoors background air samples were collected, which served as comparative-data points for the evaluation of the indoor air spore counts, *refer to Table 7.1 – Air Sample Fungal Spore Count Summary*.

7.0 Analytical Findings

Our review of the laboratory report showed that all sample total fungal spore (TFS) counts, were lower than the 7,100 spores per cubic meter of air (7,100/m³) TFS background count. Sample TFS counts in the air samples collected from the first-floor resident apartments ranged from a low of 220/m³ in unit 106 to a high of 4,190/m³ in unit 103. Sample TFS counts in the air samples collected from the three third-floor apartments ranged from a low of 0/m³ in unit 305 to a high of 533/m³ in unit 320.

First-floor sample fungal genera (*fungi identified at the genus level*) spore counts were at low-moderate to moderate spore counts, while sample diversity was low with three to four fungal genera in each sample. Most resident unit air samples were predominated by *Penicillium/Aspergillus* (*Pen/Asp*)-type spores. First floor sample *Pen/Asp* spore counts which were found to be at less than background counts ranged from 53/m³ to 480/m³. Samples that contained elevated counts of *Penicillium/Aspergillus* were found in following nine resident unit samples at counts of 102 (587/m³), 104 (1,280/m³), 103 (4,110/m³), 105 (2,560/m³), 110 (587/m³), 112 (2,190/m³), 107 (1,970/m³), 109 (587/m³) and unit 114 (1,070/m³), relative to the *Penicillium/Aspergillus* 534/m³ background spore count.

The three air samples collected from the third-floor residences included units 305, 311, unit 320. Sample TFS counts ranged from 0/m³ in unit 305 to 533/m³ in unit 320. Sample diversity was low with two to three fungal genera in each sample. The samples from unit 311 and unit 320 contained less than background counts of *Pen/Asp* spores at 53/m³ and 533/m³.

The samples from resident units 103, 105 110 and 114 contained low moderate elevated of unidentified fungal hyphal fragments at counts of 13/m³, relative to the 0/m³ hyphal fungal fragment background count. Fungal hyphal fragments are the root-like filamentous strands common to all fungi, which are used to absorb nutrients from the substrates to which they are attached. Hyphal fragments are analogous to the roots and stems of plants and can sometimes become airborne. The presence of hyphal fragments in samples serves as an indicator that moisture was present and fungal activity is occurring within the immediate vicinity of the sample location at the time of sampling. *refer to Appendix A Direct Microscopy Examination SEMML SOP, SEEML Reference No.230802029, dated August 2, 2023.*

Tables 7.0, summarize the fungal spores present within the interior room air samples collected on August 1, 2023, to include, sample location, sample fungal genera spore counts, elevated spore counts, sample total fungal spore (TFS) count, background spore counts, the background total fungal spore count, and spores present in the sample, but absent from the background:

Table 7.0 Non-Viable Fungal Spore Counts Osceola Council on Aging Oak Leaf Apartments 2350 North Central Avenue Kissimmee, Florida (counts/m³)								
Fungi	Unit 102	Unit 106	Unit 104	Unit 101	Unit 103	Unit 105	Unit 107	Background Spore Count
<i>Alternaria</i>	0	0	0	0	0	0	0	0
<i>Ascospores</i>	0	0	0	0	0	0	0	614
<i>Basidiospores</i>	53	160	0	533	53	0	53	4,185
<i>Bipolaris / Drechslera</i>	0	0	0	0	0	0	0	13
<i>Chaetomium</i>	0	0	0	0	0	0	0	0
<i>Cladosporium</i>	107	53	13	13	13	53	13	1,625
<i>Curvularia</i>	0	0	0	0	0	0	0	80
<i>Epicoccum</i>	0	0	0	0	0	0	0	0
<i>Cercospora</i>	0	0	0	0	0	0	0	0
<i>Fusarium</i>	0	0	0	0	0	0	0	0
<i>Memnoniella</i>	0	0	0	0	0	0	0	0
<i>Nigrospora</i>	0	0	0	0	13	13	0	20
<i>Penicillium / Aspergillus</i>	587	107	1,280	427	4,110	2560	1,970	534
<i>Pyricularia</i>	0	0	0	0	0	0	0	0
<i>Plant Rusts</i>	0	0	0	0	0	0	0	14
<i>Plant Smuts, Periconia, Myxomycetes</i>	0	0	0	0	0	0	0	20
<i>Spegazzinia</i>	0	0	0	0	0	0	0	0
<i>Stachybotrys</i>	0	0	0	0	0	0	0	0
<i>Stemphylium</i>	0	0	0	0	0	0	0	0
<i>Tetraploa</i>	0	0	0	0	0	0	0	0
<i>Torula</i>	0	0	0	0	0	0	0	0
<i>Ulocladium</i>	0	0	0	0	0	0	0	0
<i>Other Brown/Colorless</i>	0	0	0	0	0	0	0	0
<i>Odium</i>	0	0	0	0	0	0	0	0
<i>Pithomyces</i>	0	0	0	0	0	0	0	0
<i>Zygomycetes</i>	0	0	0	0	0	0	0	0
<i>Hyphal Fragments</i>	0	0	0	0	13	13	0	0
Sample TFS Count	747	320	1,290	973	4,190	2,630	2,040	NA
Total Fungal Spore Background Count								7,100

Note:

Bold numeric font = spore count exceeds outdoors background count
Large Italicized numeric font = fungal spores are not present in background samples

Table 7.0 Non-Viable Fungal Spore Count Osceola Council on Aging Oak Leaf Apartments 2350 North Central Avenue Kissimmee, Florida (counts/m³)								
Fungl	Unit 108	Unit 109	Unit 110	Unit 111	Unit 112	Unit 113	Unit 114	Background Spore Count
<i>Alternaria</i>	0	0	0	0	0	0	0	0
<i>Ascospores</i>	0	0	0	0	0	0	0	614
<i>Basidiospores</i>	0	107	107	160	160	53	107	4,185
<i>Bipolaris / Drechslera</i>	0	0	0	0	0	0	0	13
<i>Chaetomium</i>	0	0	0	0	0	0	0	0
<i>Cladosporium</i>	13	13	13	13	107	13	53	1,625
<i>Curvularia</i>	0	0	0	0	0	0	0	80
<i>Epicoccum</i>	0	0	0	0	0	0	0	0
<i>Cercospora</i>	0	0	0	0	0	0	0	0
<i>Fusarium</i>	0	0	0	0	0	0	0	0
<i>Memnoniella</i>	0	0	0	0	0	0	0	0
<i>Nigrospora</i>	0	0	0	0	0	0	0	20
<i>Penicillium / Aspergillus</i>	427	587	587	480	2,190	427	1,700	534
<i>Pyricularia</i>	0	0	0	0	0	0	0	0
<i>Plant Rusts</i>	0	0	0	0	0	0	0	14
<i>Plant Smuts, Periconia, Myxomycetes.</i>	0	0	13	13	27	0	0	20
<i>Spegazzinia</i>	0	0	0	0	0	0	0	0
<i>Stachybotrys</i>	0	0	0	0	0	0	0	0
<i>Stemphylium</i>	0	0	0	0	0	0	0	0
<i>Tetraploa</i>	0	0	0	0	0	0	0	0
<i>Torula</i>	0	0	0	0	0	0	0	0
<i>Ulocladium</i>	0	0	0	0	0	0	0	0
<i>Other Brown/Colorless</i>	0	0	0	0	0	0	0	0
<i>Odium</i>	0	0	0	0	0	0	0	0
<i>Pithomyces</i>	0	0	0	0	0	0	0	0
<i>Zygomycetes</i>	0	0	0	0	0	0	0	0
<i>Hyphal Fragments</i>	0	0	0	0	0	0	0	0
Sample TFS Count	440	707	720	666	2,460	0	0	NA
Total Fungal Spore Background Count								7,100

Note:

Bold numeric font = spore count exceeds outdoors background count
Large Italicized numeric font = fungal spores are not present in background samples

Table 7.0 Non-Viable Fungal Spore Counts Osceola Council on Aging Oak Leaf Apartments 2350 North Central Avenue Kissimmee, Florida (counts/m ³)				
Fungi	Unit 305	Unit 111	Unit 320	Background Spore Count
<i>Alternaria</i>	0	0	0	0
<i>Ascospores</i>	0	0	0	614
<i>Basidiospores</i>	0	853	0	4,185
<i>Bipolaris / Drechslera</i>	0	0	0	13
<i>Chaetomium</i>	0	0	0	0
<i>Cladosporium</i>	0	160	13	1,625
<i>Curvularia</i>	0	0	0	80
<i>Epicoccum</i>	0	0	0	0
<i>Cercospora</i>	0	0	0	0
<i>Fusarium</i>	0	0	0	0
<i>Memnoniella</i>	0	0	0	0
<i>Nigrospora</i>	0	0	0	20
<i>Penicillium / Aspergillus</i>	0	53	533	534
<i>Pyricularia</i>	0	0	0	0
<i>Plant Rusts</i>	0	0	0	14
<i>Plant Smuts, Periconia, Myxomycetes.</i>	0	0	0	20
<i>Spegazzinia</i>	0	0	0	0
<i>Stachybotrys</i>	0	0	0	0
<i>Stemphylium</i>	0	0	0	0
<i>Tetraploa</i>	0	0	0	0
<i>Torula</i>	0	0	0	0
<i>Ulocladium</i>	0	0	0	0
<i>Other Brown/Colorless</i>	0	0	0	0
<i>Odium</i>	0	0	0	0
<i>Pithomyces</i>	0	0	0	0
<i>Zygomycetes</i>	0	0	0	0
<i>Hyphal Fragments</i>	0	0	0	0
Sample TFS Count	0	1,700	546	NA
Total Fungal Spore Background Count				7,100

Note:

Bold numeric font = spore count exceeds outdoors background count
Large Italicized numeric font = fungal spores are not present in background samples

8.0 Indoor Comfort Measurements

Direct reading measurements of indoor comfort levels for temperature and percent relative humidity, (RH%) were measured and recorded, at each sample location, using a previously calibrated Protometer MMS2 Moisture Measurement System.

First-Floor Resident Apartments

Interior room temperatures ranged from 77.7.2 °F to 80.3 °F.
RH% measurements ranged from 43.4% to 58.7%.

Third-Floor Resident Apartments

Interior room temperatures ranged from 79.3 °F to 80.3 °F.
RH% measurements ranged from 43.4% to 58.7%.

The actual temperature and RH% measurements may be viewed on the Sample Chain-of-Custody document.

The direct reading temperature measurements of first-floor resident units no. 102, 107, through 114, as well as Third-floor resident units 305, 311 and 320 were, not within range of the recommended indoor temperature comfort levels established by the American Society of Heating, Refrigeration and Air Conditioning Engineers (ASHRAE) Standard 55-2013 *Thermal Environmental Conditions for Human Occupancy*. The RH% measurements were within range of ASHRAE's RH% comfort levels.

ASHRAE 62.1-2013, *Ventilation for Acceptable Indoor Air Quality* recommends a summer temperature range of 73 °F to 78.5 °F coupled with an approximate relative humidity of 30% to 60%, and a winter temperature between 68 °F to 75 °F coupled with an approximate relative humidity of 30% to 60%.

These ranges were developed to specify the thermal conditions generally acceptable to 90% of all building occupants. It is important to note that Orlando is geographically located within the Tropic of Cancer and experiences a sub-tropical climate nearly nine months of the year.

In view of Orlando's summer and winter climate, MartinEnviro recommends that the RH% in the building and resident apartments be maintained between 40% and 50% to control moisture.

ASHRAE standards provide thresholds for fungal growth. The fungal growth thresholds are based upon on average surface temperature of susceptible materials at 75 °F. The thresholds also assume that the RH% has risen, and not fallen below these values.

The ASHRAE thresholds for fungal growth are as follows:

- RH of less than 60% – No growth expected
- RH% of 65% and greater – Growth likely to occur
- RH% of 65% (continuously) – Growth will occur in approximately 100-days
- RH% of 80% (continuously) – Growth will occur in approximately 30-days
- RH% of 100% (continuously) – Growth will occur in approximately 48-hours

Table 8.1 documents interior temperatures and RH% measurements within the 14 first-floor resident apartment units and three third-floor apartment Units as measured by MartinEnviro during our August 1, 2023 sampling activity:

Table 8.1 Indoor Comfort Level Measurements Osceola Council of Aging 2350 North Central Avenue Kissimmee, Florida Temperature (° F) and Percent Relative Humidity (RH%)		
Location	Temperature ° F	RH%
First Floor		
Unit 102	78.8	57.1
Unit 106	78.1	51.7
Unit 104	77.8	51.9
Unit 101	77.7	57.9
Unit 103	77.8	52.8
Unit 105	77.8	55.8
Unit 101	77.3	49.5
Unit 107	80.5	48.7
Unit 108	80.0	56.6
Unit 109	79.8	46.2
Unit 110	80.3	58.7
Unit 111	79.3	43.4
Unit 112	79.9	49.8
Unit 113	79.7	45.8
Unit 114	80.3	54.3
Thrd Floor		
Unit 305	79.8	53.2
Unit 311	80.3	58.7
Unit 320	79.3	43.4
Outdoors	86.2	75.7

Note: Red highlighted temperature measurements = Elevated temperature
Blue highlighted RH% measurements = Elevated RH%

9.0 Observations

The following visual observations were made during our inspection of interior rooms from which non-viable fungal air samples or fungal surface swab samples were collected:

1. Our inspection of the resident apartments from which samples were collected observed no visual evidence of moisture intrusion or active fungal growth.

10.0 Discussion

Bioaerosols are airborne particles of biological origin to include microbial, plant, or animal i.e., fungal spores, fungal mycotoxins (*fungal specific toxins*). Pathogenic bacteria, viruses, plant pollens and fibers, decaying matter in compost or soils, human skin fragments, animal dander, dust mites, rodent and insect droppings), all of which can be dispersed via wind, water, air and mechanical movements. Exposure to bioaerosols in damp or humid environments can result in mild allergenic reactions, or more severe adverse health effects including dry coughing, upper respiratory symptoms, with coughing and wheezing. Bioaerosol exposure can lead to the exacerbation of chronic pulmonary obstruction disease (CPOD), chronic respiratory inflammation Syndrome (CRS), Multiple Chemical Sensitivity (MCS), Lyme disease, asthma, bronchitis, sinus infections and aggravation of existing allergies or chemical sensitivities, with impact of the upper or lower respiratory system, immune suppression, or inflammation due to exposure to fungal allergens, microbial toxins (mycotoxins) or other inflammatory agents.

The elevated counts of fungal spores in interior spaces can represent a potential respiratory exposure risk to both humans and animals. While some fungal genera are potentially toxigenic, the extent of their toxigenicity, and symptomatic effects on humans and animals can vary dependent upon an individual's biochemical resilience to fungal allergens and mycotoxins (their age, sex, lifestyle practices, pre-existing respiratory allergies, respiratory diseases, immune suppression, and/or other medical conditions).

Penicillium/Aspergillus-type (*Pen/Asp*) spores are ubiquitous, and without a microscope, are visually indistinguishable round spores. *Asp/Pen* spores are opportunist pathogens, which are potentially toxic to humans and animals, and are Type I and, II human allergens, which is often associated with allergic fungal sinusitis. Elevated counts of *Pen/Asp* spores can aggravate those individuals with respiratory allergies, hay fever, and asthma, or pre-existing fungal sensitivities.

Aspergillus spores are potential opportunist pathogens, particularly in immunocompromised individuals. Human infections include pulmonary infections, such as hypersensitivity pneumonitis. Both fungi can be responsible for invasive infections in the immune suppressed, especially individuals with pre-existing respiratory illnesses, liver infections, or who have had recent organ transplants.

Chaetomium spores are also ubiquitous, and within indoor environments, are commonly found on materials containing cellulose, such as very damp gypsum wallboard facing paper, deteriorated wood building materials and other wet materials. Because of its water requirements, *Chaetomium* is often found in association with *Stachybotrys*. *Chaetomium* spores are similar to *Stachybotrys* spores in that they are heavy dark-colored, which following sporulation fall out of the ambient air and settle on to flat surfaces. *Chaetomium* spores are opportunist pathogens, which are potentially toxic to humans and animals, and are Type I

human allergens, which are often associated with nasal and open wound dermal infections. It has been reported that immune suppressed are more susceptible to mycoses (fungal infections), brain abscesses, peritonitis, and fingernail infections.

Cladosporium is a common and world-wide fungus, associated with the soil, plant litter, and is commonly found of dead plants and leaves as a plant pathogen. This fungus readily exploits many moist indoor substrates (wood gypsum wallboard, textiles, damp diffusers etc.), and is also capable of growing at 0° Centigrade (32° Fahrenheit). Consequently, fungal bioamplification can easily occur within HVAC air handlers and associated ducts. While *Cladosporium* is generally considered to be non-toxic to humans, they are considered to be Type I and II human allergens, which can aggravate those individuals with allergies, hay fever, and asthma, or pre-existing fungal sensitivities.

Plant Rusts and Plant Smuts, *Periconia* and *Myxomycetes* do not grow indoors and are parasitic plant pathogens that require a living host to complete their life cycle, while their potential toxin production is not known, they are considered a Type I allergen, which can aggravate those individuals with allergies, hay fever, and asthma, or pre-existing fungal sensitivities.

Water/moisture indicator fungi such as *Bipolaris/Dothidea* Group, *Curvularia*, Other Brown fungi, *Pithomyces*, and *Ulocladium*, while considered not to be non-potentially toxigenic are still considered to be Type I and II allergens, which individually or together can serve to aggravate those individuals with allergies, hay fever, and asthma, or pre-existing fungal sensitivities. *Curvularia* has been reported to be cause type I hypersensitivity and the cause of allergenic fungal sinusitis.

The above fungi are commonly found in house and office dusts, tend to colonize continuously damp materials such as moist cupboards, damp wallboard, ceiling board, ceiling tiles, wood, fabrics, and carpeting. These fungi produce various specie specific mycotoxins (fungal chemical toxins). Exposure pathways include inhalation, ingestion, and dermal contact. Some molds produce several or more mycotoxins, while others produce toxins only under certain environmental conditions. It is important to note that the presence of mold in a building does not necessarily mean that mycotoxins are present, or that they are present in large concentrations.

11.0 Moisture and Fungal Activity

Fungal spores are ubiquitous and are entrained into homes due to daily human traffic in and out of the residence. Each time a door or window is opened, or left open, higher pressure outdoors air, moisture, fungal laden dust, fungal spores and particulates are drawn into the building's lower pressure interior living or working space, where they are generally recovered by the return air register. Those spores which are not recovered remain lofted and suspended in the ambient air where they can sporulate (reproduce) due to the daily slight changes in temperature and

humidity that occurs in the ambient air. It is important to note that the atmospheric pressure in crawl spaces and attic spaces can cause fungal spores and odors to be entrained through wood floor systems and unsealed ceiling penetrations. Therefore, it is important to understand the term, "water activity" (a_w) and its relationship to fungal growth. Water activity is the ratio of the vapor pressure exerted by water in the water or moisture affected material i.e., ceiling tiles, ceiling board or gypsum wallboard, relative to the vapor pressure of pure water at the same

temperature and pressure. Water activity values range from 0.7 a_w to 0.9 a_w and determine which types of fungi will grow on damp or wet substrates. Indoor fungi such as *Penicillium/Aspergillus*-type fungi *Bipolaris/Drechslera* group, *Curvularia* sp., Other Brown fungi, *Pithomyces* sp, *Ulocladium* sp. moisture indicator fungal sp. (species) are capable of growth below water activity 0.8 a_w are primary fungal colonizers on damp surfaces such as wallboard and ceiling board. Slightly xerophilic "dry loving" fungi can be secondary or intermediate colonizers and can grow at or below a water activity 0.85 a_w , are *Alternaria* sp. *Cladosporium* sp. and other fungal genera. Hydrophilic water loving fungi are tertiary colonizers, and are associated with water intrusion events, which provide the fungi with a continuous source of water for growth. Due to their need for very high levels of moisture, their water activity is $\geq 0.9 a_w$. Tertiary colonizers are indicators of chronic water and moisture damage, or chronic condensation in buildings, which has occurred over periods of weeks, months or years. Tertiary colonizer fungi include, *Aspergillus fumigatus*, *Aspergillus*, *Penicillioideis*, *Aspergillus versicolor*, *Chaetomium globosum*., *Stachybotrys chartarum*, Black Slime Mold and *Memnoniella echinata*.

if the room temperatures and percent relative humidity (RH%) in a building are maintained, as per ASHRAE's recommended temperature and RH% comfort levels, and the RH% is maintained at 30% to 60%, the lower humidity will lead to lower water activity values, which will result in reduced fungal activity in the resident unit apartments.

12.0 Conclusion

Based upon the microbiological analytical data generated by this sampling events, the background TFS counts, relative to the listed fungal analytes, and their respective background counts, fungal bio-amplification of predominant *Penicillium/Aspergillus* spores was occurring in the ambient air of nine resident apartment units at the time of sampling. The samples collected from the 14 first-floor and three third-floor sample locations contained predominant *Penicillium/Aspergillus* spores. Currently, bio-amplification of *Penicillium/Aspergillus* spores is occurring in first-floor resident apartments, including units 102, 103, 104 105, 107, 109, 110, 112 and 114. *Penicillium/Aspergillus* spore counts in resident apartment units 103, 104, 105, 107, 112 and 114 contained high counts of *Penicillium/Aspergillus*, with counts ranging from 1,970/m³ to 4,110/m³. Counts over 1,000 could represent a potential respiratory health risk to elderly residents. We observed that five of the nine resident apartment units, including apartment units 107, 109, 110, 112 and 114 contained elevated to high *Penicillium/Aspergillus* counts and had indoor temperatures above 78.5 °F. It is important to note that samples were collected from 9:00 AM to 11:00 AM in the morning. Given the extreme outdoors temperatures that occur in the afternoon, indoor temperatures and percent relative humidity (RH%) would be expected to become more elevated during the mid and late afternoon period, especially in those resident apartments where the air handlers are intermittently operated, or the thermostats are preset to temperatures above 78.5 °F. When air handlers are operated in this manner, little to no dehumidification occurs, the indoor environment and the microbial air quality is adversely affected due to absence of fresh conditioned air, the presence of stagnated air and excessive moisture in the room's ambient air.

Daily slight changes in room temperature and RH% can create a temperature and humidity exchange effect, due to chronically elevated daily temperatures and/or elevated RH% in resident apartment units. A temperature humidity exchange occurs with the mixing of warmer

higher-pressure air in the building's common corridors with the cooler lower-pressure air in resident apartments. This condition occurs due to the differential pressure between outdoors atmospheric pressure and lower building pressure, resulting in uncomfortable room temperature and/or the RH% conditions.

Penicillium/Aspergillus is a primary fungal colonizer, as the fungi requires very little moisture to grow and survive. Therefore, moisture in the building and in each resident apartment unit must be properly managed, as *Penicillium/Aspergillus* can rapidly amplify if indoor temperatures and percent relative humidity (RH%) are not managed in accordance with ASHRAE Standard 55-2013 *Thermal Environmental Conditions for Human Occupancy*, and ASHRAE 62.1-2013, *Ventilation for Acceptable Indoor Air Quality*, which recommends a summer temperature range of 73 °F to 78.5 °F coupled with an approximate relative humidity of 30% to 60%, and a winter temperature between 68 °F to 75 °F coupled with an approximate relative humidity of 30% to 60%.

Due to Orlando's summer and winter climate, MartinEnviro recommends that the RH% in the building and resident apartments be maintained between 40% and 50% to control moisture and fungal activity.

Based upon the current *Penicillium/Aspergillus* infestation of the above referenced resident apartment units, the post construction renovation cleaning was not effective. In view of the current *Penicillium/Aspergillus* spore counts in the nine apartments, all interior surfaces and room contents in each apartment will need to be microbially cleaned by a Florida Licensed Mold Remediator.

13.0 Recommendations for Further Action

MartinEnviro recommends that the following corrective actions be considered for recovery of fugitive *Penicillium/Aspergillus* and other fungal spores from affected resident apartment units:

1. We recommend that residents be temporarily re-located to vacant apartments or a hotel during the microbial cleaning and the 72-hours of air scrubbing with negative air machines (NAMs).
2. The mold remediator should provide a minimum of four microbial cleaning technicians for the cleaning of each resident apartment unit.
3. Apartment air handlers should not be operated during microbial cleaning or air scrubbing activities.
4. Three to four 500 CFM negative air machines (NAMs) should be used in resident's apartments, with the NAMs being positioned in the kitchen, living room, and bedrooms to scrub the apartment's ambient air.
5. Concurrent with air scrubbing, all apartment horizontal and vertical surfaces should be microbial cleaned from top to bottom, as well as any room contents. and microbial fogged with a broad-spectrum disinfectant.

6. We recommend that first, floors and flat surfaces, such as counter, appliance, cabinet, table, dresser and vanity tops be microbially microbial cleaned to recover surface fungal spores.
7. We recommend that initially, all furnishings, appliances, decorative and personal items be microbially cleaned and draped with protective polyethylene sheeting.
8. Area rugs should be HEPA vacuumed in multiple directions and treated with a broad-spectrum disinfectant and rolled up covered with polyethylene sheeting and set aside.
9. Area rugs can also be professionally cleaned using the steam cleaning method, treated with sanitizer and mildew preventative.
10. Throw rugs should be recovered and placed in a tape sealed polyethylene bag, pending their being laundered.
11. Microbial cleaning includes the initial HEPA vacuuming and directional wet wiping of all flat surfaces and room contents with an EPA-Registered microbial disinfectant cleaning solution, dampened cotton wipe cloths. This procedure will recover surface fungal biofilms, fungal spores, and fungal laden dust, which could otherwise become re-lofted into the ambient air and serve as chronic exposure source. Concurrent with the on-site microbial cleaning activities, NAMs should always be employed to scrub the indoor ambient air. This procedure will recover any remaining residual airborne fungal spores, fungal structures and fungal laden dust from the interior ambient air.
12. Dehumidifiers, equipped with a condensate pump should be positioned in each apartment work area to control moisture.
13. Upon completion of the final cleaning of each apartment room, The NAM should be turned off so that the room's ambient air can be microbially fogged with an EPA -Registered broad-spectrum disinfectant.
14. Following a 30-minute dwell time, the NAM should be turned back on, and the flat surfaces wet wiped with disinfectant to recover all residual surface fungal spores.
15. The floor should be wet wiped with disinfectant as the technician backs out of the room.
16. Upon completion of all microbial cleaning activities in each room, the NAM's primary filter element should be changed out in preparation for post cleaning air scrubbing.
17. The ambient air in each room should be continuously air scrubbed for 72-hours prior to the collection of post remediation air samples.
18. Post remediation air samples will document the post remedial air quality, determine whether the microbial remedial cleaning effort was efficient and successful, and that spore counts are at acceptable, or less than background spore counts, or if there is a need for further corrective action.

19. The above corrective action items when implemented will restore the microbial air quality to acceptable, or less than background spore counts.

It should be noted, there are at this time, no published standards or specific regulations for surface microbiological contamination or airborne microbiological contaminants (bioaerosols) within indoor air environments. Acceptable permissible exposures for mold have not been established. This is in part, due to the many variables involved in sampling for microorganisms, fluctuations in background levels of microorganisms, and the lack of consensus on the exact fungi concentrations responsible for toxigenic effects, or the cause of adverse health effects or disease in humans.

This investigation and microbial IAQ sampling activities were conducted, in accordance with the guidelines established by the following industry publications:

- United States Environmental Protection Agency (EPA) Guidelines Entitled *Mold Remediation in Schools and Commercial Buildings* www.epa.gov/mold
- Building Air Quality, *A Guide for Building Owners and Facility Managers*, U.S. EPA and U.S. Department of Health and Human Services, Public Health Service, Centers for Disease Control and The National Institute for Occupational Safety and Health,
- American Conference of Governmental Industrial Hygienists (ACGIH) guidance documents, *Assessment and Post Remediation Verification of Mold in Buildings* www.asqhih.org
- *Bioaerosols Assessment and Control* www.AIHA.org
- ASHRAE *Humidity Control Design Guide for Commercial and Institutional Buildings* www.ashrae.org
- Institute of Inspection, Cleaning, and Restoration Standard IIRC S520, *Standard and Reference Guide for Professional Mold Remediation* www.iirc.org
- Institute of Inspection, Cleaning, and Restoration Standard *and Reference Guide for Professional Water damage Restoration S500* www.iirc.org
- New York City Department of Health and Mental Hygiene, *Guidelines on the Assessment and Remediation of Fungi in Indoor Environments* www.nyc.gov/health

Following your review of this report, please call me should you have any questions regarding, our findings, the microbiological analytical data, recommendations for corrective action, or if we can be of further service to you in this matter.

Thank you again for your trust in me and Martin Environmental Solutions, with regards to the Osceola Council on Aging's microbial indoor air quality, and environmental health concerns.

Respectfully submitted,

Martin Environmental Solutions Inc.

Mitch Kramer

Karl M. "Mitch" Kramer, REM, CHMM, RPIH, CIEC, CMC
Senior Environmental Scientist / Special Projects Manager
Registered Professional Industrial Hygienist
Florida Licensed Mold Assessor & Mold Remediator
MRSA1145 & MRSR1317
Board Certified Indoor Environmental Consultant
Board Certified Microbial Consultant
Certified Level I Infrared Thermographer



Date: 12/12/2022

Total Roof Services
1920 N Rio Grande Ave
Orlando, FL 32804
407-495-4151

Re: Osceola Council on Aging
Wendy Ford
Oak Leaf Landings
2350 N Central Ave
Kissimmee, FL 34741

Ms. Wendy Ford,

Enclosed is our roof evaluation and proposal for roof repairs at the above-mentioned property. Below is a list of deficiencies we noted on your roof, a summary of your roof condition and a scope of work for repair of your roof.

Jose Morales, HCRI-C
Inspector ID #: 201208223
State Certified Contractor #CCC1330329



1920 N. Rio Grande Ave * Orlando * FL * 32804

Oak Leaf Landings
2350 N Central Ave
Kissimmee, FL 34741

OBSERVATIONS

1. Maintenance required on pitch pockets throughout roof.
2. Roof membrane dirty recommend roof cleaning.
3. Rusted gas lines - recommend painting with rust inhibitor paint.
4. Rust on roof hatch - recommend painting with rust inhibitor paint.
5. HVAC door sitting on roof surface. Need to locate which unit door belongs to and resecure.
6. Torn walkway pads - noting / repair will be too intrusive.
7. Maintenance required on wall flashing - inspect and reseal any deteriorated caulking.
8. Roof top drains need to be cleaned to ensure proper drainage.
9. HVAC has significant hail damage - not roof related.
10. AC stand support legs need to be inspected and resealed as needed- annual maintenance requirements.
11. Rusted areas of coping cap should be painted with rust inhibitor paint.
12. Damage to counter flashing on wall.
13. Lighting protection system not adhered to sacrificial pads.
14. HVAC equipment access panel left loose on roof.
15. Puncture in roof system
16. Potential issues on wall / window flashings - not roof related.



Oak Leaf Landings

Oak Leaf Landings
2350 N Central Ave
Kissimmee, FL 34741

SUMMARY

Total Roof Services Inspected this roof for leaks that occurred during hurricane Ian. Upon inspection of the roof we did not find any failure points related to storm damage. The existing roof is a TPO single ply membrane that is terminated 8" up the parapet wall. It is our belief that the water levels surpassed the 8" of wall flashing and found its way behind the flashing. This is not a failure of the roof system as it is more that the roof drains were overwhelmed with the amount of rain from the storm. The roof is in relatively good shape and needs minor annual maintenance performed. We have provided a scope of work for addressing the maintenance items as well as an option to clean the roof system.



Oak Leaf Landings

Oak Leaf Landings
2350 N Central Ave
Kissimmee, FL 34741

SCOPE OF WORK
Single Ply Annual Maintenance Service

1. Total Roof Services will inspect roof for all annual maintenance requirements. Service includes cleaning roof of all loose debris, materials and leaves.
2. On all pipe boots, AC stand supports, metal flashings, goose necks, and/or misc penetration flashings - TRS will remove all loose and deteriorated caulking and will install new polyurethane sealant as needed and recommended by manufacturer.
3. On all wall flashings - TRS will remove all loose and deteriorated caulking and will install new polyurethane sealant as needed and recommended by manufacturer.
4. Total Roof Services will inspect and apply sealant as needed on all pitch pocket penetrations. Includes applying one part portable sealant or silicone coating as needed.
5. TRS will clean all roof top drain of roof top debris and ensure all drainers are properly installed. Drains will be inspected for proper water flow. If obstruction are detected Owners will be notified to hire a plumber to clean drain.
6. Total Roof Services will inspect rusted metals and will paint with Rustoleum paint to inhibit further rusting. Gas lines and roof hatch to be painted safety yellow. All other metals will be painted with complimentary colors.
7. Total Roof Services will inspect all metal coping / edge metal flashings. TRS will replace damaged or failing fasteners/washers as needed.
8. Remove and dispose of debris generated by this scope of work

SCOPE OF WORK TOTAL

\$4,200.00

Four Thousand Two Hundred Dollars

Oak Leaf Landings
2350 N Central Ave
Kissimmee, FL 34741

SCOPE OF WORK
Roof Softwash Cleaning Service

1. Total Roof Services will provide the necessary materials, equipment and labor to treat roof with approved cleaning solution as per manufacturer specifications.
2. Client shall allow Company, its employees, and representatives access to Client's property to accomplish the requested cleaning services. Client further agrees to allow Company to visit the property prior to the date of service for assessment and after the services were performed for a follow-up check. The aforementioned visits may be done with short or no notice.
3. On the date of service, Client agrees to allow Company to use the residential/commercial water source via an outdoor spigot. In areas where well water is used or there is low water pressure, Client agrees to provide advance notice of such conditions so Company can prepare and bring an adequate amount of water for the cleaning service.
4. In the event Company is required to supplement the water supply, Client understands that additional charges will be assessed to Client as extra equipment is needed to transport water and feed the water from the tanks. These additional fees will vary depending on factors like location and the quantity of water needed.
5. Company equipment is powered by Company's systems, so Company will not connect to Client's home's electrical supply. Company's crew members will inspect Client's spigot to ensure that there is no damage in it and the area surrounding.
6. Client's crew members will take before and after photographs documenting the condition of the spigot. Client agrees that Company shall not be held liable for either previously damaged spigot issues or issues outside Client's home unrelated to cleaning services.
7. During unavoidable circumstances, such as emergency or inclement weather conditions, Company shall perform the requested cleaning services on the next available business day. Client acknowledges that as much as Company wants to accommodate a quick reschedule, Company has other considerations to take into account such as working with other scheduled clients and weather situations.

Oak Leaf Landings
2350 N Central Ave
Kissimmee, FL 34741

8. Client must have a water spigot available, or arrangements should have been made with Company for water that will be brought to the site, subject to additional fees, as outlined on line item 4 of this Contract. Client is hereby advised that Company's service equipment needs a direct connection to a water line and not on a water faucet.
9. Client understands that Company uses a cleaning solution that is guaranteed to kill damaging growths like algae, moss, or lichen. Roofs react differently to the solution, meaning the result may vary. There are times when it takes more time to completely remove the dead growths. The materials and the age of the roof, the location, and the amount of build-up can affect the length of time to see the results.
10. Company does not pull growth with a force, as it can cause damage. However, if Client insists on Company doing so, Client should sign a waiver stating that Company is not liable for any damage that it may cause and that Client understands that doing so could void the warranty with the roof manufacturer.
11. Client understands that roofs naturally suffer granular loss over time. Algae, moss, and lichen can cause more significant granular loss. Also, after a roof cleaning, areas affected by granular loss are more visible since no organic matter is covering it.
12. Touch-ups on roofs may be needed after washing. There is a possibility that washing may leave light brown areas after treatment and washing. These are just dead algae, or the black streaks before treatment. In these cases, Client must understand that Client needs to wait for dead algae to come off with the help of natural elements like rain and sun exposure. These traces will fade after 6 to 8 weeks or longer, especially on shingles.
13. If the traces do not fade after 6 to 8 weeks, Client can contact Company so the parties can assess and decide what to do next. The span of time can also determine if the reapplication of the solution is needed. Touch-ups are not charged to Client given that it is necessary for proper treatment on the initial quote.
14. Company cannot proceed with any washing or cleaning service if Client has ongoing construction and/or home improvement projects going on. Client is hereby advised to schedule Company's services to be performed on dates when no construction and/or home improvement projects are being completed.

Oak Leaf Landings
2350 N Central Ave
Kissimmee, FL 34741

15. A cancellation fee of \$150.00 shall be charged to Client if Company arrives at Client's property for washing and/or cleanings and construction and/or home improvement projects are ongoing.

SCOPE OF WORK TOTAL

\$1,650.00

One Thousand Six Hundred Fifty Dollars

Oak Leaf Landings
2350 N Central Ave
Kissimmee, FL 34741

TERMS

Balance Due Upon Completion

ACCEPTANCE OF PROPOSAL

The above prices, specifications and conditions are satisfactory and are hereby accepted. You authorized to do the work as specified. Payment will be made as outlined above. Note: this proposal may be withdrawn by us if not accepted within 10 days.

All material is guaranteed to be as specified. All work to be completed in a workmanlike manner according to standard practices. Any alteration or deviation from above specifications involving extra cost will be executed only upon written orders, and will become an extra charge over and above the estimate. Not responsible for inclement weather as it relates to job speed. In the event of a dispute under this agreement, including non-payment, the prevailing party shall be entitled to recover all attorney fees and costs. Our workers are fully covered by Workers Compensation Insurance.

3 DAY RIGHT TO CANCEL

Cancellation of a this sale must be made in writing to the Total Roof Services by no later than midnight of the third business day after the day the buyer signed the contract. A written notice sent by mail must be postmarked by no later than midnight of the third business day after the contract date. If a deposit was collected a refund check will be mailed within 10 business days after receipt of cancellation notice. Cancellation notices can also be emailed to admin@totalroofservices.com

CONTRACT ACCEPTANCE

Selected Option Total: _____

Accepted By: _____ Date _____

Company Representative: _____



Oak Leaf Landings

United Glass Service
4600 36th St Ste C
Orlando, FL 32811
(407) 339-1300
unitedglassservice@gmail.com



Estimate

ADDRESS

Osceola Council on Aging
700 Generation Point,
Kissimmee, FL 34744

SHIP TO

Oak Leaf Landing
2350 N. Central Ave
Kissimmee, FL 34741

ESTIMATE # 3593

DATE 03/03/2023

DATE	ACTIVITY	QTY	RATE	AMOUNT
	Caulking Furnish materials and equipment required to perform complete "wet seal" of existing storefront window. 65' Manlift required. Approx. 65" X 90" Approx. 113L/F Also inspect surrounding areas for voids.	1	1,820.00	1,820.00

TOTAL

\$1,820.00

Accepted By

Accepted Date

50% Deposit required before any materials can be ordered
3% Credit Card Fee applies to all invoices over \$1000
Thank you for your business!



3830 Crown Point Road, Suite F
Jacksonville, Florida 32257
(904) 737-1034
(904) 674-6316 (FAX)
www.MartinEnviro.com

INVOICE No. MES23-
Invoice Date: August 4, 2023

MartinEnviro Project No.: 2023-MSC-0023
P. O. No. NA

Attn: Angelica Rodriguez-Perez VP Housing
Company: Osceola Council on Aging
Street: 2350 North Central Avenue
City, Zip: Kissimmee, Florida 34741
Phone: (407) 931-2990
Fax: (407) 931-3411

Company:
Site: Oak Leaf Apartments
Street: 2350 North Central Avenue
City, Zip: Kissimmee, Florida
Phone: Cell: (407) 931-2990
e-mail: rodricua@osceola-coa.com

DETAIL OF CHARGES

Services: Post Hurricane Ian Construction and Renovation
Microbial IAQ Sampling
Location: Osceola Council on Aging
2350 North Central Avenue
Kissimmee, Florida
Date of Services: August 1, 2023

Collection of nineteen (16) non-viable fungal air samples, including two (2) background air samples from resident units on the first and third floors damaged by Hurricane Ian

8/12/2023

Personnel and Equipment

Registered Professional Industrial Hygienist, 8.0 Hours @ \$95.00/Hr.	\$760.00
Florida Licensed Mold Assessor & Mold Remediator License No. MRSA1145 and MRSR1317	
Passenger Vehicle @ \$150.00/Day	\$150.00
Two Air Sample Pumps and IAQ/Moisture Meter @ \$75.00/Day	\$75.00
Subtotal	\$985.00

Analytical Services

Non-Viable Fungal Air Samples, 16.0 @ \$70.00/Ea.	\$1,120.00
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Additional Samples

Non-Viable Fungal Air Samples, 2.0 @ \$70.00/Ea.	\$140.00
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Microbial IAQ Sampling Report *included*

Subtotal	\$2,245.00
TOTAL DUE	\$2,245.00

General Environmental Issues and Consulting
Phase I Assessments
Phase II Assessments
Soil and Groundwater Sampling and Testing
Emergency Response and Source Removal
Contaminated Site Assessment and Remediation
Hazardous Waste Management

NEPA Screening
NEPA Environmental Assessments
Section 106 Reviews
Ecological Studies
OSHA and EPA Compliance
OSHA/Health & Safety Training
Industrial Hygiene

Pro Master Cleaning Restoration Inc



Address: 1504 Damon Ave.
Kissimmee, FL 34744

Office: (407) 933-0808

Website: www.promaster247.com

Client: Oak Leaf Landing
Property: 2350 N. Central Ave.
Kissimmee, FL 34741

Business: (407) 846-8532

Operator: PROMASTE

Estimator: Melissa Vergara
Company: Pro Master Cleaning Restoration
Business: 1504 Damon Ave
Kissimmee, FL 34744

Business: (407) 933-0808
E-mail: promaster724@gmail.com

Type of Estimate: Mold resulting from water intrusion
Date Entered: 10/10/2023 Date Assigned:

Price List: FLOR8X_OCT23
Labor Efficiency: Restoration/Service/Remodel
Estimate: OAK_LEAF_MIT

This/These estimate(s) of repairs are prepared in good faith and using the most accurate information known at the time of its preparation. However, numerous factors may adversely impact this estimate including but not limited to hidden damages, changes in material and/or labor costs, building codes, architectural and/or engineering requirements, and costs". Pro Master Cleaning Restoration reserves the right to increase the original estimate once the work has started in case of hidden damages that can't be seen at the time of this estimate.

This/These estimate(s) has/have been prepared by Pro Master Cleaning Restoration [Hereinafter referred to as Provider]. There can be errors or omissions during this process, as in any human process. Any errors or omissions will be corrected as soon as we are made aware of them. Any errors or omissions do not constitute any misrepresentation on the part of the Provider or the Homeowner, COA/HOA, Property Manager, and/or Appropriate Relevant Authorizing Party [Hereinafter referred to as Client/Insured], it is only an error that will be corrected as soon as possible. The provider will report the level of damages and/or repairs required as accurately as possible. This/These estimate(s) does/do not reflect any additional cost, due to Building Code compliance.

I/We [Client(s)/Insured(s)] authorize Provider to perform all necessary services to dry, mitigate, and/or mold remediate all damage from the subject loss, including any associated damages. This includes but is not limited to, services and/or equipment rental used for water extraction, removal of damaged flooring, building material, and services as well as equipment used for drying, containment, and/or use of air filtration machines for cleaning/scrubbing. Provider agrees to perform their services as fit per varying project and scope of work/protocol.

Provider will provide the Client/Insured with a true and correct copy of any report, bid, or estimate for damage done on their home by Provider, and do so in a timely matter if Client/Insured requests it. This/These estimate(s) is/are provided with the understanding that Provider is not engaged in giving legal accounting, or other professional advice. Provider will provide a true and correct scope of work to be performed and costs thereof, regardless of policy limits or other restrictions, if any.

If any service(s) performed/rendered under this agreement is deemed insufficient or defective, the parties agree that the Provider shall have the right to redo and/or repair any such services. Failure to allow Provider the right to repair shall constitute a breach of this agreement and all rights or causes of action as to such service(s), including but not limited to, damages and/or cost of repair shall be deemed waived. I/We understand that payment(s) for all services and rentals are due at the time they are provided unless other terms are previously agreed to in writing. All balances unpaid after ten (10) days of the date of the invoice(s) is/are subject to a late payment charge of two (2) percent per month or the maximum allowed by law, whichever is greater. I/We agree that in the event that I/We fail to pay as set forth, I/We am/are responsible for all charges that are associated with the collection

Pro Master Cleaning Restoration Inc



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of any such bill for service(s) and/or rental(s) that shall include reasonable attorney fees, costs, and interest. I/We understand that the failure to promptly pay for the services and repairs may result in liens on my/our/the property, late fees, interest, and possible legal action. The venue for any action under this agreement shall be the county corresponding to the property in Florida.

Should Provider bring legal action to collect monies due under this Contract/Agreement/Commitment and/or should the matter be turned over for collection, Provider shall be entitled, to the fullest extent permitted under law, to reasonable legal fees and costs of any such collection attempt, in addition to any other amounts owed by Client/Insured.

This attorney fee provision shall not be effective or enforceable in jurisdictions where attorney fee provisions are made reciprocal or invalid by operation of law. If and/or when legal advice or other expert assistance is required, the service(s) of a competent professional should be sought.

Our invoice is non-negotiable, that includes the insurance carrier or any hired TPA (Third Party Administration) companies.

This/These estimate(s) may not be reproduced or quoted, in whole or in part, by any means whatsoever, without the express written consent/permission of Provider. Any negotiation(s) is/are solely between the Client/Insured and their insurance carrier (if applicable). Any and/or all negotiation(s) has/have zero effect(s) on the final invoice(s) for service(s).

Nothing herein constitutes nor should be constituted as a waiver of any of the rights of the Client/Insured under their insurance policy; more specifically, they are reserving all the rights under their insurance policy.

Thank you for choosing to use Pro Master Cleaning Restoration. We look forward to serving you. If you have any questions about this/these estimate(s) please call us at (407) 933-0808.

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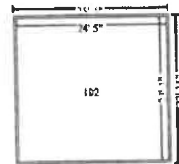
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OAK_LEAF_MIT

Main Level

Main Level

DESCRIPTION	QUANTITY	UNIT PRICE	TAX	RCV	DEPREC.	ACV
1. Add for personal protective equipment (hazardous cleanup)	108.00 EA	13.10	0.00	1,414.80	(0.00)	1,414.80
4 techs x 3 days x 9 units						
2. Personal protective mask (N-95)	12.00 EA	1.57	0.00	18.84	(0.00)	18.84
4 tech x 3 days						
3. Cleaning & Remediation - Supervisory - per hr	3.00 HR	69.75	0.00	209.25	(0.00)	209.25
4. Hazardous Waste/Mold Cleaning- Supervisory/Admin- per hour	3.00 HR	87.61	0.00	262.83	(0.00)	262.83
5. Cleaning Technician - per hour	16.00 HR	56.91	0.00	910.56	(0.00)	910.56
4 technicians x 4 hours						
6. Add for HEPA filter (for negative air exhaust fan)	9.00 EA	209.60	0.00	1,886.40	(0.00)	1,886.40
9 filters x 9 units						
7. Equipment setup, take down, and monitoring (hourly charge)	9.00 HR	65.93	0.00	593.37	(0.00)	593.37
4.5 hours to set up equipment and monitoring for all 9 units, and 4.5 hrs for take down.						
8. Equipment decontamination charge - per piece of equipment	36.00 EA	45.42	0.00	1,635.12	(0.00)	1,635.12
18 air scrubbers plus 18 dehus total						
Total: Main Level			0.00	6,931.17	0.00	6,931.17



102

Height: 8'

762.67 SF Walls	567.69 SF Ceiling
1330.35 SF Walls & Ceiling	567.69 SF Floor
63.08 SY Flooring	95.33 LF Floor Perimeter
95.33 LF Ceil. Perimeter	

DESCRIPTION	QUANTITY	UNIT PRICE	TAX	RCV	DEPREC.	ACV
9. Clean microwave - interior and exterior	1.00 EA	26.74	0.00	26.74	(0.00)	26.74
10. Clean sofa	1.00 LF	44.12	0.00	44.12	(0.00)	44.12
11. Clean floor - Heavy	567.69 SF	0.81	0.00	459.83	(0.00)	459.83
12. Clean door (per side)	12.00 EA	9.93	0.00	119.16	(0.00)	119.16
6 doors total x 2 sides						
13. Clean range - exterior	1.00 EA	43.67	0.00	43.67	(0.00)	43.67
14. Clean countertop - Heavy	20.00 SF	1.34	0.00	26.80	(0.00)	26.80

OAK_LEAF_MIT

10/10/2023

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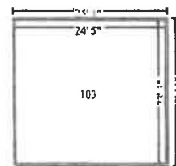
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CONTINUED - 102

DESCRIPTION	QUANTITY	UNIT PRICE	TAX	RCV	DEPREC.	ACV
Approximately the kitchen countertop measure 5 ft x 3 ft= 15 LF plus the side countertop measure 2x3 ft = 6. 15 + 6 = 20 LF approximately.						
15. Clean furniture	19.00 EA	48.09	0.00	913.71	(0.00)	913.71
16. Clean sink	2.00 EA	18.02	0.00	36.04	(0.00)	36.04
1 kitchen and 1 bathroom						
17. Apply anti-microbial agent to the walls	762.67 SF	0.37	0.00	282.19	(0.00)	282.19
18. Content Manipulation charge - per hour	4.00 HR	52.73	0.00	210.92	(0.00)	210.92
2 technicians x 2 hours						
19. HEPA Vacuuming - Light - (PER SF)	2,500.00 SF	0.52	0.00	1,300.00	(0.00)	1,300.00
Approximately 576 sq ft times 9 inch ceiling height						
20. Disinfect building - fog / spray - per SF	567.69 SF	1.21	0.00	686.90	(0.00)	686.90
21. Negative air fan/Air scrubber (24 hr period) - No monit.	6.00 DA	71.51	0.00	429.06	(0.00)	429.06
2 air scrubbers x 3 days						
22. Dehumidifier (per 24 hr period) - 70-109 ppd - No monitor.	6.00 EA	82.00	0.00	492.00	(0.00)	492.00
2 dehumidifier x 3 days						
23. Clean ductwork - Interior (PER REGISTER)	4.00 EA	36.67	0.00	146.68	(0.00)	146.68
24. Clean cold air return cover	1.00 EA	12.04	0.00	12.04	(0.00)	12.04
25. Clean register - heat / AC	4.00 EA	7.81	0.00	31.24	(0.00)	31.24
4 registers total						
26. Clean the surface area	2,500.00 SF	0.50	0.00	1,250.00	(0.00)	1,250.00
Totals: 102			0.00	6,511.10	0.00	6,511.10



103

Height: 8'

762.67 SF Walls	567.69 SF Ceiling
1330.35 SF Walls & Ceiling	567.69 SF Floor
63.08 SY Flooring	95.33 LF Floor Perimeter
95.33 LF Ceil. Perimeter	

DESCRIPTION	QUANTITY	UNIT PRICE	TAX	RCV	DEPREC.	ACV
27. Clean microwave - interior and exterior	1.00 EA	26.74	0.00	26.74	(0.00)	26.74
28. Clean sofa	1.00 LF	44.12	0.00	44.12	(0.00)	44.12
29. Clean floor - Heavy	567.69 SF	0.81	0.00	459.83	(0.00)	459.83
OAK_LEAF_MIT				10/10/2023		Page: 4

Pro Master Cleaning Restoration Inc



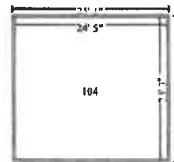
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Website: www.promaster247.com

CONTINUED - 103

DESCRIPTION	QUANTITY	UNIT PRICE	TAX	RCV	DEPREC.	ACV
30. Clean door (per side)	12.00 EA	9.93	0.00	119.16	(0.00)	119.16
6 doors total x 2 sides						
31. Clean range - exterior	1.00 EA	43.67	0.00	43.67	(0.00)	43.67
32. Clean countertop - Heavy	20.00 SF	1.34	0.00	26.80	(0.00)	26.80
Approximately the kitchen countertop measure 5 ft x 3 ft= 15 LF plus the side countertop measure 2x3 ft = 6. 15 + 6 = 20 LF approximately.						
33. Clean furniture	19.00 EA	48.09	0.00	913.71	(0.00)	913.71
34. Clean sink	2.00 EA	18.02	0.00	36.04	(0.00)	36.04
1 kitchen and 1 bathroom						
35. Apply anti-microbial agent to the walls	762.67 SF	0.37	0.00	282.19	(0.00)	282.19
36. Content Manipulation charge - per hour	4.00 HR	52.73	0.00	210.92	(0.00)	210.92
2 technicians x 2 hours						
37. HEPA Vacuuming - Light - (PER SF)	2,500.00 SF	0.52	0.00	1,300.00	(0.00)	1,300.00
Approximately 576 sq ft times 9 inch ceiling height						
38. Disinfect building - fog / spray - per SF	567.69 SF	1.21	0.00	686.90	(0.00)	686.90
39. Negative air fan/Air scrubber (24 hr period) - No monit.	6.00 DA	71.51	0.00	429.06	(0.00)	429.06
2 air scrubbers x 3 days						
40. Dehumidifier (per 24 hr period) - 70-109 ppd - No monitor.	6.00 EA	82.00	0.00	492.00	(0.00)	492.00
2 dehumidifier x 3 days						
41. Clean ductwork - Interior (PER REGISTER)	4.00 EA	36.67	0.00	146.68	(0.00)	146.68
42. Clean cold air return cover	1.00 EA	12.04	0.00	12.04	(0.00)	12.04
43. Clean register - heat / AC	4.00 EA	7.81	0.00	31.24	(0.00)	31.24
4 registers total						
44. Clean the surface area	2,500.00 SF	0.50	0.00	1,250.00	(0.00)	1,250.00
Totals: 103			0.00	6,511.10	0.00	6,511.10



104

Height: 8'

162.67 SF Walls
1330.35 SF Walls & Ceiling
63.08 SY Flooring
95.33 LF Ceil. Perimeter

567.69 SF Ceiling
567.69 SF Floor
95.33 LF Floor Perimeter

Pro Master Cleaning Restoration Inc

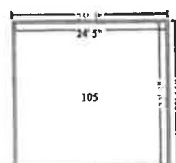


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DESCRIPTION	QUANTITY	UNIT PRICE	TAX	RCV	DEPREC.	ACV
45. Clean microwave - interior and exterior	1.00 EA	26.74	0.00	26.74	(0.00)	26.74
46. Clean sofa	1.00 LF	44.12	0.00	44.12	(0.00)	44.12
47. Clean floor - Heavy	567.69 SF	0.81	0.00	459.83	(0.00)	459.83
48. Clean door (per side)	12.00 EA	9.93	0.00	119.16	(0.00)	119.16
6 doors total x 2 sides						
49. Clean range - exterior	1.00 EA	43.67	0.00	43.67	(0.00)	43.67
50. Clean countertop - Heavy	20.00 SF	1.34	0.00	26.80	(0.00)	26.80
Approximately the kitchen countertop measure 5 ft x 3 ft= 15 LF plus the side countertop measure 2x3 ft = 6. 15 + 6 = 20 LF approximately.						
51. Clean furniture	19.00 EA	48.09	0.00	913.71	(0.00)	913.71
52. Clean sink	2.00 EA	18.02	0.00	36.04	(0.00)	36.04
1 kitchen and 1 bathroom						
53. Apply anti-microbial agent to the walls	762.67 SF	0.37	0.00	282.19	(0.00)	282.19
54. Content Manipulation charge - per hour	4.00 HR	52.73	0.00	210.92	(0.00)	210.92
2 technicians x 2 hours						
55. HEPA Vacuuming - Light - (PER SF)	2,500.00 SF	0.52	0.00	1,300.00	(0.00)	1,300.00
Approximately 576 sq ft times 9 inch ceiling height						
56. Disinfect building - fog / spray - per SF	567.69 SF	1.21	0.00	686.90	(0.00)	686.90
57. Negative air fan/Air scrubber (24 hr period) - No monit.	6.00 DA	71.51	0.00	429.06	(0.00)	429.06
2 air scrubbers x 3 days						
58. Dehumidifier (per 24 hr period) - 70-109 ppd - No monitor.	6.00 EA	82.00	0.00	492.00	(0.00)	492.00
2 dehumidifier x 3 days						
59. Clean ductwork - Interior (PER REGISTER)	4.00 EA	36.67	0.00	146.68	(0.00)	146.68
60. Clean cold air return cover	1.00 EA	12.04	0.00	12.04	(0.00)	12.04
61. Clean register - heat / AC	4.00 EA	7.81	0.00	31.24	(0.00)	31.24
4 registers total						
62. Clean the surface area	2,500.00 SF	0.50	0.00	1,250.00	(0.00)	1,250.00
Totals: 104			0.00	6,511.10	0.00	6,511.10



105

Height: 8'

762.67 SF Walls
1330.35 SF Walls & Ceiling
63.08 SY Flooring
95.33 LF Ceil. Perimeter

567.69 SF Ceiling
567.69 SF Floor
95.33 LF Floor Perimeter

DESCRIPTION	QUANTITY	UNIT PRICE	TAX	RCV	DEPREC.	ACV
63. Clean microwave - interior and exterior	1.00 EA	26.74	0.00	26.74	(0.00)	26.74

OAK_LEAF_MIT

10/10/2023

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**Pro Master Cleaning Restoration Inc**Address: 1504 Damon Ave.
Kissimmee, FL 34744

Office: (407) 933-0808

Website: www.promaster247.com

CONTINUED - 105

DESCRIPTION	QUANTITY	UNIT PRICE	TAX	RCV	DEPREC.	ACV
64. Clean sofa	1.00 LF	44.12	0.00	44.12	(0.00)	44.12
65. Clean floor - Heavy	567.69 SF	0.81	0.00	459.83	(0.00)	459.83
66. Clean door (per side)	12.00 EA	9.93	0.00	119.16	(0.00)	119.16
6 doors total x 2 sides						
67. Clean range - exterior	1.00 EA	43.67	0.00	43.67	(0.00)	43.67
68. Clean countertop - Heavy	20.00 SF	1.34	0.00	26.80	(0.00)	26.80
Approximately the kitchen countertop measure 5 ft x 3 ft = 15 LF plus the side countertop measure 2x3 ft = 6. 15 + 6 = 20 LF approximately.						
69. Clean furniture	19.00 EA	48.09	0.00	913.71	(0.00)	913.71
70. Clean sink	2.00 EA	18.02	0.00	36.04	(0.00)	36.04
1 kitchen and 1 bathroom						
71. Apply anti-microbial agent to the walls	762.67 SF	0.37	0.00	282.19	(0.00)	282.19
72. Content Manipulation charge - per hour	4.00 HR	52.73	0.00	210.92	(0.00)	210.92
2 technicians x 2 hours						
73. HEPA Vacuuming - Light - (PER SF)	2,500.00 SF	0.52	0.00	1,300.00	(0.00)	1,300.00
Approximately 576 sq ft times 9 inch ceiling height						
74. Disinfect building - fog / spray - per SF	567.69 SF	1.21	0.00	686.90	(0.00)	686.90
75. Negative air fan/Air scrubber (24 hr period) - No monit.	6.00 DA	71.51	0.00	429.06	(0.00)	429.06
2 air scrubbers x 3 days						
76. Dehumidifier (per 24 hr period) - 70-109 ppd - No monitor.	6.00 EA	82.00	0.00	492.00	(0.00)	492.00
2 dehumidifier x 3 days						
77. Clean ductwork - Interior (PER REGISTER)	4.00 EA	36.67	0.00	146.68	(0.00)	146.68
78. Clean cold air return cover	1.00 EA	12.04	0.00	12.04	(0.00)	12.04
79. Clean register - heat / AC	4.00 EA	7.81	0.00	31.24	(0.00)	31.24
4 registers total						
80. Clean the surface area	2,500.00 SF	0.50	0.00	1,250.00	(0.00)	1,250.00
Totals: 105			0.00	6,511.10	0.00	6,511.10

Pro Master Cleaning Restoration Inc



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107

Height: 8'

762.67 SF Walls
1330.35 SF Walls & Ceiling
63.08 SY Flooring
95.33 LF Ceil. Perimeter

567.69 SF Ceiling
567.69 SF Floor
95.33 LF Floor Perimeter

DESCRIPTION	QUANTITY	UNIT PRICE	TAX	RCV	DEPREC.	ACV
81. Clean microwave - interior and exterior	1.00 EA	26.74	0.00	26.74	(0.00)	26.74
82. Clean sofa	1.00 LF	44.12	0.00	44.12	(0.00)	44.12
83. Clean floor - Heavy	567.69 SF	0.81	0.00	459.83	(0.00)	459.83
84. Clean door (per side)	12.00 EA	9.93	0.00	119.16	(0.00)	119.16
6 doors total x 2 sides						
85. Clean range - exterior	1.00 EA	43.67	0.00	43.67	(0.00)	43.67
86. Clean countertop - Heavy	20.00 SF	1.34	0.00	26.80	(0.00)	26.80
Approximately the kitchen countertop measure 5 ft x 3 ft= 15 LF plus the side countertop measure 2x3 ft = 6. 15 + 6 = 20 LF approximately.						
87. Clean furniture	19.00 EA	48.09	0.00	913.71	(0.00)	913.71
88. Clean sink	2.00 EA	18.02	0.00	36.04	(0.00)	36.04
1 kitchen and 1 bathroom						
89. Apply anti-microbial agent to the walls	762.67 SF	0.37	0.00	282.19	(0.00)	282.19
90. Content Manipulation charge - per hour	4.00 HR	52.73	0.00	210.92	(0.00)	210.92
2 technicians x 2 hours						
91. HEPA Vacuuming - Light - (PER SF)	2,500.00 SF	0.52	0.00	1,300.00	(0.00)	1,300.00
Approximately \$76 sq ft times 9 inch ceiling height						
92. Disinfect building - fog / spray - per SF	567.69 SF	1.21	0.00	686.90	(0.00)	686.90
93. Negative air fan/Air scrubber (24 hr period) - No monit.	6.00 DA	71.51	0.00	429.06	(0.00)	429.06
2 air scrubbers x 3 days						
94. Dehumidifier (per 24 hr period) - 70-109 ppd - No monitor.	6.00 EA	82.00	0.00	492.00	(0.00)	492.00
2 dehumidifier x 3 days						
95. Clean ductwork - Interior (PER REGISTER)	4.00 EA	36.67	0.00	146.68	(0.00)	146.68
96. Clean cold air return cover	1.00 EA	12.04	0.00	12.04	(0.00)	12.04
97. Clean register - heat / AC	4.00 EA	7.81	0.00	31.24	(0.00)	31.24
4 registers total						
98. Clean the surface area	2,500.00 SF	0.50	0.00	1,250.00	(0.00)	1,250.00
Totals: 107			0.00	6,511.10	0.00	6,511.10

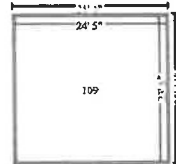
Pro Master Cleaning Restoration Inc



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Office: (407) 933-0808

Website: www.promaster247.com



109

Height: 8'

762.67 SF Walls
1330.35 SF Walls & Ceiling
63.08 SY Flooring
95.33 LF Ceil. Perimeter

567.69 SF Ceiling
567.69 SF Floor
95.33 LF Floor Perimeter

DESCRIPTION	QUANTITY	UNIT PRICE	TAX	RCV	DEPREC.	ACV
99. Clean microwave - interior and exterior	1.00 EA	26.74	0.00	26.74	(0.00)	26.74
100. Clean sofa	1.00 LF	44.12	0.00	44.12	(0.00)	44.12
101. Clean floor - Heavy	567.69 SF	0.81	0.00	459.83	(0.00)	459.83
102. Clean door (per side)	12.00 EA	9.93	0.00	119.16	(0.00)	119.16
6 doors total x 2 sides						
103. Clean range - exterior	1.00 EA	43.67	0.00	43.67	(0.00)	43.67
104. Clean countertop - Heavy	20.00 SF	1.34	0.00	26.80	(0.00)	26.80
Approximately the kitchen countertop measure 5 ft x 3 ft= 15 LF plus the side countertop measure 2x3 ft = 6. 15 + 6 = 20 LF approximately.						
105. Clean furniture	19.00 EA	48.09	0.00	913.71	(0.00)	913.71
106. Clean sink	2.00 EA	18.02	0.00	36.04	(0.00)	36.04
1 kitchen and 1 bathroom						
107. Apply anti-microbial agent to the walls	762.67 SF	0.37	0.00	282.19	(0.00)	282.19
108. Content Manipulation charge - per hour	4.00 HR	52.73	0.00	210.92	(0.00)	210.92
2 technicians x 2 hours						
109. HEPA Vacuuming - Light - (PER SF)	2,500.00 SF	0.52	0.00	1,300.00	(0.00)	1,300.00
Approximately 576 sq ft times 9 inch ceiling height						
110. Disinfect building - fog / spray - per SF	567.69 SF	1.21	0.00	686.90	(0.00)	686.90
111. Negative air fan/Air scrubber (24 hr period) - No monitor.	6.00 DA	71.51	0.00	429.06	(0.00)	429.06
2 air scrubbers x 3 days						
112. Dehumidifier (per 24 hr period) - 70-109 ppd - No monitor.	6.00 EA	82.00	0.00	492.00	(0.00)	492.00
2 dehumidifier x 3 days						
113. Clean ductwork - Interior (PER REGISTER)	4.00 EA	36.67	0.00	146.68	(0.00)	146.68
114. Clean cold air return cover	1.00 EA	12.04	0.00	12.04	(0.00)	12.04
115. Clean register - heat / AC	4.00 EA	7.81	0.00	31.24	(0.00)	31.24
4 registers total						
116. Clean the surface area	2,500.00 SF	0.50	0.00	1,250.00	(0.00)	1,250.00
Totals: 109			0.00	6,511.10	0.00	6,511.10

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Website: www.promaster247.com



110

Height: 8'

762.67 SF Walls
1330.35 SF Walls & Ceiling
63.08 SY Flooring
95.33 LF Ceil. Perimeter

567.69 SF Ceiling
567.69 SF Floor
95.33 LF Floor Perimeter

DESCRIPTION	QUANTITY	UNIT PRICE	TAX	RCV	DEPREC.	ACV
117. Clean microwave - interior and exterior	1.00 EA	26.74	0.00	26.74	(0.00)	26.74
118. Clean sofa	1.00 LF	44.12	0.00	44.12	(0.00)	44.12
119. Clean floor - Heavy	567.69 SF	0.81	0.00	459.83	(0.00)	459.83
120. Clean door (per side)	12.00 EA	9.93	0.00	119.16	(0.00)	119.16
6 doors total x 2 sides						
121. Clean range - exterior	1.00 EA	43.67	0.00	43.67	(0.00)	43.67
122. Clean countertop - Heavy	20.00 SF	1.34	0.00	26.80	(0.00)	26.80
Approximately the kitchen countertop measure 5 ft x 3 ft= 15 LF plus the side countertop measure 2x3 ft = 6. 15 + 6 = 20 LF approximately.						
123. Clean furniture	19.00 EA	48.09	0.00	913.71	(0.00)	913.71
124. Clean sink	2.00 EA	18.02	0.00	36.04	(0.00)	36.04
1 kitchen and 1 bathroom						
125. Apply anti-microbial agent to the walls	762.67 SF	0.37	0.00	282.19	(0.00)	282.19
126. Content Manipulation charge - per hour	4.00 HR	52.73	0.00	210.92	(0.00)	210.92
2 technicians x 2 hours						
127. HEPA Vacuuming - Light - (PER SF)	2,500.00 SF	0.52	0.00	1,300.00	(0.00)	1,300.00
Approximately 576 sq ft times 9 inch ceiling height						
128. Disinfect building - fog / spray - per SF	567.69 SF	1.21	0.00	686.90	(0.00)	686.90
129. Negative air fan/Air scrubber (24 hr period) - No monit.	6.00 DA	71.51	0.00	429.06	(0.00)	429.06
2 air scrubbers x 3 days						
130. Dehumidifier (per 24 hr period) - 70-109 ppd - No monitor.	6.00 EA	82.00	0.00	492.00	(0.00)	492.00
2 dehumidifier x 3 days						
131. Clean ductwork - Interior (PER REGISTER)	4.00 EA	36.67	0.00	146.68	(0.00)	146.68
132. Clean cold air return cover	1.00 EA	12.04	0.00	12.04	(0.00)	12.04
133. Clean register - heat / AC	4.00 EA	7.81	0.00	31.24	(0.00)	31.24
4 registers total						
134. Clean the surface area	2,500.00 SF	0.50	0.00	1,250.00	(0.00)	1,250.00
Totals: 110			0.00	6,511.10	0.00	6,511.10

Pro Master Cleaning Restoration Inc



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112

Height: 8'

762.67 SF Walls
1330.35 SF Walls & Ceiling
63.08 SY Flooring
95.33 LF Ceil. Perimeter

567.69 SF Ceiling
567.69 SF Floor
95.33 LF Floor Perimeter

DESCRIPTION	QUANTITY	UNIT PRICE	TAX	RCV	DEPREC.	ACV
135. Clean microwave - interior and exterior	1.00 EA	26.74	0.00	26.74	(0.00)	26.74
136. Clean sofa	1.00 LF	44.12	0.00	44.12	(0.00)	44.12
137. Clean floor - Heavy	567.69 SF	0.81	0.00	459.83	(0.00)	459.83
138. Clean door (per side)	12.00 EA	9.93	0.00	119.16	(0.00)	119.16
6 doors total x 2 sides						
139. Clean range - exterior	1.00 EA	43.67	0.00	43.67	(0.00)	43.67
140. Clean countertop - Heavy	20.00 SF	1.34	0.00	26.80	(0.00)	26.80
Approximately the kitchen countertop measure 5 ft x 3 ft= 15 LF plus the side countertop measure 2x3 ft = 6. 15 + 6 = 20 LF approximately.						
141. Clean furniture	19.00 EA	48.09	0.00	913.71	(0.00)	913.71
142. Clean sink	2.00 EA	18.02	0.00	36.04	(0.00)	36.04
1 kitchen and 1 bathroom						
143. Apply anti-microbial agent to the walls	762.67 SF	0.37	0.00	282.19	(0.00)	282.19
144. Content Manipulation charge - per hour	4.00 HR	52.73	0.00	210.92	(0.00)	210.92
2 technicians x 2 hours						
145. HEPA Vacuuming - Light - (PER SF)	2,500.00 SF	0.52	0.00	1,300.00	(0.00)	1,300.00
Approximately 576 sq ft times 9 inch ceiling height						
146. Disinfect building - fog / spray - per SF	567.69 SF	1.21	0.00	686.90	(0.00)	686.90
147. Negative air fan/Air scrubber (24 hr period) - No monit.	6.00 DA	71.51	0.00	429.06	(0.00)	429.06
2 air scrubbers x 3 days						
148. Dehumidifier (per 24 hr period) - 70-109 ppd - No monitor.	6.00 EA	82.00	0.00	492.00	(0.00)	492.00
2 dehumidifier x 3 days						
149. Clean ductwork - Interior (PER REGISTER)	4.00 EA	36.67	0.00	146.68	(0.00)	146.68
150. Clean cold air return cover	1.00 EA	12.04	0.00	12.04	(0.00)	12.04
151. Clean register - heat / AC	4.00 EA	7.81	0.00	31.24	(0.00)	31.24
4 registers total						
152. Clean the surface area	2,500.00 SF	0.50	0.00	1,250.00	(0.00)	1,250.00
Totals: 112			0.00	6,511.10	0.00	6,511.10

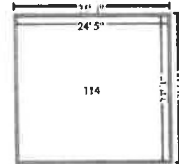
Pro Master Cleaning Restoration Inc



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114

Height: 8'

762.67 SF Walls
1330.35 SF Walls & Ceiling
63.08 SY Flooring
95.33 LF Ceil. Perimeter

567.69 SF Ceiling
567.69 SF Floor
95.33 LF Floor Perimeter

DESCRIPTION	QUANTITY	UNIT PRICE	TAX	RCV	DEPREC.	ACV
153. Clean microwave - interior and exterior	1.00 EA	26.74	0.00	26.74	(0.00)	26.74
154. Clean sofa	1.00 LF	44.12	0.00	44.12	(0.00)	44.12
155. Clean floor - Heavy	567.69 SF	0.81	0.00	459.83	(0.00)	459.83
156. Clean door (per side)	12.00 EA	9.93	0.00	119.16	(0.00)	119.16
6 doors total x 2 sides						
157. Clean range - exterior	1.00 EA	43.67	0.00	43.67	(0.00)	43.67
158. Clean countertop - Heavy	20.00 SF	1.34	0.00	26.80	(0.00)	26.80
Approximately the kitchen countertop measure 5 ft x 3 ft= 15 LF plus the side countertop measure 2x3 ft = 6. 15 + 6 = 20 LF approximately.						
159. Clean furniture	19.00 EA	48.09	0.00	913.71	(0.00)	913.71
160. Clean sink	2.00 EA	18.02	0.00	36.04	(0.00)	36.04
1 kitchen and 1 bathroom						
161. Apply anti-microbial agent to the walls	762.67 SF	0.37	0.00	282.19	(0.00)	282.19
162. Content Manipulation charge - per hour	4.00 HR	52.73	0.00	210.92	(0.00)	210.92
2 technicians x 2 hours						
163. HEPA Vacuuming - Light - (PER SF)	2,500.00 SF	0.52	0.00	1,300.00	(0.00)	1,300.00
Approximately 576 sq ft times 9 inch ceiling height						
164. Disinfect building - fog / spray - per SF	567.69 SF	1.21	0.00	686.90	(0.00)	686.90
165. Negative air fan/Air scrubber (24 hr period) - No monit.	6.00 DA	71.51	0.00	429.06	(0.00)	429.06
2 air scrubbers x 3 days						
166. Dehumidifier (per 24 hr period) - 70-109 ppd - No monitor.	6.00 EA	82.00	0.00	492.00	(0.00)	492.00
2 dehumidifier x 3 days						
167. Clean ductwork - Interior (PER REGISTER)	4.00 EA	36.67	0.00	146.68	(0.00)	146.68
168. Clean cold air return cover	1.00 EA	12.04	0.00	12.04	(0.00)	12.04
169. Clean register - heat / AC	4.00 EA	7.81	0.00	31.24	(0.00)	31.24
4 registers total						
170. Clean the surface area	2,500.00 SF	0.50	0.00	1,250.00	(0.00)	1,250.00
Totals: 114			0.00	6,511.10	0.00	6,511.10
Total: Main Level			0.00	65,531.07	0.00	65,531.07
Line Item Totals: OAK_LEAF_MIT			0.00	65,531.07	0.00	65,531.07

OAK_LEAF_MIT

10/10/2023

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Grand Total Areas:

8,901.11 SF Walls	5,686.15 SF Ceiling	14,587.26 SF Walls and Ceiling
5,686.15 SF Floor	631.79 SY Flooring	1,109.67 LF Floor Perimeter
0.00 SF Long Wall	0.00 SF Short Wall	1,127.50 LF Ceil. Perimeter
5,686.15 Floor Area	6,038.81 Total Area	8,901.11 Interior Wall Area
8,848.50 Exterior Wall Area	983.17 Exterior Perimeter of Walls	
0.00 Surface Area	0.00 Number of Squares	0.00 Total Perimeter Length
0.00 Total Ridge Length	0.00 Total Hip Length	



Pro Master Cleaning Restoration Inc

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Summary

Line Item Total	65,531.07
Replacement Cost Value	\$65,531.07
Net Claim	\$65,531.07

Melissa Vergara

Pro Master Cleaning Restoration Inc



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Kissimmee, FL 34744

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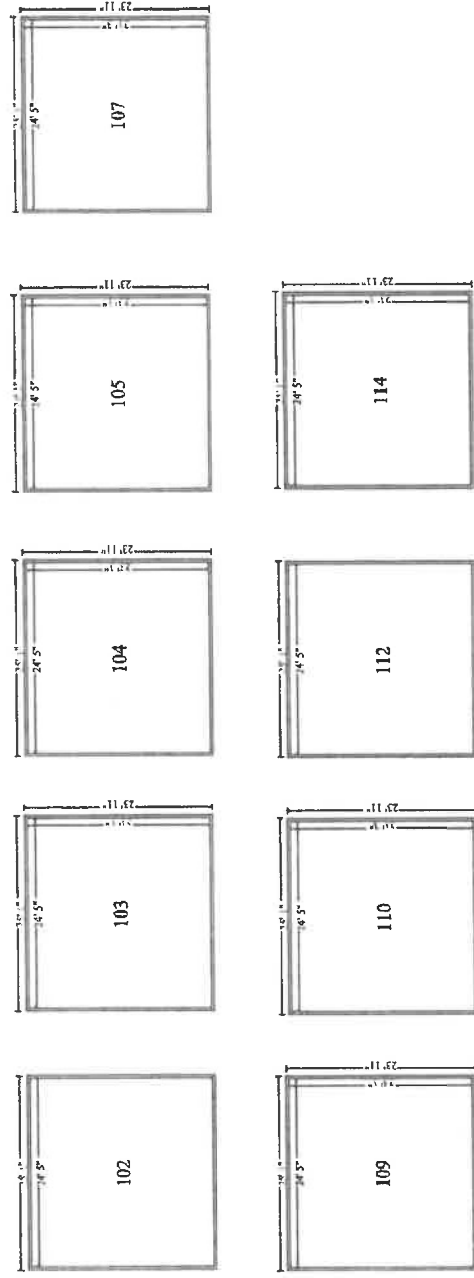
Recap by Category

Items	Total	%
CONT: CLEAN APPLIANCES	240.66	0.37%
CONT: CLEAN - HARD FURNITURE	8,223.39	12.55%
CLEANING	20,039.70	30.58%
CONTENT MANIPULATION	1,898.28	2.90%
CONT: CLEAN, UPHOLSTERY & SOFT	397.08	0.61%
HAZARDOUS MATERIAL REMEDIATION	19,457.70	29.69%
TRAUMA/CRIME SCENE REMEDIATION	6,182.10	9.43%
WATER EXTRACTION & REMEDIATION	9,092.16	13.87%
Subtotal	65,531.07	100.00%

We value your business, commitment, & trust!

Thank you.

Main Level



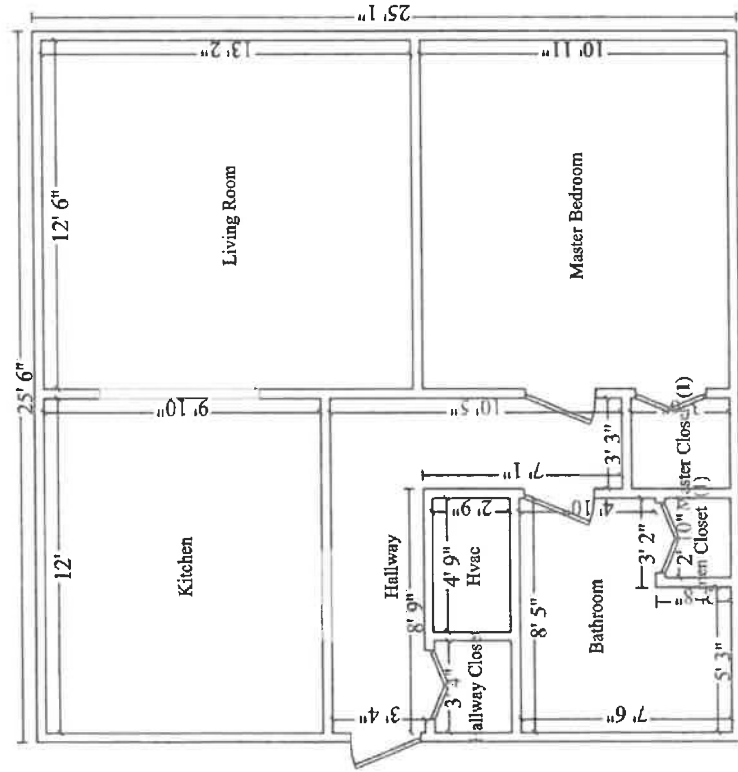
Main Level

OAK_LEAF_MIT

10/10/2023

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Detailed Unit



Detailed Unit

OAK_LEAF_MIT

10/10/2023

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23/10/2023, 10:13

Osceola Council on Aging Mail - Fwd: Rooms at Westgate Towers



OSCEOLA
COUNCIL
ON AGING

Angelica Rodriguez <rodrigua@osceola-coa.com>

Fwd: Rooms at Westgate Towers

1 message

Wendy Ford <fordw@osceola-coa.com>
To: Angelica Rodriguez <rodrigua@osceola-coa.com>

Thu, Oct 12, 2023 at 9:31 AM

----- Forwarded message -----

From: **Sonya Alvarez** <sonya_alvarez@wgresorts.com>
Date: Thu, Oct 12, 2023, 9:29 AM
Subject: Rooms at Westgate Towers
To: Wendy Ford <fordw@osceola-coa.com>
Cc: Kristina Lundeberg <kristina_lundeberg@wgresorts.com>

Hello Wendy,

It was great to see you yesterday. As we discussed today, rooms are available at Westgate Towers at \$69.00 for Studios and \$85.00 for one bedroom.

We will wait for you to give us your direction.

Talk soon,

↳ approx.
10 days
x 10 residents

Sonya Alvarez
Rental Sales
National Director of Group & Leisure Sales
Westgate Resorts
2801 Old Winter Garden Rd
Ocoee
FL
34761
Office: 407-355-1562
Cell: 407-982-0089
sonya_alvarez@wgresorts.com

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**EXHIBIT B
BUDGET AND ELIGIBLE EXPENSES**

Amount of Funding = \$90,346.07

Services Funded

Expenses	Total invoice	To be paid by Insurance	To be paid by FEMA	Eligible HHRP Expense
TOTAL				

TOTAL HHRP ALLOCATION

\$90,346.07

**EXHIBIT C
REQUEST FOR PAYMENT**

Subrecipient:	
Billing Address:	
City/State/Zip:	
Program/Project Name:	
Invoice #	Month/Year:
Preparer's Name:	Phone:
Approved HHRP Budget	\$
HHRP Disbursements To Date	\$
Available HHRP Balance	\$

This Request:

Budget Line Item:	AMOUNT BEING REQUESTED FOR HHRP REIMBURSEMENT:
Total Request:	

Description of reimbursement activity(ies) including time period activities were executed.

By signing this report, I certify to the best of my knowledge and belief that the request for payment is true, complete, and accurate, and the expenditures are for the purposes and objectives set forth in the terms and conditions of the Federal award. I am aware that any false, fictitious, or fraudulent information, or the omission of any material fact, may subject me to criminal, civil or administrative penalties for fraud, false statements false claims or otherwise (U.S. Code Title 18, Section 1001 and Title 31, Sections 3729-3730 and 3801-3812).

Print – Name of Executive Director or Board President

Date

Signature - Executive Director or Board President Signature

Date

SECTION BELOW TO BE COMPLETED BY CITY OF KISSIMMEE

I certify that all grant requirements for this payment have been met and request reimbursement.

Housing and Community Development Manager Signature

Date

APPROVAL INFORMATION

ITEM 7.F

Architectural and Engineering Continuing Services Agreements

Request

Request approval of the Architectural/Engineering Services master agreements, contract # 2024-0133 with Barrientos Design & Consulting, Inc., BEA Architects, Inc., Bumpus & Associates, Inc., Forefront Architecture & Engineering, Franklin Design KPM-KMF Joint Venture, Florida Technical Consultants, Inc., Harvard Jolly-PBK, and Ohlson Lavoie Corp.

Explanation

On November 21, 2023, the Commission authorized staff to negotiate master service agreements with Baker Barrios Architects, Inc., Barrientos Design & Consulting, Inc., BEA Architects, Inc., Bentley Group, Inc., Bumpus & Associates, Inc., Colliers Engineering & Design, Inc., CPH LLC, Forefront Architecture & Engineering, Franklin Design KPM-KMF Joint Venture, Florida Technical Consultants, Inc., Harvard Jolly-PBK, Ohlson Lavoie Corp., The Lunz Group, WSP Environmental & Infrastructure, Inc. and Zyscovich, LLC. to provide architectural services on a continuing as needed basis. These services will be provided for capital construction projects with a construction value up to \$4,000,000.

The following eight (8) firms have submitted all of their contract documents, therefore staff is requesting approval for their agreements. The remaining seven (7) agreements will be brought to the Commission for approval once all documentation is received.

- Barrientos Design & Consulting, Inc.
- BEA Architects, Inc.
- Bumpus & Associates, Inc.
- Forefront Architecture & Engineering.
- Franklin Design KPM-KMF Joint Venture.
- Florida Technical Consultants, Inc.
- Harvard Jolly-PBK.
- Ohlson Lavoie Corp.

The selected consultants may work with city-selected contractors or construction management firms on City capital construction projects. The scope of services may include, but not be limited to, needs analysis, recommendations on modifications or additions to existing facilities or the construction of additional facilities, the planning and design for the construction of new facilities, and the construction administration for construction projects. The term of the agreements is for five (5) years unless otherwise terminated.

The attached agreements are a result of the negotiations and legal review.

Recommendation

Approval of the Architectural/Engineering Services master agreement with Barrientos Design & Consulting, Inc., BEA Architects, Inc., Bumpus & Associates, Inc., Forefront Architecture & Engineering, Franklin Design KPM-KMF Joint Venture, Florida Technical Consultants, Inc., Harvard Jolly-PBK, and Ohlson Lavoie Corp.

REQUESTED CITY COMMISSION ACTION:

Approve

City of Kissimmee

Department: Public Works & Engineering

Presenter:

Attachment(s):

1. (S) Barrientos Design & Consulting, Inc
2. (S) BEA Architects, Inc
3. (S) Bumpus & Associates, Inc
4. (S) Forefront Architecture & Engineering
5. (S) Franklin Design KPM-KMF Joint Venture
6. (S) Florida Technical Consultants, Inc
7. (S) Harvard Jolly-PBK
8. (S) Ohlson Lavoie Corp

Architectural/Engineering Services Master Agreement

THIS ARCHITECTURAL/ENGINEERING MASTER SERVICES AGREEMENT (“Agreement”) is entered into as of the Effective Date (hereinafter defined) by and between the City of Kissimmee, a Municipal Corporation of the State of Florida, by and through its Commission, 101 Church Street, Kissimmee, Florida 34741 (hereinafter referred to as the “CITY”), and **BARRIENTOS DESIGN & CONSULTING, INC.**, 205 W. Highland Avenue, Suite 303, Milwaukee, WI 53203, whose Federal Identification Number is: 39-1924546 (hereinafter referred to as the “CONSULTANT”).

WITNESSETH:

WHEREAS, the CITY requires certain architectural and/or engineering services to be performed in the City of Kissimmee; and,

WHEREAS, the CITY has solicited for these professional services via RFQ2023-006, an advertised request for qualifications (the “RFQ”), and has received numerous responsive bids thereto; and

WHEREAS, the CONSULTANT remains agreeable to providing the CITY the professional services and represents that it is capable and prepared to do so;

NOW, THEREFORE, in consideration of the promises contained herein, the CITY and the CONSULTANT (collectively, the “Parties”) hereby agree, as follows:

1.0 **Term**

1.1 This Agreement shall take effect on the date of its execution by the Mayor, The City of Kissimmee Commission (the “Effective Date”).

1.2 The term of this Agreement shall be for a five (5) year period, commencing upon the Effective Date, unless otherwise terminated as provided herein.

2.0 **CONSULTANT –SERVICES -- GENERAL**

2.1 The CONSULTANT shall provide the CITY complete architectural and engineering services necessary to provide construction documents and administration for various projects (individually a “Project” and collectively, the “Projects”) throughout the Term, as may be further specifically designated and authorized by the CITY in writing. Such authorization shall be in the form of either a Consultant Services Authorization (“CSA”) or a Contract Purchase Order (“CPO”), and all provisions of this Agreement shall apply to the CSA or CPO with full force and effect as if appearing in full within each CSA or CPO. Each CSA or CPO will set forth a specific Scope of Services, maximum limit of compensation, schedule, liquidated damages, and completion date, and shall become effective upon the due execution. When the CONSULTANT and the CITY enter into a CSA or CPO where the term

thereof expires on a date that is later than the date of this Agreement, the CONSULTANT and the CITY agree that the terms of this Agreement and any amendments, attachments, or provisions thereof are automatically extended until the expiration or full completion of the requirements of the CSA or CPO, as applicable, have been performed. Cancellation by the CITY of any remaining service prior to the full completion of the requirements of the CSA/CPO shall cause the terms of this Agreement to terminate at the same time. This provision only applies when the expiration of the CSA/CPO extends beyond the expiration of this Agreement. It does not apply when a CSA/CPO expires or is cancelled prior to the expiration of this Agreement.

2.2 The CONSULTANT is not authorized to undertake any Project without a duly executed CSA or CPO, which shall specify the work to be performed. The CONSULTANT recognizes that the CITY may employ several different CONSULTANTS and engineers to perform the services described herein and that the CONSULTANT has not been employed as the exclusive agent to perform any such services.

2.3 In addition to the services described in this Section 2.0, the RFQ, the Consultant's responsive proposal thereto, and otherwise set forth and described in the body of this Agreement, the CONSULTANT may also be authorized to perform, via a duly executed CSA or CPO, any or all of those services set forth and further described in **Exhibit "B"**, attached hereto and incorporated herein (collectively, the "Services").

3.0 **Project Administration Services**

3.1 The CONSULTANT shall manage the CONSULTANT'S services and administer the Project. The CONSULTANT shall consult with the CITY, research applicable design criteria, attend Project meetings, and communicate with members of the Project team and issue progress reports. The CONSULTANT shall coordinate the services provided by the CONSULTANT and the CONSULTANT'S sub-consultants with those services provided by the CITY and the CITY'S consultants.

3.2 When Project requirements have been sufficiently identified, the CONSULTANT may be required to prepare, and periodically update, a Project schedule that shall identify milestone dates for decisions required of the CITY, design services furnished by the CONSULTANT, completion of documentation provided by the CONSULTANT, commencement of construction and Substantial Completion of the Work.

3.3 The CONSULTANT shall consider the value of alternative materials, building systems and equipment, together with other considerations based on program, budget and aesthetics in developing the design for the Project.

3.4 Upon request of the CITY, the CONSULTANT shall make a presentation to explain the design of the Project to representatives of the CITY.

3.5 The CONSULTANT shall submit design documents to the CITY at intervals appropriate to the design process for purposes of evaluation and approval by the CITY. The CONSULTANT shall be entitled to rely on approvals received from the CITY in the further development of the design.

3.6 The CONSULTANT shall assist the CITY in connection with the CITY'S responsibility for filing documents required for the approval of governmental authorities having jurisdiction over the Project.

3.7 EVALUATION OF BUDGET AND COST OF THE WORK.

3.7.1 When the Project requirements have been sufficiently identified, the CONSULTANT shall prepare a preliminary estimate of the Cost of the Work. This estimate may be based on current area, volume or similar conceptual estimating techniques. The CONSULTANT shall advise the CITY of any adjustments to previous estimates of the Cost of the Work indicated by changes in Project requirements or general market conditions. If at any time the estimate of the Cost of the Work exceeds the CITY'S budget, the CONSULTANT shall make appropriate recommendations to the CITY to adjust the Project's size, quality or budget, and the CITY shall cooperate with the CONSULTANT in making such adjustments.

3.7.2 Evaluations of the CITY'S budget for the Project, the preliminary estimate of the Cost of the Work, and updated estimates of the Cost of the Work represent the CONSULTANT'S judgment as a design professional familiar with the construction industry. It is recognized, however, that neither the CONSULTANT nor the CITY has control over the cost of labor, materials or equipment, over the CONSULTANT'S methods of determining bid prices, or over competitive bidding, market or negotiating conditions. Accordingly, the CONSULTANT cannot and does not warrant or represent that bids or negotiated prices will not vary from the CITY'S budget for the Project or from any estimate of the Cost of the Work or evaluation prepared or agreed to by the CONSULTANT.

3.7.3 In preparing estimates of the Cost of the Work, the CONSULTANT shall be permitted to include contingencies and allowances for design, bidding and price escalation; to determine what materials, equipment, component systems and types of construction are to be included in the Contract Documents; to make reasonable adjustments in the scope of the Project and to include in the Contract Documents alternate bids as may be necessary to adjust the estimated Cost of the Work to meet the CITY'S budget for the Cost of the Work.

3.7.4 If bidding or negotiation has not commenced within 90 days after the CONSULTANT submits the Construction Documents to the CITY, the

budget for the Cost of the Work shall be adjusted to reflect changes in the general level of prices in the construction industry.

- 3.7.5** If the budget for the Cost of the Work is exceeded by the lowest bona fide bid or negotiated proposal, and the CITY elects to revise the Project scope to reduce the Cost of the Work, then the CONSULTANT, without additional charge, shall modify the Contract Documents as necessary to comply with the fixed limit as a condition of this Agreement.

4.0 Evaluation and Planning Services

- 4.1** The CITY may furnish a program setting forth the CITY's objectives, schedule, constraints and criteria, including space requirements and relationships, special equipment, systems and site requirements. The CONSULTANT shall provide a preliminary evaluation of the information furnished by the CITY under this Agreement, including the CITY'S program and schedule requirements and budget for the Cost of the Work, each in terms of the other. The CONSULTANT shall review such information to ascertain that it is consistent with the requirements of the Project and shall notify the CITY of any other information or consultant services that may be reasonably needed for the Project.
- 4.2** The CONSULTANT shall provide a preliminary evaluation of the CITY's site for the Project based on the information provided by the CITY of site conditions, and the CITY'S program, schedule and budget for the Cost of the Work.

5.0 Design Services

5.1 SCHEMATIC DESIGN DOCUMENTS

5.1.1 The CONSULTANT shall provide Schematic Design Documents based on the mutually agreed-upon program, schedule, and budget for the Cost of the Work. The documents shall establish the conceptual design of the Project illustrating the scale and relationship of the Project components. The Schematic Design Documents shall include a conceptual site plan, if appropriate, and preliminary building plans, sections and elevations. At the CONSULTANT's option, the Schematic Design Documents may include study models, perspective sketches, electronic modeling or combinations of these media. Preliminary selections of major building systems and construction materials shall be noted on the drawings or described in writing.

5.2 DESIGN DEVELOPMENT DOCUMENTS

5.2.1 The CONSULTANT shall provide Design Development Documents based on the approved Schematic Design Documents and updated budget for the Cost of the Work. The Design Development Documents shall illustrate and describe the refinement of the design of the Project, establishing the scope, relationships, forms, size and appearance of the Project by means of

plans, sections and elevations, typical construction details, and equipment layouts. The Design Development Documents shall include specifications that identify major materials and systems and establish in general their quality levels.

5.3 CONSTRUCTION DOCUMENTS

5.3.1 The CONSULTANT shall provide Construction Documents based on the approved Design Development Documents and updated budget for the Cost of the Work. The Construction Documents shall set forth in detail the requirements for construction of the Project. The Construction Documents shall include Drawings and Specifications that establish in detail the quality levels of materials and systems required for the Project.

5.3.2 During the development of the Construction Documents, the CONSULTANT shall assist the CITY in the development and preparation of: (1) bidding and procurement information which describes the time, place and conditions of bidding; bidding or proposal forms; and the form of agreement between the CITY and the CONSULTANT; and (2) the Conditions of the Contract for Construction (General, Supplementary and other Conditions). The CONSULTANT also shall compile the Project Manual that includes the Conditions of the Contract for Construction and Specifications and may include bidding requirements and sample forms.

5.3.3 Progress submittals of design documents shall be delivered to the CITY for review and approval, at the 50% Construction Document Phase, the 100% Construction Document to be submitted for permit, and the 100% Construction Documents, approved for construction for each subproject. Such submittals shall be reissued as necessary to secure approval. CITY comments shall be incorporated into the next phase of the work. CONSULTANT is entitled to rely upon CITY'S approval that the design conforms to the program at each stage. The CITY and the CONSULTANT agree that they shall not proceed to the next phase, including the Construction Phase, until they have mutually agreed that the project is feasible in accordance with the budget approved by the CITY.

6.0 Contract Administration Services

6.1 GENERAL ADMINISTRATION

6.1.1 The CONSULTANT shall provide administration of the Contract between the CITY and the Contractor as set forth in the CITY'S Agreement with their Contractor.

6.1.2 The CONSULTANT'S responsibility to provide the Contract Administration Services under this Agreement commences with the Notice to Proceed to the

Contractor and terminates at the issuance to the CITY of the final Certificate for Payment. However, the CONSULTANT may be entitled to a Change in Services in accordance with Section 47.2 if Contract Administration Services extend 60 days after the date of Final Completion of the Work.

- 6.1.3** The CONSULTANT shall be a representative of, and shall advise and consult with, the CITY during the provision of the Contract Administration Services. The CONSULTANT shall have authority to act on behalf of the CITY only to the extent provided in this Agreement unless otherwise modified by written amendment.
- 6.1.4** Duties, responsibilities and limitations of authority of the CONSULTANT under this Section 6.0 shall not be restricted, modified or extended without written agreement of the CITY and CONSULTANT.
- 6.1.5** The CONSULTANT shall review properly prepared, timely requests by the Contractor for additional information about the Contract Documents. A properly prepared request for additional information about the Contract Documents shall be in a form prepared or approved by the CONSULTANT and shall include a detailed written statement that indicates the specific Drawings or Specifications in need of clarification and the nature of the clarification requested.
- 6.1.6** If deemed appropriate by the CONSULTANT, the CONSULTANT shall on the CITY'S behalf prepare, reproduce and distribute supplemental Drawings and Specifications in response to requests for information by the Contractor.
- 6.1.7** The CONSULTANT shall interpret and decide matters concerning performance of the CITY and Contractor under, and requirements of, the Contract Documents on written request of either the CITY or Contractor. The CONSULTANT'S response to such requests shall be made in writing within any time limits agreed upon or otherwise with reasonable promptness.
- 6.1.8** Interpretations and decisions of the CONSULTANT shall be consistent with the intent of and reasonably inferable from the Contract Documents and shall be in writing or in the form of drawings. When making such interpretations and initial decisions, the CONSULTANT shall endeavor to secure faithful performance by both CITY and Contractor, shall not show partiality to either, and shall not be liable for the results of interpretations or decisions so rendered in good faith.
- 6.1.9** The CONSULTANT shall render initial decisions on claims, disputes or other matters in question between the CITY and CONSULTANT as provided in the Contract Documents. However, the CITY'S decisions on matters relating to aesthetic effect shall be final if consistent with the intent expressed in the Contract Documents.

6.2 EVALUATIONS OF THE WORK

6.2.1 The CONSULTANT, as a representative of the CITY, shall visit the site at intervals appropriate to the stage of the Contractor's operations, or as otherwise agreed by the CITY and the CONSULTANT, (1) to become generally familiar with and to keep the CITY informed in writing about the progress and quality of the portion of the Work completed, (2) to endeavor to guard the CITY against defects and deficiencies in the Work, and (3) to determine in general if the Work is being performed in a manner indicating that the Work, when fully completed, will be in accordance with the Contract Documents. However, the CONSULTANT shall not be required to make exhaustive or continuous on-site inspections to check the quality or quantity of the Work. The CONSULTANT shall neither have control over or charge of, nor be responsible for, the construction means, methods, techniques, sequences or procedures, or for safety precautions and programs in connection with the Work, since these are solely the Contractor's rights and responsibilities under the Contract Documents.

6.2.2 The CONSULTANT shall report to the CITY known deviations from the Contract Documents and from the most recent construction schedule submitted by the Contractor. However, the CONSULTANT shall not be responsible for the Contractor's failure to perform the Work in accordance with the requirements of the Contract Documents. The CONSULTANT shall be responsible for the CONSULTANT'S negligent acts or omissions, but shall not have control over or charge of and shall not be responsible for acts or omissions of the Contractor, Sub-contractors, or their agents or employees, or of any other persons or entities performing portions of the Work.

6.2.3 The CONSULTANT shall at all times have access to the Work wherever it is in preparation or progress.

6.2.4 Except as may otherwise be provided in the Contract Documents or when direct communications have been specially authorized in writing, the CONSULTANT and Contractor shall communicate through the CITY. Communications by and with the CONSULTANT'S sub-consultants shall be through the CONSULTANT. The CONSULTANT shall respond to the CITY with the CONSULTANT'S written responses or correspondence within a reasonable length of time.

6.2.5 The CONSULTANT shall have authority to reject Work that does not conform to the Contract Documents. Whenever the CONSULTANT considers it necessary or advisable, the CONSULTANT, with the CITY'S approval, will have authority to require inspection or testing of the Work in accordance with the provisions of the Contract Documents, whether or not such Work is fabricated, installed or completed. However, neither this

authority of the CONSULTANT nor a decision made in good faith, either to exercise or not to exercise such authority, shall give rise to a duty or responsibility of the CONSULTANT to the Contractor, Sub-contractor, material and equipment suppliers, their agents or employees or other persons or entities performing portions of the Work. If the CONSULTANT requires inspection or testing of the Work without the CITY'S prior approval, the Work is deemed acceptable, the CONSULTANT will be responsible for any compensation due the Contractor.

6.3 CERTIFICATION OF PAYMENTS TO CONTRACTOR

6.3.1 The CONSULTANT shall review and certify the amounts due the Contractor and shall issue Certificates for Payment in such amounts. The CONSULTANT'S certification for payment shall constitute a representation to the CITY, based on the CONSULTANT'S evaluation of the Work as provided in Paragraph 6.2 and on the data comprising the Contractor's Application for Payment, that the Work has progressed to the point indicated and that, to the best of the CONSULTANT'S knowledge, information and belief, the quality of the Work is in accordance with the Contract Documents. The foregoing representations are subject (1) to an evaluation of the Work for conformance with the Contract Documents upon Substantial Completion, (2) to results of subsequent tests and inspections, (3) to correction of minor deviations from the Contract Documents prior to completion, and (4) to specific qualifications expressed by the CONSULTANT.

6.3.2 The issuance of a Certificate for Payment shall not be a representation that the CONSULTANT has (1) made exhaustive or continuous on-site inspections to check the quality or quantity of the Work, (2) reviewed construction means, methods, techniques, sequences or procedures, (3) reviewed copies of requisitions received from Sub-contractors and material suppliers and other data requested by the CITY to substantiate the Contractor's right to payment, or (4) ascertained how or for what purpose the Contractor has used money previously paid on account of the Contract Sum.

6.3.3 The CONSULTANT shall maintain a record of the Contractor's Applications for Payment.

6.4 SUBMITTALS

6.4.1 The CONSULTANT shall review and approve or take other appropriate action upon the Contractor's submittals such as Shop Drawings, Product Data and Samples, but only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. The CONSULTANT'S action shall be taken with such reasonable promptness as to cause no delay in the Work or in the activities of the CITY, Contractor or separate contractor. Review of such submittals is

not conducted for the purpose of determining the accuracy and completeness of other details such as dimensions and quantities, or for substantiating instructions for installation or performance of equipment or systems, all of which remain the responsibility of the Contractor as required by the Contract Documents. The CONSULTANT'S review shall not constitute approval of safety precautions or, unless otherwise specifically stated by the CONSULTANT, of any construction means, methods, techniques, sequences or procedures. The CONSULTANT'S approval of a specific item shall not indicate approval of an assembly of which the item is a component.

6.4.2 The CONSULTANT shall maintain a record of submittals and copies of submittals supplied by the Contractor in accordance with the requirements of the Contract Documents.

6.4.3 If professional design services or certifications by a design professional related to systems, materials or equipment are specifically required of the Contractor by the Contract Documents, the CONSULTANT shall specify appropriate performance and design criteria that such services must satisfy. Shop Drawings and other submittals related to the Work designed or certified by the design professional retained by the Contractor shall bear such professional's written approval when submitted to the CONSULTANT. The CONSULTANT shall be entitled to rely upon the adequacy, accuracy and completeness of the services, certifications or approvals performed by such design professionals.

6.5 CHANGES IN THE WORK

6.5.1 The CONSULTANT shall prepare Construction Change Directives and assist the City with the preparation of change orders and allowance authorizations for the CITY'S approval and execution in accordance with the Contract Documents. The CONSULTANT may authorize minor changes in the Work not involving an adjustment in Contract Sum or an extension of the Contract Time, which are consistent with the intent of the Contract Documents. If necessary, the CONSULTANT shall prepare, reproduce and distribute Drawings and Specifications to describe Work to be added, deleted or modified.

6.5.2 The CONSULTANT shall review properly prepared, timely requests by the CITY or Contractor for changes in the Work, including adjustments to the Contract Sum or Contract Time. A properly prepared request for a change in the Work shall be accompanied by sufficient supporting data and information to permit the CONSULTANT to make a reasonable determination without extensive investigation or preparation of additional drawings or specifications. If the CONSULTANT determines that requested changes in the Work are not materially different from the requirements of the

Contract Documents, the CONSULTANT may issue an order for a minor change in the Work or recommend to the CITY that the requested change be denied.

6.5.3 If the CONSULTANT determines that implementation of the requested changes would result in a material change to the Contract that may cause an adjustment in the Contract Time or Contract Sum, the CONSULTANT shall make a recommendation to the CITY, who may authorize further investigation of such change. Upon such authorization, and based upon information furnished by the Contractor, if any, the CONSULTANT shall estimate the additional cost and time that might result from such change, including any additional costs attributable to a Change in Services of the CONSULTANT. With the CITY'S approval, the CONSULTANT shall incorporate those estimates into a Change Order or other appropriate documentation for the CITY'S execution or negotiation with the Contractor.

6.5.4 The CONSULTANT shall maintain records relative to changes in the Work.

6.6 PROJECT COMPLETION

6.6.1 The CONSULTANT shall conduct inspections to determine the date or dates of Substantial Completion and the date of Final Completion, shall receive from the Contractor and forward to the CITY, for the CITY'S review and records, written warranties and related documents required by the Contract Documents and assembled by the Contractor, and shall issue a final Certificate for Payment based upon a final inspection indicating the Work complies with the requirements of the Contract Documents.

6.6.2 The CONSULTANT'S inspection shall be conducted with the CITY'S Designated Representative to check conformance of the Work with the requirements of the Contract Documents and to verify the accuracy and completeness of the list submitted by the CONSULTANT of Work to be completed or corrected.

6.6.3 When the Work is found to be substantially complete, the CONSULTANT shall inform the CITY about the balance of the Contract Sum remaining to be paid the Contractor, including any amounts needed to pay for final completion or correction of the Work.

6.6.4 The CONSULTANT shall receive from the Contractor and forward to the CITY: (1) consent of surety or sureties, if any, to reduction in or partial release of retainage or the making of final payment and (2) affidavits, receipts, releases and waivers of liens or bonds indemnifying the CITY against liens.

7.0 **Facility Operation Services**

7.1 The CONSULTANT shall meet with the CITY or the CITY'S Designated Representative promptly after Substantial Completion to review the need for facility operation services.

7.2 Upon request of the CITY, and prior to the expiration of one year from the date of Substantial Completion, the CONSULTANT shall conduct a meeting with the CITY and the CITY'S Designated Representative to review the facility operations and performance and to make appropriate recommendations to the CITY.

8.0 **Additional Services**

8.1 The CONSULTANT may be authorized, via a duly executed CSA or CPO, to perform any or all of the additional services as set forth and further described on **Exhibit "B"**.

8.2 The following minimum Design and Contract Administration Services shall be provided by the CONSULTANT without a Change in Services in accordance with Section 47.2:

8.2.1 A reasonable number of reviews of each Shop Drawing, Product Data item, sample and similar submittal of the CONSULTANT.

8.2.2 Up to two (2) inspections for any portion of the Work to determine whether such portion of the Work is substantially complete in accordance with the requirements of the Contract Documents.

8.2.3 Up to two (2) inspections for any portion of the Work to determine final completion.

8.3 The following Design and Contract Administration Services shall be provided by the CONSULTANT as a Change in Services in accordance with Section 47.2:

8.3.1 Change Orders and Construction Change Directives requiring evaluation of proposals, including the preparation or revision of Instruments of Services, with prior approval by CITY;

8.3.2 Providing consultation concerning replacement of Work resulting from fire or other cause during construction;

8.3.3 Evaluation of substitutions proposed by the CITY'S consultants or contractors and making subsequent revisions to the Instruments of Service, with prior approval by CITY.

8.3.4 Preparation of design and documentation for alternate bid or proposal requests proposed by the CITY after the Guaranteed Maximum Price is established.

8.3.5 Contract Administration Services provided 60 (sixty) days after the date of Final Completion of the Work, as may be requested by the CITY.

8.4 The CONSULTANT shall furnish or provide the following services only if specifically designated:

- 8.4.1 Programming
- 8.4.2 Land Survey Services
- 8.4.3 Geotechnical Services
- 8.4.4 Space Schematics/Flow Diagrams
- 8.4.5 Existing Facilities Surveys
- 8.4.6 Economic Feasibility Studies
- 8.4.7 Site Analysis
- 8.4.8 Environmental Studies and Reports
- 8.4.9 User-Supplied Data
- 8.4.10 Schedule Development and Monitoring
- 8.4.11 Civil Design
- 8.4.12 Landscape Design
- 8.4.13 Interior Design
- 8.4.14 Value Analysis
- 8.4.15 Cost Estimating
- 8.4.16 On-Site Project Representation
- 8.4.17 Construction Management
- 8.4.18 Start-up Assistance
- 8.4.19 Record Drawings
- 8.4.20 Post-Contract Evaluation
- 8.4.21 Tenant-Related Services
- 8.4.22 Underground Field Drainage

9.0 **Compensation**

- 9.1 In consideration of the Services provided by the CONSULTANT pursuant to this Agreement, the CITY shall pay CONSULTANT compensation which may be negotiated as either a not-to-exceed price or a lump sum amount, in the CITY's sole discretion.
- 9.2 In the event a not to exceed price is negotiated, compensation shall be billed and paid based on and in accordance with the Hourly Rate Schedule attached hereto and incorporated herein as **Exhibit "A"**. The Hourly Rate Schedule identifies all job

classifications which will perform billable services pursuant to this Agreement and the fee for each job classification. Performance of work by personnel in job classifications not listed on the fee schedule will result in nonpayment for such services.

- 9.3 All invoices must reference this Agreement number, using an invoice form approved by the CITY.
- 9.4 Each individual invoice shall be due and payable forty-five (45) days after receipt by the CITY of a correct, fully documented, invoice, in form and substance satisfactory to the CITY with all appropriate cost substantiations attached. All invoices shall be delivered to:

The City of Kissimmee

Public Works & Engineering

Attention: Facilities Management Director

101 Church Street

Kissimmee, FL 34741

- 9.5 In order for both parties herein to close their books and records for a particular Project, the CONSULTANT will clearly state "Final Invoice" on the CONSULTANT's final/last billing to the CITY for such Project. This certifies that all services have been properly performed and all charges and costs have been invoiced to the CITY. Since this account will thereupon be closed, any and other further charges if not properly included on this final invoice are waived by the CONSULTANT.
- 9.6 Payment of the final invoice for any particular Project shall not constitute evidence of the CITY's acceptance of the Work or Services.
- 9.7 Pursuant to Section 9.2, if a not to exceed fee is negotiated, invoices shall be accompanied by time and task records for all billable hours appearing on the invoice. Alternatively, if a lump sum amount is negotiated, invoices shall be made upon the completion of each phase of the work in proportion to the Services performed, as specifically set forth in the applicable CSA or CPO. Additional documentation may be requested by the CITY and, if so requested, shall be furnished by the CONSULTANT to the CITY Auditor's satisfaction.
- 9.8 A contract amendment/change order may be executed by both parties, after Substantial Completion, to incorporate any additional design fees due to the CONSULTANT. The amendment shall be based upon 7% of the additional cost of the work that has been added to the project where the CONSULTANT participated in the design process.
- 9.9 If the services of the CONSULTANT are changed as described in Section 47.2.1 or

47.2.2, the CONSULTANT'S compensation shall be adjusted. Such adjustment shall be computed as a fixed fee on a task-by-task basis, or, in the discretion of the CITY, in an otherwise equitable manner. Adjustments to the CONSULTANT'S compensation may be approved by the Facilities Management Director, providing the compensation adjustment does not exceed the amount specified in the applicable CSA or CPO.

- 9.10 Forty (40) calendar days shall be allowed for the CITY's inspection and approval of the goods and services for which any invoice has been submitted.
- 9.11 No deduction shall be made from the CONSULTANT's compensation on account of penalty, liquidated damages, or other sums withheld from payments to contractors.
- 9.12 If any work designed or specified by the CONSULTANT during any phase of service is abandoned or suspended in whole or in part, the CONSULTANT is to be paid for the service performed on account of it prior to receipt of written notice from the CITY of such abandonment or suspension, together with reimbursements then due and any terminal expense resulting from abandonment or suspension for more than three months.

10.0 **Reimbursable Expense**

10.1 All requests for payment of out-of-pocket expenses eligible for reimbursement under the terms of this Agreement shall include copies of paid receipts, invoices or other documentation acceptable to the CITY. Such documentation shall be sufficient to establish that the expense was actually incurred and necessary in the performance of the Scope of Work described in this Agreement.

10.2 Reimbursable Expenses are the actual, pre-approved, expenses incurred directly in connection with the applicable Consultant Services Authorization, and include:

- Overnight Deliveries
- Reproduction
- Sub-Consultant
- Long Distance Telephone Calls (excluding Florida cities located outside the boundaries of Osceola County)

10.3 Mileage shall be reimbursed in accordance with Section 112.061, Florida Statutes, for pre-approved out-of-county travel (excluding travel from home offices located outside of Osceola County to the Osceola County line).

10.4 Reimbursable Expenses, including sub-consultants, shall be reimbursed at cost.

10.5 Pre-approved travel costs shall be reimbursed in accordance with Section 112.061, Florida Statutes.

10.6 All assets, i.e. durable goods, purchased as reimbursable expenses become the property of the CITY upon completion of the work for which the asset was utilized. All such assets must be surrendered by delivery to the City of Kissimmee Public Works and Engineering Division offices upon demand termination of the Agreement or the conclusion of the project, whichever occurs first.

10.7 The CITY shall reimburse the CONSULTANT for any documents required over and above the number specified in this Agreement per the City's Reimbursable Schedule that is attached hereto as **Exhibit "C"**.

11.0 **Project Team**

11.1 The Project Team, including the CITY'S Designated Representative and the CONSULTANT'S Designated Representative, shall be as specified in the applicable CSA or CPO.

11.2 The Commission (the "Board") hereby authorizes the CITY'S Designated Representative to act as the Board's agent and execute documents associated with a particular project. Examples of these documents are Notices of Commencements, Certificates of Substantial and Final Completion and permits from applicable agencies.

11.3 The persons or entities, in addition to the CITY'S Designated Representative, who have rights to review the CONSULTANT'S submittals to the CITY, shall be as specified in the applicable CSA or CPO.

11.4 The CITY'S other consultants and the CONSULTANT'S sub-consultants or any other person or entity retained at the CONSULTANT'S expense shall be as specified in the applicable CSA or CPO.

12.0 **Consultant's Standard of Care**

12.1 The CONSULTANT'S services shall be performed as expeditiously as is consistent with professional skill and care and the orderly progress of the Project. The CONSULTANT shall submit for the CITY'S approval a schedule for the performance of the CONSULTANT'S services which initially shall be consistent with the time periods established in the applicable CSA or CPO and which shall be adjusted, if necessary, as the Project proceeds. This schedule shall include allowances for periods of time required for the CITY'S review, for the performance of the CITY'S consultants, and for approval of submissions by authorities having jurisdiction over the Project. The CONSULTANT or CITY shall not, except for reasonable cause, exceed time limits established by this schedule approved by the CITY.

12.2 The CONSULTANT'S Designated Representative, identified in the

applicable CSA or CPO, shall be authorized to act on the CONSULTANT'S behalf with Respect to the Project.

12.3 The CONSULTANT shall maintain the confidentiality of information specifically designated as confidential by the CITY, unless withholding such information would violate the law, create the risk of significant harm to the public or prevent the CONSULTANT from establishing a claim or defense in an adjudicatory proceeding. The CONSULTANT shall require of the CONSULTANT'S consultants similar agreements to maintain the confidentiality of information specifically designated as confidential by the CITY.

12.4 Except with the CITY'S knowledge and prior express written consent, the CONSULTANT shall not engage in any activity, or accept any employment, interest or contribution that would reasonably appear to compromise the CONSULTANT'S professional judgment with respect to the Project.

12.5 The CONSULTANT shall review laws, codes and regulations applicable to the CONSULTANT'S services. The CONSULTANT shall design the Project to conform to the requirements imposed by governmental authorities having jurisdiction over the Project.

12.6 The CONSULTANT shall be entitled to rely on the accuracy and completeness of services and information furnished by the CITY. The CONSULTANT shall provide prompt written notice to the CITY if the CONSULTANT becomes aware of any errors, omissions or inconsistencies in such services or information.

12.7 The CONSULTANT has represented to the CITY that it has the personnel and experience necessary to perform the work in a professional and workmanlike manner.

12.8 The CONSULTANT shall exercise the same degree of care, skill, and diligence in the performance of the Services as is provided by a professional of like experience, knowledge and resources, under similar circumstances.

12.9 The CONSULTANT shall, at no additional cost to CITY, re-perform services which fail to satisfy the foregoing standard of care or otherwise fail to meet the requirement of this Agreement.

12.10 The CONSULTANT shall use skilled and competent personnel to perform the services.

13.0 **Insurance**

13.1 **General Provisions**

13.1.1 The CONSULTANT shall maintain, at all times, the following minimum levels of insurance and shall, without in any way altering their liability, obtain, pay for and maintain insurance for the coverage and amounts of coverage not less than those set forth below and provide the CITY with a certified copy of each policy applicable to this Agreement followed thereafter by an annual Certificate of Insurance satisfactory to the CITY to evidence such coverage before any work commences. Such certificates will provide that there shall be no termination, non-renewal, modification or expiration of such coverage without thirty (30) days prior written notice to the CITY .

13.1.2 The CITY shall be named as an additional insured on all CONSULTANT policies related to the project, excluding professional liability and worker's compensation. The general liability and workers' compensation policies shall contain a waiver of subrogation in favor of the CITY. All insurance coverage shall be written with an insurer having an A.M. Best Rating of a least the "A" category and size category of VIII.

13.1.3 The CONSULTANT's self-insured retention or deductible per line of coverage shall not exceed \$25,000.00 without the permission of the CITY.

13.1.4 Any failure by the CONSULTANT to comply with the requirements of this section to provide insurance, the CITY may, at its option, on notice to the CONSULTANT, suspend the work for cause until there is full compliance;

13.1.5 The CITY may, at its sole discretion, purchase such insurance at CONSULTANT's expense provided that the CITY shall have no obligation to do so and if the CITY shall do so, it shall not relieve CONSULTANT of its obligation to obtain insurance.

13.1.6 The CONSULTANT shall not be relieved of or excused from the obligation to obtain and maintain such insurance amount and coverages.

13.1.7 All CONSULTANT's sub-consultants shall be required to include CITY and CONSULTANT as additional insured on their General Liability Insurance policies.

13.1.8 In the event that sub-consultants used by the CONSULTANT do not have insurance, or do not meet the insurance limits, CONSULTANT shall indemnify and hold harmless the CITY for any claim in excess of the sub-consultants' insurance coverage.

13.1.9 The CONSULTANT shall not commence work under this Agreement until all insurance required as stated herein has been obtained and such insurance has been approved by the CITY.

13.2 Comprehensive Automobile Liability Insurance. \$1,000,000.00 combined single limit of liability for bodily injuries, death and property damage resulting from any one occurrence, including all owned, hired, and non-owned vehicles.

13.3 Commercial General Liability. \$1,000,000.00 combined single limit of liability for bodily injuries, death and property damage, and personal injury resulting from any one occurrence, including the following coverages:

13.3.1 Premises and Operations:

Broad Form Commercial General Liability Endorsement to include Blanket Contractual liability (specifically covering, but not limited to, the contractual obligations assumed by the Firm); Personal Injury (with employment and contractual exclusions deleted); and Broad Form Property Damage coverage.

13.3.2 Independent Contractors:

Delete Exclusion relative to collapse, explosion and underground; Property Damage Hazards; Cross Liability Endorsement; and Contractual liability (specifically covering, but not limited to, the contractual obligations assumed by the Firm)

13.4 Professional Liability Insurance. \$2,000,000 for design errors and omissions, exclusive of defense costs. The CONSULTANT shall be required to provide continuing Professional Liability Insurance to cover each project for a period of two (2) years after the project is completed. Insurance requirements may vary depending on projects as determined by the CITY Director of Risk Management and Insurance. The CITY may require the CONSULTANT to provide a higher level of coverage for a specific Project and time frame.

13.5 Performance, Payment and Other Bonds. CONSULTANT shall furnish Performance and Payment Bonds specific to each Project if required and agreed to under the applicable CSA or CPO for the Project.

13.6 Worker's Compensation. CONSULTANT shall provide, pay for, and maintain worker's compensation insurance on all employees, its agents or subcontractors as required by Florida Statutes.

13.7 Employers' Liability. \$1,000,000.

14.0 **Indemnification**

14.1 General. Having considered the risks and potential liabilities that may exist during the performance of the Services and in consideration of the promises included herein, the CITY and the CONSULTANT agree to allocate such liabilities in accordance with this Section 14.0.

14.2 Indemnification.

14.2.1 The CONSULTANT, to the extent permitted by law, shall indemnify, defend (by counsel reasonably acceptable to the CITY) protect and hold the CITY, and its officers, employees and agents, free and harmless from and against any and all claims, actions, causes of action, liabilities (joint or several), penalties, forfeitures, damages, losses and expenses (including, without limitation, attorneys' fees and costs during negotiation, through litigation and all appeals therefrom), and including, without limitation, any liability or loss resulting from judgments or claims for personal injury, including death, or damage to any property whatsoever, which directly or indirectly result from or arise in connection with (i) the failure of the CONSULTANT to comply with applicable non-conflicting laws, rules or regulations, (ii) the breach by the CONSULTANT of its obligations under this Agreement, (iii) any claim for trademark, patent or copyright infringement arising out of the scope of the CONSULTANT's performance of this Agreement, or (iv) the negligent act, errors or omissions, or intentional or willful misconduct of the CONSULTANT, its sub-consultants, agents, employees and invitees; provided, however, that the CONSULTANT shall not be obligated to defend or indemnify the CITY with respect to any such claims or damages arising out of the CITY's sole negligence.

14.2.2 The CITY's review, comment and observation of the CONSULTANT's work and performance of this Agreement shall in no manner constitute a waiver of the indemnification provisions of this Agreement.

14.2.3 The CONSULTANT agrees that it bears sole legal responsibility for its work and work product, and the work and work product of sub-consultants and their employees, and/or for CONSULTANT's performance of this Agreement and its work product(s).

14.3 Survival. Upon completion of all Services, obligations and duties provided for in this Agreement, or in the event of termination of this Agreement for any reason, the terms and conditions of this Section 14.0 shall survive as if the Agreement were in full force and effect.

15.0 Independent Contractor

15.1 The CONSULTANT undertakes performance of the Services as an independent contractor and shall be wholly responsible for the methods of performance.

15.2 The CITY shall have no right to supervise the methods used, but the CITY shall have the right to observe such performance.

15.3 The CONSULTANT shall work closely with the CITY in performing Services under this Agreement.

15.4 The CONSULTANT shall not pledge the CITY's credit or make it a guarantor of payment or surety for any contract, debt, obligation, judgment, lien or any form of indebtedness and shall have no right to speak for or bind the CITY in any manner.

15.5 The CONSULTANT further warrants and represents that it has no obligation or indebtedness that would impair its ability to fulfill the terms of this Agreement.

16.0 **Authority to Practice**

16.1 The CONSULTANT hereby represents and warrants that it has and will continue to maintain all licenses and approvals required to conduct its business, and that it will at all times conduct its business activities in a reputable manner.

17.0 **Compliance with Laws**

17.1 In performance of the Services, the CONSULTANT will comply with applicable regulatory requirements including federal, state, special district, and local laws, rules, regulations, orders, codes, criteria and standards.

18.0 **Subcontracting**

18.1 The CITY reserves the right to accept the use of any proposed subcontractor or sub-consultant of the CONSULTANT (for purposes of this Section 18.0 referred to as a “subcontractor”), or to reject the selection of a particular subcontractor and to inspect all facilities of any subcontractor.

18.2 If a subcontractor fails to perform or make progress, as required by this Agreement, and it is necessary to replace the subcontractor to complete the work in a timely fashion, the CONSULTANT shall promptly do so, subject to acceptance of the new subcontractor by the CITY. Failure of a subcontractor to timely or properly perform its obligations shall not relieve CONSULTANT of its obligations hereunder.

19.0 **Federal and State Taxes**

19.1 The CITY is exempt from Federal Tax and State Sales and Use Taxes. Upon request, the CITY will provide an exemption certificate to the CONSULTANT. The CONSULTANT shall not be exempted from paying sales tax to its suppliers for materials to fulfill contractual obligations with the CITY, nor shall the CONSULTANT be authorized to use the CITY’s Tax Exemption Number in securing such materials.

20.0 **Public Entity Crimes**

20.1 The CONSULTANT understands and acknowledges that this Agreement with the CITY will be void, in the event the conditions under Section 287.133, Florida Statutes apply to the CONSULTANT, relating to conviction for a public entity crime.

21.0 **CITY’s Responsibilities**

21.1 The CITY shall be responsible for providing access to all CITY project sites, and providing information in the CITY’s possession that may reasonably be required by CONSULTANT, including existing reports, studies, financial information, and other required data that are available in the files of the CITY.

22.0 **Termination of Agreement**

22.1 This Agreement may be terminated by the CONSULTANT upon thirty (30) days prior written notice to the CITY in the event of substantial failure by the CITY to perform in accordance with the terms of the Agreement through no fault of the CONSULTANT.

22.2 This Agreement may be terminated by the CITY with or without cause immediately upon written notice to the CONSULTANT.

22.3 Unless the CONSULTANT is in breach of this Agreement, the

CONSULTANT shall be paid for services rendered to the CITY's satisfaction through the date of termination.

22.4 After receipt of written notice of termination of this Agreement, and except as otherwise directed by the CITY, the CONSULTANT shall:

22.4.1 Stop work on the date and to the extent specified.

22.4.2 Terminate and settle all orders and subcontracts relating to the performance of the terminated work.

22.4.3 Transfer all work in process, completed work, and other material related to the terminated work to the CITY.

22.4.4 Continue and complete all parts of the work that have not been terminated.

22.5 The CONSULTANT shall be paid for services actually rendered to the date of termination.

23.0 **Uncontrollable Forces (Force Majeure)**

23.1 Neither the CITY nor the CONSULTANT shall be considered to be in default of this Agreement if delays in or failure of performance shall be due to Uncontrollable Forces, the effect of which, by the exercise of reasonable diligence, the non-performing party could not avoid. The term "Uncontrollable Forces" shall mean any event which results in the prevention or delay of performance by a party of its obligations under this Agreement and which is beyond the reasonable control of the nonperforming party. It includes, but is not limited to fire, flood, earthquakes, storms, lightning, epidemic, war, riot, civil disturbance, sabotage, and governmental actions.

23.2 Neither Party shall, however, be excused from performance if nonperformance is due to forces which are preventable, removable, or remediable and which the nonperforming party could have, with the exercise of reasonable diligence, prevented, removed or remedied with reasonable dispatch.

23.3 The nonperforming party shall, within a reasonable time of being prevented or delayed from performance by an Uncontrollable Force, give written notice to the other party describing the circumstances and Uncontrollable Forces preventing continued performance of the obligations of this Agreement.

24.0 **Governing Law and Venue**

24.1 This Agreement shall be governed in all respects by the laws of the State of Florida and any litigation with respect thereto shall be brought only in the courts of Osceola County.

25.0 **Non-Discrimination**

25.1 The CONSULTANT warrants and represents that all of its employees are treated equally during employment without regard to race, color, religion, gender, age or national origin.

26.0 **Waiver**

26.1 A waiver by either the CITY or the CONSULTANT of any breach of this Agreement shall not be binding upon the waiving party unless such waiver is in writing. In the event of a written waiver, such a waiver shall not affect the waiving Party's rights with respect to any other or further breach. The making or acceptance of a payment by either party with knowledge of the existence of a default or breach shall not operate or be construed to operate as a waiver of any subsequent default or breach.

27.0 **Severability**

27.1 The invalidity, illegality, or unenforceability of any provision of this Agreement, or the occurrence of any event rendering any portion or provision of this Agreement void, shall in no way affect the validity or enforceability of any other portion or provision of the Agreement.

27.2 Any void provision shall be deemed severed from the Agreement and the balance of the Agreement shall be construed and enforced as if the Agreement did not contain the particular portion or provision held to be void.

27.3 The Parties further agree to reform the Agreement to replace any stricken provision with a valid provision that comes as close as possible to the intent of the stricken provision.

27.4 The provisions of this Section shall not prevent the entire Agreement from being void should a provision which is of the essence of the Agreement be determined to be void.

28.0 **Entirety of Agreement**

28.1 The CITY and the CONSULTANT agree that this Agreement sets forth the entire understanding between the Parties as to the subject matter contained herein, and that there are no promises or understandings between the parties other than those

stated herein.

28.2 This Agreement supersedes all prior agreements, contracts, proposals, representations, negotiations, letters or other communications between the CITY and the CONSULTANT pertaining to the Services, whether written or oral.

29.0 **Modification**

29.1 This Agreement may not be modified, added to, superseded or otherwise altered unless such modifications, additions or other alterations are evidenced in writing signed by both the CITY and the CONSULTANT. Such modifications shall be in the form of a written Amendment executed by both Parties.

30.0 **Successors and Assigns**

30.1 The CITY and the CONSULTANT each binds itself and its partners, successors, assigns, executors, administrators and legal representatives to the other Party to this Agreement and to their partners, successors, executors, administrators, assigns, and legal representatives.

30.2 The CONSULTANT shall not assign this Agreement without the express written approval of the CITY by executed amendment, which approval may be withheld in the CITY's sole and absolute discretion.

30.3 In the event of a merger, the surviving corporation shall be substituted for the contracting party to this Agreement and such substitution shall be affirmed by the City of Kissimmee Commission by executed amendment.

31.0 **Contingent Fees**

31.1 The CONSULTANT warrants that it has not employed or retained any company or person, other than a bona fide employee working solely for the CONSULTANT to solicit or secure this Agreement and that it has not paid or agreed to pay any person, company, corporation, individual or firm, other than bona fide employee working solely for the CONSULTANT, any fee, commission, percentage, gift or any other consideration contingent upon or resulting from the award or making of this Agreement.

32.0 **Truth-In-Negotiation Certificate**

32.1 Execution of this Agreement by the CONSULTANT shall act as the execution of a Truth-in-Negotiation certificate certifying that the wage rates and costs used to determine the compensation provided for in this Agreement are accurate, complete, and current as of the date of the Agreement.

32.2 The said rates and costs shall be adjusted to exclude any significant sums should the CITY determine that the rates and costs were increased due to inaccurate, incomplete or noncurrent wage rates or due to inaccurate representations of fees paid to outside consultants. The CITY shall exercise its rights under this Certificate within one (1) year following payment.

33.0 **Ownership of Documents**

33.1 The CONSULTANT shall be required to cooperate with other consultants relative to providing information requested in a timely manner and in the specified form. Any and all documents, records, disks, original drawings, or other information shall become the property of the CITY for its use and/or distribution as may be deemed appropriate by the CITY. The CONSULTANT is not liable for any damages, injury or costs associated with the CITY's use or distribution of these documents for purposes other than those originally intended by the CONSULTANT.

34.0 **Access and Audits**

34.1 The CONSULTANT shall maintain adequate records to justify all charges and costs incurred in performing the work for at least three (3) years after completion of this Agreement. The CITY shall have access to such books, records, and documents as required in this section for the purpose of inspection or audit during normal business hours at the CONSULTANT's place of business.

34.2 Misrepresentations of billable time or Reimbursable Expenses as determined by the City Auditor to the Commission shall result in the recovery of any resulting overpayments. The CITY's cost of recovery shall be the sole expense of the CONSULTANT, including accounting and legal fees, court costs and administrative expenses.

34.3 Intentional misrepresentations of billable hours and Reimbursable Expenses will be criminally prosecuted to the fullest extent of the law.

34.4 All invoices submitted are subject to audit and demand for refund of overpayment up to three (3) years following completion of all services related to this Agreement.

35.0 **Notice**

35.1 Any notice, demand, communication, or request required or permitted hereunder shall be in writing and delivered in person or sent by Federal-Express or by Certified Mail, postage prepaid as follows:

As to City: **City of Kissimmee**
Public Works & Engineering Department
Facilities Management Division
101 Church Street
Kissimmee, FL 34741
Attn: Purchasing Director

As to Consultant:

35.2 Notices shall be effective when received at the addresses as specified above. Changes in the respective addresses to which such notice is to be directed may be made from time to time by either party by written notice to the other party. Facsimile transmission is acceptable notice effective when received, however, facsimile transmissions received (i.e.; printed) after 5:00 p.m., or on weekends or holidays, will be deemed received on the next business day. The original of the notice must additionally be mailed as required herein.

35.3 Nothing contained in this Article shall be construed to restrict the transmission of routine communications between representatives of the CONSULTANT and the CITY.

36.0 Service of Process

As to City: **City Attorney**
City of Kissimmee
101 Church Street
Kissimmee, Florida 34741

As to Consultant: **BARRIENTOS DESIGN & CONSULTING, INC.**

37.0 Key Personnel

37.1 The CONSULTANT shall notify the CITY in the event of key personnel changes which might affect this Agreement. To the extent possible, notification shall be made within ten (10) days prior to any such changes. The CONSULTANT, at the CITY's request, shall remove without consequence to the CITY any subcontractor or employee of the CONSULTANT and replace him/her with another employee having the required skill and experience. The CITY has the right to reject proposed changes in key personnel.

The following personnel shall be considered key personnel:

Name:

Name:

Norman Barrientos, AIA Principal-in-Charge

Patrick Wesley, AIA, Project Manager

Neil Bierwirth, Project Architect

Joshua Koch, Project Architect

Isabelle Jardas, Design Architect

Alyssa McKinnon, Design Architect

Lisa Morgen, Interior Designer

38.0. **Annual Appropriations**

38.1 The CONSULTANT acknowledges that the CITY, during any fiscal year, shall not expend money, incur any liability, or enter into any agreement which, by its terms, involves the expenditure of money in excess of the amounts budgeted as available for expenditure during such fiscal year. Any agreement, verbal or written, made in violation of this subsection is null and void, and no money may be paid on such agreement. Nothing herein contained shall prevent the making of agreements for a period exceeding one year, but any agreement so made shall be executory only for the value of the services to be rendered or agreed to be paid for in succeeding fiscal years. Accordingly, the CITY's performance and obligation to pay under this agreement is contingent upon annual appropriation.

39.0 **Liquidated Damages**

39.1 The parties hereto agree that liquidated damages, in lieu of actual damages and in the amount stated in the applicable CSA or CPO, will be assessed against the CONSULTANT, as the CITY's remedy and not as a penalty, for CONSULTANT'S failure to meet the final deliverable date in the Performance Schedule in the Scope of Work, but only to the extent and in the proportion to CONSULTANT'S fault in causing the delay as compared to other causes, and to the extent the CONSULTANT is not delayed by reasons beyond CONSULTANT'S reasonable control. The parties agree that such assessment of liquidated damages is reasonable and appropriate, as it would be difficult or impossible to accurately determine the amount of actual damages the CITY would or may incur as a consequence of the CONSULTANT's failure described above.

40.0 **Unauthorized Alien(s)**

40.1 The CONSULTANT shall not employ or utilize unauthorized aliens in the performance of the Services. The CITY shall consider the employment or utilization of unauthorized aliens a violation of Section 274A(e) of the Immigration and Naturalization Act (8 U.S.C. 1324a). Such violation shall be cause for unilateral termination of this Agreement by the CITY. The Form "AFFIDAVIT CERTIFICATION IMMIGRATION LAWS" will be signed by the CONSULTANT and submitted as part of this Agreement.

40.2 To verify employee eligibility, the CONSULTANT may avail itself of a program by the U.S. Immigration and Customs Enforcement called E-Verify. E-Verify is an Internet-based system operated by U.S. Citizenship and Immigration Services (USCIS), part of the Department of Homeland Security (DHS), in partnership with the Social Security Administration (SSA). E-Verify is currently free to employers. E-Verify provides an automated link to Federal databases to help employers determine employment eligibility of new hires and the validity of their Social Security numbers.

41.0 **Limitation of Liability**

IN NO EVENT, SHALL EITHER PARTY BE LIABLE TO THE OTHER PARTY FOR INDIRECT, INCIDENTAL, CONSEQUENTIAL, SPECIAL, EXEMPLARY, OR PUNITIVE DAMAGES OF ANY KIND OR NATURE, INCLUDING LOSS OF PROFIT, WHETHER FORESEEABLE OR NOT, ARISING OUT OF OR RESULTING FROM THE NONPERFORMANCE OR BREACH OF THIS AGREEMENT BY A PARTY WHETHER BASED IN CONTRACT, COMMON LAW, WARRANTY, TORT, STRICT LIABILITY, CONTRIBUTION, INDEMNITY OR OTHERWISE.

42.0 **Default and Remedy**

42.1 If the CONSULTANT materially defaults in its obligations under this Agreement and fails to cure the same within fifteen (15) days after the date the CONSULTANT receives written notice of the default from the CITY, then the CITY shall have the right to (i) immediately terminate this Agreement by delivering written notice to the CONSULTANT, and (ii) pursue any and all remedies available in law, equity, and under this Agreement. If the CITY materially defaults in its obligations under this Agreement and fails to cure the same within fifteen (15) days after the date the CITY receives written notice of the default from the CONSULTANT, then the CONSULTANT shall have the right to immediately terminate this Agreement by delivering written notice to the CITY. Upon any such termination, the CITY shall pay the CONSULTANT the full amount due and owing for all Services performed through the date of Agreement termination.

43.0 **Attorneys' Fees and Costs**

43.1 Except as stated in Section 14.2.1, above, in connection with any dispute or any litigation arising out of, or relating to this Agreement, each party shall be responsible for its own legal and attorneys' fees, costs and expenses, including attorneys' fees, costs, and expenses incurred for any appellate or bankruptcy proceedings.

44.0 **Public Records Law**

44.1 CONSULTANT 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.

44.2 CONSULTANT shall keep and maintain public records required to perform the services contemplated by this Agreement, in accordance with Chapter 119, Florida Statutes "Public records" means all documents, papers, letters, maps, books, tapes, photographs, films, sound recordings, data processing software,

or other material, regardless of the physical form, characteristics, or means of transmission, made or received pursuant to law or ordinance or in connection with the transaction of official business by any agency.

44.3 CONSULTANT shall ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law for the duration of the contract term and following completion of the contract if the Construction Manager does not transfer the records to the CITY.

44.4 Questions regarding the application of Chapter 119, Florida Statutes, to the CONSULTANT's duty to provide public records relating to this Agreement, shall be directed to the CITY's Custodian of Public Records at 407-518-2308, cityclerkemail@kissimmee.org, and 101 Church Street, Kissimmee, Florida 34741.

45.0 **Americans with Disabilities Act**

45.1 The CONSULTANT shall conform its Drawings and Specifications to the requirements of the Americans with Disabilities Act Accessibility Guidelines ("ADAAG"), but CITY shall be responsible for compliance with the remaining provisions of the Americans with Disabilities Act ("ADA"). CITY and CONSULTANT further recognize that interpretations of ADA by governmental officials and/or courts of law may vary or change. Should such variance or change adopted after the date the 100% Design Development are completed, require the CONSULTANT to make the required modifications, such modifications shall be considered as Contingent Additional Services. Further, CITY acknowledges, that the ADA, including ADAAG, is a new law presenting numerous difficult interpretation issues. Accordingly, the CONSULTANT shall only be liable for gross negligence in connection with any allegation that its design does not properly comply with ADAAG.

46.0 **Additional Definitions**

46.1 **Contract Documents** means this Agreement, any CSA or CPO issued hereunder, the CITY'S contract with the Contractor, the Plans, Specifications, General Conditions and related Construction Documents or any other documents incorporated by reference.

46.2 **Cost of the Work** shall be the total cost or, to the extent the Project is not completed, the estimated cost to the CITY of all elements of the Project designed or specified by the CONSULTANT.

46.2.1 The Cost of the Work shall include the cost at current market rates of labor and materials furnished by the CITY and equipment designed,

specified, selected or specially provided for by the CONSULTANT, including the costs of management or supervision of construction or installation provided by a separate construction manager or CONSULTANT.

46.2.2 The Cost of the Work does not include the compensation of the CONSULTANT and the CONSULTANT'S sub-consultants, the costs of the land, rights-of-way and financing or other costs that are the responsibility of the CITY.

46.3 **Final Completion** means that the following items have been completed or satisfied:

46.3.1 Construction of the Project is completed, in accordance with the contract documents and certified as such by the CITY and CONSULTANT.

46.3.2 The Project is suitable for full use and occupancy as determined by the CITY and CONSULTANT.

46.3.3 All Punchlist items have been completed or otherwise disposed of or accounted for to the CITY'S satisfaction and approval.

46.3.4 A final Certificate of Occupancy and all other permits and approvals required have been legally and validly issued.

46.3.5 All required guarantees, affidavits, releases, bonds and waivers, manuals, record drawings, warranties and maintenance books including the Final Completion form have been delivered to the CITY.

46.4 **Punch list** means a list of items of work to be completed and deficiencies to be corrected, which items shall not affect the attainment of Substantial Completion. Such items shall be complete or otherwise disposed of prior to final acceptance.

46.5 **Schedule of Values** means the schedule to be used as a basis for progress payments to be made to the Contractor by the CITY during performance of the work, based on the then current percentage of progress of construction of the Project, subject to the approval of the CONSULTANT.

46.6 **Substantial Completion** means the Contractor has ascertained that the work or portions thereof is ready for the CITY and CONSULTANT substantial completion inspection. It is understood that the Construction Manager will provide a list of incomplete items to the CITY and CONSULTANT prior to this inspection. After the CITY'S and CONSULTANT's inspection, the Contractor will prepare a schedule for a completion of the list, indicating completion dates for the CITY'S review. The CITY and CONSULTANT will issue a Certificate of Substantial Completion when the work on the Contractor's pre-substantial punch-list has been accomplished, to the best of the Contractor's ability.

46.7 **Substantial Completion Date** means the date, certified by the CONSULTANT, that the Project, or designated portion thereof, is sufficiently complete, in accordance with the Construction Documents and a Certificate of Occupancy issued, so that the CITY can reasonably occupy or utilize the Project, or designated portion thereof, for its intended use.

47.0 **Additional Terms and Conditions**

47.1 INSTRUMENTS OF SERVICE

47.1.1 Drawings, specifications and other documents, including those in electronic form, prepared by the CONSULTANT and the CONSULTANT'S sub-consultants are Instruments of Service for use solely with respect to this Project. The CONSULTANT and the CONSULTANT'S sub-consultants shall be deemed the authors and owners of their respective Instruments of Service and shall retain all common law, statutory and other reserved rights, including copyrights.

47.1.2 Upon execution of this Agreement, the CONSULTANT grants to the CITY a nonexclusive license to reproduce the CONSULTANT'S Instrument of Service and thereafter use the same solely for purposes of constructing, using and maintaining, repairing and making additions and modifications to the Project, provided that the CITY shall comply with all obligations, including prompt payment of all sums when due, under the Agreement. The CONSULTANT shall obtain similar nonexclusive licenses from the CONSULTANT'S sub-consultants consistent with this Agreement. Any termination of this Agreement prior to completion of the Project shall terminate the license. Upon such termination, the CITY shall refrain from making further reproductions of Instrument of Service. If and upon the date the CONSULTANT is adjudged in default of this Agreement, the foregoing license shall be deemed terminated and replaced by a second, nonexclusive license permitting the CITY to authorize other similarly credentialed design professionals to reproduce and, where permitted by law, to make changes, corrections or additions to the Instruments of Service solely for purposes of completing, using and maintaining the Project.

47.1.3 Except for the licenses granted in Section 47.1.2, no other license or right shall be deemed granted or implied under this Agreement. The CITY shall not assign, delegate, sublicense, pledge or otherwise transfer any license granted herein to another party without the prior written agreement of the CONSULTANT. However, the CITY shall be permitted to authorize the Contractor, Subcontractors, and sub-subcontractors and material or equipment suppliers to reproduce applicable portions of the Instruments of Service to and for use in their execution of the Work by license granted in Section 47.1.2. Submission or distribution of Instruments of Service to meet

official regulatory requirements or for similar purposes in connection with the Project is not to be construed as publication in derogation of the reserved rights of the CONSULTANT and the CONSULTANT'S sub-consultants. The CITY agrees to pay the CONSULTANT a reasonable, mutually agreed upon amount for any reuse of the designs, drawings or specifications beyond this Agreement. The CITY shall not be responsible to pay the CONSULTANT for the use of the designs, drawings or specifications when used for reference purposes only.

- 47.1.4 If the CONSULTANT is required to deliver any services hereunder in the form of electronic encoded media, the printed representation of such media furnished by the CONSULTANT shall be the official records of the CONSULTANT'S service provided upon completion of the services and payment in full. The CITY shall have a right to rely on such printed representation in connection with any subsequent modification of such electronic media and agrees to hold the CONSULTANT harmless from all cost and expense, including attorney's fees, from claims which arise out of modification or re-use of such electronic media or printed representation by or on behalf of the CITY without the CONSULTANT'S consent. Under no circumstances shall transfer of drawings and other instruments of service on electronic media for use by the CITY, be deemed a sale by the CONSULTANT, and the CONSULTANT makes no warranties of merchantability or fitness for a particular purpose.

47.2 CHANGE IN SERVICES

- 47.2.1 Change in Services of the CONSULTANT, including services required of the CONSULTANT'S sub-consultants may be accomplished after execution of this Agreement, without invalidating the Agreement, if mutually agreed in writing, if required by circumstances beyond the CONSULTANT'S control, or if the CONSULTANT'S services are affected as described in Section 47.2B-2. In the absence of mutual agreement in writing, the CONSULTANT shall notify the CITY prior to providing such services. If the CITY deems that all or part of such Change in Services is not required, the CITY shall give prompt written notice to the CONSULTANT, and the CONSULTANT shall have no obligation to provide those services. Except for a change due to fault of the CONSULTANT, Change in Services of the CONSULTANT shall entitle the CONSULTANT to an adjustment in compensation pursuant to Section 9.8, and to any Reimbursable Expenses described in Section 10.0.
- 47.2.2 If any of the following circumstances affect the CONSULTANT'S services for the Project, the CONSULTANT shall be entitled to an appropriate adjustment in the CONSULTANT'S schedule and compensation:
- 47.2.2.1 Change in the instructions or approvals given by the CITY that constitute material changes to the Project parameters set forth above

and which necessitate revisions in Instruments of Service;

47.2.2.2 Enactment or revision of codes, laws or regulations or official interpretations, which necessitate changes to previously prepared Instruments of Service;

47.2.2.3 Significant change in the Project including, but not limited to, size, quality, complexity, the CITY'S schedule or budget, or procurement method;

47.2.2.4 Preparation for and attendance at a public hearing, a dispute resolution proceeding or a legal proceeding except where the CONSULTANT is party thereto.

47.3 ACCELERATED COMPLETION OF DESIGN PACKAGES. In order to minimize construction problems and change orders, the CONSULTANT's standard practice requires the completion of detailed working drawings, submission for review and comment by reviewing agencies and incorporation of those comments and/or changes prior to bidding and entering into firm construction contracts. However, CITY may choose to accelerate the completion of the Project so that it may be completed in a shorter time period than would normally be required. Should the CITY choose to make this selection, it shall not be considered Fast Track, or in any way relieve the CONSULTANT of its responsibilities and obligations set forth herein.

(THE REMAINDER OF THIS PAGE IS INTENTIONALLY LEFT BLANK; THE AGREEMENT CONTINUES ON THE FOLLOWING PAGE WITH THE PARTIES' SIGNATURES.)

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement as of the Effective Date.

Attest:

Linda Hansell
CITY CLERK

CITY OF KISSIMMEE,
a Municipal Corporation of the
State of Florida

By: _____
City Clerk

By: _____
Mayor
City of Kissimmee Commission

Date Approved by Commission: _____

Reviewed as to form and legal sufficiency:

City Attorney's Office Date

CONSULTANT

Attest:

By: Norman Barrientos

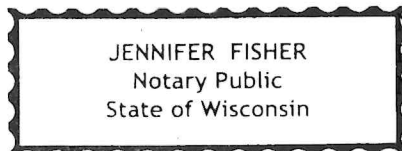
Norman Barrientos, AIA
Corporate Secretary

Title: President

STATE OF ~~FLORIDA~~ Wisconsin
COUNTY OF Milwaukee

The foregoing instrument was acknowledged before me this 21 day of November, 2023, by means of ☒ physical presence or ☐ online notarization, by (name of person) as (type of authority) for (name of party on behalf of whom instrument was executed), a Florida corporation, who is personally known to me or has produced identification.

Notary Seal:



Notary: Jennifer Fisher
Print Name: Jennifer Fisher
My Commission Expires: June 26, 2024

EXHIBIT “A”

HOURLY RATE SCHEDULE

Norman Barrientos, AIA	Principal-in-Charge	\$294.00
Patrick Wesley, AIA,	Project Manager	\$182.00
Neil Bierwirth,	Project Architect	\$135.00
Joshua Koch,	Project Architect	\$135.00
Isabelle Jardas,	Design Architect	\$102.00
Alyssa McKinnon,	Design Architect	\$102.00
Lisa Morgen,	Interior Designer	\$147.00

EXHIBIT “B”

SCOPE OF SERVICES

In accordance with Sections 2.3 and 8.1 of the Agreement, in addition to any other Services described in the Agreement, the RFQ, and the CONSULTANT’s responsive proposal thereto, the CONSULTANT may also be authorized to perform any or all of those services set forth and further described below. In the event the CITY requests the CONSULTANT to furnish and perform any of the services listed and described in this Exhibit “B”, those services shall be listed and incorporated in the applicable CSA or CPO issued for a particular Project.

ALL PHASES:

1. PROJECT ADMINISTRATION AND MANAGEMENT SERVICES

1.1. Project Administration services consisting of administrative functions including:

- 1.1.1. Project Decision Structure
- 1.1.2. Project Directory
- 1.1.3. Consultation
- 1.1.4. Research
- 1.1.5. Communications; Meeting Minutes, Meeting Agendas (For meetings called by CONSULTANT during the Design phases of the project)
- 1.1.6. Direction of the work of architectural, engineering and other consultant personnel

1.2. Disciplines Coordination/Document Checking consisting of:

- 1.2.1. Coordination between the architectural work and the work of engineering and their disciplines involved in the Project.
- 1.2.2. Review and checking of documents prepared for the Project by the CONSULTANT and the CONSULTANT’s Consultants.

1.3. Agency Consulting/Review/Approval services, including:

- 1.3.1. Agency consultants
 - 1.3.1.1. City agencies
 - 1.3.1.2. Regional agencies
 - 1.3.1.3. State agencies
- 1.3.2. Research of critical applicable regulations.
- 1.3.3. Preparation of written and graphic explanatory materials.

1.4. Owner Coordination, including:

- 1.4.1. Review and coordination of data furnished for the Project as a responsibility of the Owner.

1.5. Schedule Development/Monitoring Services, including:

- 1.5.1. Participate in establishment and updating of design schedule in conjunction with CM for the performance of the CONSULTANT's services throughout the design of the project. Key decision-making points will be identified on this schedule.

1.6. Presentation services consisting of presentations and recommendations by the CONSULTANT to the following client representatives:

- 1.6.1. City of Kissimmee Commission
- 1.6.2. Executive Task Force
- 1.6.3. User group(s)
- 1.6.4. Construction Manager

PHASE I PROGRAMMING & MASTER PLANNING

2. NEEDS ASSESSMENT/DATA COLLECTION

2.1. Space Needs Assessments

- 2.1.1. Macro Level Space Requirements Analysis
- 2.1.2. Macro Level Adjacency Requirements
- 2.1.3. Parking Analysis

2.2. Analysis of the site and its surroundings to include the following:

- 2.2.1. Land Utilization
- 2.2.2. Building locations
- 2.2.3. Utility Systems
- 2.2.4. Surface and subsurface conditions (By Owner)
- 2.2.5. Vegetation (By Owner)
- 2.2.6. Survey (By Owner)
- 2.2.7. Land Use Restrictions
- 2.2.8. Historical analysis
- 2.2.9. Stormwater retention/detention areas

3. FUNCTIONAL PROGRAMMING

3.1. Prepare a detailed architectural program based on the scope established in Phase I to include the following services:

- 3.1.1. Functional Requirements Analysis
- 3.1.2. Interior Development Guidelines
- 3.1.3. Space Standards

- 3.1.4. Preliminary Program Space Estimates
- 3.1.5. Space and Equipment Program
- 3.1.6. Special Building System Requirements
- 3.1.7. Micro-Adjacency Requirements
- 3.1.8. Prepare Final Draft Program
- 3.1.9. Prepare Final Program Report

4. MASTER PLANNING

- 4.1 Prepare three different conceptual approaches for housing the space and parking requirements validated in the Needs Assessment. Include the following information, at a minimum:
 - 4.1.1 Existing facility renovation recommendations
 - 4.1.2 Site development planning issues (land utilization, pedestrian and vehicular circulation, parking, areas for expansion, stormwater retention/detention and landscape forms)
 - 4.1.3 Architectural concepts. The architectural concepts will include blocking and stacking diagrams, massing studies and character sketches.

PHASE II: DESIGN/ BIDDING/CONSTRUCTION ADMINISTRATION SERVICES

5. DESIGN SERVICES

5.1. Architectural Design/Documentation:

- 5.1.1. During the Schematic Design Phase, responding to program requirements and preparing:
 - 5.1.1.1. Conceptual Planning/Massing Options
 - 5.1.1.2. Final Conceptual Site and Building Plans
 - 5.1.1.3. Preliminary Sections and Elevations
 - 5.1.1.4. Preliminary Selection of Building Systems and Materials
 - 5.1.1.5. Development of Approximate Dimensions, Areas and Volumes
 - 5.1.1.6. Perspective sketch – eye level
 - 5.1.1.7. Study model
- 5.1.2. During the Design Development Phase consisting of continued development and expansion of architectural Schematic Design Documents to establish the final scope, relationships, forms, size and appearance of the Project through:
 - 5.1.2.1. Plans, sections and elevations
 - 5.1.2.2. Typical construction details
 - 5.1.2.3. Three-dimensional sketch
 - 5.1.2.4. Study model
 - 5.1.2.5. Final materials selection
 - 5.1.2.6. Equipment layouts

- 5.1.3. During the Contract Documents phase consisting of preparation of Drawings and Specifications based on approved Design Development documents setting forth in detail the architectural construction requirements for the Project.

5.2. Structural Design/Documentation:

- 5.2.1. During the Schematic Design Phase consisting of recommendations regarding basic structural materials and systems, analyses, and development of conceptual design solutions for:
 - 5.2.1.1. A structural system
 - 5.2.1.2. Alternate structural systems, if required
- 5.2.2. During the Design Development phase consisting of continued development of the specific structural system and Schematic Design documents in sufficient detail to establish:
 - 5.2.2.1. Basic structural system and dimensions
 - 5.2.2.2. Final structural design criteria
 - 5.2.2.3. Foundation design criteria
 - 5.2.2.4. Preliminary sizing of major structural components
 - 5.2.2.5. Critical coordination clearances
- 5.2.3. During the Contract Documents phase consisting of preparation of final structural engineering calculations, Drawings and Specifications based on approved Design Development documents, setting forth in detail the structural construction requirements for the Project.

5.3. Mechanical Design/Documentation:

- 5.3.1. During the Schematic Design phase, prepare a narrative, consisting of consideration of alternate materials, systems and equipment, and development of conceptual design solutions for:
 - 5.3.1.1. Energy source(s)
 - 5.3.1.2. Energy conservation and controls system concepts
 - 5.3.1.3. Heating and ventilating (systems selections and conceptual sizing and configuration analysis.)
 - 5.3.1.4. Air conditioning (systems selections and conceptual sizing and configuration analysis.)
 - 5.3.1.5. Plumbing
 - 5.3.1.6. Fire protection
 - 5.3.1.7. General space requirements
- 5.3.2. During the Design Development phase consisting of continued development and expansion of mechanical Schematic Design documents and development of outline Specifications or materials lists to establish:
 - 5.3.2.1. Approximate equipment sizes and capacities

- 5.3.2.2. Preliminary equipment layouts
- 5.3.2.3. Required space for equipment
- 5.3.2.4. Required chases and clearances
- 5.3.2.5. Acoustical and vibration control
- 5.3.2.6. Visual impacts
- 5.3.2.7. Energy conservation measures

- 5.3.3. During the Contract Documents phase consisting of preparation of final mechanical engineering calculations, Drawings and Specifications based on approved Design Development documents, setting forth in detail the mechanical construction requirements for the Project.

5.4. Electrical Design/Documentation

- 5.4.1. During the Schematic Design Phase, prepare a narrative, consisting of consideration of alternate systems, recommendations regarding basic electrical materials, systems and equipment, analyses, and development of conceptual solutions for:
 - 5.4.1.1. Power service and distribution
 - 5.4.1.2. Lighting
 - 5.4.1.3. Communication and data outlet location systems
 - 5.4.1.4. Fire detection and alarms
 - 5.4.1.5. General space requirements
 - 5.4.1.6. Audio/Visual systems
- 5.4.2. During the Design Development phase consisting of continued development and expansion of electrical Schematic Design documents and development of outline Specifications or materials lists to establish:
 - 5.4.2.1. Criteria for lighting, electrical and communications systems
 - 5.4.2.2. Approximate sizes and capacities of major components
 - 5.4.2.3. Preliminary equipment layouts
 - 5.4.2.4. Required space for equipment
 - 5.4.2.5. Required chases and clearances
- 5.4.3. During the Contract Documents phase, consisting of preparation of final electrical engineering calculations, Drawings and Specifications based on approved Design Development documents, setting forth in detail the electrical requirements for the Project.

5.5. Civil Design/Documentation:

- 5.5.1. During the Schematic Design phase consisting of consideration of alternate materials and systems and development of conceptual design solutions for:
 - 5.5.1.1. On-site utility systems
 - 5.5.1.2. Fire protection systems
 - 5.5.1.3. Drainage systems

5.5.1.4. Paving

- 5.5.2. During the Design Development phase consisting of continued development and expansion of civil Schematic Design documents and development of outline Specifications or materials lists to establish the final scope of and preliminary details for on-site civil engineering work.
- 5.5.3. During the Contract Documents phase, consisting of preparation of final civil engineering calculations, Drawings and Specifications based on approved Design Development documents, setting forth in detail the civil construction requirements for the Project.
- 5.5.4. Permit applications required for Water Distribution, Sewage Collection and Stormwater/Environment Management (Local, State, and Federal) shall be prepared for execution by the Owner. Permit applications to be paid by Owner. All necessary reports and drawings will be prepared to accompany the permit applications. Two meetings per agency as required to secure permits is included in services. City shall designate individual who has authority to sign permit applications.

5.6. Landscape Design/Documentation:

- 5.6.1. During the Schematic Design phase, prepare narrative conceptual design solutions, which will be developed for land forms, hardscape, lawns and plantings based on program requirements, physical site characteristics, design objectives and environmental determinants.
- 5.6.2. During the Design Development phase, Schematic Design documents will be further developed including outline Specifications and materials lists to establish final scope and preliminary details for landscape work.
- 5.6.3. During the Contract Documents phase, the Drawings and Specifications based on approved Design Development documents, setting forth in detail the landscape and hardscape construction requirements for the Project will be prepared.

5.7. Interior Design/Documentation:

- 5.7.1. During the Schematic Design phase consisting of space allocation and departmental utilization plans based on functional relationships:
 - 5.7.1.1. Types and qualities of finishes and materials for furniture, furnishings, and equipment.
- 5.7.2. During the Design Development phase consisting of continued development and expansion of interior Schematic Design documents and development of

outline Specifications or materials lists to establish final scope and preliminary details relative to:

5.7.2.1. Interior construction of the Project

5.7.2.2. Special interior design features

5.7.2.3.Space planning

5.7.2.4. Materials, finishes and colors

5.7.2.5. Furniture and equipment layouts

5.7.3. During the Contract Documents phase consisting of preparation of Drawings, Specifications and other documents based on approved Design Development documents, setting forth in detail the requirements for interior construction and furniture, furnishings and equipment for the Project.

5.8. Environmental Graphic Design Services: The scope shall include interior and exterior sign types and graphic elements to provide a comprehensive and cohesive signage and wayfinding system for users of the facility.

5.8.1. Design Development:

5.8.1.1.Consider design approaches; determine elements needed for identity, information and wayfinding.

5.8.1.2. Begin development of sign prototypes.

5.8.1.3. Develop preliminary location plans.

5.8.2. Construction document preparation.

5.8.3. Construction observation and submittal review.

5.8.4. Interior sign types to include:

5.8.4.1. Primary room ID (changeable name inserts in some locations).

5.8.4.2. Restroom ID.

5.8.4.3. Stairway ID and stairway level ID.

5.8.4.4. Building Code required ID.

5.8.4.5. Fire exit plan.

5.8.4.6. Building directories.

5.8.5. Exterior sign types include:

5.8.5.1. Main entrance identification.

5.8.5.2. Vehicular directional.

5.8.5.3. Regulatory / Warning identification.

5.8.5.4.Parking areas; handicap parking, authorized vehicles, visitor parking, etc.

5.8.6. Donor Recognition / Dedication Plaques – Prepare conceptual designs illustrating a graphic solution to recognize a significant donor for the facility.

5.9. Materials Research/Specifications:

5.9.1. During the Schematic Design phase consisting of:

5.9.1.1.Identification of potential materials, systems and equipment and their criteria and quality standards consistent with the conceptual design.

- 5.9.1.2. Investigation of availability and suitability of alternative materials, systems and equipment.
- 5.9.2. During the Design Development phase consisting of activities by in-house personnel in:
 - 5.9.2.1. Development of architectural and engineering project specific draft Specifications or itemized lists and brief form identification of significant architectural materials, systems and equipment, including their criteria and quality standards.
 - 5.9.2.2. Coordination of similar activities of other disciplines.
 - 5.9.2.3. Production of design manual including design criteria and outline specifications or material lists.
- 5.9.3. During the Contract Documents phase consisting of activities of in-house architectural personnel in:
 - 5.9.3.1. Review of the development and preparation of bidding and procurement information prepared by the Construction Manager.
 - 5.9.3.2. Assistance to the Owner and their agents in review of the Conditions of the Contract (General, Supplementary and other Conditions).
 - 5.9.3.3. Development and preparation of architectural Specifications describing materials, systems and equipment, workmanship, quality and performance criteria required for the construction of the Project.
 - 5.9.3.4. Coordination of the development of Specifications by other disciplines.
 - 5.9.3.5. Compilation of Project Manual including Conditions of the Contract, bidding and procurement information and Specifications.
- 5.10. At the conclusion of each Design Phase (Schematic Design, Design Development and Construction Document) the Architect/Engineer shall provide the Owner with two (2) sets of drawings and specifications. At the conclusion of Construction Documents one set of reproducible will also be made available to the City for printing of Bid Documents by the City or the Construction Manager.

6. BIDDING OR NEGOTIATION SERVICES

- 6.1. **Bidding Materials services** consisting of organizing and handling Bidding Documents for:
 - 6.1.1. Coordination
 - 6.1.2. Reproduction by Owner
 - 6.1.3. Completeness review
- 6.2. **Addenda services** consisting of preparation and distribution of Addenda as may be required during bidding or negotiation and including supplementary Drawings,

Specifications, instructions and notice(s) of changes in the bidding schedule and procedures.

6.3. Bidding/Negotiation services consisting of:

6.3.1. Responses to questions from Bidders and clarifications or interpretations of the Bidding Documents.

6.4. Analysis of Alternates/Substitutions consisting of consideration, analyses, comparisons, and recommendations relative to alternates or substitutions proposed by Bidders or proposers either prior to or subsequent to receipt of Bids or proposals.

7. CONSTRUCTION ADMINISTRATION

7.1. Submittal Services consisting of:

7.1.1. Processing of submittals, including receipt, review of, and appropriate action on Shop Drawings, Product Data, Samples and other submittals required by the Contract Documents.

7.1.2. Distribution of submittals to Construction Manager.

7.1.3. Related communications.

7.2. Observation services consisting of periodic visits by the Project Manager or Project CONSULTANT to the site at intervals appropriate to the state of the work or as otherwise agreed by the Owner and CONSULTANT in writing to become generally familiar with the progress and quality of the Work completed and to determine in general if the Work when completed will be in accordance with Contract Documents; preparing related reports and communications, and attendance at progress review meetings at the site.

7.2.1. Periodic site visits by other staff to observe the progress of the project.

7.3. Responses to Requests for Information (RFI)

7.3.1. Responding to requests for clarifications or additional information related to the Contract Documents.

7.4. Supplemental Documentation services consisting of:

7.4.1. Preparation, reproduction and distribution of supplemental Drawings, Specifications and interpretations in response to requests for clarification by Construction Manager or the Owner.

7.4.2. Providing guidance to the Construction Manager in conjunction with the Owner -relative to changed requirements and schedule revisions.

7.5. Quotation Requests/Change Orders consisting of:

- 7.5.1. Preparation, reproduction and distribution of Drawings and Specifications to describe Work to be added, deleted or modified. Changes shall be clearly defined.
- 7.5.2. Review of proposals from Construction Manager for reasonableness of quantities and costs of labor and materials.
- 7.5.3. Review and recommendations relative to changes in time for Substantial Completion.
- 7.5.4. Review on Owner's behalf relative to costs of Work proposed to be added, deleted or modified.
- 7.5.5. Assisting in the preparation of appropriate Modifications of the Contract(s) for Construction.
- 7.5.6. Coordination of communications, approvals, notifications and record-keeping relative to changes in the Work.

7.6. Contract Cost Accounting services consisting of:

- 7.6.1. Review of records of payments on account of the Contract Sum and all changes thereto.
- 7.6.2. Evaluation of Applications for Payment and certification thereof.
- 7.6.3. Review and evaluation of expense data submitted by the Construction Manager for Work under cost-plus-fee arrangements.

7.7. Interpretations and Decisions consisting of:

- 7.7.1. Review of claims, disputes, or other matters between the Owner and Construction Manager relating to the execution or progress of the Work as provided in the Contract Documents.
- 7.7.2. Rendering written decisions.

7.8. Project Closeout services initiated upon notice from the Construction Manager that the Work, or a designated portion thereof which is acceptable to the Owner, is sufficiently complete in accordance with the Contract Documents to verify the list submitted by the Construction Manager of items to be completed or corrected.

- 7.8.1. Review with the Owner's representative for conformity of the Work to the Contract Documents to verify the list submitted by the Construction Manager of items to be completed or corrected.
- 7.8.2. Recommendation of the amounts to be withheld until final completion.
- 7.8.3. Securing and receipt of consent of surety or sureties, if any, to reduction in or partial release of retainage or the making of final payment(s).
- 7.8.4. Issuance of Certificate(s) of Substantial Completion.
- 7.8.5. Inspection(s) upon notice by the Construction Manager that the Work is ready for final inspection and acceptance.
- 7.8.6. Final inspection with the Owner's representative to verify final completion of the Work.

- 7.8.7. Securing and receipt of consent of surety or sureties, if any, to the making of final payment(s).
- 7.8.8. Issuance of final Certificate(s) for Payment.
- 7.8.9. Final inspection of Water Distribution, Sewage Collection and Stormwater/ Environmental Management Facilities. Preparation of certifications to agencies along with record documents prepared based upon record information supplied by the Construction Manager. Services include one final inspection for each certification.

8. POST-CONSTRUCTION SERVICES

8.1. Record Drawing services consisting of:

- 8.1.1. Making arrangements for obtaining from Construction Manager information in the form of marked-up prints, drawings and other data certified by them on changes made during performance of the Work, including Change Directives, RFI's, ASI's, etc.
- 8.1.2. Review of general accuracy of information submitted and certified by the Construction Manager.
- 8.1.3. Preparation of record drawings electronically based on certified information furnished by the Construction Manager.
- 8.1.4. Transmittal one set of full-size reproducible record drawings and general data, appropriately identified, to the Owner and others as directed. Two copies of all electronic data including CADD drawings on CD.

8.2. Warranty Review consisting of:

- 8.2.1. Consultation with and recommendation to the Owner during the duration of warranties in connection with inadequate performance of materials, systems and equipment under warranty.
- 8.2.2. Inspection(s) prior to expiration of the warranty period(s) to ascertain adequacy of performance of materials, systems and equipment.
- 8.2.3. Documenting defects or deficiencies and assisting the Owner in preparing instructions to the Construction Manager for correction of noted defects.

9. ADDITIONAL SERVICES/EXPENSES (not included in the base fee):

9.1. Owner-Provided Services:

- 9.1.1. Environmental assessment of site, if necessary.
- 9.1.2. Environmental assessment of existing facilities to be renovated and/or demolished, and the removal of any hazardous material, if necessary.
- 9.1.3. Printing of all Contract Documents issued for bidding and construction.
- 9.1.4. Distribution of Contract Documents to Construction Manager for estimating and bidding purposes.

- 9.2. Mock-Up Services** relating to any space for study during the design phases and consisting of:
- 9.2.1. Design and documentation for the required mock-up.
 - 9.2.2. Construction administration of mock-up construction activities.
 - 9.2.3. Arrangements for testing performance of mock-up.
 - 9.2.4. Review, analysis and reporting of results.
- 9.3. Prepare an Inventory** of existing furniture and equipment that will be placed in the new facilities.
- 9.4. Value Engineering** – Value engineering is the detailed, systematic review of the design concepts, construction techniques, materials and building types associated with a project solely in terms of life cycle costs in an attempt to obtain optimum value for every dollar spent. If Owner chooses to engage in value engineering, Owner shall either retain the services of an independent Value Engineer (“VE”) to perform the above review services to be complete at a stage no later than the completion of schematic design, or may pay a mutually negotiated sum “at the time the services are requested” to CONSULTANT to perform the above review services at a stage later than the completion of schematic design, Owner acknowledges that schedule and cost impacts may occur.
- 9.4.1. If Owner chooses to retain an independent VE, all recommendations of the VE shall be given to CONSULTANT for its review and adequate time will be provided for CONSULTANT to respond to these recommendations. CONSULTANT may be compensated as an additional service for time spent to review the recommendations of the VE and to incorporate those accepted by both Owner and CONSULTANT. Objections to any recommendations made by the VE shall be stated in writing. Owner agrees that CONSULTANT shall not be responsible for any damage, cost or liability which arises in connection with or as a result of the incorporation of such design changes.
- 9.5. Commissioning** – The performance of a functional and operational check of all systems and equipment to verify the installation is performing to the design criteria. CONSULTANT would prepare this service in conjunction with an independent contractor experienced in such activities.
- 9.6. Structural Blast Resistance** - Analysis of building structural systems to resist loads imposed by blast forces on exterior of facility. This would require an additional blast consultant to be obtained.
- 9.7. Security Systems:** The Security portion of the project will include the design and documentation of Electronic Security System from Schematic Design through Construction Administration Services. The Electronic Security System will include intrusion detection, access control, electronic door control and monitoring,

operational intercom, fixed duress alarms, monitoring and control panels, CCVE systems, control room layouts, rough-ins for x-ray screening/magnetometer at entry lobby, and parcel screening. As part of the overall security plan CONSULTANT will provide a site analysis to determine passive security measures to be incorporated for the facility. Deliverables for the above scope for each task are as listed below.

- 9.7.1. **Schematic Design (SDs):** CONSULTANT will provide a written security narrative describing the Electronic Security System, reflecting the design approach based on program requirements. In addition, CONSULTANT will provide two people for a one day on site Security Workshop to validate the security program and establish the design intent.
- 9.7.2. **Design Development (DDs):** CONSULTANT will provide job specific draft specifications of the Electronic Security System including plans indicating device locations, and outline specifications, and equipment selections reflecting design approach. CONSULTANT will provide one person for 1 day to attend an on-site design review with the Owner and Design Team members to review the Electronic Security System Design Development documents.
- 9.7.3. **Construction Documents (CDs):** Upon completion of this review, CONSULTANT will provide completed biddable documents including plans, details, schedules, riser diagrams, and specifications required to fully document the Electronic Security System. In addition, CONSULTANT will provide, at the completion of the Construction Documents phase, two (2) copies of a Design Information Manual (DIM) outlining major equipment selections utilized as the basis of design for the Electronic Security Systems. CONSULTANT will conduct mid-point design review with Owner and Design Team members to review the Electronic Security Construction Documents.
- 9.7.4. **Bidding:** CONSULTANT will review all questions related to the Electronic Security System submitted, and provide answers in written addendum as required.
- 9.7.5. **Construction Administration (CA):** CONSULTANT will provide one person for four, one day intermediate site visits during construction. In addition, upon written notification of substantial completion CONSULTANT will provide two persons for one day (16 hours total) to review and test the Electronic Security System.
 - 9.7.5.1. Included in this phase of work is the review of security shop drawing submittals and written responses to security RFI from the contractor.
 - 9.7.5.2. Deliverable for this phase of work will include a written field report for the intermediate site visits, and a final report and punch list of the site visit made following written notice of substantial completion.

9.7.6. **Expanded Security System Design** - The following systems and services can be provided in addition to the Electronic Security Design defined in previous sections:

9.7.6.1. Assistance Stations

9.7.6.2. Parking Area Equipment (cameras, card access control)

9.7.6.3. Wireless Duress

9.7.6.4. Hydraulic Barriers

9.7.6.5. Biometrics

9.7.6.6. Perimeter protection systems

9.7.6.7. Post Construction Services: CONSULTANT will provide two people for one day (16 hours total) to conduct a pre-warranty expiration review of the electronic security system. The review will focus on inspection of equipment, operational functions, defects or deficiencies within the system and will be documented in report form and issued to the owner.



EXHIBIT C

SCHEDULE OF REIMBURSABLES

1. Reproduction Cost

A.....Regular Copying	Single Side	Double
Sided		
8 ½ x 11 (black & white).....\$ 0.15/page	\$ 0.25/sheet	
8 ½ x 11 (color)\$ 0.30/page	\$ 0.40/sheet	
8 ½ x 14 (black & white).....\$ 0.15/page	\$ 0.25/sheet	
8 ½ x 14 (color)\$ 0.30/page	\$ 0.40/sheet	
11 x 17 (black & white).....\$ 0.25/page	\$ 0.35/sheet	
11 x 17 (color)\$ 0.40/page	\$ 0.50/sheet	
9 ½ x 24 Single Side Only.....\$ 1.00/page		
17 x 22 Single Side Only.....\$ 2.00/page		
18 x 24 Single Side Only.....\$ 2.00/page		
24 x 36 Single Side Only.....\$ 3.00/page		
30 x 30 Single Side Only.....\$ 5.00/page		
32 x 34 Single Side Only.....\$ 5.00/page		
Other sizes-per square inch\$ 0.03/page		
Compact Digital Disk.....\$ 6.00/disk		
B. Blueprint Copy.....\$10.00/page		
2. Subcontractor Services Actual Costs
3. Special Consultants Actual costs
4. Telecommunications

A. Local	Non-reimbursable
B. Non-Local	Actual Costs
5. Computer Services Non-reimbursable
6. Travel Expenses In accordance with Chapter 112.061, F.S.;
and further defined in the City of
Kissimmee
Employee Handbook
7. Postage, Fed Express, UPS Actual Costs
8. Pre-approved Equipment
(includes purchase and rental of equipment used in project) Actual Costs

EXHIBIT D

AFFIDAVIT CERTIFICATION
IMMIGRATION LAWS

SOLICITATION NO.: RFP2023-006 PROJECT NAME: Architectural and Engineering Services

THE CITY OF KISSIMMEE, a MUNICIPAL CORPORATION OF THE STATE OF FLORIDA (CITY), WILL NOT INTENTIONALLY AWARD CITY CONTRACTS TO ANY CONTRACTOR WHO KNOWINGLY EMPLOYS UNAUTHORIZED ALIEN WORKERS, CONSTITUTING A VIOLATION OF THE EMPLOYMENT PROVISIONS CONTAINED IN 8 U.S.C. SECTION 1324 a(e) {SECTION 274A(e) OF THE IMMIGRATION AND NATIONALITY ACT ("INA").

THE CITY MAY CONSIDER THE EMPLOYMENT BY ANY CONTRACTOR OF UNAUTHORIZED ALIENS A VIOLATION OF SECTION 274A(e) OF THE INA. **SUCH VIOLATION BY THE RECIPIENT OF THE EMPLOYMENT PROVISIONS CONTAINED IN SECTION 274A(e) OF THE INA SHALL BE GROUNDS FOR UNILATERAL CANCELLATION OF THE CONTRACT BY THE CITY.**

BIDDER ATTESTS THAT THEY ARE FULLY COMPLIANT WITH ALL APPLICABLE IMMIGRATION LAWS (SPECIFICALLY TO THE 1986 IMMIGRATION ACT AND SUBSEQUENT AMENDMENTS).

Attest:

CONSULTANT

By:

Norman Barrientos

Norman Barrientos, AIA

Corporate Secretary

Title: President

STATE OF ~~FLORIDA~~ Wisconsin
COUNTY OF Milwaukee

The foregoing instrument was acknowledged before me this 21 day of November, 2023, by means of ☒ physical presence or ☐ online notarization, by (name of person) as (type of authority) for (name of party on behalf of whom instrument was executed), a Florida corporation, who is personally known to me or has produced identification.

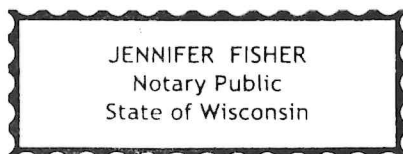
Notary Seal:

Notary:

Jennifer Fisher

Print Name: Jennifer Fisher

My Commission Expires: June 26, 2024.



Architectural/Engineering Services Master Agreement

THIS ARCHITECTURAL/ENGINEERING MASTER SERVICES AGREEMENT ("Agreement") is entered into as of the Effective Date (hereinafter defined) by and between the City of Kissimmee, a Municipal Corporation of the State of Florida, by and through its Commission, 101 Church Street, Kissimmee, Florida 34741 (hereinafter referred to as the "CITY"), and **BEA ARCHITECTS, INC.** 11575 NW 7th Avenue Miami, Florida 33168, whose Federal Identification Number is: 65-1020158 (hereinafter referred to as the "CONSULTANT").

WITNESSETH:

WHEREAS, the CITY requires certain architectural and/or engineering services to be performed in the City of Kissimmee; and,

WHEREAS, the CITY has solicited for these professional services via RFQ2023-006, an advertised request for qualifications (the "RFQ"), and has received numerous responsive bids thereto; and

WHEREAS, the CONSULTANT remains agreeable to providing the CITY the professional services and represents that it is capable and prepared to do so;

NOW, THEREFORE, in consideration of the promises contained herein, the CITY and the CONSULTANT (collectively, the "Parties") hereby agree, as follows:

1.0 Term

1.1 This Agreement shall take effect on the date of its execution by the Mayor, The City of Kissimmee Commission (the "Effective Date").

1.2 The term of this Agreement shall be for a five (5) year period, commencing upon the Effective Date, unless otherwise terminated as provided herein.

2.0 CONSULTANT –SERVICES -- GENERAL

2.1 The CONSULTANT shall provide the CITY complete architectural and engineering services necessary to provide construction documents and administration for various projects (individually a "Project" and collectively, the "Projects") throughout the Term, as may be further specifically designated and authorized by the CITY in writing. Such authorization shall be in the form of either a Consultant Services Authorization ("CSA") or a Contract Purchase Order ("CPO"), and all provisions of this Agreement shall apply to the CSA or CPO with full force and effect as if appearing in full within each CSA or CPO. Each CSA or CPO will set forth a specific Scope of Services, maximum limit of compensation, schedule, liquidated damages, and completion date, and shall become effective upon the due execution. When the CONSULTANT and the CITY enter into a CSA or CPO where the term

thereof expires on a date that is later than the date of this Agreement, the CONSULTANT and the CITY agree that the terms of this Agreement and any amendments, attachments, or provisions thereof are automatically extended until the expiration or full completion of the requirements of the CSA or CPO, as applicable, have been performed. Cancellation by the CITY of any remaining service prior to the full completion of the requirements of the CSA/CPO shall cause the terms of this Agreement to terminate at the same time. This provision only applies when the expiration of the CSA/CPO extends beyond the expiration of this Agreement. It does not apply when a CSA/CPO expires or is cancelled prior to the expiration of this Agreement.

2.2 The CONSULTANT is not authorized to undertake any Project without a duly executed CSA or CPO, which shall specify the work to be performed. The CONSULTANT recognizes that the CITY may employ several different CONSULTANTS and engineers to perform the services described herein and that the CONSULTANT has not been employed as the exclusive agent to perform any such services.

2.3 In addition to the services described in this Section 2.0, the RFQ, the Consultant's responsive proposal thereto, and otherwise set forth and described in the body of this Agreement, the CONSULTANT may also be authorized to perform, via a duly executed CSA or CPO, any or all of those services set forth and further described in **Exhibit "B"**, attached hereto and incorporated herein (collectively, the "Services").

3.0 **Project Administration Services**

3.1 The CONSULTANT shall manage the CONSULTANT'S services and administer the Project. The CONSULTANT shall consult with the CITY, research applicable design criteria, attend Project meetings, and communicate with members of the Project team and issue progress reports. The CONSULTANT shall coordinate the services provided by the CONSULTANT and the CONSULTANT'S sub-consultants with those services provided by the CITY and the CITY'S consultants.

3.2 When Project requirements have been sufficiently identified, the CONSULTANT may be required to prepare, and periodically update, a Project schedule that shall identify milestone dates for decisions required of the CITY, design services furnished by the CONSULTANT, completion of documentation provided by the CONSULTANT, commencement of construction and Substantial Completion of the Work.

3.3 The CONSULTANT shall consider the value of alternative materials, building systems and equipment, together with other considerations based on program, budget and aesthetics in developing the design for the Project.

3.4 Upon request of the CITY, the CONSULTANT shall make a presentation to explain the design of the Project to representatives of the CITY.

3.5 The CONSULTANT shall submit design documents to the CITY at intervals appropriate to the design process for purposes of evaluation and approval by the CITY. The CONSULTANT shall be entitled to rely on approvals received from the CITY in the further development of the design.

3.6 The CONSULTANT shall assist the CITY in connection with the CITY'S responsibility for filing documents required for the approval of governmental authorities having jurisdiction over the Project.

3.7 EVALUATION OF BUDGET AND COST OF THE WORK.

3.7.1 When the Project requirements have been sufficiently identified, the CONSULTANT shall prepare a preliminary estimate of the Cost of the Work. This estimate may be based on current area, volume or similar conceptual estimating techniques. The CONSULTANT shall advise the CITY of any adjustments to previous estimates of the Cost of the Work indicated by changes in Project requirements or general market conditions. If at any time the estimate of the Cost of the Work exceeds the CITY'S budget, the CONSULTANT shall make appropriate recommendations to the CITY to adjust the Project's size, quality or budget, and the CITY shall cooperate with the CONSULTANT in making such adjustments.

3.7.2 Evaluations of the CITY'S budget for the Project, the preliminary estimate of the Cost of the Work, and updated estimates of the Cost of the Work represent the CONSULTANT'S judgment as a design professional familiar with the construction industry. It is recognized, however, that neither the CONSULTANT nor the CITY has control over the cost of labor, materials or equipment, over the CONSULTANT'S methods of determining bid prices, or over competitive bidding, market or negotiating conditions. Accordingly, the CONSULTANT cannot and does not warrant or represent that bids or negotiated prices will not vary from the CITY'S budget for the Project or from any estimate of the Cost of the Work or evaluation prepared or agreed to by the CONSULTANT.

3.7.3 In preparing estimates of the Cost of the Work, the CONSULTANT shall be permitted to include contingencies and allowances for design, bidding and price escalation; to determine what materials, equipment, component systems and types of construction are to be included in the Contract Documents; to make reasonable adjustments in the scope of the Project and to include in the Contract Documents alternate bids as may be necessary to adjust the estimated Cost of the Work to meet the CITY'S budget for the Cost of the Work.

3.7.4 If bidding or negotiation has not commenced within 90 days after the CONSULTANT submits the Construction Documents to the CITY, the

budget for the Cost of the Work shall be adjusted to reflect changes in the general level of prices in the construction industry.

- 3.7.5** If the budget for the Cost of the Work is exceeded by the lowest bona fide bid or negotiated proposal, and the CITY elects to revise the Project scope to reduce the Cost of the Work, then the CONSULTANT, without additional charge, shall modify the Contract Documents as necessary to comply with the fixed limit as a condition of this Agreement.

4.0 Evaluation and Planning Services

- 4.1 The CITY may furnish a program setting forth the CITY's objectives, schedule, constraints and criteria, including space requirements and relationships, special equipment, systems and site requirements.** The CONSULTANT shall provide a preliminary evaluation of the information furnished by the CITY under this Agreement, including the CITY'S program and schedule requirements and budget for the Cost of the Work, each in terms of the other. The CONSULTANT shall review such information to ascertain that it is consistent with the requirements of the Project and shall notify the CITY of any other information or consultant services that may be reasonably needed for the Project.

- 4.2** The CONSULTANT shall provide a preliminary evaluation of the CITY's site for the Project based on the information provided by the CITY of site conditions, and the CITY'S program, schedule and budget for the Cost of the Work.

5.0 Design Services

5.1 SCHEMATIC DESIGN DOCUMENTS

5.1.1 The CONSULTANT shall provide Schematic Design Documents based on the mutually agreed-upon program, schedule, and budget for the Cost of the Work. The documents shall establish the conceptual design of the Project illustrating the scale and relationship of the Project components. The Schematic Design Documents shall include a conceptual site plan, if appropriate, and preliminary building plans, sections and elevations. At the CONSULTANT's option, the Schematic Design Documents may include study models, perspective sketches, electronic modeling or combinations of these media. Preliminary selections of major building systems and construction materials shall be noted on the drawings or described in writing.

5.2 DESIGN DEVELOPMENT DOCUMENTS

5.2.1 The CONSULTANT shall provide Design Development Documents based on the approved Schematic Design Documents and updated budget for the Cost of the Work. The Design Development Documents shall illustrate and describe the refinement of the design of the Project, establishing the scope, relationships, forms, size and appearance of the Project by means of

plans, sections and elevations, typical construction details, and equipment layouts. The Design Development Documents shall include specifications that identify major materials and systems and establish in general their quality levels.

5.3 CONSTRUCTION DOCUMENTS

5.3.1 The CONSULTANT shall provide Construction Documents based on the approved Design Development Documents and updated budget for the Cost of the Work. The Construction Documents shall set forth in detail the requirements for construction of the Project. The Construction Documents shall include Drawings and Specifications that establish in detail the quality levels of materials and systems required for the Project.

5.3.2 During the development of the Construction Documents, the CONSULTANT shall assist the CITY in the development and preparation of: (1) bidding and procurement information which describes the time, place and conditions of bidding; bidding or proposal forms; and the form of agreement between the CITY and the CONSULTANT; and (2) the Conditions of the Contract for Construction (General, Supplementary and other Conditions). The CONSULTANT also shall compile the Project Manual that includes the Conditions of the Contract for Construction and Specifications and may include bidding requirements and sample forms.

5.3.3 Progress submittals of design documents shall be delivered to the CITY for review and approval, at the 50% Construction Document Phase, the 100% Construction Document to be submitted for permit, and the 100% Construction Documents, approved for construction for each subproject. Such submittals shall be reissued as necessary to secure approval. CITY comments shall be incorporated into the next phase of the work. CONSULTANT is entitled to rely upon CITY'S approval that the design conforms to the program at each stage. The CITY and the CONSULTANT agree that they shall not proceed to the next phase, including the Construction Phase, until they have mutually agreed that the project is feasible in accordance with the budget approved by the CITY.

6.0 Contract Administration Services

6.1 GENERAL ADMINISTRATION

6.1.1 The CONSULTANT shall provide administration of the Contract between the CITY and the Contractor as set forth in the CITY'S Agreement with their Contractor.

6.1.2 The CONSULTANT'S responsibility to provide the Contract Administration Services under this Agreement commences with the Notice to Proceed to the

Contractor and terminates at the issuance to the CITY of the final Certificate for Payment. However, the CONSULTANT may be entitled to a Change in Services in accordance with Section 47.2 if Contract Administration Services extend 60 days after the date of Final Completion of the Work.

- 6.1.3** The CONSULTANT shall be a representative of, and shall advise and consult with, the CITY during the provision of the Contract Administration Services. The CONSULTANT shall have authority to act on behalf of the CITY only to the extent provided in this Agreement unless otherwise modified by written amendment.
- 6.1.4** Duties, responsibilities and limitations of authority of the CONSULTANT under this Section 6.0 shall not be restricted, modified or extended without written agreement of the CITY and CONSULTANT.
- 6.1.5** The CONSULTANT shall review properly prepared, timely requests by the Contractor for additional information about the Contract Documents. A properly prepared request for additional information about the Contract Documents shall be in a form prepared or approved by the CONSULTANT and shall include a detailed written statement that indicates the specific Drawings or Specifications in need of clarification and the nature of the clarification requested.
- 6.1.6** If deemed appropriate by the CONSULTANT, the CONSULTANT shall on the CITY'S behalf prepare, reproduce and distribute supplemental Drawings and Specifications in response to requests for information by the Contractor.
- 6.1.7** The CONSULTANT shall interpret and decide matters concerning performance of the CITY and Contractor under, and requirements of, the Contract Documents on written request of either the CITY or Contractor. The CONSULTANT'S response to such requests shall be made in writing within any time limits agreed upon or otherwise with reasonable promptness.
- 6.1.8** Interpretations and decisions of the CONSULTANT shall be consistent with the intent of and reasonably inferable from the Contract Documents and shall be in writing or in the form of drawings. When making such interpretations and initial decisions, the CONSULTANT shall endeavor to secure faithful performance by both CITY and Contractor, shall not show partiality to either, and shall not be liable for the results of interpretations or decisions so rendered in good faith.
- 6.1.9** The CONSULTANT shall render initial decisions on claims, disputes or other matters in question between the CITY and CONSULTANT as provided in the Contract Documents. However, the CITY'S decisions on matters relating to aesthetic effect shall be final if consistent with the intent expressed in the Contract Documents.

6.2 EVALUATIONS OF THE WORK

6.2.1 The CONSULTANT, as a representative of the CITY, shall visit the site at intervals appropriate to the stage of the Contractor's operations, or as otherwise agreed by the CITY and the CONSULTANT, (1) to become generally familiar with and to keep the CITY informed in writing about the progress and quality of the portion of the Work completed, (2) to endeavor to guard the CITY against defects and deficiencies in the Work, and (3) to determine in general if the Work is being performed in a manner indicating that the Work, when fully completed, will be in accordance with the Contract Documents. However, the CONSULTANT shall not be required to make exhaustive or continuous on-site inspections to check the quality or quantity of the Work. The CONSULTANT shall neither have control over or charge of, nor be responsible for, the construction means, methods, techniques, sequences or procedures, or for safety precautions and programs in connection with the Work, since these are solely the Contractor's rights and responsibilities under the Contract Documents.

6.2.2 The CONSULTANT shall report to the CITY known deviations from the Contract Documents and from the most recent construction schedule submitted by the Contractor. However, the CONSULTANT shall not be responsible for the Contractor's failure to perform the Work in accordance with the requirements of the Contract Documents. The CONSULTANT shall be responsible for the CONSULTANT'S negligent acts or omissions, but shall not have control over or charge of and shall not be responsible for acts or omissions of the Contractor, Sub-contractors, or their agents or employees, or of any other persons or entities performing portions of the Work.

6.2.3 The CONSULTANT shall at all times have access to the Work wherever it is in preparation or progress.

6.2.4 Except as may otherwise be provided in the Contract Documents or when direct communications have been specially authorized in writing, the CONSULTANT and Contractor shall communicate through the CITY. Communications by and with the CONSULTANT'S sub-consultants shall be through the CONSULTANT. The CONSULTANT shall respond to the CITY with the CONSULTANT'S written responses or correspondence within a reasonable length of time.

6.2.5 The CONSULTANT shall have authority to reject Work that does not conform to the Contract Documents. Whenever the CONSULTANT considers it necessary or advisable, the CONSULTANT, with the CITY'S approval, will have authority to require inspection or testing of the Work in accordance with the provisions of the Contract Documents, whether or not such Work is fabricated, installed or completed. However, neither this

authority of the CONSULTANT nor a decision made in good faith, either to exercise or not to exercise such authority, shall give rise to a duty or responsibility of the CONSULTANT to the Contractor, Sub-contractor, material and equipment suppliers, their agents or employees or other persons or entities performing portions of the Work. If the CONSULTANT requires inspection or testing of the Work without the CITY'S prior approval, the Work is deemed acceptable, the CONSULTANT will be responsible for any compensation due the Contractor.

6.3 CERTIFICATION OF PAYMENTS TO CONTRACTOR

6.3.1 The CONSULTANT shall review and certify the amounts due the Contractor and shall issue Certificates for Payment in such amounts. The CONSULTANT'S certification for payment shall constitute a representation to the CITY, based on the CONSULTANT'S evaluation of the Work as provided in Paragraph 6.2 and on the data comprising the Contractor's Application for Payment, that the Work has progressed to the point indicated and that, to the best of the CONSULTANT'S knowledge, information and belief, the quality of the Work is in accordance with the Contract Documents. The foregoing representations are subject (1) to an evaluation of the Work for conformance with the Contract Documents upon Substantial Completion, (2) to results of subsequent tests and inspections, (3) to correction of minor deviations from the Contract Documents prior to completion, and (4) to specific qualifications expressed by the CONSULTANT.

6.3.2 The issuance of a Certificate for Payment shall not be a representation that the CONSULTANT has (1) made exhaustive or continuous on-site inspections to check the quality or quantity of the Work, (2) reviewed construction means, methods, techniques, sequences or procedures, (3) reviewed copies of requisitions received from Sub-contractors and material suppliers and other data requested by the CITY to substantiate the Contractor's right to payment, or (4) ascertained how or for what purpose the Contractor has used money previously paid on account of the Contract Sum.

6.3.3 The CONSULTANT shall maintain a record of the Contractor's Applications for Payment.

6.4 SUBMITTALS

6.4.1 The CONSULTANT shall review and approve or take other appropriate action upon the Contractor's submittals such as Shop Drawings, Product Data and Samples, but only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. The CONSULTANT'S action shall be taken with such reasonable promptness as to cause no delay in the Work or in the activities of the CITY, Contractor or separate contractor. Review of such submittals is

not conducted for the purpose of determining the accuracy and completeness of other details such as dimensions and quantities, or for substantiating instructions for installation or performance of equipment or systems, all of which remain the responsibility of the Contractor as required by the Contract Documents. The CONSULTANT'S review shall not constitute approval of safety precautions or, unless otherwise specifically stated by the CONSULTANT, of any construction means, methods, techniques, sequences or procedures. The CONSULTANT'S approval of a specific item shall not indicate approval of an assembly of which the item is a component.

6.4.2 The CONSULTANT shall maintain a record of submittals and copies of submittals supplied by the Contractor in accordance with the requirements of the Contract Documents.

6.4.3 If professional design services or certifications by a design professional related to systems, materials or equipment are specifically required of the Contractor by the Contract Documents, the CONSULTANT shall specify appropriate performance and design criteria that such services must satisfy. Shop Drawings and other submittals related to the Work designed or certified by the design professional retained by the Contractor shall bear such professional's written approval when submitted to the CONSULTANT. The CONSULTANT shall be entitled to rely upon the adequacy, accuracy and completeness of the services, certifications or approvals performed by such design professionals.

6.5 CHANGES IN THE WORK

6.5.1 The CONSULTANT shall prepare Construction Change Directives and assist the City with the preparation of change orders and allowance authorizations for the CITY'S approval and execution in accordance with the Contract Documents. The CONSULTANT may authorize minor changes in the Work not involving an adjustment in Contract Sum or an extension of the Contract Time, which are consistent with the intent of the Contract Documents. If necessary, the CONSULTANT shall prepare, reproduce and distribute Drawings and Specifications to describe Work to be added, deleted or modified.

6.5.2 The CONSULTANT shall review properly prepared, timely requests by the CITY or Contractor for changes in the Work, including adjustments to the Contract Sum or Contract Time. A properly prepared request for a change in the Work shall be accompanied by sufficient supporting data and information to permit the CONSULTANT to make a reasonable determination without extensive investigation or preparation of additional drawings or specifications. If the CONSULTANT determines that requested changes in the Work are not materially different from the requirements of the

Contract Documents, the CONSULTANT may issue an order for a minor change in the Work or recommend to the CITY that the requested change be denied.

6.5.3 If the CONSULTANT determines that implementation of the requested changes would result in a material change to the Contract that may cause an adjustment in the Contract Time or Contract Sum, the CONSULTANT shall make a recommendation to the CITY, who may authorize further investigation of such change. Upon such authorization, and based upon information furnished by the Contractor, if any, the CONSULTANT shall estimate the additional cost and time that might result from such change, including any additional costs attributable to a Change in Services of the CONSULTANT. With the CITY'S approval, the CONSULTANT shall incorporate those estimates into a Change Order or other appropriate documentation for the CITY'S execution or negotiation with the Contractor.

6.5.4 The CONSULTANT shall maintain records relative to changes in the Work.

6.6 PROJECT COMPLETION

6.6.1 The CONSULTANT shall conduct inspections to determine the date or dates of Substantial Completion and the date of Final Completion, shall receive from the Contractor and forward to the CITY, for the CITY'S review and records, written warranties and related documents required by the Contract Documents and assembled by the Contractor, and shall issue a final Certificate for Payment based upon a final inspection indicating the Work complies with the requirements of the Contract Documents.

6.6.2 The CONSULTANT'S inspection shall be conducted with the CITY'S Designated Representative to check conformance of the Work with the requirements of the Contract Documents and to verify the accuracy and completeness of the list submitted by the CONSULTANT of Work to be completed or corrected.

6.6.3 When the Work is found to be substantially complete, the CONSULTANT shall inform the CITY about the balance of the Contract Sum remaining to be paid the Contractor, including any amounts needed to pay for final completion or correction of the Work.

6.6.4 The CONSULTANT shall receive from the Contractor and forward to the CITY: (1) consent of surety or sureties, if any, to reduction in or partial release of retainage or the making of final payment and (2) affidavits, receipts, releases and waivers of liens or bonds indemnifying the CITY against liens.

7.0 **Facility Operation Services**

7.1 The CONSULTANT shall meet with the CITY or the CITY'S Designated Representative promptly after Substantial Completion to review the need for facility operation services.

7.2 Upon request of the CITY, and prior to the expiration of one year from the date of Substantial Completion, the CONSULTANT shall conduct a meeting with the CITY and the CITY'S Designated Representative to review the facility operations and performance and to make appropriate recommendations to the CITY.

8.0 **Additional Services**

8.1 The CONSULTANT may be authorized, via a duly executed CSA or CPO, to perform any or all of the additional services as set forth and further described on **Exhibit "B"**.

8.2 **The following minimum** Design and Contract Administration Services shall be provided by the CONSULTANT without a Change in Services in accordance with Section 47.2:

8.2.1 A reasonable number of reviews of each Shop Drawing, Product Data item, sample and similar submittal of the CONSULTANT.

8.2.2 Up to two (2) inspections for any portion of the Work to determine whether such portion of the Work is substantially complete in accordance with the requirements of the Contract Documents.

8.2.3 Up to two (2) inspections for any portion of the Work to determine final completion.

8.3 The following Design and Contract Administration Services shall be provided by the CONSULTANT as a Change in Services in accordance with Section 47.2:

8.3.1 Change Orders and Construction Change Directives requiring evaluation of proposals, including the preparation or revision of Instruments of Services, with prior approval by CITY;

8.3.2 Providing consultation concerning replacement of Work resulting from fire or other cause during construction;

8.3.3 Evaluation of substitutions proposed by the CITY'S consultants or contractors and making subsequent revisions to the Instruments of Service, with prior approval by CITY.

8.3.4 Preparation of design and documentation for alternate bid or proposal requests proposed by the CITY after the Guaranteed Maximum Price is established.

8.3.5 Contract Administration Services provided 60 (sixty) days after the date of Final Completion of the Work, as may be requested by the CITY.

8.4 The CONSULTANT shall furnish or provide the following services only if specifically designated:

- 8.4.1 Programming
- 8.4.2 Land Survey Services
- 8.4.3 Geotechnical Services
- 8.4.4 Space Schematics/Flow Diagrams
- 8.4.5 Existing Facilities Surveys
- 8.4.6 Economic Feasibility Studies
- 8.4.7 Site Analysis
- 8.4.8 Environmental Studies and Reports
- 8.4.9 User-Supplied Data
- 8.4.10 Schedule Development and Monitoring
- 8.4.11 Civil Design
- 8.4.12 Landscape Design
- 8.4.13 Interior Design
- 8.4.14 Value Analysis
- 8.4.15 Cost Estimating
- 8.4.16 On-Site Project Representation
- 8.4.17 Construction Management
- 8.4.18 Start-up Assistance
- 8.4.19 Record Drawings
- 8.4.20 Post-Contract Evaluation
- 8.4.21 Tenant-Related Services
- 8.4.22 Underground Field Drainage

9.0 **Compensation**

9.1 In consideration of the Services provided by the CONSULTANT pursuant to this Agreement, the CITY shall pay CONSULTANT compensation which may be negotiated as either a not-to-exceed price or a lump sum amount, in the CITY's sole discretion.

9.2. In the event a not to exceed price is negotiated, compensation shall be billed and paid based on and in accordance with the Hourly Rate Schedule attached hereto and incorporated herein as **Exhibit "A"**. The Hourly Rate Schedule identifies all job

classifications which will perform billable services pursuant to this Agreement and the fee for each job classification. Performance of work by personnel in job classifications not listed on the fee schedule will result in nonpayment for such services.

- 9.3 All invoices must reference this Agreement number, using an invoice form approved by the CITY.
- 9.4 Each individual invoice shall be due and payable forty-five (45) days after receipt by the CITY of a correct, fully documented, invoice, in form and substance satisfactory to the CITY with all appropriate cost substantiations attached. All invoices shall be delivered to:

The City of Kissimmee

Public Works & Engineering
Attention: Facilities Management Director
101 Church Street
Kissimmee, FL 34741

- 9.5 In order for both parties herein to close their books and records for a particular Project, the CONSULTANT will clearly state "Final Invoice" on the CONSULTANT's final/last billing to the CITY for such Project. This certifies that all services have been properly performed and all charges and costs have been invoiced to the CITY. Since this account will thereupon be closed, any and other further charges if not properly included on this final invoice are waived by the CONSULTANT.
- 9.6 Payment of the final invoice for any particular Project shall not constitute evidence of the CITY's acceptance of the Work or Services.
- 9.7 Pursuant to Section 9.2, if a not to exceed fee is negotiated, invoices shall be accompanied by time and task records for all billable hours appearing on the invoice. Alternatively, if a lump sum amount is negotiated, invoices shall be made upon the completion of each phase of the work in proportion to the Services performed, as specifically set forth in the applicable CSA or CPO. Additional documentation may be requested by the CITY and, if so requested, shall be furnished by the CONSULTANT to the CITY Auditor's satisfaction.
- 9.8 A contract amendment/change order may be executed by both parties, after Substantial Completion, to incorporate any additional design fees due to the CONSULTANT. The amendment shall be based upon 7% of the additional cost of the work that has been added to the project where the CONSULTANT participated in the design process.
- 9.9 If the services of the CONSULTANT are changed as described in Section 47.2.1 or

47.2.2, the CONSULTANT'S compensation shall be adjusted. Such adjustment shall be computed as a fixed fee on a task-by-task basis, or, in the discretion of the CITY, in an otherwise equitable manner. Adjustments to the CONSULTANT'S compensation may be approved by the Facilities Management Director, providing the compensation adjustment does not exceed the amount specified in the applicable CSA or CPO.

9.10 Forty (40) calendar days shall be allowed for the CITY's inspection and approval of the goods and services for which any invoice has been submitted.

9.11 No deduction shall be made from the CONSULTANT's compensation on account of penalty, liquidated damages, or other sums withheld from payments to contractors.

9.12 If any work designed or specified by the CONSULTANT during any phase of service is abandoned or suspended in whole or in part, the CONSULTANT is to be paid for the service performed on account of it prior to receipt of written notice from the CITY of such abandonment or suspension, together with reimbursements then due and any terminal expense resulting from abandonment or suspension for more than three months.

10.0 **Reimbursable Expense**

10.1 All requests for payment of out-of-pocket expenses eligible for reimbursement under the terms of this Agreement shall include copies of paid receipts, invoices or other documentation acceptable to the CITY. Such documentation shall be sufficient to establish that the expense was actually incurred and necessary in the performance of the Scope of Work described in this Agreement.

10.2 Reimbursable Expenses are the actual, pre-approved, expenses incurred directly in connection with the applicable Consultant Services Authorization, and include:

Overnight Deliveries

Reproduction

Sub-Consultant

Long Distance Telephone Calls (excluding Florida cities located outside the boundaries of Osceola County)

10.3 Mileage shall be reimbursed in accordance with Section 112.061, Florida Statutes, for pre-approved out-of-county travel (excluding travel from home offices located outside of Osceola County to the Osceola County line).

10.4 Reimbursable Expenses, including sub-consultants, shall be reimbursed at cost.

10.5 Pre-approved travel costs shall be reimbursed in accordance with Section 112.061, Florida Statutes.

10.6 All assets, i.e. durable goods, purchased as reimbursable expenses become the property of the CITY upon completion of the work for which the asset was utilized. All such assets must be surrendered by delivery to the City of Kissimmee Public Works and Engineering Division offices upon demand termination of the Agreement or the conclusion of the project, whichever occurs first.

10.7 The CITY shall reimburse the CONSULTANT for any documents required over and above the number specified in this Agreement per the City's Reimbursable Schedule that is attached hereto as Exhibit "C".

11.0 **Project Team**

11.1 The Project Team, including the CITY'S Designated Representative and the CONSULTANT'S Designated Representative, shall be as specified in the applicable CSA or CPO.

11.2 The Commission (the "Board") hereby authorizes the CITY'S Designated Representative to act as the Board's agent and execute documents associated with a particular project. Examples of these documents are Notices of Commencements, Certificates of Substantial and Final Completion and permits from applicable agencies.

11.3 The persons or entities, in addition to the CITY'S Designated Representative, who have rights to review the CONSULTANT'S submittals to the CITY, shall be as specified in the applicable CSA or CPO.

11.4 The CITY'S other consultants and the CONSULTANT'S sub-consultants or any other person or entity retained at the CONSULTANT'S expense shall be as specified in the applicable CSA or CPO.

12.0 **Consultant's Standard of Care**

12.1 The CONSULTANT'S services shall be performed as expeditiously as is consistent with professional skill and care and the orderly progress of the Project. The CONSULTANT shall submit for the CITY'S approval a schedule for the performance of the CONSULTANT'S services which initially shall be consistent with the time periods established in the applicable CSA or CPO and which shall be adjusted, if necessary, as the Project proceeds. This schedule shall include allowances for periods of time required for the CITY'S review, for the performance of the CITY'S consultants, and for approval of submissions by authorities having jurisdiction over the Project. The CONSULTANT or CITY shall not, except for reasonable cause, exceed time limits established by this schedule approved by the CITY.

12.2 The CONSULTANT'S Designated Representative, identified in the

applicable CSA or CPO, shall be authorized to act on the CONSULTANT'S behalf with Respect to the Project.

12.3 The CONSULTANT shall maintain the confidentiality of information specifically designated as confidential by the CITY, unless withholding such information would violate the law, create the risk of significant harm to the public or prevent the CONSULTANT from establishing a claim or defense in an adjudicatory proceeding. The CONSULTANT shall require of the CONSULTANT'S consultants similar agreements to maintain the confidentiality of information specifically designated as confidential by the CITY.

12.4 Except with the CITY'S knowledge and prior express written consent, the CONSULTANT shall not engage in any activity, or accept any employment, interest or contribution that would reasonably appear to compromise the CONSULTANT'S professional judgment with respect to the Project.

12.5 The CONSULTANT shall review laws, codes and regulations applicable to the CONSULTANT'S services. The CONSULTANT shall design the Project to conform to the requirements imposed by governmental authorities having jurisdiction over the Project.

12.6 The CONSULTANT shall be entitled to rely on the accuracy and completeness of services and information furnished by the CITY. The CONSULTANT shall provide prompt written notice to the CITY if the CONSULTANT becomes aware of any errors, omissions or inconsistencies in such services or information.

12.7 The CONSULTANT has represented to the CITY that it has the personnel and experience necessary to perform the work in a professional and workmanlike manner.

12.8 The CONSULTANT shall exercise the same degree of care, skill, and diligence in the performance of the Services as is provided by a professional of like experience, knowledge and resources, under similar circumstances.

12.9 The CONSULTANT shall, at no additional cost to CITY, re-perform services which fail to satisfy the foregoing standard of care or otherwise fail to meet the requirement of this Agreement.

12.10 The CONSULTANT shall use skilled and competent personnel to perform the services.

13.0 **Insurance**

13.1 **General Provisions**

13.1.1 The CONSULTANT shall maintain, at all times, the following minimum levels of insurance and shall, without in any way altering their liability, obtain, pay for and maintain insurance for the coverage and amounts of coverage not less than those set forth below and provide the CITY with a certified copy of each policy applicable to this Agreement followed thereafter by an annual Certificate of Insurance satisfactory to the CITY to evidence such coverage before any work commences. Such certificates will provide that there shall be no termination, non-renewal, modification or expiration of such coverage without thirty (30) days prior written notice to the CITY .

13.1.2 The CITY shall be named as an additional insured on all CONSULTANT policies related to the project, excluding professional liability and worker's compensation. The general liability and workers' compensation policies shall contain a waiver of subrogation in favor of the CITY. All insurance coverage shall be written with an insurer having an A.M. Best Rating of at least the "A" category and size category of VIII.

13.1.3 The CONSULTANT's self-insured retention or deductible per line of coverage shall not exceed \$25,000.00 without the permission of the CITY.

13.1.4 Any failure by the CONSULTANT to comply with the requirements of this section to provide insurance, the CITY may, at its option, on notice to the CONSULTANT, suspend the work for cause until there is full compliance;

13.1.5 The CITY may, at its sole discretion, purchase such insurance at CONSULTANT's expense provided that the CITY shall have no obligation to do so and if the CITY shall do so, it shall not relieve CONSULTANT of its obligation to obtain insurance.

13.1.6 The CONSULTANT shall not be relieved of or excused from the obligation to obtain and maintain such insurance amount and coverages.

13.1.7 All CONSULTANT's sub-consultants shall be required to include CITY and CONSULTANT as additional insured on their General Liability Insurance policies.

13.1.8 In the event that sub-consultants used by the CONSULTANT do not have insurance, or do not meet the insurance limits, CONSULTANT shall indemnify and hold harmless the CITY for any claim in excess of the sub-consultants' insurance coverage.

13.1.9 The CONSULTANT shall not commence work under this Agreement until all insurance required as stated herein has been obtained and such insurance has been approved by the CITY.

13.2 Comprehensive Automobile Liability Insurance. \$1,000,000.00 combined single limit of liability for bodily injuries, death and property damage resulting from any one occurrence, including all owned, hired, and non-owned vehicles.

13.3 Commercial General Liability. \$1,000,000.00 combined single limit of liability for bodily injuries, death and property damage, and personal injury resulting from any one occurrence, including the following coverages:

13.3.1 Premises and Operations:

Broad Form Commercial General Liability Endorsement to include Blanket Contractual liability (specifically covering, but not limited to, the contractual obligations assumed by the Firm); Personal Injury (with employment and contractual exclusions deleted); and Broad Form Property Damage coverage.

13.3.2 Independent Contractors:

Delete Exclusion relative to collapse, explosion and underground; Property Damage Hazards; Cross Liability Endorsement; and Contractual liability (specifically covering, but not limited to, the contractual obligations assumed by the Firm)

13.4 Professional Liability Insurance. \$2,000,000 for design errors and omissions, exclusive of defense costs. The CONSULTANT shall be required to provide continuing Professional Liability Insurance to cover each project for a period of two (2) years after the project is completed. Insurance requirements may vary depending on projects as determined by the CITY Director of Risk Management and Insurance. The CITY may require the CONSULTANT to provide a higher level of coverage for a specific Project and time frame.

13.5 Performance, Payment and Other Bonds. CONSULTANT shall furnish Performance and Payment Bonds specific to each Project if required and agreed to under the applicable CSA or CPO for the Project.

13.6 Worker's Compensation. CONSULTANT shall provide, pay for, and maintain worker's compensation insurance on all employees, its agents or subcontractors as required by Florida Statutes.

13.7 Employers' Liability. \$1,000,000.

14.0 Indemnification

14.1 General. Having considered the risks and potential liabilities that may exist during the performance of the Services and in consideration of the promises included herein, the CITY and the CONSULTANT agree to allocate such liabilities in accordance with this Section 14.0.

14.2 Indemnification.

14.2.1 The CONSULTANT, to the extent permitted by law, shall indemnify, defend (by counsel reasonably acceptable to the CITY) protect and hold the CITY, and its officers, employees and agents, free and harmless from and against any and all claims, actions, causes of action, liabilities (joint or several), penalties, forfeitures, damages, losses and expenses (including, without limitation, attorneys' fees and costs during negotiation, through litigation and all appeals therefrom), and including, without limitation, any liability or loss resulting from judgments or claims for personal injury, including death, or damage to any property whatsoever, which directly or indirectly result from or arise in connection with (i) the failure of the CONSULTANT to comply with applicable non-conflicting laws, rules or regulations, (ii) the breach by the CONSULTANT of its obligations under this Agreement, (iii) any claim for trademark, patent or copyright infringement arising out of the scope of the CONSULTANT's performance of this Agreement, or (iv) the negligent act, errors or omissions, or intentional or willful misconduct of the CONSULTANT, its sub-consultants, agents, employees and invitees; provided, however, that the CONSULTANT shall not be obligated to defend or indemnify the CITY with respect to any such claims or damages arising out of the CITY's sole negligence.

14.2.2 The CITY's review, comment and observation of the CONSULTANT's work and performance of this Agreement shall in no manner constitute a waiver of the indemnification provisions of this Agreement.

14.2.3 The CONSULTANT agrees that it bears sole legal responsibility for its work and work product, and the work and work product of sub-consultants and their employees, and/or for CONSULTANT's performance of this Agreement and its work product(s).

14.3 Survival. Upon completion of all Services, obligations and duties provided for in this Agreement, or in the event of termination of this Agreement for any reason, the terms and conditions of this Section 14.0 shall survive as if the Agreement were in full force and effect.

15.0 Independent Contractor

15.1 The CONSULTANT undertakes performance of the Services as an independent contractor and shall be wholly responsible for the methods of performance.

15.2 The CITY shall have no right to supervise the methods used, but the CITY shall have the right to observe such performance.

15.3 The CONSULTANT shall work closely with the CITY in performing Services under this Agreement.

15.4 The CONSULTANT shall not pledge the CITY's credit or make it a guarantor of payment or surety for any contract, debt, obligation, judgment, lien or any form of indebtedness and shall have no right to speak for or bind the CITY in any manner.

15.5 The CONSULTANT further warrants and represents that it has no obligation or indebtedness that would impair its ability to fulfill the terms of this Agreement.

16.0 **Authority to Practice**

16.1 The CONSULTANT hereby represents and warrants that it has and will continue to maintain all licenses and approvals required to conduct its business, and that it will at all times conduct its business activities in a reputable manner.

17.0 **Compliance with Laws**

17.1 In performance of the Services, the CONSULTANT will comply with applicable regulatory requirements including federal, state, special district, and local laws, rules, regulations, orders, codes, criteria and standards.

18.0 **Subcontracting**

18.1 The CITY reserves the right to accept the use of any proposed subcontractor or sub-consultant of the CONSULTANT (for purposes of this Section 18.0 referred to as a “subcontractor”), or to reject the selection of a particular subcontractor and to inspect all facilities of any subcontractor.

18.2 If a subcontractor fails to perform or make progress, as required by this Agreement, and it is necessary to replace the subcontractor to complete the work in a timely fashion, the CONSULTANT shall promptly do so, subject to acceptance of the new subcontractor by the CITY. Failure of a subcontractor to timely or properly perform its obligations shall not relieve CONSULTANT of its obligations hereunder.

19.0 **Federal and State Taxes**

19.1 The CITY is exempt from Federal Tax and State Sales and Use Taxes. Upon request, the CITY will provide an exemption certificate to the CONSULTANT. The CONSULTANT shall not be exempted from paying sales tax to its suppliers for materials to fulfill contractual obligations with the CITY, nor shall the CONSULTANT be authorized to use the CITY’s Tax Exemption Number in securing such materials.

20.0 **Public Entity Crimes**

20.1 The CONSULTANT understands and acknowledges that this Agreement with the CITY will be void, in the event the conditions under Section 287.133, Florida Statutes apply to the CONSULTANT, relating to conviction for a public entity crime.

21.0 **CITY’s Responsibilities**

21.1 The CITY shall be responsible for providing access to all CITY project sites, and providing information in the CITY’s possession that may reasonably be required by CONSULTANT, including existing reports, studies, financial information, and other required data that are available in the files of the CITY.

22.0 **Termination of Agreement**

22.1 This Agreement may be terminated by the CONSULTANT upon thirty (30) days prior written notice to the CITY in the event of substantial failure by the CITY to perform in accordance with the terms of the Agreement through no fault of the CONSULTANT.

22.2 This Agreement may be terminated by the CITY with or without cause immediately upon written notice to the CONSULTANT.

22.3 Unless the CONSULTANT is in breach of this Agreement, the

CONSULTANT shall be paid for services rendered to the CITY's satisfaction through the date of termination.

22.4 After receipt of written notice of termination of this Agreement, and except as otherwise directed by the CITY, the CONSULTANT shall:

22.4.1 Stop work on the date and to the extent specified.

22.4.2 Terminate and settle all orders and subcontracts relating to the performance of the terminated work.

22.4.3 Transfer all work in process, completed work, and other material related to the terminated work to the CITY.

22.4.4 Continue and complete all parts of the work that have not been terminated.

22.5 The CONSULTANT shall be paid for services actually rendered to the date of termination.

23.0 **Uncontrollable Forces (Force Majeure)**

23.1 Neither the CITY nor the CONSULTANT shall be considered to be in default of this Agreement if delays in or failure of performance shall be due to Uncontrollable Forces, the effect of which, by the exercise of reasonable diligence, the non-performing party could not avoid. The term "Uncontrollable Forces" shall mean any event which results in the prevention or delay of performance by a party of its obligations under this Agreement and which is beyond the reasonable control of the nonperforming party. It includes, but is not limited to fire, flood, earthquakes, storms, lightning, epidemic, war, riot, civil disturbance, sabotage, and governmental actions.

23.2 Neither Party shall, however, be excused from performance if nonperformance is due to forces which are preventable, removable, or remediable and which the nonperforming party could have, with the exercise of reasonable diligence, prevented, removed or remedied with reasonable dispatch.

23.3 The nonperforming party shall, within a reasonable time of being prevented or delayed from performance by an Uncontrollable Force, give written notice to the other party describing the circumstances and Uncontrollable Forces preventing continued performance of the obligations of this Agreement.

24.0 **Governing Law and Venue**

24.1 This Agreement shall be governed in all respects by the laws of the State of Florida and any litigation with respect thereto shall be brought only in the courts of Osceola County.

25.0 **Non-Discrimination**

25.1 The CONSULTANT warrants and represents that all of its employees are treated equally during employment without regard to race, color, religion, gender, age or national origin.

26.0 **Waiver**

26.1 A waiver by either the CITY or the CONSULTANT of any breach of this Agreement shall not be binding upon the waiving party unless such waiver is in writing. In the event of a written waiver, such a waiver shall not affect the waiving Party's rights with respect to any other or further breach. The making or acceptance of a payment by either party with knowledge of the existence of a default or breach shall not operate or be construed to operate as a waiver of any subsequent default or breach.

27.0 **Severability**

27.1 The invalidity, illegality, or unenforceability of any provision of this Agreement, or the occurrence of any event rendering any portion or provision of this Agreement void, shall in no way affect the validity or enforceability of any other portion or provision of the Agreement.

27.2 Any void provision shall be deemed severed from the Agreement and the balance of the Agreement shall be construed and enforced as if the Agreement did not contain the particular portion or provision held to be void.

27.3 The Parties further agree to reform the Agreement to replace any stricken provision with a valid provision that comes as close as possible to the intent of the stricken provision.

27.4 The provisions of this Section shall not prevent the entire Agreement from being void should a provision which is of the essence of the Agreement be determined to be void.

28.0 **Entirety of Agreement**

28.1 The CITY and the CONSULTANT agree that this Agreement sets forth the entire understanding between the Parties as to the subject matter contained herein, and that there are no promises or understandings between the parties other than those

stated herein.

28.2 This Agreement supersedes all prior agreements, contracts, proposals, representations, negotiations, letters or other communications between the CITY and the CONSULTANT pertaining to the Services, whether written or oral.

29.0 **Modification**

29.1 This Agreement may not be modified, added to, superseded or otherwise altered unless such modifications, additions or other alterations are evidenced in writing signed by both the CITY and the CONSULTANT. Such modifications shall be in the form of a written Amendment executed by both Parties.

30.0 **Successors and Assigns**

30.1 The CITY and the CONSULTANT each binds itself and its partners, successors, assigns, executors, administrators and legal representatives to the other Party to this Agreement and to their partners, successors, executors, administrators, assigns, and legal representatives.

30.2 The CONSULTANT shall not assign this Agreement without the express written approval of the CITY by executed amendment, which approval may be withheld in the CITY's sole and absolute discretion.

30.3 In the event of a merger, the surviving corporation shall be substituted for the contracting party to this Agreement and such substitution shall be affirmed by the City of Kissimmee Commission by executed amendment.

31.0 **Contingent Fees**

31.1 The CONSULTANT warrants that it has not employed or retained any company or person, other than a bona fide employee working solely for the CONSULTANT to solicit or secure this Agreement and that it has not paid or agreed to pay any person, company, corporation, individual or firm, other than bona fide employee working solely for the CONSULTANT, any fee, commission, percentage, gift or any other consideration contingent upon or resulting from the award or making of this Agreement.

32.0 **Truth-In-Negotiation Certificate**

32.1 Execution of this Agreement by the CONSULTANT shall act as the execution of a Truth-in-Negotiation certificate certifying that the wage rates and costs used to determine the compensation provided for in this Agreement are accurate, complete, and current as of the date of the Agreement.

32.2 The said rates and costs shall be adjusted to exclude any significant sums should the CITY determine that the rates and costs were increased due to inaccurate, incomplete or noncurrent wage rates or due to inaccurate representations of fees paid to outside consultants. The CITY shall exercise its rights under this Certificate within one (1) year following payment.

33.0 **Ownership of Documents**

33.1 The CONSULTANT shall be required to cooperate with other consultants relative to providing information requested in a timely manner and in the specified form. Any and all documents, records, disks, original drawings, or other information shall become the property of the CITY for its use and/or distribution as may be deemed appropriate by the CITY. The CONSULTANT is not liable for any damages, injury or costs associated with the CITY's use or distribution of these documents for purposes other than those originally intended by the CONSULTANT.

34.0 **Access and Audits**

34.1 The CONSULTANT shall maintain adequate records to justify all charges and costs incurred in performing the work for at least three (3) years after completion of this Agreement. The CITY shall have access to such books, records, and documents as required in this section for the purpose of inspection or audit during normal business hours at the CONSULTANT's place of business.

34.2 Misrepresentations of billable time or Reimbursable Expenses as determined by the City Auditor to the Commission shall result in the recovery of any resulting overpayments. The CITY's cost of recovery shall be the sole expense of the CONSULTANT, including accounting and legal fees, court costs and administrative expenses.

34.3 Intentional misrepresentations of billable hours and Reimbursable Expenses will be criminally prosecuted to the fullest extent of the law.

34.4 All invoices submitted are subject to audit and demand for refund of overpayment up to three (3) years following completion of all services related to this Agreement.

35.0 **Notice**

35.1 Any notice, demand, communication, or request required or permitted hereunder shall be in writing and delivered in person or sent by Federal-Express or by Certified Mail, postage prepaid as follows:

As to City: **City of Kissimmee**
Public Works & Engineering Department
Facilities Management Division
101 Church Street
Kissimmee, FL 34741
Attn: Purchasing Director

As to Consultant:

35.2 Notices shall be effective when received at the addresses as specified above. Changes in the respective addresses to which such notice is to be directed may be made from time to time by either party by written notice to the other party. Facsimile transmission is acceptable notice effective when received, however, facsimile transmissions received (i.e.; printed) after 5:00 p.m., or on weekends or holidays, will be deemed received on the next business day. The original of the notice must additionally be mailed as required herein.

35.3 Nothing contained in this Article shall be construed to restrict the transmission of routine communications between representatives of the CONSULTANT and the CITY.

36.0 **Service of Process**

As to City: **City Attorney**
City of Kissimmee
101 Church Street
Kissimmee, Florida 34741

As to Consultant: BEA ARCHITECTS, INC.

37.0 **Key Personnel**

37.1 The CONSULTANT shall notify the CITY in the event of key personnel changes which might affect this Agreement. To the extent possible, notification shall be made within ten (10) days prior to any such changes. The CONSULTANT, at the CITY's request, shall remove without consequence to the CITY any subcontractor or employee of the CONSULTANT and replace him/her with another employee having the required skill and experience. The CITY has the right to reject proposed changes in key personnel.

The following personnel shall be considered key personnel:

Name:

Name:

Bruno-Elias Ramos, Principal-in-Charge
Adrian Price, Vice President
Robert Draper, Senior Architect
Gustavo Santos, Architect
Mario F. Ortega, Director of Design

38.0. **Annual Appropriations**

38.1 The CONSULTANT acknowledges that the CITY, during any fiscal year, shall not expend money, incur any liability, or enter into any agreement which, by its terms, involves the expenditure of money in excess of the amounts budgeted as available for expenditure during such fiscal year. Any agreement, verbal or written, made in violation of this subsection is null and void, and no money may be paid on such agreement. Nothing herein contained shall prevent the making of agreements for a period exceeding one year, but any agreement so made shall be executory only for the value of the services to be rendered or agreed to be paid for in succeeding fiscal years. Accordingly, the CITY's performance and obligation to pay under this agreement is contingent upon annual appropriation.

39.0 **Liquidated Damages**

39.1 The parties hereto agree that liquidated damages, in lieu of actual damages and in the amount stated in the applicable CSA or CPO, will be assessed against the CONSULTANT, as the CITY's remedy and not as a penalty, for CONSULTANT'S failure to meet the final deliverable date in the Performance Schedule in the Scope of Work, but only to the extent and in the proportion to CONSULTANT'S fault in causing the delay as compared to other causes, and to the extent the CONSULTANT is not delayed by reasons beyond CONSULTANT'S reasonable control. The parties agree that such assessment of liquidated damages is reasonable and appropriate, as it would be difficult or impossible to accurately determine the amount of actual damages the CITY would or may incur as a consequence of the CONSULTANT's failure described above.

40.0 **Unauthorized Alien(s)**

40.1 The CONSULTANT shall not employ or utilize unauthorized aliens in the performance of the Services. The CITY shall consider the employment or utilization of unauthorized aliens a violation of Section 274A(e) of the Immigration and Naturalization Act (8 U.S.C. 1324a). Such violation shall be cause for unilateral termination of this Agreement by the CITY. The Form "AFFIDAVIT CERTIFICATION IMMIGRATION LAWS" will be signed by the CONSULTANT and submitted as part of this Agreement.

40.2 To verify employee eligibility, the CONSULTANT may avail itself of a program by the U.S. Immigration and Customs Enforcement called E-Verify. E-Verify is an Internet-based system operated by U.S. Citizenship and Immigration Services (USCIS), part of the Department of Homeland Security (DHS), in partnership with the Social Security Administration (SSA). E-Verify is currently free to employers. E-Verify provides an automated link to Federal databases to help employers determine employment eligibility of new hires and the validity of their Social Security numbers.

41.0 **Limitation of Liability**

IN NO EVENT, SHALL EITHER PARTY BE LIABLE TO THE OTHER PARTY FOR INDIRECT, INCIDENTAL, CONSEQUENTIAL, SPECIAL, EXEMPLARY, OR PUNITIVE DAMAGES OF ANY KIND OR NATURE, INCLUDING LOSS OF PROFIT, WHETHER FORESEEABLE OR NOT, ARISING OUT OF OR RESULTING FROM THE NONPERFORMANCE OR BREACH OF THIS AGREEMENT BY A PARTY WHETHER BASED IN CONTRACT, COMMON LAW, WARRANTY, TORT, STRICT LIABILITY, CONTRIBUTION, INDEMNITY OR OTHERWISE.

42.0 **Default and Remedy**

42.1 If the CONSULTANT materially defaults in its obligations under this Agreement and fails to cure the same within fifteen (15) days after the date the CONSULTANT receives written notice of the default from the CITY, then the CITY shall have the right to (i) immediately terminate this Agreement by delivering written notice to the CONSULTANT, and (ii) pursue any and all remedies available in law, equity, and under this Agreement. If the CITY materially defaults in its obligations under this Agreement and fails to cure the same within fifteen (15) days after the date the CITY receives written notice of the default from the CONSULTANT, then the CONSULTANT shall have the right to immediately terminate this Agreement by delivering written notice to the CITY. Upon any such termination, the CITY shall pay the CONSULTANT the full amount due and owing for all Services performed through the date of Agreement termination.

43.0 **Attorneys' Fees and Costs**

43.1 Except as stated in Section 14.2.1, above, in connection with any dispute or any litigation arising out of, or relating to this Agreement, each party shall be responsible for its own legal and attorneys' fees, costs and expenses, including attorneys' fees, costs, and expenses incurred for any appellate or bankruptcy proceedings.

44.0 **Public Records Law**

44.1 CONSULTANT 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.

44.2 CONSULTANT shall keep and maintain public records required to perform the services contemplated by this Agreement, in accordance with Chapter 119, Florida Statutes "Public records" means all documents, papers, letters, maps, books, tapes, photographs, films, sound recordings, data processing software,

or other material, regardless of the physical form, characteristics, or means of transmission, made or received pursuant to law or ordinance or in connection with the transaction of official business by any agency.

44.3 CONSULTANT shall ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law for the duration of the contract term and following completion of the contract if the Construction Manager does not transfer the records to the CITY.

44.4 Questions regarding the application of Chapter 119, Florida Statutes, to the CONSULTANT's duty to provide public records relating to this Agreement, shall be directed to the CITY's Custodian of Public Records at 407-518-2308, cityclerkemail@kissimmee.org, and 101 Church Street, Kissimmee, Florida 34741.

45.0 **Americans with Disabilities Act**

45.1 The CONSULTANT shall conform its Drawings and Specifications to the requirements of the Americans with Disabilities Act Accessibility Guidelines ("ADAAG"), but CITY shall be responsible for compliance with the remaining provisions of the Americans with Disabilities Act ("ADA"). CITY and CONSULTANT further recognize that interpretations of ADA by governmental officials and/or courts of law may vary or change. Should such variance or change adopted after the date the 100% Design Development are completed, require the CONSULTANT to make the required modifications, such modifications shall be considered as Contingent Additional Services. Further, CITY acknowledges, that the ADA, including ADAAG, is a new law presenting numerous difficult interpretation issues. Accordingly, the CONSULTANT shall only be liable for gross negligence in connection with any allegation that its design does not properly comply with ADAAG.

46.0 **Additional Definitions**

46.1 **Contract Documents** means this Agreement, any CSA or CPO issued hereunder, the CITY'S contract with the Contractor, the Plans, Specifications, General Conditions and related Construction Documents or any other documents incorporated by reference.

46.2 **Cost of the Work** shall be the total cost or, to the extent the Project is not completed, the estimated cost to the CITY of all elements of the Project designed or specified by the CONSULTANT.

46.2.1 The Cost of the Work shall include the cost at current market rates of labor and materials furnished by the CITY and equipment designed,

specified, selected or specially provided for by the CONSULTANT, including the costs of management or supervision of construction or installation provided by a separate construction manager or CONSULTANT.

46.2.2 The Cost of the Work does not include the compensation of the CONSULTANT and the CONSULTANT'S sub-consultants, the costs of the land, rights-of-way and financing or other costs that are the responsibility of the CITY.

46.3 **Final Completion** means that the following items have been completed or satisfied:

46.3.1 Construction of the Project is completed, in accordance with the contract documents and certified as such by the CITY and CONSULTANT.

46.3.2 The Project is suitable for full use and occupancy as determined by the CITY and CONSULTANT.

46.3.3 All Punchlist items have been completed or otherwise disposed of or accounted for to the CITY'S satisfaction and approval.

46.3.4 A final Certificate of Occupancy and all other permits and approvals required have been legally and validly issued.

46.3.5 All required guarantees, affidavits, releases, bonds and waivers, manuals, record drawings, warranties and maintenance books including the Final Completion form have been delivered to the CITY.

46.4 **Punch list** means a list of items of work to be completed and deficiencies to be corrected, which items shall not affect the attainment of Substantial Completion. Such items shall be complete or otherwise disposed of prior to final acceptance.

46.5 **Schedule of Values** means the schedule to be used as a basis for progress payments to be made to the Contractor by the CITY during performance of the work, based on the then current percentage of progress of construction of the Project, subject to the approval of the CONSULTANT.

46.6 **Substantial Completion** means the Contractor has ascertained that the work or portions thereof is ready for the CITY and CONSULTANT substantial completion inspection. It is understood that the Construction Manager will provide a list of incomplete items to the CITY and CONSULTANT prior to this inspection. After the CITY'S and CONSULTANT's inspection, the Contractor will prepare a schedule for a completion of the list, indicating completion dates for the CITY'S review. The CITY and CONSULTANT will issue a Certificate of Substantial Completion when the work on the Contractor's pre-substantial punch-list has been accomplished, to the best of the Contractor's ability.

46.7 Substantial Completion Date means the date, certified by the CONSULTANT, that the Project, or designated portion thereof, is sufficiently complete, in accordance with the Construction Documents and a Certificate of Occupancy issued, so that the CITY can reasonably occupy or utilize the Project, or designated portion thereof, for its intended use.

47.0 Additional Terms and Conditions

47.1 INSTRUMENTS OF SERVICE

47.1.1 Drawings, specifications and other documents, including those in electronic form, prepared by the CONSULTANT and the CONSULTANT'S sub-consultants are Instruments of Service for use solely with respect to this Project. The CONSULTANT and the CONSULTANT'S sub-consultants shall be deemed the authors and owners of their respective Instruments of Service and shall retain all common law, statutory and other reserved rights, including copyrights.

47.1.2 Upon execution of this Agreement, the CONSULTANT grants to the CITY a nonexclusive license to reproduce the CONSULTANT'S Instrument of Service and thereafter use the same solely for purposes of constructing, using and maintaining, repairing and making additions and modifications to the Project, provided that the CITY shall comply with all obligations, including prompt payment of all sums when due, under the Agreement. The CONSULTANT shall obtain similar nonexclusive licenses from the CONSULTANT'S sub-consultants consistent with this Agreement. Any termination of this Agreement prior to completion of the Project shall terminate the license. Upon such termination, the CITY shall refrain from making further reproductions of Instrument of Service. If and upon the date the CONSULTANT is adjudged in default of this Agreement, the foregoing license shall be deemed terminated and replaced by a second, nonexclusive license permitting the CITY to authorize other similarly credentialed design professionals to reproduce and, where permitted by law, to make changes, corrections or additions to the Instruments of Service solely for purposes of completing, using and maintaining the Project.

47.1.3 Except for the licenses granted in Section 47.1.2, no other license or right shall be deemed granted or implied under this Agreement. The CITY shall not assign, delegate, sublicense, pledge or otherwise transfer any license granted herein to another party without the prior written agreement of the CONSULTANT. However, the CITY shall be permitted to authorize the Contractor, Subcontractors, and sub-subcontractors and material or equipment suppliers to reproduce applicable portions of the Instruments of Service to and for use in their execution of the Work by license granted in Section 47.1.2. Submission or distribution of Instruments of Service to meet

official regulatory requirements or for similar purposes in connection with the Project is not to be construed as publication in derogation of the reserved rights of the CONSULTANT and the CONSULTANT'S sub-consultants. The CITY agrees to pay the CONSULTANT a reasonable, mutually agreed upon amount for any reuse of the designs, drawings or specifications beyond this Agreement. The CITY shall not be responsible to pay the CONSULTANT for the use of the designs, drawings or specifications when used for reference purposes only.

- 47.1.4 If the CONSULTANT is required to deliver any services hereunder in the form of electronic encoded media, the printed representation of such media furnished by the CONSULTANT shall be the official records of the CONSULTANT'S service provided upon completion of the services and payment in full. The CITY shall have a right to rely on such printed representation in connection with any subsequent modification of such electronic media and agrees to hold the CONSULTANT harmless from all cost and expense, including attorney's fees, from claims which arise out of modification or re-use of such electronic media or printed representation by or on behalf of the CITY without the CONSULTANT'S consent. Under no circumstances shall transfer of drawings and other instruments of service on electronic media for use by the CITY, be deemed a sale by the CONSULTANT, and the CONSULTANT makes no warranties of merchantability or fitness for a particular purpose.

47.2 CHANGE IN SERVICES

- 47.2.1 Change in Services of the CONSULTANT, including services required of the CONSULTANT'S sub-consultants may be accomplished after execution of this Agreement, without invalidating the Agreement, if mutually agreed in writing, if required by circumstances beyond the CONSULTANT'S control, or if the CONSULTANT'S services are affected as described in Section 47.2B-2. In the absence of mutual agreement in writing, the CONSULTANT shall notify the CITY prior to providing such services. If the CITY deems that all or part of such Change in Services is not required, the CITY shall give prompt written notice to the CONSULTANT, and the CONSULTANT shall have no obligation to provide those services. Except for a change due to fault of the CONSULTANT, Change in Services of the CONSULTANT shall entitle the CONSULTANT to an adjustment in compensation pursuant to Section 9.8, and to any Reimbursable Expenses described in Section 10.0.

- 47.2.2 If any of the following circumstances affect the CONSULTANT'S services for the Project, the CONSULTANT shall be entitled to an appropriate adjustment in the CONSULTANT'S schedule and compensation:

- 47.2.2.1 Change in the instructions or approvals given by the CITY that constitute material changes to the Project parameters set forth above

and which necessitate revisions in Instruments of Service;

47.2.2.2 Enactment or revision of codes, laws or regulations or official interpretations, which necessitate changes to previously prepared Instruments of Service;

47.2.2.3 Significant change in the Project including, but not limited to, size, quality, complexity, the CITY'S schedule or budget, or procurement method;

47.2.2.4 Preparation for and attendance at a public hearing, a dispute resolution proceeding or a legal proceeding except where the CONSULTANT is party thereto.

47.3 ACCELERATED COMPLETION OF DESIGN PACKAGES. In order to minimize construction problems and change orders, the CONSULTANT's standard practice requires the completion of detailed working drawings, submission for review and comment by reviewing agencies and incorporation of those comments and/or changes prior to bidding and entering into firm construction contracts. However, CITY may choose to accelerate the completion of the Project so that it may be completed in a shorter time period than would normally be required. Should the CITY choose to make this selection, it shall not be considered Fast Track, or in any way relieve the CONSULTANT of its responsibilities and obligations set forth herein.

(THE REMAINDER OF THIS PAGE IS INTENTIONALLY LEFT BLANK; THE AGREEMENT CONTINUES ON THE FOLLOWING PAGE WITH THE PARTIES' SIGNATURES.)

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement as of the Effective Date.

Attest:

Linda Hansell
CITY CLERK

CITY OF KISSIMMEE,
a Municipal Corporation of the
State of Florida

By: _____
City Clerk

By: _____
Mayor
City of Kissimmee Commission

Date Approved by Commission: _____

Reviewed as to form and legal sufficiency:

City Attorney's Office Date

CONSULTANT

Attest:

Corporate Secretary

By: Bruno-Elias Ramos

Title: Principal-in-Charge

STATE OF FLORIDA
COUNTY OF Miami-Dade

The foregoing instrument was acknowledged before me this 4 day of December, 2023, by means of ☒ physical presence or ☐ online notarization, by (name of person) as (type of authority) for (name of party on behalf of whom instrument was executed), a Florida corporation, who is personally known to me or has produced identification.

Notary Seal:



Notary: Janet Bencomo

Print Name: Janet Bencomo

My Commission Expires: 10.4.2025

EXHIBIT "A"
HOURLY RATE SCHEDULE

Bruno-Elias Ramos, Principal-in-Charge

Personnel Classification	Hourly Rate per Classification
Principal	\$350.00
Senior Project Manager / Senior Consultant	\$265.00
Quality Assurance Officer	\$240.00
Senior Project Designer/Planner	\$240.00
Project Manager	\$240.00
Senior Architect/ Designer	\$182.00
Architect	\$182.00
Interior Architect	\$214.00
Junior Engineer/ Architect/Designer/Illustrator	\$130.00
Senior Engineer (i.e., Civil, Electrical, Mechanical, etc.)	\$240.00
Engineer (i.e., Civil, Structural, Mechanical, etc.)	\$214.00
Senior Cost Estimator	\$240.00
Senior Construction Manager	\$240.00
Construction Manager	\$214.00
LEED Administrator	\$162.00
Senior Technical Support (<i>licensed</i>)	\$130.00
Project Scheduler	\$130.00
Senior CADD/REVIT	\$130.00
Senior Technical Support (<i>non-licensed</i>)	\$130.00
CADD/REVIT Technician	\$130.00
Administrative/Clerical	\$95.00

Please note that these rates will be valid until December 2024.

EXHIBIT “B”

SCOPE OF SERVICES

In accordance with Sections 2.3 and 8.1 of the Agreement, in addition to any other Services described in the Agreement, the RFQ, and the CONSULTANT’s responsive proposal thereto, the CONSULTANT may also be authorized to perform any or all of those services set forth and further described below. In the event the CITY requests the CONSULTANT to furnish and perform any of the services listed and described in this Exhibit “B”, those services shall be listed and incorporated in the applicable CSA or CPO issued for a particular Project.

ALL PHASES:

1. PROJECT ADMINISTRATION AND MANAGEMENT SERVICES

1.1. Project Administration services consisting of administrative functions including:

- 1.1.1. Project Decision Structure
- 1.1.2. Project Directory
- 1.1.3. Consultation
- 1.1.4. Research
- 1.1.5. Communications; Meeting Minutes, Meeting Agendas (For meetings called by CONSULTANT during the Design phases of the project)
- 1.1.6. Direction of the work of architectural, engineering and other consultant personnel

1.2. Disciplines Coordination/Document Checking consisting of:

- 1.2.1. Coordination between the architectural work and the work of engineering and their disciplines involved in the Project.
- 1.2.2. Review and checking of documents prepared for the Project by the CONSULTANT and the CONSULTANT’s Consultants.

1.3. Agency Consulting/Review/Approval services, including:

- 1.3.1. Agency consultants
 - 1.3.1.1. City agencies
 - 1.3.1.2. Regional agencies
 - 1.3.1.3. State agencies
- 1.3.2. Research of critical applicable regulations.
- 1.3.3. Preparation of written and graphic explanatory materials.

1.4. Owner Coordination, including:

- 1.4.1. Review and coordination of data furnished for the Project as a responsibility of the Owner.

1.5. Schedule Development/Monitoring Services, including:

1.5.1. Participate in establishment and updating of design schedule in conjunction with CM for the performance of the CONSULTANT's services throughout the design of the project. Key decision-making points will be identified on this schedule.

1.6. Presentation services consisting of presentations and recommendations by the CONSULTANT to the following client representatives:

- 1.6.1. City of Kissimmee Commission
- 1.6.2. Executive Task Force
- 1.6.3. User group(s)
- 1.6.4. Construction Manager

PHASE I PROGRAMMING & MASTER PLANNING

2. NEEDS ASSESSMENT/DATA COLLECTION

2.1. Space Needs Assessments

- 2.1.1. Macro Level Space Requirements Analysis
- 2.1.2. Macro Level Adjacency Requirements
- 2.1.3. Parking Analysis

2.2. Analysis of the site and its surroundings to include the following:

- 2.2.1. Land Utilization
- 2.2.2. Building locations
- 2.2.3. Utility Systems
- 2.2.4. Surface and subsurface conditions (By Owner)
- 2.2.5. Vegetation (By Owner)
- 2.2.6. Survey (By Owner)
- 2.2.7. Land Use Restrictions
- 2.2.8. Historical analysis
- 2.2.9. Stormwater retention/detention areas

3. FUNCTIONAL PROGRAMMING

3.1. Prepare a detailed architectural program based on the scope established in Phase I to include the following services:

- 3.1.1. Functional Requirements Analysis
- 3.1.2. Interior Development Guidelines
- 3.1.3. Space Standards

- 3.1.4. Preliminary Program Space Estimates
- 3.1.5. Space and Equipment Program
- 3.1.6. Special Building System Requirements
- 3.1.7. Micro-Adjacency Requirements
- 3.1.8. Prepare Final Draft Program
- 3.1.9. Prepare Final Program Report

4. MASTER PLANNING

- 4.1** Prepare three different conceptual approaches for housing the space and parking requirements validated in the Needs Assessment. Include the following information, at a minimum:
 - 4.1.1 Existing facility renovation recommendations
 - 4.1.2 Site development planning issues (land utilization, pedestrian and vehicular circulation, parking, areas for expansion, stormwater retention/detention and landscape forms)
 - 4.1.3 Architectural concepts. The architectural concepts will include blocking and stacking diagrams, massing studies and character sketches.

PHASE II: DESIGN/ BIDDING/CONSTRUCTION ADMINISTRATION SERVICES

5. DESIGN SERVICES

5.1. Architectural Design/Documentation:

- 5.1.1. During the Schematic Design Phase, responding to program requirements and preparing:
 - 5.1.1.1. Conceptual Planning/Massing Options
 - 5.1.1.2. Final Conceptual Site and Building Plans
 - 5.1.1.3. Preliminary Sections and Elevations
 - 5.1.1.4. Preliminary Selection of Building Systems and Materials
 - 5.1.1.5. Development of Approximate Dimensions, Areas and Volumes
 - 5.1.1.6. Perspective sketch – eye level
 - 5.1.1.7. Study model
- 5.1.2. During the Design Development Phase consisting of continued development and expansion of architectural Schematic Design Documents to establish the final scope, relationships, forms, size and appearance of the Project through:
 - 5.1.2.1. Plans, sections and elevations
 - 5.1.2.2. Typical construction details
 - 5.1.2.3. Three-dimensional sketch
 - 5.1.2.4. Study model
 - 5.1.2.5. Final materials selection
 - 5.1.2.6. Equipment layouts

- 5.1.3. During the Contract Documents phase consisting of preparation of Drawings and Specifications based on approved Design Development documents setting forth in detail the architectural construction requirements for the Project.

5.2. Structural Design/Documentation:

- 5.2.1. During the Schematic Design Phase consisting of recommendations regarding basic structural materials and systems, analyses, and development of conceptual design solutions for:
 - 5.2.1.1. A structural system
 - 5.2.1.2. Alternate structural systems, if required
- 5.2.2. During the Design Development phase consisting of continued development of the specific structural system and Schematic Design documents in sufficient detail to establish:
 - 5.2.2.1. Basic structural system and dimensions
 - 5.2.2.2. Final structural design criteria
 - 5.2.2.3. Foundation design criteria
 - 5.2.2.4. Preliminary sizing of major structural components
 - 5.2.2.5. Critical coordination clearances
- 5.2.3. During the Contract Documents phase consisting of preparation of final structural engineering calculations, Drawings and Specifications based on approved Design Development documents, setting forth in detail the structural construction requirements for the Project.

5.3. Mechanical Design/Documentation:

- 5.3.1. During the Schematic Design phase, prepare a narrative, consisting of consideration of alternate materials, systems and equipment, and development of conceptual design solutions for:
 - 5.3.1.1. Energy source(s)
 - 5.3.1.2. Energy conservation and controls system concepts
 - 5.3.1.3. Heating and ventilating (systems selections and conceptual sizing and configuration analysis.)
 - 5.3.1.4. Air conditioning (systems selections and conceptual sizing and configuration analysis.)
 - 5.3.1.5. Plumbing
 - 5.3.1.6. Fire protection
 - 5.3.1.7. General space requirements
- 5.3.2. During the Design Development phase consisting of continued development and expansion of mechanical Schematic Design documents and development of outline Specifications or materials lists to establish:
 - 5.3.2.1. Approximate equipment sizes and capacities

- 5.3.2.2. Preliminary equipment layouts
- 5.3.2.3. Required space for equipment
- 5.3.2.4. Required chases and clearances
- 5.3.2.5. Acoustical and vibration control
- 5.3.2.6. Visual impacts
- 5.3.2.7. Energy conservation measures
- 5.3.3. During the Contract Documents phase consisting of preparation of final mechanical engineering calculations, Drawings and Specifications based on approved Design Development documents, setting forth in detail the mechanical construction requirements for the Project.

5.4. Electrical Design/Documentation

- 5.4.1. During the Schematic Design Phase, prepare a narrative, consisting of consideration of alternate systems, recommendations regarding basic electrical materials, systems and equipment, analyses, and development of conceptual solutions for:
 - 5.4.1.1. Power service and distribution
 - 5.4.1.2. Lighting
 - 5.4.1.3. Communication and data outlet location systems
 - 5.4.1.4. Fire detection and alarms
 - 5.4.1.5. General space requirements
 - 5.4.1.6. Audio/Visual systems
- 5.4.2. During the Design Development phase consisting of continued development and expansion of electrical Schematic Design documents and development of outline Specifications or materials lists to establish:
 - 5.4.2.1. Criteria for lighting, electrical and communications systems
 - 5.4.2.2. Approximate sizes and capacities of major components
 - 5.4.2.3. Preliminary equipment layouts
 - 5.4.2.4. Required space for equipment
 - 5.4.2.5. Required chases and clearances
- 5.4.3. During the Contract Documents phase, consisting of preparation of final electrical engineering calculations, Drawings and Specifications based on approved Design Development documents, setting forth in detail the electrical requirements for the Project.

5.5. Civil Design/Documentation:

- 5.5.1. During the Schematic Design phase consisting of consideration of alternate materials and systems and development of conceptual design solutions for:
 - 5.5.1.1. On-site utility systems
 - 5.5.1.2. Fire protection systems
 - 5.5.1.3. Drainage systems

5.5.1.4. Paving

- 5.5.2. During the Design Development phase consisting of continued development and expansion of civil Schematic Design documents and development of outline Specifications or materials lists to establish the final scope of and preliminary details for on-site civil engineering work.
- 5.5.3. During the Contract Documents phase, consisting of preparation of final civil engineering calculations, Drawings and Specifications based on approved Design Development documents, setting forth in detail the civil construction requirements for the Project.
- 5.5.4. Permit applications required for Water Distribution, Sewage Collection and Stormwater/Environment Management (Local, State, and Federal) shall be prepared for execution by the Owner. Permit applications to be paid by Owner. All necessary reports and drawings will be prepared to accompany the permit applications. Two meetings per agency as required to secure permits is included in services. City shall designate individual who has authority to sign permit applications.

5.6. Landscape Design/Documentation:

- 5.6.1. During the Schematic Design phase, prepare narrative conceptual design solutions, which will be developed for land forms, hardscape, lawns and plantings based on program requirements, physical site characteristics, design objectives and environmental determinants.
- 5.6.2. During the Design Development phase, Schematic Design documents will be further developed including outline Specifications and materials lists to establish final scope and preliminary details for landscape work.
- 5.6.3. During the Contract Documents phase, the Drawings and Specifications based on approved Design Development documents, setting forth in detail the landscape and hardscape construction requirements for the Project will be prepared.

5.7. Interior Design/Documentation:

- 5.7.1. During the Schematic Design phase consisting of space allocation and departmental utilization plans based on functional relationships:
 - 5.7.1.1.Types and qualities of finishes and materials for furniture, furnishings, and equipment.
- 5.7.2. During the Design Development phase consisting of continued development and expansion of interior Schematic Design documents and development of

outline Specifications or materials lists to establish final scope and preliminary details relative to:

- 5.7.2.1. Interior construction of the Project
- 5.7.2.2. Special interior design features
- 5.7.2.3. Space planning
- 5.7.2.4. Materials, finishes and colors
- 5.7.2.5. Furniture and equipment layouts

- 5.7.3. During the Contract Documents phase consisting of preparation of Drawings, Specifications and other documents based on approved Design Development documents, setting forth in detail the requirements for interior construction and furniture, furnishings and equipment for the Project.

5.8. Environmental Graphic Design Services: The scope shall include interior and exterior sign types and graphic elements to provide a comprehensive and cohesive signage and wayfinding system for users of the facility.

- 5.8.1. Design Development:
 - 5.8.1.1. Consider design approaches; determine elements needed for identity, information and wayfinding.
 - 5.8.1.2. Begin development of sign prototypes.
 - 5.8.1.3. Develop preliminary location plans.
- 5.8.2. Construction document preparation.
- 5.8.3. Construction observation and submittal review.
- 5.8.4. Interior sign types to include:
 - 5.8.4.1. Primary room ID (changeable name inserts in some locations).
 - 5.8.4.2. Restroom ID.
 - 5.8.4.3. Stairway ID and stairway level ID.
 - 5.8.4.4. Building Code required ID.
 - 5.8.4.5. Fire exit plan.
 - 5.8.4.6. Building directories.
- 5.8.5. Exterior sign types include:
 - 5.8.5.1. Main entrance identification.
 - 5.8.5.2. Vehicular directional.
 - 5.8.5.3. Regulatory / Warning identification.
 - 5.8.5.4. Parking areas; handicap parking, authorized vehicles, visitor parking, etc.
- 5.8.6. Donor Recognition / Dedication Plaques – Prepare conceptual designs illustrating a graphic solution to recognize a significant donor for the facility.

5.9. Materials Research/Specifications:

- 5.9.1. During the Schematic Design phase consisting of:
 - 5.9.1.1. Identification of potential materials, systems and equipment and their criteria and quality standards consistent with the conceptual design.

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- 5.9.1.2. Investigation of availability and suitability of alternative materials, systems and equipment.
- 5.9.2. During the Design Development phase consisting of activities by in-house personnel in:
 - 5.9.2.1. Development of architectural and engineering project specific draft Specifications or itemized lists and brief form identification of significant architectural materials, systems and equipment, including their criteria and quality standards.
 - 5.9.2.2. Coordination of similar activities of other disciplines.
 - 5.9.2.3. Production of design manual including design criteria and outline specifications or material lists.
- 5.9.3. During the Contract Documents phase consisting of activities of in-house architectural personnel in:
 - 5.9.3.1. Review of the development and preparation of bidding and procurement information prepared by the Construction Manager.
 - 5.9.3.2. Assistance to the Owner and their agents in review of the Conditions of the Contract (General, Supplementary and other Conditions).
 - 5.9.3.3. Development and preparation of architectural Specifications describing materials, systems and equipment, workmanship, quality and performance criteria required for the construction of the Project.
 - 5.9.3.4. Coordination of the development of Specifications by other disciplines.
 - 5.9.3.5. Compilation of Project Manual including Conditions of the Contract, bidding and procurement information and Specifications.
- 5.10. At the conclusion of each Design Phase (Schematic Design, Design Development and Construction Document) the Architect/Engineer shall provide the Owner with two (2) sets of drawings and specifications. At the conclusion of Construction Documents one set of reproducible will also be made available to the City for printing of Bid Documents by the City or the Construction Manager.

6. BIDDING OR NEGOTIATION SERVICES

- 6.1. **Bidding Materials services** consisting of organizing and handling Bidding Documents for:
 - 6.1.1. Coordination
 - 6.1.2. Reproduction by Owner
 - 6.1.3. Completeness review
- 6.2. **Addenda services** consisting of preparation and distribution of Addenda as may be required during bidding or negotiation and including supplementary Drawings,

Specifications, instructions and notice(s) of changes in the bidding schedule and procedures.

6.3. Bidding/Negotiation services consisting of:

6.3.1. Responses to questions from Bidders and clarifications or interpretations of the Bidding Documents.

6.4. Analysis of Alternates/Substitutions consisting of consideration, analyses, comparisons, and recommendations relative to alternates or substitutions proposed by Bidders or proposers either prior to or subsequent to receipt of Bids or proposals.

7. CONSTRUCTION ADMINISTRATION

7.1. Submittal Services consisting of:

7.1.1. Processing of submittals, including receipt, review of, and appropriate action on Shop Drawings, Product Data, Samples and other submittals required by the Contract Documents.

7.1.2. Distribution of submittals to Construction Manager.

7.1.3. Related communications.

7.2. Observation services consisting of periodic visits by the Project Manager or Project CONSULTANT to the site at intervals appropriate to the state of the work or as otherwise agreed by the Owner and CONSULTANT in writing to become generally familiar with the progress and quality of the Work completed and to determine in general if the Work when completed will be in accordance with Contract Documents; preparing related reports and communications, and attendance at progress review meetings at the site.

7.2.1. Periodic site visits by other staff to observe the progress of the project.

7.3. Responses to Requests for Information (RFI)

7.3.1. Responding to requests for clarifications or additional information related to the Contract Documents.

7.4. Supplemental Documentation services consisting of:

7.4.1. Preparation, reproduction and distribution of supplemental Drawings, Specifications and interpretations in response to requests for clarification by Construction Manager or the Owner.

7.4.2. Providing guidance to the Construction Manager in conjunction with the Owner -relative to changed requirements and schedule revisions.

7.5. Quotation Requests/Change Orders consisting of:

- 7.5.1. Preparation, reproduction and distribution of Drawings and Specifications to describe Work to be added, deleted or modified. Changes shall be clearly defined.
- 7.5.2. Review of proposals from Construction Manager for reasonableness of quantities and costs of labor and materials.
- 7.5.3. Review and recommendations relative to changes in time for Substantial Completion.
- 7.5.4. Review on Owner's behalf relative to costs of Work proposed to be added, deleted or modified.
- 7.5.5. Assisting in the preparation of appropriate Modifications of the Contract(s) for Construction.
- 7.5.6. Coordination of communications, approvals, notifications and record-keeping relative to changes in the Work.

7.6. Contract Cost Accounting services consisting of:

- 7.6.1. Review of records of payments on account of the Contract Sum and all changes thereto.
- 7.6.2. Evaluation of Applications for Payment and certification thereof.
- 7.6.3. Review and evaluation of expense data submitted by the Construction Manager for Work under cost-plus-fee arrangements.

7.7. Interpretations and Decisions consisting of:

- 7.7.1. Review of claims, disputes, or other matters between the Owner and Construction Manager relating to the execution or progress of the Work as provided in the Contract Documents.
- 7.7.2. Rendering written decisions.

7.8. Project Closeout services initiated upon notice from the Construction Manager that the Work, or a designated portion thereof which is acceptable to the Owner, is sufficiently complete in accordance with the Contract Documents to verify the list submitted by the Construction Manager of items to be completed or corrected.

- 7.8.1. Review with the Owner's representative for conformity of the Work to the Contract Documents to verify the list submitted by the Construction Manager of items to be completed or corrected.
- 7.8.2. Recommendation of the amounts to be withheld until final completion.
- 7.8.3. Securing and receipt of consent of surety or sureties, if any, to reduction in or partial release of retainage or the making of final payment(s).
- 7.8.4. Issuance of Certificate(s) of Substantial Completion.
- 7.8.5. Inspection(s) upon notice by the Construction Manager that the Work is ready for final inspection and acceptance.
- 7.8.6. Final inspection with the Owner's representative to verify final completion of the Work.

- 7.8.7. Securing and receipt of consent of surety or sureties, if any, to the making of final payment(s).
- 7.8.8. Issuance of final Certificate(s) for Payment.
- 7.8.9. Final inspection of Water Distribution, Sewage Collection and Stormwater/ Environmental Management Facilities. Preparation of certifications to agencies along with record documents prepared based upon record information supplied by the Construction Manager. Services include one final inspection for each certification.

8. POST-CONSTRUCTION SERVICES

8.1. Record Drawing services consisting of:

- 8.1.1. Making arrangements for obtaining from Construction Manager information in the form of marked-up prints, drawings and other data certified by them on changes made during performance of the Work, including Change Directives, RFI's, ASI's, etc.
- 8.1.2. Review of general accuracy of information submitted and certified by the Construction Manager.
- 8.1.3. Preparation of record drawings electronically based on certified information furnished by the Construction Manager.
- 8.1.4. Transmittal one set of full-size reproducible record drawings and general data, appropriately identified, to the Owner and others as directed. Two copies of all electronic data including CADD drawings on CD.

8.2. Warranty Review consisting of:

- 8.2.1. Consultation with and recommendation to the Owner during the duration of warranties in connection with inadequate performance of materials, systems and equipment under warranty.
- 8.2.2. Inspection(s) prior to expiration of the warranty period(s) to ascertain adequacy of performance of materials, systems and equipment.
- 8.2.3. Documenting defects or deficiencies and assisting the Owner in preparing instructions to the Construction Manager for correction of noted defects.

9. ADDITIONAL SERVICES/EXPENSES (not included in the base fee):

9.1. Owner-Provided Services:

- 9.1.1. Environmental assessment of site, if necessary.
- 9.1.2. Environmental assessment of existing facilities to be renovated and/or demolished, and the removal of any hazardous material, if necessary.
- 9.1.3. Printing of all Contract Documents issued for bidding and construction.
- 9.1.4. Distribution of Contract Documents to Construction Manager for estimating and bidding purposes.

- 9.2. **Mock-Up Services** relating to any space for study during the design phases and consisting of:
- 9.2.1. Design and documentation for the required mock-up.
 - 9.2.2. Construction administration of mock-up construction activities.
 - 9.2.3. Arrangements for testing performance of mock-up.
 - 9.2.4. Review, analysis and reporting of results.
- 9.3. **Prepare an Inventory** of existing furniture and equipment that will be placed in the new facilities.
- 9.4. **Value Engineering** – Value engineering is the detailed, systematic review of the design concepts, construction techniques, materials and building types associated with a project solely in terms of life cycle costs in an attempt to obtain optimum value for every dollar spent. If Owner chooses to engage in value engineering, Owner shall either retain the services of an independent Value Engineer (“VE”) to perform the above review services to be complete at a stage no later than the completion of schematic design, or may pay a mutually negotiated sum “at the time the services are requested” to CONSULTANT to perform the above review services at a stage later than the completion of schematic design, Owner acknowledges that schedule and cost impacts may occur.
- 9.4.1. If Owner chooses to retain an independent VE, all recommendations of the VE shall be given to CONSULTANT for its review and adequate time will be provided for CONSULTANT to respond to these recommendations. CONSULTANT may be compensated as an additional service for time spent to review the recommendations of the VE and to incorporate those accepted by both Owner and CONSULTANT. Objections to any recommendations made by the VE shall be stated in writing. Owner agrees that CONSULTANT shall not be responsible for any damage, cost or liability which arises in connection with or as a result of the incorporation of such design changes.
- 9.5. **Commissioning** – The performance of a functional and operational check of all systems and equipment to verify the installation is performing to the design criteria. CONSULTANT would prepare this service in conjunction with an independent contractor experienced in such activities.
- 9.6. **Structural Blast Resistance** - Analysis of building structural systems to resist loads imposed by blast forces on exterior of facility. This would require an additional blast consultant to be obtained.
- 9.7. **Security Systems:** The Security portion of the project will include the design and documentation of Electronic Security System from Schematic Design through Construction Administration Services. The Electronic Security System will include intrusion detection, access control, electronic door control and monitoring,

operational intercom, fixed duress alarms, monitoring and control panels, CCVE systems, control room layouts, rough-ins for x-ray screening/magnetometer at entry lobby, and parcel screening. As part of the overall security plan CONSULTANT will provide a site analysis to determine passive security measures to be incorporated for the facility. Deliverables for the above scope for each task are as listed below.

9.7.1. **Schematic Design (SDs):** CONSULTANT will provide a written security narrative describing the Electronic Security System, reflecting the design approach based on program requirements. In addition, CONSULTANT will provide two people for a one day on site Security Workshop to validate the security program and establish the design intent.

9.7.2. **Design Development (DDs):** CONSULTANT will provide job specific draft specifications of the Electronic Security System including plans indicating device locations, and outline specifications, and equipment selections reflecting design approach. CONSULTANT will provide one person for 1 day to attend an on-site design review with the Owner and Design Team members to review the Electronic Security System Design Development documents.

9.7.3. **Construction Documents (CDs):** Upon completion of this review, CONSULTANT will provide completed biddable documents including plans, details, schedules, riser diagrams, and specifications required to fully document the Electronic Security System. In addition, CONSULTANT will provide, at the completion of the Construction Documents phase, two (2) copies of a Design Information Manual (DIM) outlining major equipment selections utilized as the basis of design for the Electronic Security Systems. CONSULTANT will conduct mid-point design review with Owner and Design Team members to review the Electronic Security Construction Documents.

9.7.4. **Bidding:** CONSULTANT will review all questions related to the Electronic Security System submitted, and provide answers in written addendum as required.

9.7.5. **Construction Administration (CA):** CONSULTANT will provide one person for four, one day intermediate site visits during construction. In addition, upon written notification of substantial completion CONSULTANT will provide two persons for one day (16 hours total) to review and test the Electronic Security System.

9.7.5.1. Included in this phase of work is the review of security shop drawing submittals and written responses to security RFI from the contractor.

9.7.5.2. Deliverable for this phase of work will include a written field report for the intermediate site visits, and a final report and punch list of the site visit made following written notice of substantial completion.

9.7.6. **Expanded Security System Design** - The following systems and services can be provided in addition to the Electronic Security Design defined in previous sections:

9.7.6.1. Assistance Stations

9.7.6.2. Parking Area Equipment (cameras, card access control)

9.7.6.3. Wireless Duress

9.7.6.4. Hydraulic Barriers

9.7.6.5. Biometrics

9.7.6.6. Perimeter protection systems

9.7.6.7. Post Construction Services: CONSULTANT will provide two people for one day (16 hours total) to conduct a pre-warranty expiration review of the electronic security system. The review will focus on inspection of equipment, operational functions, defects or deficiencies within the system and will be documented in report form and issued to the owner.



EXHIBIT C

SCHEDULE OF REIMBURSABLES

1. Reproduction Cost

A.....Regular Copying	Single Side	Double
Sided		
8 ½ x 11 (black & white).....	\$ 0.15/page	\$ 0.25/sheet
8 ½ x 11 (color)	\$ 0.30/page	\$ 0.40/sheet
8 ½ x 14 (black & white).....	\$ 0.15/page	\$ 0.25/sheet
8 ½ x 14 (color)	\$ 0.30/page	\$ 0.40/sheet
11 x 17 (black & white).....	\$ 0.25/page	\$ 0.35/sheet
11 x 17 (color)	\$ 0.40/page	\$ 0.50/sheet
9 ½ x 24 Single Side Only.....	\$ 1.00/page	
17 x 22 Single Side Only.....	\$ 2.00/page	
18 x 24 Single Side Only.....	\$ 2.00/page	
24 x 36 Single Side Only.....	\$ 3.00/page	
30 x 30 Single Side Only.....	\$ 5.00/page	
32 x 34 Single Side Only.....	\$ 5.00/page	
Other sizes-per square inch	\$ 0.03/page	
Compact Digital Disk	\$ 6.00/disk	
B. Blueprint Copy		\$10.00/page
2. Subcontractor Services Actual Costs
3. Special Consultants Actual costs
4. Telecommunications

A. Local	Non-reimbursable
B. Non-Local	Actual Costs
5. Computer Services Non-reimbursable
6. Travel Expenses In accordance with Chapter 112.061, F.S.;
and further defined in the City of
Kissimmee
Employee Handbook
7. Postage, Fed Express, UPS Actual Costs
8. Pre-approved Equipment
 (includes purchase and rental of equipment used in project) Actual Costs

EXHIBIT D

AFFIDAVIT CERTIFICATION
IMMIGRATION LAWS

SOLICITATION NO.: RFP2023-006 PROJECT NAME: Architectural and Engineering Services

THE CITY OF KISSIMMEE, a MUNICIPAL CORPORATION OF THE STATE OF FLORIDA (CITY), WILL NOT INTENTIONALLY AWARD CITY CONTRACTS TO ANY CONTRACTOR WHO KNOWINGLY EMPLOYS UNAUTHORIZED ALIEN WORKERS, CONSTITUTING A VIOLATION OF THE EMPLOYMENT PROVISIONS CONTAINED IN 8 U.S.C. SECTION 1324 a(e) {SECTION 274A(e) OF THE IMMIGRATION AND NATIONALITY ACT ("INA").

THE CITY MAY CONSIDER THE EMPLOYMENT BY ANY CONTRACTOR OF UNAUTHORIZED ALIENS A VIOLATION OF SECTION 274A(e) OF THE INA. **SUCH VIOLATION BY THE RECIPIENT OF THE EMPLOYMENT PROVISIONS CONTAINED IN SECTION 274A(e) OF THE INA SHALL BE GROUNDS FOR UNILATERAL CANCELLATION OF THE CONTRACT BY THE CITY.**

BIDDER ATTESTS THAT THEY ARE FULLY COMPLIANT WITH ALL APPLICABLE IMMIGRATION LAWS (SPECIFICALLY TO THE 1986 IMMIGRATION ACT AND SUBSEQUENT AMENDMENTS).

Attest:



Corporate Secretary

CONSULTANT

By:

Bruno-Elias Ramos 

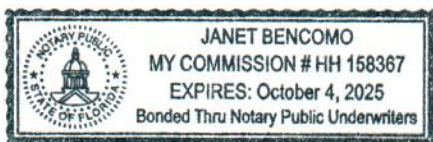
Title:

Principal-in-Charge

STATE OF FLORIDA
COUNTY OF Miami-Dade

The foregoing instrument was acknowledged before me this 4 day of December, 2023, by means of ☒ physical presence or ☐ online notarization, by (name of person) as (type of authority) for (name of party on behalf of whom instrument was executed), a Florida corporation, who is personally known to me or has produced identification.

Notary Seal:



Notary:

Print Name:

My Commission Expires:

Janet Bencomo
Janet Bencomo
10.4.2025

Architectural/Engineering Services Master Agreement

THIS ARCHITECTURAL/ENGINEERING MASTER SERVICES AGREEMENT (“Agreement”) is entered into as of the Effective Date (hereinafter defined) by and between the City of Kissimmee, a Municipal Corporation of the State of Florida, by and through its Commission, 101 Church Street, Kissimmee, Florida 34741 (hereinafter referred to as the “CITY”), and **BUMPUS AND ASSOCIATES, INC.**, 603 FRONT ST, CELEBRATION, FL 34747, whose Federal Identification Number is: 59-3043397 (hereinafter referred to as the “CONSULTANT”).

WITNESSETH:

WHEREAS, the CITY requires certain architectural and/or engineering services to be performed in the City of Kissimmee; and,

WHEREAS, the CITY has solicited for these professional services via RFQ2023-006, an advertised request for qualifications (the “RFQ”), and has received numerous responsive bids thereto; and

WHEREAS, the CONSULTANT remains agreeable to providing the CITY the professional services and represents that it is capable and prepared to do so;

NOW, THEREFORE, in consideration of the promises contained herein, the CITY and the CONSULTANT (collectively, the “Parties”) hereby agree, as follows:

1.0 **Term**

1.1 This Agreement shall take effect on the date of its execution by the Mayor, The City of Kissimmee Commission (the “Effective Date”).

1.2 The term of this Agreement shall be for a five (5) year period, commencing upon the Effective Date, unless otherwise terminated as provided herein.

2.0 **CONSULTANT –SERVICES -- GENERAL**

2.1 The CONSULTANT shall provide the CITY complete architectural and engineering services necessary to provide construction documents and administration for various projects (individually a “Project” and collectively, the “Projects”) throughout the Term, as may be further specifically designated and authorized by the CITY in writing. Such authorization shall be in the form of either a Consultant Services Authorization (“CSA”) or a Contract Purchase Order (“CPO”), and all provisions of this Agreement shall apply to the CSA or CPO with full force and effect as if appearing in full within each CSA or CPO. Each CSA or CPO will set forth a specific Scope of Services, maximum limit of compensation, schedule, liquidated damages, and completion date, and shall become effective upon the due execution. When the CONSULTANT and the CITY enter into a CSA or CPO where the term

thereof expires on a date that is later than the date of this Agreement, the CONSULTANT and the CITY agree that the terms of this Agreement and any amendments, attachments, or provisions thereof are automatically extended until the expiration or full completion of the requirements of the CSA or CPO, as applicable, have been performed. Cancellation by the CITY of any remaining service prior to the full completion of the requirements of the CSA/CPO shall cause the terms of this Agreement to terminate at the same time. This provision only applies when the expiration of the CSA/CPO extends beyond the expiration of this Agreement. It does not apply when a CSA/CPO expires or is cancelled prior to the expiration of this Agreement.

2.2 The CONSULTANT is not authorized to undertake any Project without a duly executed CSA or CPO, which shall specify the work to be performed. The CONSULTANT recognizes that the CITY may employ several different CONSULTANTS and engineers to perform the services described herein and that the CONSULTANT has not been employed as the exclusive agent to perform any such services.

2.3 In addition to the services described in this Section 2.0, the RFQ, the Consultant's responsive proposal thereto, and otherwise set forth and described in the body of this Agreement, the CONSULTANT may also be authorized to perform, via a duly executed CSA or CPO, any or all of those services set forth and further described in **Exhibit "B"**, attached hereto and incorporated herein (collectively, the "Services").

3.0 **Project Administration Services**

3.1 The CONSULTANT shall manage the CONSULTANT'S services and administer the Project. The CONSULTANT shall consult with the CITY, research applicable design criteria, attend Project meetings, and communicate with members of the Project team and issue progress reports. The CONSULTANT shall coordinate the services provided by the CONSULTANT and the CONSULTANT'S sub-consultants with those services provided by the CITY and the CITY'S consultants.

3.2 When Project requirements have been sufficiently identified, the CONSULTANT may be required to prepare, and periodically update, a Project schedule that shall identify milestone dates for decisions required of the CITY, design services furnished by the CONSULTANT, completion of documentation provided by the CONSULTANT, commencement of construction and Substantial Completion of the Work.

3.3 The CONSULTANT shall consider the value of alternative materials, building systems and equipment, together with other considerations based on program, budget and aesthetics in developing the design for the Project.

3.4 Upon request of the CITY, the CONSULTANT shall make a presentation to explain the design of the Project to representatives of the CITY.

3.5 The CONSULTANT shall submit design documents to the CITY at intervals appropriate to the design process for purposes of evaluation and approval by the CITY. The CONSULTANT shall be entitled to rely on approvals received from the CITY in the further development of the design.

3.6 The CONSULTANT shall assist the CITY in connection with the CITY'S responsibility for filing documents required for the approval of governmental authorities having jurisdiction over the Project.

3.7 EVALUATION OF BUDGET AND COST OF THE WORK.

3.7.1 When the Project requirements have been sufficiently identified, the CONSULTANT shall prepare a preliminary estimate of the Cost of the Work. This estimate may be based on current area, volume or similar conceptual estimating techniques. The CONSULTANT shall advise the CITY of any adjustments to previous estimates of the Cost of the Work indicated by changes in Project requirements or general market conditions. If at any time the estimate of the Cost of the Work exceeds the CITY'S budget, the CONSULTANT shall make appropriate recommendations to the CITY to adjust the Project's size, quality or budget, and the CITY shall cooperate with the CONSULTANT in making such adjustments.

3.7.2 Evaluations of the CITY'S budget for the Project, the preliminary estimate of the Cost of the Work, and updated estimates of the Cost of the Work represent the CONSULTANT'S judgment as a design professional familiar with the construction industry. It is recognized, however, that neither the CONSULTANT nor the CITY has control over the cost of labor, materials or equipment, over the CONSULTANT'S methods of determining bid prices, or over competitive bidding, market or negotiating conditions. Accordingly, the CONSULTANT cannot and does not warrant or represent that bids or negotiated prices will not vary from the CITY'S budget for the Project or from any estimate of the Cost of the Work or evaluation prepared or agreed to by the CONSULTANT.

3.7.3 In preparing estimates of the Cost of the Work, the CONSULTANT shall be permitted to include contingencies and allowances for design, bidding and price escalation; to determine what materials, equipment, component systems and types of construction are to be included in the Contract Documents; to make reasonable adjustments in the scope of the Project and to include in the Contract Documents alternate bids as may be necessary to adjust the estimated Cost of the Work to meet the CITY'S budget for the Cost of the Work.

3.7.4 If bidding or negotiation has not commenced within 90 days after the CONSULTANT submits the Construction Documents to the CITY, the

budget for the Cost of the Work shall be adjusted to reflect changes in the general level of prices in the construction industry.

- 3.7.5** If the budget for the Cost of the Work is exceeded by the lowest bona fide bid or negotiated proposal, and the CITY elects to revise the Project scope to reduce the Cost of the Work, then the CONSULTANT, without additional charge, shall modify the Contract Documents as necessary to comply with the fixed limit as a condition of this Agreement.

4.0 Evaluation and Planning Services

- 4.1** The CITY may furnish a program setting forth the CITY's objectives, schedule, constraints and criteria, including space requirements and relationships, special equipment, systems and site requirements. The CONSULTANT shall provide a preliminary evaluation of the information furnished by the CITY under this Agreement, including the CITY'S program and schedule requirements and budget for the Cost of the Work, each in terms of the other. The CONSULTANT shall review such information to ascertain that it is consistent with the requirements of the Project and shall notify the CITY of any other information or consultant services that may be reasonably needed for the Project.
- 4.2** The CONSULTANT shall provide a preliminary evaluation of the CITY's site for the Project based on the information provided by the CITY of site conditions, and the CITY'S program, schedule and budget for the Cost of the Work.

5.0 Design Services

5.1 SCHEMATIC DESIGN DOCUMENTS

5.1.1 The CONSULTANT shall provide Schematic Design Documents based on the mutually agreed-upon program, schedule, and budget for the Cost of the Work. The documents shall establish the conceptual design of the Project illustrating the scale and relationship of the Project components. The Schematic Design Documents shall include a conceptual site plan, if appropriate, and preliminary building plans, sections and elevations. At the CONSULTANT's option, the Schematic Design Documents may include study models, perspective sketches, electronic modeling or combinations of these media. Preliminary selections of major building systems and construction materials shall be noted on the drawings or described in writing.

5.2 DESIGN DEVELOPMENT DOCUMENTS

5.2.1 The CONSULTANT shall provide Design Development Documents based on the approved Schematic Design Documents and updated budget for the Cost of the Work. The Design Development Documents shall illustrate and describe the refinement of the design of the Project, establishing the scope, relationships, forms, size and appearance of the Project by means of

plans, sections and elevations, typical construction details, and equipment layouts. The Design Development Documents shall include specifications that identify major materials and systems and establish in general their quality levels.

5.3 CONSTRUCTION DOCUMENTS

5.3.1 The CONSULTANT shall provide Construction Documents based on the approved Design Development Documents and updated budget for the Cost of the Work. The Construction Documents shall set forth in detail the requirements for construction of the Project. The Construction Documents shall include Drawings and Specifications that establish in detail the quality levels of materials and systems required for the Project.

5.3.2 During the development of the Construction Documents, the CONSULTANT shall assist the CITY in the development and preparation of: (1) bidding and procurement information which describes the time, place and conditions of bidding; bidding or proposal forms; and the form of agreement between the CITY and the CONSULTANT; and (2) the Conditions of the Contract for Construction (General, Supplementary and other Conditions). The CONSULTANT also shall compile the Project Manual that includes the Conditions of the Contract for Construction and Specifications and may include bidding requirements and sample forms.

5.3.3 Progress submittals of design documents shall be delivered to the CITY for review and approval, at the 50% Construction Document Phase, the 100% Construction Document to be submitted for permit, and the 100% Construction Documents, approved for construction for each subproject. Such submittals shall be reissued as necessary to secure approval. CITY comments shall be incorporated into the next phase of the work. CONSULTANT is entitled to rely upon CITY'S approval that the design conforms to the program at each stage. The CITY and the CONSULTANT agree that they shall not proceed to the next phase, including the Construction Phase, until they have mutually agreed that the project is feasible in accordance with the budget approved by the CITY.

6.0 Contract Administration Services

6.1 GENERAL ADMINISTRATION

6.1.1 The CONSULTANT shall provide administration of the Contract between the CITY and the Contractor as set forth in the CITY'S Agreement with their Contractor.

6.1.2 The CONSULTANT'S responsibility to provide the Contract Administration Services under this Agreement commences with the Notice to Proceed to the

Contractor and terminates at the issuance to the CITY of the final Certificate for Payment. However, the CONSULTANT may be entitled to a Change in Services in accordance with Section 47.2 if Contract Administration Services extend 60 days after the date of Final Completion of the Work.

- 6.1.3** The CONSULTANT shall be a representative of, and shall advise and consult with, the CITY during the provision of the Contract Administration Services. The CONSULTANT shall have authority to act on behalf of the CITY only to the extent provided in this Agreement unless otherwise modified by written amendment.
- 6.1.4** Duties, responsibilities and limitations of authority of the CONSULTANT under this Section 6.0 shall not be restricted, modified or extended without written agreement of the CITY and CONSULTANT.
- 6.1.5** The CONSULTANT shall review properly prepared, timely requests by the Contractor for additional information about the Contract Documents. A properly prepared request for additional information about the Contract Documents shall be in a form prepared or approved by the CONSULTANT and shall include a detailed written statement that indicates the specific Drawings or Specifications in need of clarification and the nature of the clarification requested.
- 6.1.6** If deemed appropriate by the CONSULTANT, the CONSULTANT shall on the CITY'S behalf prepare, reproduce and distribute supplemental Drawings and Specifications in response to requests for information by the Contractor.
- 6.1.7** The CONSULTANT shall interpret and decide matters concerning performance of the CITY and Contractor under, and requirements of, the Contract Documents on written request of either the CITY or Contractor. The CONSULTANT'S response to such requests shall be made in writing within any time limits agreed upon or otherwise with reasonable promptness.
- 6.1.8** Interpretations and decisions of the CONSULTANT shall be consistent with the intent of and reasonably inferable from the Contract Documents and shall be in writing or in the form of drawings. When making such interpretations and initial decisions, the CONSULTANT shall endeavor to secure faithful performance by both CITY and Contractor, shall not show partiality to either, and shall not be liable for the results of interpretations or decisions so rendered in good faith.
- 6.1.9** The CONSULTANT shall render initial decisions on claims, disputes or other matters in question between the CITY and CONSULTANT as provided in the Contract Documents. However, the CITY'S decisions on matters relating to aesthetic effect shall be final if consistent with the intent expressed in the Contract Documents.

6.2 EVALUATIONS OF THE WORK

6.2.1 The CONSULTANT, as a representative of the CITY, shall visit the site at intervals appropriate to the stage of the Contractor's operations, or as otherwise agreed by the CITY and the CONSULTANT, (1) to become generally familiar with and to keep the CITY informed in writing about the progress and quality of the portion of the Work completed, (2) to endeavor to guard the CITY against defects and deficiencies in the Work, and (3) to determine in general if the Work is being performed in a manner indicating that the Work, when fully completed, will be in accordance with the Contract Documents. However, the CONSULTANT shall not be required to make exhaustive or continuous on-site inspections to check the quality or quantity of the Work. The CONSULTANT shall neither have control over or charge of, nor be responsible for, the construction means, methods, techniques, sequences or procedures, or for safety precautions and programs in connection with the Work, since these are solely the Contractor's rights and responsibilities under the Contract Documents.

6.2.2 The CONSULTANT shall report to the CITY known deviations from the Contract Documents and from the most recent construction schedule submitted by the Contractor. However, the CONSULTANT shall not be responsible for the Contractor's failure to perform the Work in accordance with the requirements of the Contract Documents. The CONSULTANT shall be responsible for the CONSULTANT'S negligent acts or omissions, but shall not have control over or charge of and shall not be responsible for acts or omissions of the Contractor, Sub-contractors, or their agents or employees, or of any other persons or entities performing portions of the Work.

6.2.3 The CONSULTANT shall at all times have access to the Work wherever it is in preparation or progress.

6.2.4 Except as may otherwise be provided in the Contract Documents or when direct communications have been specially authorized in writing, the CONSULTANT and Contractor shall communicate through the CITY. Communications by and with the CONSULTANT'S sub-consultants shall be through the CONSULTANT. The CONSULTANT shall respond to the CITY with the CONSULTANT'S written responses or correspondence within a reasonable length of time.

6.2.5 The CONSULTANT shall have authority to reject Work that does not conform to the Contract Documents. Whenever the CONSULTANT considers it necessary or advisable, the CONSULTANT, with the CITY'S approval, will have authority to require inspection or testing of the Work in accordance with the provisions of the Contract Documents, whether or not such Work is fabricated, installed or completed. However, neither this

authority of the CONSULTANT nor a decision made in good faith, either to exercise or not to exercise such authority, shall give rise to a duty or responsibility of the CONSULTANT to the Contractor, Sub-contractor, material and equipment suppliers, their agents or employees or other persons or entities performing portions of the Work. If the CONSULTANT requires inspection or testing of the Work without the CITY'S prior approval, the Work is deemed acceptable, the CONSULTANT will be responsible for any compensation due the Contractor.

6.3 CERTIFICATION OF PAYMENTS TO CONTRACTOR

6.3.1 The CONSULTANT shall review and certify the amounts due the Contractor and shall issue Certificates for Payment in such amounts. The CONSULTANT'S certification for payment shall constitute a representation to the CITY, based on the CONSULTANT'S evaluation of the Work as provided in Paragraph 6.2 and on the data comprising the Contractor's Application for Payment, that the Work has progressed to the point indicated and that, to the best of the CONSULTANT'S knowledge, information and belief, the quality of the Work is in accordance with the Contract Documents. The foregoing representations are subject (1) to an evaluation of the Work for conformance with the Contract Documents upon Substantial Completion, (2) to results of subsequent tests and inspections, (3) to correction of minor deviations from the Contract Documents prior to completion, and (4) to specific qualifications expressed by the CONSULTANT.

6.3.2 The issuance of a Certificate for Payment shall not be a representation that the CONSULTANT has (1) made exhaustive or continuous on-site inspections to check the quality or quantity of the Work, (2) reviewed construction means, methods, techniques, sequences or procedures, (3) reviewed copies of requisitions received from Sub-contractors and material suppliers and other data requested by the CITY to substantiate the Contractor's right to payment, or (4) ascertained how or for what purpose the Contractor has used money previously paid on account of the Contract Sum.

6.3.3 The CONSULTANT shall maintain a record of the Contractor's Applications for Payment.

6.4 SUBMITTALS

6.4.1 The CONSULTANT shall review and approve or take other appropriate action upon the Contractor's submittals such as Shop Drawings, Product Data and Samples, but only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. The CONSULTANT'S action shall be taken with such reasonable promptness as to cause no delay in the Work or in the activities of the CITY, Contractor or separate contractor. Review of such submittals is

not conducted for the purpose of determining the accuracy and completeness of other details such as dimensions and quantities, or for substantiating instructions for installation or performance of equipment or systems, all of which remain the responsibility of the Contractor as required by the Contract Documents. The CONSULTANT'S review shall not constitute approval of safety precautions or, unless otherwise specifically stated by the CONSULTANT, of any construction means, methods, techniques, sequences or procedures. The CONSULTANT'S approval of a specific item shall not indicate approval of an assembly of which the item is a component.

6.4.2 The CONSULTANT shall maintain a record of submittals and copies of submittals supplied by the Contractor in accordance with the requirements of the Contract Documents.

6.4.3 If professional design services or certifications by a design professional related to systems, materials or equipment are specifically required of the Contractor by the Contract Documents, the CONSULTANT shall specify appropriate performance and design criteria that such services must satisfy. Shop Drawings and other submittals related to the Work designed or certified by the design professional retained by the Contractor shall bear such professional's written approval when submitted to the CONSULTANT. The CONSULTANT shall be entitled to rely upon the adequacy, accuracy and completeness of the services, certifications or approvals performed by such design professionals.

6.5 CHANGES IN THE WORK

6.5.1 The CONSULTANT shall prepare Construction Change Directives and assist the City with the preparation of change orders and allowance authorizations for the CITY'S approval and execution in accordance with the Contract Documents. The CONSULTANT may authorize minor changes in the Work not involving an adjustment in Contract Sum or an extension of the Contract Time, which are consistent with the intent of the Contract Documents. If necessary, the CONSULTANT shall prepare, reproduce and distribute Drawings and Specifications to describe Work to be added, deleted or modified.

6.5.2 The CONSULTANT shall review properly prepared, timely requests by the CITY or Contractor for changes in the Work, including adjustments to the Contract Sum or Contract Time. A properly prepared request for a change in the Work shall be accompanied by sufficient supporting data and information to permit the CONSULTANT to make a reasonable determination without extensive investigation or preparation of additional drawings or specifications. If the CONSULTANT determines that requested changes in the Work are not materially different from the requirements of the

Contract Documents, the CONSULTANT may issue an order for a minor change in the Work or recommend to the CITY that the requested change be denied.

6.5.3 If the CONSULTANT determines that implementation of the requested changes would result in a material change to the Contract that may cause an adjustment in the Contract Time or Contract Sum, the CONSULTANT shall make a recommendation to the CITY, who may authorize further investigation of such change. Upon such authorization, and based upon information furnished by the Contractor, if any, the CONSULTANT shall estimate the additional cost and time that might result from such change, including any additional costs attributable to a Change in Services of the CONSULTANT. With the CITY'S approval, the CONSULTANT shall incorporate those estimates into a Change Order or other appropriate documentation for the CITY'S execution or negotiation with the Contractor.

6.5.4 The CONSULTANT shall maintain records relative to changes in the Work.

6.6 PROJECT COMPLETION

6.6.1 The CONSULTANT shall conduct inspections to determine the date or dates of Substantial Completion and the date of Final Completion, shall receive from the Contractor and forward to the CITY, for the CITY'S review and records, written warranties and related documents required by the Contract Documents and assembled by the Contractor, and shall issue a final Certificate for Payment based upon a final inspection indicating the Work complies with the requirements of the Contract Documents.

6.6.2 The CONSULTANT'S inspection shall be conducted with the CITY'S Designated Representative to check conformance of the Work with the requirements of the Contract Documents and to verify the accuracy and completeness of the list submitted by the CONSULTANT of Work to be completed or corrected.

6.6.3 When the Work is found to be substantially complete, the CONSULTANT shall inform the CITY about the balance of the Contract Sum remaining to be paid the Contractor, including any amounts needed to pay for final completion or correction of the Work.

6.6.4 The CONSULTANT shall receive from the Contractor and forward to the CITY: (1) consent of surety or sureties, if any, to reduction in or partial release of retainage or the making of final payment and (2) affidavits, receipts, releases and waivers of liens or bonds indemnifying the CITY against liens.

7.0 **Facility Operation Services**

7.1 The CONSULTANT shall meet with the CITY or the CITY'S Designated Representative promptly after Substantial Completion to review the need for facility operation services.

7.2 Upon request of the CITY, and prior to the expiration of one year from the date of Substantial Completion, the CONSULTANT shall conduct a meeting with the CITY and the CITY'S Designated Representative to review the facility operations and performance and to make appropriate recommendations to the CITY.

8.0 **Additional Services**

8.1 The CONSULTANT may be authorized, via a duly executed CSA or CPO, to perform any or all of the additional services as set forth and further described on **Exhibit "B"**.

8.2 The following minimum Design and Contract Administration Services shall be provided by the CONSULTANT without a Change in Services in accordance with Section 47.2:

8.2.1 A reasonable number of reviews of each Shop Drawing, Product Data item, sample and similar submittal of the CONSULTANT.

8.2.2 Up to two (2) inspections for any portion of the Work to determine whether such portion of the Work is substantially complete in accordance with the requirements of the Contract Documents.

8.2.3 Up to two (2) inspections for any portion of the Work to determine final completion.

8.3 The following Design and Contract Administration Services shall be provided by the CONSULTANT as a Change in Services in accordance with Section 47.2:

8.3.1 Change Orders and Construction Change Directives requiring evaluation of proposals, including the preparation or revision of Instruments of Services, with prior approval by CITY;

8.3.2 Providing consultation concerning replacement of Work resulting from fire or other cause during construction;

8.3.3 Evaluation of substitutions proposed by the CITY'S consultants or contractors and making subsequent revisions to the Instruments of Service, with prior approval by CITY.

8.3.4 Preparation of design and documentation for alternate bid or proposal requests proposed by the CITY after the Guaranteed Maximum Price is established.

8.3.5 Contract Administration Services provided 60 (sixty) days after the date of Final Completion of the Work, as may be requested by the CITY.

8.4 The CONSULTANT shall furnish or provide the following services only if specifically designated:

- 8.4.1 Programming
- 8.4.2 Land Survey Services
- 8.4.3 Geotechnical Services
- 8.4.4 Space Schematics/Flow Diagrams
- 8.4.5 Existing Facilities Surveys
- 8.4.6 Economic Feasibility Studies
- 8.4.7 Site Analysis
- 8.4.8 Environmental Studies and Reports
- 8.4.9 User-Supplied Data
- 8.4.10 Schedule Development and Monitoring
- 8.4.11 Civil Design
- 8.4.12 Landscape Design
- 8.4.13 Interior Design
- 8.4.14 Value Analysis
- 8.4.15 Cost Estimating
- 8.4.16 On-Site Project Representation
- 8.4.17 Construction Management
- 8.4.18 Start-up Assistance
- 8.4.19 Record Drawings
- 8.4.20 Post-Contract Evaluation
- 8.4.21 Tenant-Related Services
- 8.4.22 Underground Field Drainage

9.0 **Compensation**

- 9.1 In consideration of the Services provided by the CONSULTANT pursuant to this Agreement, the CITY shall pay CONSULTANT compensation which may be negotiated as either a not-to-exceed price or a lump sum amount, in the CITY's sole discretion.
- 9.2 In the event a not to exceed price is negotiated, compensation shall be billed and paid based on and in accordance with the Hourly Rate Schedule attached hereto and incorporated herein as **Exhibit "A"**. The Hourly Rate Schedule identifies all job

classifications which will perform billable services pursuant to this Agreement and the fee for each job classification. Performance of work by personnel in job classifications not listed on the fee schedule will result in nonpayment for such services.

- 9.3 All invoices must reference this Agreement number, using an invoice form approved by the CITY.
- 9.4 Each individual invoice shall be due and payable forty-five (45) days after receipt by the CITY of a correct, fully documented, invoice, in form and substance satisfactory to the CITY with all appropriate cost substantiations attached. All invoices shall be delivered to:

The City of Kissimmee

Public Works & Engineering

Attention: Facilities Management Director

101 Church Street

Kissimmee, FL 34741

- 9.5 In order for both parties herein to close their books and records for a particular Project, the CONSULTANT will clearly state "Final Invoice" on the CONSULTANT's final/last billing to the CITY for such Project. This certifies that all services have been properly performed and all charges and costs have been invoiced to the CITY. Since this account will thereupon be closed, any and other further charges if not properly included on this final invoice are waived by the CONSULTANT.
- 9.6 Payment of the final invoice for any particular Project shall not constitute evidence of the CITY's acceptance of the Work or Services.
- 9.7 Pursuant to Section 9.2, if a not to exceed fee is negotiated, invoices shall be accompanied by time and task records for all billable hours appearing on the invoice. Alternatively, if a lump sum amount is negotiated, invoices shall be made upon the completion of each phase of the work in proportion to the Services performed, as specifically set forth in the applicable CSA or CPO. Additional documentation may be requested by the CITY and, if so requested, shall be furnished by the CONSULTANT to the CITY Auditor's satisfaction.
- 9.8 A contract amendment/change order may be executed by both parties, after Substantial Completion, to incorporate any additional design fees due to the CONSULTANT. The amendment shall be based upon 7% of the additional cost of the work that has been added to the project where the CONSULTANT participated in the design process.
- 9.9 If the services of the CONSULTANT are changed as described in Section 47.2.1 or

47.2.2, the CONSULTANT'S compensation shall be adjusted. Such adjustment shall be computed as a fixed fee on a task-by-task basis, or, in the discretion of the CITY, in an otherwise equitable manner. Adjustments to the CONSULTANT'S compensation may be approved by the Facilities Management Director, providing the compensation adjustment does not exceed the amount specified in the applicable CSA or CPO.

- 9.10 Forty (40) calendar days shall be allowed for the CITY's inspection and approval of the goods and services for which any invoice has been submitted.
- 9.11 No deduction shall be made from the CONSULTANT's compensation on account of penalty, liquidated damages, or other sums withheld from payments to contractors.
- 9.12 If any work designed or specified by the CONSULTANT during any phase of service is abandoned or suspended in whole or in part, the CONSULTANT is to be paid for the service performed on account of it prior to receipt of written notice from the CITY of such abandonment or suspension, together with reimbursements then due and any terminal expense resulting from abandonment or suspension for more than three months.

10.0 **Reimbursable Expense**

10.1 All requests for payment of out-of-pocket expenses eligible for reimbursement under the terms of this Agreement shall include copies of paid receipts, invoices or other documentation acceptable to the CITY. Such documentation shall be sufficient to establish that the expense was actually incurred and necessary in the performance of the Scope of Work described in this Agreement.

10.2 Reimbursable Expenses are the actual, pre-approved, expenses incurred directly in connection with the applicable Consultant Services Authorization, and include:

- Overnight Deliveries
- Reproduction
- Sub-Consultant
- Long Distance Telephone Calls (excluding Florida cities located outside the boundaries of Osceola County)

10.3 Mileage shall be reimbursed in accordance with Section 112.061, Florida Statutes, for pre-approved out-of-county travel (excluding travel from home offices located outside of Osceola County to the Osceola County line).

10.4 Reimbursable Expenses, including sub-consultants, shall be reimbursed at cost.

10.5 Pre-approved travel costs shall be reimbursed in accordance with Section 112.061, Florida Statutes.

10.6 All assets, i.e. durable goods, purchased as reimbursable expenses become the property of the CITY upon completion of the work for which the asset was utilized. All such assets must be surrendered by delivery to the City of Kissimmee Public Works and Engineering Division offices upon demand termination of the Agreement or the conclusion of the project, whichever occurs first.

10.7 The CITY shall reimburse the CONSULTANT for any documents required over and above the number specified in this Agreement per the City's Reimbursable Schedule that is attached hereto as **Exhibit "C"**.

11.0 **Project Team**

11.1 The Project Team, including the CITY'S Designated Representative and the CONSULTANT'S Designated Representative, shall be as specified in the applicable CSA or CPO.

11.2 The Commission (the "Board") hereby authorizes the CITY'S Designated Representative to act as the Board's agent and execute documents associated with a particular project. Examples of these documents are Notices of Commencements, Certificates of Substantial and Final Completion and permits from applicable agencies.

11.3 The persons or entities, in addition to the CITY'S Designated Representative, who have rights to review the CONSULTANT'S submittals to the CITY, shall be as specified in the applicable CSA or CPO.

11.4 The CITY'S other consultants and the CONSULTANT'S sub-consultants or any other person or entity retained at the CONSULTANT'S expense shall be as specified in the applicable CSA or CPO.

12.0 **Consultant's Standard of Care**

12.1 The CONSULTANT'S services shall be performed as expeditiously as is consistent with professional skill and care and the orderly progress of the Project. The CONSULTANT shall submit for the CITY'S approval a schedule for the performance of the CONSULTANT'S services which initially shall be consistent with the time periods established in the applicable CSA or CPO and which shall be adjusted, if necessary, as the Project proceeds. This schedule shall include allowances for periods of time required for the CITY'S review, for the performance of the CITY'S consultants, and for approval of submissions by authorities having jurisdiction over the Project. The CONSULTANT or CITY shall not, except for reasonable cause, exceed time limits established by this schedule approved by the CITY.

12.2 The CONSULTANT'S Designated Representative, identified in the

applicable CSA or CPO, shall be authorized to act on the CONSULTANT'S behalf with Respect to the Project.

12.3 The CONSULTANT shall maintain the confidentiality of information specifically designated as confidential by the CITY, unless withholding such information would violate the law, create the risk of significant harm to the public or prevent the CONSULTANT from establishing a claim or defense in an adjudicatory proceeding. The CONSULTANT shall require of the CONSULTANT'S consultants similar agreements to maintain the confidentiality of information specifically designated as confidential by the CITY.

12.4 Except with the CITY'S knowledge and prior express written consent, the CONSULTANT shall not engage in any activity, or accept any employment, interest or contribution that would reasonably appear to compromise the CONSULTANT'S professional judgment with respect to the Project.

12.5 The CONSULTANT shall review laws, codes and regulations applicable to the CONSULTANT'S services. The CONSULTANT shall design the Project to conform to the requirements imposed by governmental authorities having jurisdiction over the Project.

12.6 The CONSULTANT shall be entitled to rely on the accuracy and completeness of services and information furnished by the CITY. The CONSULTANT shall provide prompt written notice to the CITY if the CONSULTANT becomes aware of any errors, omissions or inconsistencies in such services or information.

12.7 The CONSULTANT has represented to the CITY that it has the personnel and experience necessary to perform the work in a professional and workmanlike manner.

12.8 The CONSULTANT shall exercise the same degree of care, skill, and diligence in the performance of the Services as is provided by a professional of like experience, knowledge and resources, under similar circumstances.

12.9 The CONSULTANT shall, at no additional cost to CITY, re-perform services which fail to satisfy the foregoing standard of care or otherwise fail to meet the requirement of this Agreement.

12.10 The CONSULTANT shall use skilled and competent personnel to perform the services.

13.0 **Insurance**

13.1 **General Provisions**

13.1.1 The CONSULTANT shall maintain, at all times, the following minimum levels of insurance and shall, without in any way altering their liability, obtain, pay for and maintain insurance for the coverage and amounts of coverage not less than those set forth below and provide the CITY with a certified copy of each policy applicable to this Agreement followed thereafter by an annual Certificate of Insurance satisfactory to the CITY to evidence such coverage before any work commences. Such certificates will provide that there shall be no termination, non-renewal, modification or expiration of such coverage without thirty (30) days prior written notice to the CITY .

13.1.2 The CITY shall be named as an additional insured on all CONSULTANT policies related to the project, excluding professional liability and worker's compensation. The general liability and workers' compensation policies shall contain a waiver of subrogation in favor of the CITY. All insurance coverage shall be written with an insurer having an A.M. Best Rating of a least the "A" category and size category of VIII.

13.1.3 The CONSULTANT's self-insured retention or deductible per line of coverage shall not exceed \$25,000.00 without the permission of the CITY.

13.1.4 Any failure by the CONSULTANT to comply with the requirements of this section to provide insurance, the CITY may, at its option, on notice to the CONSULTANT, suspend the work for cause until there is full compliance;

13.1.5 The CITY may, at its sole discretion, purchase such insurance at CONSULTANT's expense provided that the CITY shall have no obligation to do so and if the CITY shall do so, it shall not relieve CONSULTANT of its obligation to obtain insurance.

13.1.6 The CONSULTANT shall not be relieved of or excused from the obligation to obtain and maintain such insurance amount and coverages.

13.1.7 All CONSULTANT's sub-consultants shall be required to include CITY and CONSULTANT as additional insured on their General Liability Insurance policies.

13.1.8 In the event that sub-consultants used by the CONSULTANT do not have insurance, or do not meet the insurance limits, CONSULTANT shall indemnify and hold harmless the CITY for any claim in excess of the sub-consultants' insurance coverage.

13.1.9 The CONSULTANT shall not commence work under this Agreement until all insurance required as stated herein has been obtained and such insurance has been approved by the CITY.

13.2 Comprehensive Automobile Liability Insurance. \$1,000,000.00 combined single limit of liability for bodily injuries, death and property damage resulting from any one occurrence, including all owned, hired, and non-owned vehicles.

13.3 Commercial General Liability. \$1,000,000.00 combined single limit of liability for bodily injuries, death and property damage, and personal injury resulting from any one occurrence, including the following coverages:

13.3.1 Premises and Operations:

Broad Form Commercial General Liability Endorsement to include Blanket Contractual liability (specifically covering, but not limited to, the contractual obligations assumed by the Firm); Personal Injury (with employment and contractual exclusions deleted); and Broad Form Property Damage coverage.

13.3.2 Independent Contractors:

Delete Exclusion relative to collapse, explosion and underground; Property Damage Hazards; Cross Liability Endorsement; and Contractual liability (specifically covering, but not limited to, the contractual obligations assumed by the Firm)

13.4 Professional Liability Insurance. \$2,000,000 for design errors and omissions, exclusive of defense costs. The CONSULTANT shall be required to provide continuing Professional Liability Insurance to cover each project for a period of two (2) years after the project is completed. Insurance requirements may vary depending on projects as determined by the CITY Director of Risk Management and Insurance. The CITY may require the CONSULTANT to provide a higher level of coverage for a specific Project and time frame.

13.5 Performance, Payment and Other Bonds. CONSULTANT shall furnish Performance and Payment Bonds specific to each Project if required and agreed to under the applicable CSA or CPO for the Project.

13.6 Worker's Compensation. CONSULTANT shall provide, pay for, and maintain worker's compensation insurance on all employees, its agents or subcontractors as required by Florida Statutes.

13.7 Employers' Liability. \$1,000,000.

14.0 **Indemnification**

14.1 General. Having considered the risks and potential liabilities that may exist during the performance of the Services and in consideration of the promises included herein, the CITY and the CONSULTANT agree to allocate such liabilities in accordance with this Section 14.0.

14.2 Indemnification.

14.2.1 The CONSULTANT, to the extent permitted by law, shall indemnify, defend (by counsel reasonably acceptable to the CITY) protect and hold the CITY, and its officers, employees and agents, free and harmless from and against any and all claims, actions, causes of action, liabilities (joint or several), penalties, forfeitures, damages, losses and expenses (including, without limitation, attorneys' fees and costs during negotiation, through litigation and all appeals therefrom), and including, without limitation, any liability or loss resulting from judgments or claims for personal injury, including death, or damage to any property whatsoever, which directly or indirectly result from or arise in connection with (i) the failure of the CONSULTANT to comply with applicable non-conflicting laws, rules or regulations, (ii) the breach by the CONSULTANT of its obligations under this Agreement, (iii) any claim for trademark, patent or copyright infringement arising out of the scope of the CONSULTANT's performance of this Agreement, or (iv) the negligent act, errors or omissions, or intentional or willful misconduct of the CONSULTANT, its sub-consultants, agents, employees and invitees; provided, however, that the CONSULTANT shall not be obligated to defend or indemnify the CITY with respect to any such claims or damages arising out of the CITY's sole negligence.

14.2.2 The CITY's review, comment and observation of the CONSULTANT's work and performance of this Agreement shall in no manner constitute a waiver of the indemnification provisions of this Agreement.

14.2.3 The CONSULTANT agrees that it bears sole legal responsibility for its work and work product, and the work and work product of sub-consultants and their employees, and/or for CONSULTANT's performance of this Agreement and its work product(s).

14.3 Survival. Upon completion of all Services, obligations and duties provided for in this Agreement, or in the event of termination of this Agreement for any reason, the terms and conditions of this Section 14.0 shall survive as if the Agreement were in full force and effect.

15.0 Independent Contractor

15.1 The CONSULTANT undertakes performance of the Services as an independent contractor and shall be wholly responsible for the methods of performance.

15.2 The CITY shall have no right to supervise the methods used, but the CITY shall have the right to observe such performance.

15.3 The CONSULTANT shall work closely with the CITY in performing Services under this Agreement.

15.4 The CONSULTANT shall not pledge the CITY's credit or make it a guarantor of payment or surety for any contract, debt, obligation, judgment, lien or any form of indebtedness and shall have no right to speak for or bind the CITY in any manner.

15.5 The CONSULTANT further warrants and represents that it has no obligation or indebtedness that would impair its ability to fulfill the terms of this Agreement.

16.0 **Authority to Practice**

16.1 The CONSULTANT hereby represents and warrants that it has and will continue to maintain all licenses and approvals required to conduct its business, and that it will at all times conduct its business activities in a reputable manner.

17.0 **Compliance with Laws**

17.1 In performance of the Services, the CONSULTANT will comply with applicable regulatory requirements including federal, state, special district, and local laws, rules, regulations, orders, codes, criteria and standards.

18.0 **Subcontracting**

18.1 The CITY reserves the right to accept the use of any proposed subcontractor or sub-consultant of the CONSULTANT (for purposes of this Section 18.0 referred to as a “subcontractor”), or to reject the selection of a particular subcontractor and to inspect all facilities of any subcontractor.

18.2 If a subcontractor fails to perform or make progress, as required by this Agreement, and it is necessary to replace the subcontractor to complete the work in a timely fashion, the CONSULTANT shall promptly do so, subject to acceptance of the new subcontractor by the CITY. Failure of a subcontractor to timely or properly perform its obligations shall not relieve CONSULTANT of its obligations hereunder.

19.0 **Federal and State Taxes**

19.1 The CITY is exempt from Federal Tax and State Sales and Use Taxes. Upon request, the CITY will provide an exemption certificate to the CONSULTANT. The CONSULTANT shall not be exempted from paying sales tax to its suppliers for materials to fulfill contractual obligations with the CITY, nor shall the CONSULTANT be authorized to use the CITY’s Tax Exemption Number in securing such materials.

20.0 **Public Entity Crimes**

20.1 The CONSULTANT understands and acknowledges that this Agreement with the CITY will be void, in the event the conditions under Section 287.133, Florida Statutes apply to the CONSULTANT, relating to conviction for a public entity crime.

21.0 **CITY’s Responsibilities**

21.1 The CITY shall be responsible for providing access to all CITY project sites, and providing information in the CITY’s possession that may reasonably be required by CONSULTANT, including existing reports, studies, financial information, and other required data that are available in the files of the CITY.

22.0 **Termination of Agreement**

22.1 This Agreement may be terminated by the CONSULTANT upon thirty (30) days prior written notice to the CITY in the event of substantial failure by the CITY to perform in accordance with the terms of the Agreement through no fault of the CONSULTANT.

22.2 This Agreement may be terminated by the CITY with or without cause immediately upon written notice to the CONSULTANT.

22.3 Unless the CONSULTANT is in breach of this Agreement, the

CONSULTANT shall be paid for services rendered to the CITY's satisfaction through the date of termination.

22.4 After receipt of written notice of termination of this Agreement, and except as otherwise directed by the CITY, the CONSULTANT shall:

22.4.1 Stop work on the date and to the extent specified.

22.4.2 Terminate and settle all orders and subcontracts relating to the performance of the terminated work.

22.4.3 Transfer all work in process, completed work, and other material related to the terminated work to the CITY.

22.4.4 Continue and complete all parts of the work that have not been terminated.

22.5 The CONSULTANT shall be paid for services actually rendered to the date of termination.

23.0 **Uncontrollable Forces (Force Majeure)**

23.1 Neither the CITY nor the CONSULTANT shall be considered to be in default of this Agreement if delays in or failure of performance shall be due to Uncontrollable Forces, the effect of which, by the exercise of reasonable diligence, the non-performing party could not avoid. The term "Uncontrollable Forces" shall mean any event which results in the prevention or delay of performance by a party of its obligations under this Agreement and which is beyond the reasonable control of the nonperforming party. It includes, but is not limited to fire, flood, earthquakes, storms, lightning, epidemic, war, riot, civil disturbance, sabotage, and governmental actions.

23.2 Neither Party shall, however, be excused from performance if nonperformance is due to forces which are preventable, removable, or remediable and which the nonperforming party could have, with the exercise of reasonable diligence, prevented, removed or remedied with reasonable dispatch.

23.3 The nonperforming party shall, within a reasonable time of being prevented or delayed from performance by an Uncontrollable Force, give written notice to the other party describing the circumstances and Uncontrollable Forces preventing continued performance of the obligations of this Agreement.

24.0 **Governing Law and Venue**

24.1 This Agreement shall be governed in all respects by the laws of the State of Florida and any litigation with respect thereto shall be brought only in the courts of Osceola County.

25.0 **Non-Discrimination**

25.1 The CONSULTANT warrants and represents that all of its employees are treated equally during employment without regard to race, color, religion, gender, age or national origin.

26.0 **Waiver**

26.1 A waiver by either the CITY or the CONSULTANT of any breach of this Agreement shall not be binding upon the waiving party unless such waiver is in writing. In the event of a written waiver, such a waiver shall not affect the waiving Party's rights with respect to any other or further breach. The making or acceptance of a payment by either party with knowledge of the existence of a default or breach shall not operate or be construed to operate as a waiver of any subsequent default or breach.

27.0 **Severability**

27.1 The invalidity, illegality, or unenforceability of any provision of this Agreement, or the occurrence of any event rendering any portion or provision of this Agreement void, shall in no way affect the validity or enforceability of any other portion or provision of the Agreement.

27.2 Any void provision shall be deemed severed from the Agreement and the balance of the Agreement shall be construed and enforced as if the Agreement did not contain the particular portion or provision held to be void.

27.3 The Parties further agree to reform the Agreement to replace any stricken provision with a valid provision that comes as close as possible to the intent of the stricken provision.

27.4 The provisions of this Section shall not prevent the entire Agreement from being void should a provision which is of the essence of the Agreement be determined to be void.

28.0 **Entirety of Agreement**

28.1 The CITY and the CONSULTANT agree that this Agreement sets forth the entire understanding between the Parties as to the subject matter contained herein, and that there are no promises or understandings between the parties other than those

stated herein.

28.2 This Agreement supersedes all prior agreements, contracts, proposals, representations, negotiations, letters or other communications between the CITY and the CONSULTANT pertaining to the Services, whether written or oral.

29.0 **Modification**

29.1 This Agreement may not be modified, added to, superseded or otherwise altered unless such modifications, additions or other alterations are evidenced in writing signed by both the CITY and the CONSULTANT. Such modifications shall be in the form of a written Amendment executed by both Parties.

30.0 **Successors and Assigns**

30.1 The CITY and the CONSULTANT each binds itself and its partners, successors, assigns, executors, administrators and legal representatives to the other Party to this Agreement and to their partners, successors, executors, administrators, assigns, and legal representatives.

30.2 The CONSULTANT shall not assign this Agreement without the express written approval of the CITY by executed amendment, which approval may be withheld in the CITY's sole and absolute discretion.

30.3 In the event of a merger, the surviving corporation shall be substituted for the contracting party to this Agreement and such substitution shall be affirmed by the City of Kissimmee Commission by executed amendment.

31.0 **Contingent Fees**

31.1 The CONSULTANT warrants that it has not employed or retained any company or person, other than a bona fide employee working solely for the CONSULTANT to solicit or secure this Agreement and that it has not paid or agreed to pay any person, company, corporation, individual or firm, other than bona fide employee working solely for the CONSULTANT, any fee, commission, percentage, gift or any other consideration contingent upon or resulting from the award or making of this Agreement.

32.0 **Truth-In-Negotiation Certificate**

32.1 Execution of this Agreement by the CONSULTANT shall act as the execution of a Truth-in-Negotiation certificate certifying that the wage rates and costs used to determine the compensation provided for in this Agreement are accurate, complete, and current as of the date of the Agreement.

32.2 The said rates and costs shall be adjusted to exclude any significant sums should the CITY determine that the rates and costs were increased due to inaccurate, incomplete or noncurrent wage rates or due to inaccurate representations of fees paid to outside consultants. The CITY shall exercise its rights under this Certificate within one (1) year following payment.

33.0 **Ownership of Documents**

33.1 The CONSULTANT shall be required to cooperate with other consultants relative to providing information requested in a timely manner and in the specified form. Any and all documents, records, disks, original drawings, or other information shall become the property of the CITY for its use and/or distribution as may be deemed appropriate by the CITY. The CONSULTANT is not liable for any damages, injury or costs associated with the CITY's use or distribution of these documents for purposes other than those originally intended by the CONSULTANT.

34.0 **Access and Audits**

34.1 The CONSULTANT shall maintain adequate records to justify all charges and costs incurred in performing the work for at least three (3) years after completion of this Agreement. The CITY shall have access to such books, records, and documents as required in this section for the purpose of inspection or audit during normal business hours at the CONSULTANT's place of business.

34.2 Misrepresentations of billable time or Reimbursable Expenses as determined by the City Auditor to the Commission shall result in the recovery of any resulting overpayments. The CITY's cost of recovery shall be the sole expense of the CONSULTANT, including accounting and legal fees, court costs and administrative expenses.

34.3 Intentional misrepresentations of billable hours and Reimbursable Expenses will be criminally prosecuted to the fullest extent of the law.

34.4 All invoices submitted are subject to audit and demand for refund of overpayment up to three (3) years following completion of all services related to this Agreement.

35.0 **Notice**

35.1 Any notice, demand, communication, or request required or permitted hereunder shall be in writing and delivered in person or sent by Federal-Express or by Certified Mail, postage prepaid as follows:

As to City:

City of Kissimmee

Public Works & Engineering Department
Facilities Management Division
101 Church Street
Kissimmee, FL 34741
Attn: Purchasing Director

As to Consultant:

35.2 Notices shall be effective when received at the addresses as specified above. Changes in the respective addresses to which such notice is to be directed may be made from time to time by either party by written notice to the other party. Facsimile transmission is acceptable notice effective when received, however, facsimile transmissions received (i.e.; printed) after 5:00 p.m., or on weekends or holidays, will be deemed received on the next business day. The original of the notice must additionally be mailed as required herein.

35.3 Nothing contained in this Article shall be construed to restrict the transmission of routine communications between representatives of the CONSULTANT and the CITY.

36.0 Service of Process

As to City:

City Attorney
City of Kissimmee
101 Church Street
Kissimmee, Florida 34741

As to Consultant: BUMPUS AND ASSOCIATES, INC.

37.0 Key Personnel

37.1 The CONSULTANT shall notify the CITY in the event of key personnel changes which might affect this Agreement. To the extent possible, notification shall be made within ten (10) days prior to any such changes. The CONSULTANT, at the CITY's request, shall remove without consequence to the CITY any subcontractor or employee of the CONSULTANT and replace him/her with another employee having the required skill and experience. The CITY has the right to reject proposed changes in key personnel.

The following personnel shall be considered key personnel:

Name: Daniel Bumpus

Name: Matthew Rodgers

Name:

38.0. Annual Appropriations

38.1 The CONSULTANT acknowledges that the CITY, during any fiscal year, shall not expend money, incur any liability, or enter into any agreement which, by its terms, involves the expenditure of money in excess of the amounts budgeted as available for expenditure during such fiscal year. Any agreement, verbal or written, made in violation of this subsection is null and void, and no money may be paid on such agreement. Nothing herein contained shall prevent the making of agreements for a period exceeding one year, but any agreement so made shall be executory only for the value of the services to be rendered or agreed to be paid for in succeeding fiscal years. Accordingly, the CITY's performance and obligation to pay under this agreement is contingent upon annual appropriation.

39.0 Liquidated Damages

39.1 The parties hereto agree that liquidated damages, in lieu of actual damages and in the amount stated in the applicable CSA or CPO, will be assessed against the CONSULTANT, as the CITY's remedy and not as a penalty, for CONSULTANT'S failure to meet the final deliverable date in the Performance Schedule in the Scope of Work, but only to the extent and in the proportion to CONSULTANT'S fault in causing the delay as compared to other causes, and to the extent the CONSULTANT is not delayed by reasons beyond CONSULTANT'S reasonable control. The parties agree that such assessment of liquidated damages is reasonable and appropriate, as it would be difficult or impossible to accurately determine the amount of actual damages the CITY would or may incur as a consequence of the CONSULTANT's failure described above.

40.0 Unauthorized Alien(s)

40.1 The CONSULTANT shall not employ or utilize unauthorized aliens in the performance of the Services. The CITY shall consider the employment or utilization of unauthorized aliens a violation of Section 274A(e) of the Immigration and Naturalization Act (8 U.S.C. 1324a). Such violation shall be cause for unilateral termination of this Agreement by the CITY. The Form "AFFIDAVIT CERTIFICATION IMMIGRATION LAWS" will be signed by the CONSULTANT and submitted as part of this Agreement.

40.2 To verify employee eligibility, the CONSULTANT may avail itself of a program by the U.S. Immigration and Customs Enforcement called E-Verify. E-Verify is an Internet-based system operated by U.S. Citizenship and Immigration Services (USCIS), part of the Department of Homeland Security (DHS), in partnership with the Social Security Administration (SSA). E-Verify is currently free to employers. E-Verify provides an automated link to Federal databases to help employers determine employment eligibility of new hires and the validity of their Social Security numbers.

41.0 **Limitation of Liability**

IN NO EVENT, SHALL EITHER PARTY BE LIABLE TO THE OTHER PARTY FOR INDIRECT, INCIDENTAL, CONSEQUENTIAL, SPECIAL, EXEMPLARY, OR PUNITIVE DAMAGES OF ANY KIND OR NATURE, INCLUDING LOSS OF PROFIT, WHETHER FORESEEABLE OR NOT, ARISING OUT OF OR RESULTING FROM THE NONPERFORMANCE OR BREACH OF THIS AGREEMENT BY A PARTY WHETHER BASED IN CONTRACT, COMMON LAW, WARRANTY, TORT, STRICT LIABILITY, CONTRIBUTION, INDEMNITY OR OTHERWISE.

42.0 **Default and Remedy**

42.1 If the CONSULTANT materially defaults in its obligations under this Agreement and fails to cure the same within fifteen (15) days after the date the CONSULTANT receives written notice of the default from the CITY, then the CITY shall have the right to (i) immediately terminate this Agreement by delivering written notice to the CONSULTANT, and (ii) pursue any and all remedies available in law, equity, and under this Agreement. If the CITY materially defaults in its obligations under this Agreement and fails to cure the same within fifteen (15) days after the date the CITY receives written notice of the default from the CONSULTANT, then the CONSULTANT shall have the right to immediately terminate this Agreement by delivering written notice to the CITY. Upon any such termination, the CITY shall pay the CONSULTANT the full amount due and owing for all Services performed through the date of Agreement termination.

43.0 **Attorneys' Fees and Costs**

43.1 Except as stated in Section 14.2.1, above, in connection with any dispute or any litigation arising out of, or relating to this Agreement, each party shall be responsible for its own legal and attorneys' fees, costs and expenses, including attorneys' fees, costs, and expenses incurred for any appellate or bankruptcy proceedings.

44.0 **Public Records Law**

44.1 CONSULTANT 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.

44.2 CONSULTANT shall keep and maintain public records required to perform the services contemplated by this Agreement, in accordance with Chapter 119, Florida Statutes "Public records" means all documents, papers, letters, maps, books, tapes, photographs, films, sound recordings, data processing software,

or other material, regardless of the physical form, characteristics, or means of transmission, made or received pursuant to law or ordinance or in connection with the transaction of official business by any agency.

44.3 CONSULTANT shall ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law for the duration of the contract term and following completion of the contract if the Construction Manager does not transfer the records to the CITY.

44.4 Questions regarding the application of Chapter 119, Florida Statutes, to the CONSULTANT's duty to provide public records relating to this Agreement, shall be directed to the CITY's Custodian of Public Records at 407-518-2308, cityclerkemail@kissimmee.org, and 101 Church Street, Kissimmee, Florida 34741.

45.0 **Americans with Disabilities Act**

45.1 The CONSULTANT shall conform its Drawings and Specifications to the requirements of the Americans with Disabilities Act Accessibility Guidelines ("ADAAG"), but CITY shall be responsible for compliance with the remaining provisions of the Americans with Disabilities Act ("ADA"). CITY and CONSULTANT further recognize that interpretations of ADA by governmental officials and/or courts of law may vary or change. Should such variance or change adopted after the date the 100% Design Development are completed, require the CONSULTANT to make the required modifications, such modifications shall be considered as Contingent Additional Services. Further, CITY acknowledges, that the ADA, including ADAAG, is a new law presenting numerous difficult interpretation issues. Accordingly, the CONSULTANT shall only be liable for gross negligence in connection with any allegation that its design does not properly comply with ADAAG.

46.0 **Additional Definitions**

46.1 **Contract Documents** means this Agreement, any CSA or CPO issued hereunder, the CITY'S contract with the Contractor, the Plans, Specifications, General Conditions and related Construction Documents or any other documents incorporated by reference.

46.2 **Cost of the Work** shall be the total cost or, to the extent the Project is not completed, the estimated cost to the CITY of all elements of the Project designed or specified by the CONSULTANT.

46.2.1 The Cost of the Work shall include the cost at current market rates of labor and materials furnished by the CITY and equipment designed,

specified, selected or specially provided for by the CONSULTANT, including the costs of management or supervision of construction or installation provided by a separate construction manager or CONSULTANT.

46.2.2 The Cost of the Work does not include the compensation of the CONSULTANT and the CONSULTANT'S sub-consultants, the costs of the land, rights-of-way and financing or other costs that are the responsibility of the CITY.

46.3 **Final Completion** means that the following items have been completed or satisfied:

46.3.1 Construction of the Project is completed, in accordance with the contract documents and certified as such by the CITY and CONSULTANT.

46.3.2 The Project is suitable for full use and occupancy as determined by the CITY and CONSULTANT.

46.3.3 All Punchlist items have been completed or otherwise disposed of or accounted for to the CITY'S satisfaction and approval.

46.3.4 A final Certificate of Occupancy and all other permits and approvals required have been legally and validly issued.

46.3.5 All required guarantees, affidavits, releases, bonds and waivers, manuals, record drawings, warranties and maintenance books including the Final Completion form have been delivered to the CITY.

46.4 **Punch list** means a list of items of work to be completed and deficiencies to be corrected, which items shall not affect the attainment of Substantial Completion. Such items shall be complete or otherwise disposed of prior to final acceptance.

46.5 **Schedule of Values** means the schedule to be used as a basis for progress payments to be made to the Contractor by the CITY during performance of the work, based on the then current percentage of progress of construction of the Project, subject to the approval of the CONSULTANT.

46.6 **Substantial Completion** means the Contractor has ascertained that the work or portions thereof is ready for the CITY and CONSULTANT substantial completion inspection. It is understood that the Construction Manager will provide a list of incomplete items to the CITY and CONSULTANT prior to this inspection. After the CITY'S and CONSULTANT's inspection, the Contractor will prepare a schedule for a completion of the list, indicating completion dates for the CITY'S review. The CITY and CONSULTANT will issue a Certificate of Substantial Completion when the work on the Contractor's pre-substantial punch-list has been accomplished, to the best of the Contractor's ability.

46.7 **Substantial Completion Date** means the date, certified by the CONSULTANT, that the Project, or designated portion thereof, is sufficiently complete, in accordance with the Construction Documents and a Certificate of Occupancy issued, so that the CITY can reasonably occupy or utilize the Project, or designated portion thereof, for its intended use.

47.0 **Additional Terms and Conditions**

47.1 INSTRUMENTS OF SERVICE

47.1.1 Drawings, specifications and other documents, including those in electronic form, prepared by the CONSULTANT and the CONSULTANT'S sub-consultants are Instruments of Service for use solely with respect to this Project. The CONSULTANT and the CONSULTANT'S sub-consultants shall be deemed the authors and owners of their respective Instruments of Service and shall retain all common law, statutory and other reserved rights, including copyrights.

47.1.2 Upon execution of this Agreement, the CONSULTANT grants to the CITY a nonexclusive license to reproduce the CONSULTANT'S Instrument of Service and thereafter use the same solely for purposes of constructing, using and maintaining, repairing and making additions and modifications to the Project, provided that the CITY shall comply with all obligations, including prompt payment of all sums when due, under the Agreement. The CONSULTANT shall obtain similar nonexclusive licenses from the CONSULTANT'S sub-consultants consistent with this Agreement. Any termination of this Agreement prior to completion of the Project shall terminate the license. Upon such termination, the CITY shall refrain from making further reproductions of Instrument of Service. If and upon the date the CONSULTANT is adjudged in default of this Agreement, the foregoing license shall be deemed terminated and replaced by a second, nonexclusive license permitting the CITY to authorize other similarly credentialed design professionals to reproduce and, where permitted by law, to make changes, corrections or additions to the Instruments of Service solely for purposes of completing, using and maintaining the Project.

47.1.3 Except for the licenses granted in Section 47.1.2, no other license or right shall be deemed granted or implied under this Agreement. The CITY shall not assign, delegate, sublicense, pledge or otherwise transfer any license granted herein to another party without the prior written agreement of the CONSULTANT. However, the CITY shall be permitted to authorize the Contractor, Subcontractors, and sub-subcontractors and material or equipment suppliers to reproduce applicable portions of the Instruments of Service to and for use in their execution of the Work by license granted in Section 47.1.2. Submission or distribution of Instruments of Service to meet

official regulatory requirements or for similar purposes in connection with the Project is not to be construed as publication in derogation of the reserved rights of the CONSULTANT and the CONSULTANT'S sub-consultants. The CITY agrees to pay the CONSULTANT a reasonable, mutually agreed upon amount for any reuse of the designs, drawings or specifications beyond this Agreement. The CITY shall not be responsible to pay the CONSULTANT for the use of the designs, drawings or specifications when used for reference purposes only.

- 47.1.4 If the CONSULTANT is required to deliver any services hereunder in the form of electronic encoded media, the printed representation of such media furnished by the CONSULTANT shall be the official records of the CONSULTANT'S service provided upon completion of the services and payment in full. The CITY shall have a right to rely on such printed representation in connection with any subsequent modification of such electronic media and agrees to hold the CONSULTANT harmless from all cost and expense, including attorney's fees, from claims which arise out of modification or re-use of such electronic media or printed representation by or on behalf of the CITY without the CONSULTANT'S consent. Under no circumstances shall transfer of drawings and other instruments of service on electronic media for use by the CITY, be deemed a sale by the CONSULTANT, and the CONSULTANT makes no warranties of merchantability or fitness for a particular purpose.

47.2 CHANGE IN SERVICES

- 47.2.1 Change in Services of the CONSULTANT, including services required of the CONSULTANT'S sub-consultants may be accomplished after execution of this Agreement, without invalidating the Agreement, if mutually agreed in writing, if required by circumstances beyond the CONSULTANT'S control, or if the CONSULTANT'S services are affected as described in Section 47.2B-2. In the absence of mutual agreement in writing, the CONSULTANT shall notify the CITY prior to providing such services. If the CITY deems that all or part of such Change in Services is not required, the CITY shall give prompt written notice to the CONSULTANT, and the CONSULTANT shall have no obligation to provide those services. Except for a change due to fault of the CONSULTANT, Change in Services of the CONSULTANT shall entitle the CONSULTANT to an adjustment in compensation pursuant to Section 9.8, and to any Reimbursable Expenses described in Section 10.0.
- 47.2.2 If any of the following circumstances affect the CONSULTANT'S services for the Project, the CONSULTANT shall be entitled to an appropriate adjustment in the CONSULTANT'S schedule and compensation:
- 47.2.2.1 Change in the instructions or approvals given by the CITY that constitute material changes to the Project parameters set forth above

and which necessitate revisions in Instruments of Service;

47.2.2.2 Enactment or revision of codes, laws or regulations or official interpretations, which necessitate changes to previously prepared Instruments of Service;

47.2.2.3 Significant change in the Project including, but not limited to, size, quality, complexity, the CITY'S schedule or budget, or procurement method;

47.2.2.4 Preparation for and attendance at a public hearing, a dispute resolution proceeding or a legal proceeding except where the CONSULTANT is party thereto.

47.3 ACCELERATED COMPLETION OF DESIGN PACKAGES. In order to minimize construction problems and change orders, the CONSULTANT's standard practice requires the completion of detailed working drawings, submission for review and comment by reviewing agencies and incorporation of those comments and/or changes prior to bidding and entering into firm construction contracts. However, CITY may choose to accelerate the completion of the Project so that it may be completed in a shorter time period than would normally be required. Should the CITY choose to make this selection, it shall not be considered Fast Track, or in any way relieve the CONSULTANT of its responsibilities and obligations set forth herein.

(THE REMAINDER OF THIS PAGE IS INTENTIONALLY LEFT BLANK; THE AGREEMENT CONTINUES ON THE FOLLOWING PAGE WITH THE PARTIES' SIGNATURES.)

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement as of the Effective Date.

Attest:

Linda Hansell
CITY CLERK

CITY OF KISSIMMEE,
a Municipal Corporation of the
State of Florida

By: _____
City Clerk

By: _____
Mayor
City of Kissimmee Commission

Date Approved by Commission: _____

Reviewed as to form and legal sufficiency:

City Attorney's Office Date

CONSULTANT

Attest:

Lilby Bumpus
Corporate Secretary

By: Daniel Bumpus
Title: president

STATE OF FLORIDA

COUNTY OF Osceola

The foregoing instrument was acknowledged before me this 21st day of November, 2023, by means of ☒ physical presence or ☐ online notarization, by Anabel Perez Armas as Notary Public for Daniel Bumpus, a Florida corporation, who is personally known to me or has produced identification.

Notary Seal:

Notary: Anabel Perez Armas
Print Name: Anabel Perez Armas
My Commission Expires: 2026

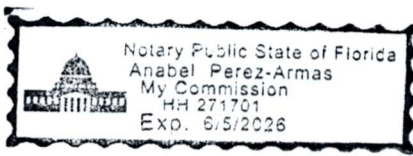


EXHIBIT “A”

HOURLY RATE SCHEDULE

EXHIBIT “B”

SCOPE OF SERVICES

In accordance with Sections 2.3 and 8.1 of the Agreement, in addition to any other Services described in the Agreement, the RFQ, and the CONSULTANT’s responsive proposal thereto, the CONSULTANT may also be authorized to perform any or all of those services set forth and further described below. In the event the CITY requests the CONSULTANT to furnish and perform any of the services listed and described in this Exhibit “B”, those services shall be listed and incorporated in the applicable CSA or CPO issued for a particular Project.

ALL PHASES:

1. PROJECT ADMINISTRATION AND MANAGEMENT SERVICES

1.1. Project Administration services consisting of administrative functions including:

- 1.1.1. Project Decision Structure
- 1.1.2. Project Directory
- 1.1.3. Consultation
- 1.1.4. Research
- 1.1.5. Communications; Meeting Minutes, Meeting Agendas (For meetings called by CONSULTANT during the Design phases of the project)
- 1.1.6. Direction of the work of architectural, engineering and other consultant personnel

1.2. Disciplines Coordination/Document Checking consisting of:

- 1.2.1. Coordination between the architectural work and the work of engineering and their disciplines involved in the Project.
- 1.2.2. Review and checking of documents prepared for the Project by the CONSULTANT and the CONSULTANT’s Consultants.

1.3. Agency Consulting/Review/Approval services, including:

- 1.3.1. Agency consultants
 - 1.3.1.1. City agencies
 - 1.3.1.2. Regional agencies
 - 1.3.1.3. State agencies
- 1.3.2. Research of critical applicable regulations.
- 1.3.3. Preparation of written and graphic explanatory materials.

1.4. Owner Coordination, including:

- 1.4.1. Review and coordination of data furnished for the Project as a responsibility of the Owner.

1.5. Schedule Development/Monitoring Services, including:

- 1.5.1. Participate in establishment and updating of design schedule in conjunction with CM for the performance of the CONSULTANT's services throughout the design of the project. Key decision-making points will be identified on this schedule.

1.6. Presentation services consisting of presentations and recommendations by the CONSULTANT to the following client representatives:

- 1.6.1. City of Kissimmee Commission
- 1.6.2. Executive Task Force
- 1.6.3. User group(s)
- 1.6.4. Construction Manager

PHASE I PROGRAMMING & MASTER PLANNING

2. NEEDS ASSESSMENT/DATA COLLECTION

2.1. Space Needs Assessments

- 2.1.1. Macro Level Space Requirements Analysis
- 2.1.2. Macro Level Adjacency Requirements
- 2.1.3. Parking Analysis

2.2. Analysis of the site and its surroundings to include the following:

- 2.2.1. Land Utilization
- 2.2.2. Building locations
- 2.2.3. Utility Systems
- 2.2.4. Surface and subsurface conditions (By Owner)
- 2.2.5. Vegetation (By Owner)
- 2.2.6. Survey (By Owner)
- 2.2.7. Land Use Restrictions
- 2.2.8. Historical analysis
- 2.2.9. Stormwater retention/detention areas

3. FUNCTIONAL PROGRAMMING

3.1. Prepare a detailed architectural program based on the scope established in Phase I to include the following services:

- 3.1.1. Functional Requirements Analysis
- 3.1.2. Interior Development Guidelines
- 3.1.3. Space Standards

- 3.1.4. Preliminary Program Space Estimates
- 3.1.5. Space and Equipment Program
- 3.1.6. Special Building System Requirements
- 3.1.7. Micro-Adjacency Requirements
- 3.1.8. Prepare Final Draft Program
- 3.1.9. Prepare Final Program Report

4. MASTER PLANNING

- 4.1** Prepare three different conceptual approaches for housing the space and parking requirements validated in the Needs Assessment. Include the following information, at a minimum:
 - 4.1.1 Existing facility renovation recommendations
 - 4.1.2 Site development planning issues (land utilization, pedestrian and vehicular circulation, parking, areas for expansion, stormwater retention/detention and landscape forms)
 - 4.1.3 Architectural concepts. The architectural concepts will include blocking and stacking diagrams, massing studies and character sketches.

PHASE II: DESIGN/ BIDDING/CONSTRUCTION ADMINISTRATION SERVICES

5. DESIGN SERVICES

5.1. Architectural Design/Documentation:

- 5.1.1. During the Schematic Design Phase, responding to program requirements and preparing:
 - 5.1.1.1. Conceptual Planning/Massing Options
 - 5.1.1.2. Final Conceptual Site and Building Plans
 - 5.1.1.3. Preliminary Sections and Elevations
 - 5.1.1.4. Preliminary Selection of Building Systems and Materials
 - 5.1.1.5. Development of Approximate Dimensions, Areas and Volumes
 - 5.1.1.6. Perspective sketch – eye level
 - 5.1.1.7. Study model
- 5.1.2. During the Design Development Phase consisting of continued development and expansion of architectural Schematic Design Documents to establish the final scope, relationships, forms, size and appearance of the Project through:
 - 5.1.2.1. Plans, sections and elevations
 - 5.1.2.2. Typical construction details
 - 5.1.2.3. Three-dimensional sketch
 - 5.1.2.4. Study model
 - 5.1.2.5. Final materials selection
 - 5.1.2.6. Equipment layouts

- 5.1.3. During the Contract Documents phase consisting of preparation of Drawings and Specifications based on approved Design Development documents setting forth in detail the architectural construction requirements for the Project.

5.2. Structural Design/Documentation:

- 5.2.1. During the Schematic Design Phase consisting of recommendations regarding basic structural materials and systems, analyses, and development of conceptual design solutions for:
 - 5.2.1.1. A structural system
 - 5.2.1.2. Alternate structural systems, if required
- 5.2.2. During the Design Development phase consisting of continued development of the specific structural system and Schematic Design documents in sufficient detail to establish:
 - 5.2.2.1. Basic structural system and dimensions
 - 5.2.2.2. Final structural design criteria
 - 5.2.2.3. Foundation design criteria
 - 5.2.2.4. Preliminary sizing of major structural components
 - 5.2.2.5. Critical coordination clearances
- 5.2.3. During the Contract Documents phase consisting of preparation of final structural engineering calculations, Drawings and Specifications based on approved Design Development documents, setting forth in detail the structural construction requirements for the Project.

5.3. Mechanical Design/Documentation:

- 5.3.1. During the Schematic Design phase, prepare a narrative, consisting of consideration of alternate materials, systems and equipment, and development of conceptual design solutions for:
 - 5.3.1.1. Energy source(s)
 - 5.3.1.2. Energy conservation and controls system concepts
 - 5.3.1.3. Heating and ventilating (systems selections and conceptual sizing and configuration analysis.)
 - 5.3.1.4. Air conditioning (systems selections and conceptual sizing and configuration analysis.)
 - 5.3.1.5. Plumbing
 - 5.3.1.6. Fire protection
 - 5.3.1.7. General space requirements
- 5.3.2. During the Design Development phase consisting of continued development and expansion of mechanical Schematic Design documents and development of outline Specifications or materials lists to establish:
 - 5.3.2.1. Approximate equipment sizes and capacities

- 5.3.2.2. Preliminary equipment layouts
- 5.3.2.3. Required space for equipment
- 5.3.2.4. Required chases and clearances
- 5.3.2.5. Acoustical and vibration control
- 5.3.2.6. Visual impacts
- 5.3.2.7. Energy conservation measures

- 5.3.3. During the Contract Documents phase consisting of preparation of final mechanical engineering calculations, Drawings and Specifications based on approved Design Development documents, setting forth in detail the mechanical construction requirements for the Project.

5.4. Electrical Design/Documentation

- 5.4.1. During the Schematic Design Phase, prepare a narrative, consisting of consideration of alternate systems, recommendations regarding basic electrical materials, systems and equipment, analyses, and development of conceptual solutions for:
 - 5.4.1.1. Power service and distribution
 - 5.4.1.2. Lighting
 - 5.4.1.3. Communication and data outlet location systems
 - 5.4.1.4. Fire detection and alarms
 - 5.4.1.5. General space requirements
 - 5.4.1.6. Audio/Visual systems
- 5.4.2. During the Design Development phase consisting of continued development and expansion of electrical Schematic Design documents and development of outline Specifications or materials lists to establish:
 - 5.4.2.1. Criteria for lighting, electrical and communications systems
 - 5.4.2.2. Approximate sizes and capacities of major components
 - 5.4.2.3. Preliminary equipment layouts
 - 5.4.2.4. Required space for equipment
 - 5.4.2.5. Required chases and clearances
- 5.4.3. During the Contract Documents phase, consisting of preparation of final electrical engineering calculations, Drawings and Specifications based on approved Design Development documents, setting forth in detail the electrical requirements for the Project.

5.5. Civil Design/Documentation:

- 5.5.1. During the Schematic Design phase consisting of consideration of alternate materials and systems and development of conceptual design solutions for:
 - 5.5.1.1. On-site utility systems
 - 5.5.1.2. Fire protection systems
 - 5.5.1.3. Drainage systems

5.5.1.4. Paving

- 5.5.2. During the Design Development phase consisting of continued development and expansion of civil Schematic Design documents and development of outline Specifications or materials lists to establish the final scope of and preliminary details for on-site civil engineering work.
- 5.5.3. During the Contract Documents phase, consisting of preparation of final civil engineering calculations, Drawings and Specifications based on approved Design Development documents, setting forth in detail the civil construction requirements for the Project.
- 5.5.4. Permit applications required for Water Distribution, Sewage Collection and Stormwater/Environment Management (Local, State, and Federal) shall be prepared for execution by the Owner. Permit applications to be paid by Owner. All necessary reports and drawings will be prepared to accompany the permit applications. Two meetings per agency as required to secure permits is included in services. City shall designate individual who has authority to sign permit applications.

5.6. Landscape Design/Documentation:

- 5.6.1. During the Schematic Design phase, prepare narrative conceptual design solutions, which will be developed for land forms, hardscape, lawns and plantings based on program requirements, physical site characteristics, design objectives and environmental determinants.
- 5.6.2. During the Design Development phase, Schematic Design documents will be further developed including outline Specifications and materials lists to establish final scope and preliminary details for landscape work.
- 5.6.3. During the Contract Documents phase, the Drawings and Specifications based on approved Design Development documents, setting forth in detail the landscape and hardscape construction requirements for the Project will be prepared.

5.7. Interior Design/Documentation:

- 5.7.1. During the Schematic Design phase consisting of space allocation and departmental utilization plans based on functional relationships:
 - 5.7.1.1. Types and qualities of finishes and materials for furniture, furnishings, and equipment.
- 5.7.2. During the Design Development phase consisting of continued development and expansion of interior Schematic Design documents and development of

outline Specifications or materials lists to establish final scope and preliminary details relative to:

- 5.7.2.1. Interior construction of the Project
- 5.7.2.2. Special interior design features
- 5.7.2.3. Space planning
- 5.7.2.4. Materials, finishes and colors
- 5.7.2.5. Furniture and equipment layouts

- 5.7.3. During the Contract Documents phase consisting of preparation of Drawings, Specifications and other documents based on approved Design Development documents, setting forth in detail the requirements for interior construction and furniture, furnishings and equipment for the Project.

5.8. Environmental Graphic Design Services: The scope shall include interior and exterior sign types and graphic elements to provide a comprehensive and cohesive signage and wayfinding system for users of the facility.

- 5.8.1. Design Development:
 - 5.8.1.1. Consider design approaches; determine elements needed for identity, information and wayfinding.
 - 5.8.1.2. Begin development of sign prototypes.
 - 5.8.1.3. Develop preliminary location plans.
- 5.8.2. Construction document preparation.
- 5.8.3. Construction observation and submittal review.
- 5.8.4. Interior sign types to include:
 - 5.8.4.1. Primary room ID (changeable name inserts in some locations).
 - 5.8.4.2. Restroom ID.
 - 5.8.4.3. Stairway ID and stairway level ID.
 - 5.8.4.4. Building Code required ID.
 - 5.8.4.5. Fire exit plan.
 - 5.8.4.6. Building directories.
- 5.8.5. Exterior sign types include:
 - 5.8.5.1. Main entrance identification.
 - 5.8.5.2. Vehicular directional.
 - 5.8.5.3. Regulatory / Warning identification.
 - 5.8.5.4. Parking areas; handicap parking, authorized vehicles, visitor parking, etc.
- 5.8.6. Donor Recognition / Dedication Plaques – Prepare conceptual designs illustrating a graphic solution to recognize a significant donor for the facility.

5.9. Materials Research/Specifications:

- 5.9.1. During the Schematic Design phase consisting of:
 - 5.9.1.1. Identification of potential materials, systems and equipment and their criteria and quality standards consistent with the conceptual design.

- 5.9.1.2. Investigation of availability and suitability of alternative materials, systems and equipment.
- 5.9.2. During the Design Development phase consisting of activities by in-house personnel in:
 - 5.9.2.1. Development of architectural and engineering project specific draft Specifications or itemized lists and brief form identification of significant architectural materials, systems and equipment, including their criteria and quality standards.
 - 5.9.2.2. Coordination of similar activities of other disciplines.
 - 5.9.2.3. Production of design manual including design criteria and outline specifications or material lists.
- 5.9.3. During the Contract Documents phase consisting of activities of in-house architectural personnel in:
 - 5.9.3.1. Review of the development and preparation of bidding and procurement information prepared by the Construction Manager.
 - 5.9.3.2. Assistance to the Owner and their agents in review of the Conditions of the Contract (General, Supplementary and other Conditions).
 - 5.9.3.3. Development and preparation of architectural Specifications describing materials, systems and equipment, workmanship, quality and performance criteria required for the construction of the Project.
 - 5.9.3.4. Coordination of the development of Specifications by other disciplines.
 - 5.9.3.5. Compilation of Project Manual including Conditions of the Contract, bidding and procurement information and Specifications.
- 5.10. At the conclusion of each Design Phase (Schematic Design, Design Development and Construction Document) the Architect/Engineer shall provide the Owner with two (2) sets of drawings and specifications. At the conclusion of Construction Documents one set of reproducible will also be made available to the City for printing of Bid Documents by the City or the Construction Manager.

6. BIDDING OR NEGOTIATION SERVICES

- 6.1. **Bidding Materials services** consisting of organizing and handling Bidding Documents for:
 - 6.1.1. Coordination
 - 6.1.2. Reproduction by Owner
 - 6.1.3. Completeness review
- 6.2. **Addenda services** consisting of preparation and distribution of Addenda as may be required during bidding or negotiation and including supplementary Drawings,

Specifications, instructions and notice(s) of changes in the bidding schedule and procedures.

6.3. Bidding/Negotiation services consisting of:

6.3.1. Responses to questions from Bidders and clarifications or interpretations of the Bidding Documents.

6.4. Analysis of Alternates/Substitutions consisting of consideration, analyses, comparisons, and recommendations relative to alternates or substitutions proposed by Bidders or proposers either prior to or subsequent to receipt of Bids or proposals.

7. CONSTRUCTION ADMINISTRATION

7.1. Submittal Services consisting of:

7.1.1. Processing of submittals, including receipt, review of, and appropriate action on Shop Drawings, Product Data, Samples and other submittals required by the Contract Documents.

7.1.2. Distribution of submittals to Construction Manager.

7.1.3. Related communications.

7.2. Observation services consisting of periodic visits by the Project Manager or Project CONSULTANT to the site at intervals appropriate to the state of the work or as otherwise agreed by the Owner and CONSULTANT in writing to become generally familiar with the progress and quality of the Work completed and to determine in general if the Work when completed will be in accordance with Contract Documents; preparing related reports and communications, and attendance at progress review meetings at the site.

7.2.1. Periodic site visits by other staff to observe the progress of the project.

7.3. Responses to Requests for Information (RFI)

7.3.1. Responding to requests for clarifications or additional information related to the Contract Documents.

7.4. Supplemental Documentation services consisting of:

7.4.1. Preparation, reproduction and distribution of supplemental Drawings, Specifications and interpretations in response to requests for clarification by Construction Manager or the Owner.

7.4.2. Providing guidance to the Construction Manager in conjunction with the Owner -relative to changed requirements and schedule revisions.

7.5. Quotation Requests/Change Orders consisting of:

- 7.5.1. Preparation, reproduction and distribution of Drawings and Specifications to describe Work to be added, deleted or modified. Changes shall be clearly defined.
- 7.5.2. Review of proposals from Construction Manager for reasonableness of quantities and costs of labor and materials.
- 7.5.3. Review and recommendations relative to changes in time for Substantial Completion.
- 7.5.4. Review on Owner's behalf relative to costs of Work proposed to be added, deleted or modified.
- 7.5.5. Assisting in the preparation of appropriate Modifications of the Contract(s) for Construction.
- 7.5.6. Coordination of communications, approvals, notifications and record-keeping relative to changes in the Work.

7.6. Contract Cost Accounting services consisting of:

- 7.6.1. Review of records of payments on account of the Contract Sum and all changes thereto.
- 7.6.2. Evaluation of Applications for Payment and certification thereof.
- 7.6.3. Review and evaluation of expense data submitted by the Construction Manager for Work under cost-plus-fee arrangements.

7.7. Interpretations and Decisions consisting of:

- 7.7.1. Review of claims, disputes, or other matters between the Owner and Construction Manager relating to the execution or progress of the Work as provided in the Contract Documents.
- 7.7.2. Rendering written decisions.

7.8. Project Closeout services initiated upon notice from the Construction Manager that the Work, or a designated portion thereof which is acceptable to the Owner, is sufficiently complete in accordance with the Contract Documents to verify the list submitted by the Construction Manager of items to be completed or corrected.

- 7.8.1. Review with the Owner's representative for conformity of the Work to the Contract Documents to verify the list submitted by the Construction Manager of items to be completed or corrected.
- 7.8.2. Recommendation of the amounts to be withheld until final completion.
- 7.8.3. Securing and receipt of consent of surety or sureties, if any, to reduction in or partial release of retainage or the making of final payment(s).
- 7.8.4. Issuance of Certificate(s) of Substantial Completion.
- 7.8.5. Inspection(s) upon notice by the Construction Manager that the Work is ready for final inspection and acceptance.
- 7.8.6. Final inspection with the Owner's representative to verify final completion of the Work.

- 7.8.7. Securing and receipt of consent of surety or sureties, if any, to the making of final payment(s).
- 7.8.8. Issuance of final Certificate(s) for Payment.
- 7.8.9. Final inspection of Water Distribution, Sewage Collection and Stormwater/ Environmental Management Facilities. Preparation of certifications to agencies along with record documents prepared based upon record information supplied by the Construction Manager. Services include one final inspection for each certification.

8. POST-CONSTRUCTION SERVICES

8.1. Record Drawing services consisting of:

- 8.1.1. Making arrangements for obtaining from Construction Manager information in the form of marked-up prints, drawings and other data certified by them on changes made during performance of the Work, including Change Directives, RFI's, ASI's, etc.
- 8.1.2. Review of general accuracy of information submitted and certified by the Construction Manager.
- 8.1.3. Preparation of record drawings electronically based on certified information furnished by the Construction Manager.
- 8.1.4. Transmittal one set of full-size reproducible record drawings and general data, appropriately identified, to the Owner and others as directed. Two copies of all electronic data including CADD drawings on CD.

8.2. Warranty Review consisting of:

- 8.2.1. Consultation with and recommendation to the Owner during the duration of warranties in connection with inadequate performance of materials, systems and equipment under warranty.
- 8.2.2. Inspection(s) prior to expiration of the warranty period(s) to ascertain adequacy of performance of materials, systems and equipment.
- 8.2.3. Documenting defects or deficiencies and assisting the Owner in preparing instructions to the Construction Manager for correction of noted defects.

9. ADDITIONAL SERVICES/EXPENSES (not included in the base fee):

9.1. Owner-Provided Services:

- 9.1.1. Environmental assessment of site, if necessary.
- 9.1.2. Environmental assessment of existing facilities to be renovated and/or demolished, and the removal of any hazardous material, if necessary.
- 9.1.3. Printing of all Contract Documents issued for bidding and construction.
- 9.1.4. Distribution of Contract Documents to Construction Manager for estimating and bidding purposes.

- 9.2. Mock-Up Services** relating to any space for study during the design phases and consisting of:
- 9.2.1. Design and documentation for the required mock-up.
 - 9.2.2. Construction administration of mock-up construction activities.
 - 9.2.3. Arrangements for testing performance of mock-up.
 - 9.2.4. Review, analysis and reporting of results.
- 9.3. Prepare an Inventory** of existing furniture and equipment that will be placed in the new facilities.
- 9.4. Value Engineering** – Value engineering is the detailed, systematic review of the design concepts, construction techniques, materials and building types associated with a project solely in terms of life cycle costs in an attempt to obtain optimum value for every dollar spent. If Owner chooses to engage in value engineering, Owner shall either retain the services of an independent Value Engineer (“VE”) to perform the above review services to be complete at a stage no later than the completion of schematic design, or may pay a mutually negotiated sum “at the time the services are requested” to CONSULTANT to perform the above review services at a stage later than the completion of schematic design, Owner acknowledges that schedule and cost impacts may occur.
- 9.4.1. If Owner chooses to retain an independent VE, all recommendations of the VE shall be given to CONSULTANT for its review and adequate time will be provided for CONSULTANT to respond to these recommendations. CONSULTANT may be compensated as an additional service for time spent to review the recommendations of the VE and to incorporate those accepted by both Owner and CONSULTANT. Objections to any recommendations made by the VE shall be stated in writing. Owner agrees that CONSULTANT shall not be responsible for any damage, cost or liability which arises in connection with or as a result of the incorporation of such design changes.
- 9.5. Commissioning** – The performance of a functional and operational check of all systems and equipment to verify the installation is performing to the design criteria. CONSULTANT would prepare this service in conjunction with an independent contractor experienced in such activities.
- 9.6. Structural Blast Resistance** - Analysis of building structural systems to resist loads imposed by blast forces on exterior of facility. This would require an additional blast consultant to be obtained.
- 9.7. Security Systems:** The Security portion of the project will include the design and documentation of Electronic Security System from Schematic Design through Construction Administration Services. The Electronic Security System will include intrusion detection, access control, electronic door control and monitoring,

operational intercom, fixed duress alarms, monitoring and control panels, CCVE systems, control room layouts, rough-ins for x-ray screening/magnetometer at entry lobby, and parcel screening. As part of the overall security plan CONSULTANT will provide a site analysis to determine passive security measures to be incorporated for the facility. Deliverables for the above scope for each task are as listed below.

- 9.7.1. **Schematic Design (SDs):** CONSULTANT will provide a written security narrative describing the Electronic Security System, reflecting the design approach based on program requirements. In addition, CONSULTANT will provide two people for a one day on site Security Workshop to validate the security program and establish the design intent.
- 9.7.2. **Design Development (DDs):** CONSULTANT will provide job specific draft specifications of the Electronic Security System including plans indicating device locations, and outline specifications, and equipment selections reflecting design approach. CONSULTANT will provide one person for 1 day to attend an on-site design review with the Owner and Design Team members to review the Electronic Security System Design Development documents.
- 9.7.3. **Construction Documents (CDs):** Upon completion of this review, CONSULTANT will provide completed biddable documents including plans, details, schedules, riser diagrams, and specifications required to fully document the Electronic Security System. In addition, CONSULTANT will provide, at the completion of the Construction Documents phase, two (2) copies of a Design Information Manual (DIM) outlining major equipment selections utilized as the basis of design for the Electronic Security Systems. CONSULTANT will conduct mid-point design review with Owner and Design Team members to review the Electronic Security Construction Documents.
- 9.7.4. **Bidding:** CONSULTANT will review all questions related to the Electronic Security System submitted, and provide answers in written addendum as required.
- 9.7.5. **Construction Administration (CA):** CONSULTANT will provide one person for four, one day intermediate site visits during construction. In addition, upon written notification of substantial completion CONSULTANT will provide two persons for one day (16 hours total) to review and test the Electronic Security System.
 - 9.7.5.1. Included in this phase of work is the review of security shop drawing submittals and written responses to security RFI from the contractor.
 - 9.7.5.2. Deliverable for this phase of work will include a written field report for the intermediate site visits, and a final report and punch list of the site visit made following written notice of substantial completion.

9.7.6. **Expanded Security System Design** - The following systems and services can be provided in addition to the Electronic Security Design defined in previous sections:

9.7.6.1. Assistance Stations

9.7.6.2. Parking Area Equipment (cameras, card access control)

9.7.6.3. Wireless Duress

9.7.6.4. Hydraulic Barriers

9.7.6.5. Biometrics

9.7.6.6. Perimeter protection systems

9.7.6.7. Post Construction Services: CONSULTANT will provide two people for one day (16 hours total) to conduct a pre-warranty expiration review of the electronic security system. The review will focus on inspection of equipment, operational functions, defects or deficiencies within the system and will be documented in report form and issued to the owner.



EXHIBIT C

SCHEDULE OF REIMBURSABLES

1. Reproduction Cost			
A.....Regular Copying	Single Side	Double	
Sided			
8 ½ x 11 (black & white).....\$ 0.15/page	\$ 0.25/sheet		
8 ½ x 11 (color)\$ 0.30/page	\$ 0.40/sheet		
8 ½ x 14 (black & white).....\$ 0.15/page	\$ 0.25/sheet		
8 ½ x 14 (color)\$ 0.30/page	\$ 0.40/sheet		
11 x 17 (black & white).....\$ 0.25/page	\$ 0.35/sheet		
11 x 17 (color)\$ 0.40/page	\$ 0.50/sheet		
9 ½ x 24 Single Side Only.....\$ 1.00/page			
17 x 22 Single Side Only.....\$ 2.00/page			
18 x 24 Single Side Only.....\$ 2.00/page			
24 x 36 Single Side Only.....\$ 3.00/page			
30 x 30 Single Side Only.....\$ 5.00/page			
32 x 34 Single Side Only.....\$ 5.00/page			
Other sizes-per square inch\$ 0.03/page			
Compact Digital Disk.....\$ 6.00/disk			
B. Blueprint Copy.....	\$10.00/page		
2. Subcontractor Services	Actual Costs		
3. Special Consultants	Actual costs		
4. Telecommunications			
A. Local	Non-reimbursable		
B. Non-Local	Actual Costs		
5. Computer Services	Non-reimbursable		
6. Travel Expenses	In accordance with Chapter 112.061, F.S.; and further defined in the City of Kissimmee Employee Handbook		
7. Postage, Fed Express, UPS	Actual Costs		
8. Pre-approved Equipment (includes purchase and rental of equipment used in project)	Actual Costs		

EXHIBIT D

AFFIDAVIT CERTIFICATION
IMMIGRATION LAWS

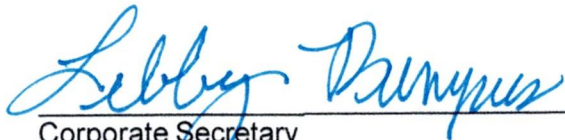
SOLICITATION NO.: RFP2023-006 PROJECT NAME: Architectural and Engineering Services

THE CITY OF KISSIMMEE, a MUNICIPAL CORPRATION OF THE STATE OF FLORIDA (CITY), WILL NOT INTENTIONALLY AWARD CITY CONTRACTS TO ANY CONTRACTOR WHO KNOWINGLY EMPLOYS UNAUTHORIZED ALIEN WORKERS, CONSTITUTING A VIOLATION OF THE EMPLOYMENT PROVISIONS CONTAINED IN 8 U.S.C. SECTION 1324 a(e) {SECTION 274A(e) OF THE IMMIGRATION AND NATIONALITY ACT ("INA").

THE CITY MAY CONSIDER THE EMPLOYMENT BY ANY CONTRACTOR OF UNAUTHORIZED ALIENS A VIOLATION OF SECTION 274A(e) OF THE INA. **SUCH VIOLATION BY THE RECIPIENT OF THE EMPLOYMENT PROVISIONS CONTAINED IN SECTION 274A(e) OF THE INA SHALL BE GROUNDS FOR UNILATERAL CANCELLATION OF THE CONTRACT BY THE CITY.**

BIDDER ATTESTS THAT THEY ARE FULLY COMPLIANT WITH ALL APPLICABLE IMMIGRATION LAWS (SPECIFICALLY TO THE 1986 IMMIGRATION ACT AND SUBSEQUENT AMENDMENTS).

Attest:


Corporate Secretary

CONSULTANT

By:

 Daniel Bumpus
Title: president

STATE OF FLORIDA
COUNTY OF Osceola

The foregoing instrument was acknowledged before me this 21st day of November 2023, by means of ☒ physical presence or ☐ online notarization, by Anabel Perez-Armas as Public Notary for Daniel Bumpus, a Florida corporation, who is personally known to me or has produced identification.

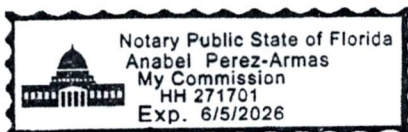
Notary Seal:

Notary:

Print Name:

My Commission Expires:


Anabel Perez-Armas
2026



Architectural/Engineering Services Master Agreement

THIS ARCHITECTURAL/ENGINEERING MASTER SERVICES AGREEMENT (“Agreement”) is entered into as of the Effective Date (hereinafter defined) by and between the City of Kissimmee, a Municipal Corporation of the State of Florida, by and through its Commission, 101 Church Street, Kissimmee, Florida 34741 (hereinafter referred to as the “CITY”), and **FOREFRONT ARCHITECTURE & ENGINEERING**, 1230 Oakley Seaver Dr, Suite 100 Clermont, FL 34711, whose Federal Identification Number is: 46-5333007 (hereinafter referred to as the “CONSULTANT”).

WITNESSETH:

WHEREAS, the CITY requires certain architectural and/or engineering services to be performed in the City of Kissimmee; and,

WHEREAS, the CITY has solicited for these professional services via RFQ2023-006, an advertised request for qualifications (the “RFQ”), and has received numerous responsive bids thereto; and

WHEREAS, the CONSULTANT remains agreeable to providing the CITY the professional services and represents that it is capable and prepared to do so;

NOW, THEREFORE, in consideration of the promises contained herein, the CITY and the CONSULTANT (collectively, the “Parties”) hereby agree, as follows:

1.0 **Term**

1.1 This Agreement shall take effect on the date of its execution by the Mayor, The City of Kissimmee Commission (the “Effective Date”).

1.2 The term of this Agreement shall be for a five (5) year period, commencing upon the Effective Date, unless otherwise terminated as provided herein.

2.0 **CONSULTANT –SERVICES -- GENERAL**

2.1 The CONSULTANT shall provide the CITY complete architectural and engineering services necessary to provide construction documents and administration for various projects (individually a “Project” and collectively, the “Projects”) throughout the Term, as may be further specifically designated and authorized by the CITY in writing. Such authorization shall be in the form of either a Consultant Services Authorization (“CSA”) or a Contract Purchase Order (“CPO”), and all provisions of this Agreement shall apply to the CSA or CPO with full force and effect as if appearing in full within each CSA or CPO. Each CSA or CPO will set forth a specific Scope of Services, maximum limit of compensation, schedule, liquidated damages, and completion date, and shall become effective upon the due execution.

When the CONSULTANT and the CITY enter into a CSA or CPO where the term thereof expires on a date that is later than the date of this Agreement, the CONSULTANT and the CITY agree that the terms of this Agreement and any amendments, attachments, or provisions thereof are automatically extended until the expiration or full completion of the requirements of the CSA or CPO, as applicable, have been performed. Cancellation by the CITY of any remaining service prior to the full completion of the requirements of the CSA/CPO shall cause the terms of this Agreement to terminate at the same time. This provision only applies when the expiration of the CSA/CPO extends beyond the expiration of this Agreement. It does not apply when a CSA/CPO expires or is cancelled prior to the expiration of this Agreement.

2.2 The CONSULTANT is not authorized to undertake any Project without a duly executed CSA or CPO, which shall specify the work to be performed. The CONSULTANT recognizes that the CITY may employ several different CONSULTANTS and engineers to perform the services described herein and that the CONSULTANT has not been employed as the exclusive agent to perform any such services.

2.3 In addition to the services described in this Section 2.0, the RFQ, the Consultant's responsive proposal thereto, and otherwise set forth and described in the body of this Agreement, the CONSULTANT may also be authorized to perform, via a duly executed CSA or CPO, any or all of those services set forth and further described in **Exhibit "B"**, attached hereto and incorporated herein (collectively, the "Services").

3.0 Project Administration Services

3.1 The CONSULTANT shall manage the CONSULTANT'S services and administer the Project. The CONSULTANT shall consult with the CITY, research applicable design criteria, attend Project meetings, and communicate with members of the Project team and issue progress reports. The CONSULTANT shall coordinate the services provided by the CONSULTANT and the CONSULTANT'S sub-consultants with those services provided by the CITY and the CITY'S consultants.

3.2 When Project requirements have been sufficiently identified, the CONSULTANT may be required to prepare, and periodically update, a Project schedule that shall identify milestone dates for decisions required of the CITY, design services furnished by the CONSULTANT, completion of documentation provided by the CONSULTANT, commencement of construction and Substantial Completion of the Work.

3.3 The CONSULTANT shall consider the value of alternative materials, building systems and equipment, together with other considerations based on program, budget and aesthetics in developing the design for the Project.

3.4 Upon request of the CITY, the CONSULTANT shall make a presentation to

explain the design of the Project to representatives of the CITY.

3.5 The CONSULTANT shall submit design documents to the CITY at intervals appropriate to the design process for purposes of evaluation and approval by the CITY. The CONSULTANT shall be entitled to rely on approvals received from the CITY in the further development of the design.

3.6 The CONSULTANT shall assist the CITY in connection with the CITY'S responsibility for filing documents required for the approval of governmental authorities having jurisdiction over the Project.

3.7 EVALUATION OF BUDGET AND COST OF THE WORK.

3.7.1 When the Project requirements have been sufficiently identified, the CONSULTANT shall prepare a preliminary estimate of the Cost of the Work. This estimate may be based on current area, volume or similar conceptual estimating techniques. The CONSULTANT shall advise the CITY of any adjustments to previous estimates of the Cost of the Work indicated by changes in Project requirements or general market conditions. If at any time the estimate of the Cost of the Work exceeds the CITY'S budget, the CONSULTANT shall make appropriate recommendations to the CITY to adjust the Project's size, quality or budget, and the CITY shall cooperate with the CONSULTANT in making such adjustments.

3.7.2 Evaluations of the CITY'S budget for the Project, the preliminary estimate of the Cost of the Work, and updated estimates of the Cost of the Work represent the CONSULTANT'S judgment as a design professional familiar with the construction industry. It is recognized, however, that neither the CONSULTANT nor the CITY has control over the cost of labor, materials or equipment, over the CONSULTANT'S methods of determining bid prices, or over competitive bidding, market or negotiating conditions. Accordingly, the CONSULTANT cannot and does not warrant or represent that bids or negotiated prices will not vary from the CITY'S budget for the Project or from any estimate of the Cost of the Work or evaluation prepared or agreed to by the CONSULTANT.

3.7.3 In preparing estimates of the Cost of the Work, the CONSULTANT shall be permitted to include contingencies and allowances for design, bidding and price escalation; to determine what materials, equipment, component systems and types of construction are to be included in the Contract Documents; to make reasonable adjustments in the scope of the Project and to include in the Contract Documents alternate bids as may be necessary to adjust the estimated Cost of the Work to meet the CITY'S budget for the Cost of the Work.

3.7.4 If bidding or negotiation has not commenced within 90 days after the CONSULTANT submits the Construction Documents to the CITY, the budget for the Cost of the Work shall be adjusted to reflect changes in the general level of prices in the construction industry.

3.7.5 If the budget for the Cost of the Work is exceeded by the lowest bona fide bid or negotiated proposal, and the CITY elects to revise the Project scope to reduce the Cost of the Work, then the CONSULTANT, without additional charge, shall modify the Contract Documents as necessary to comply with the fixed limit as a condition of this Agreement.

4.0 **Evaluation and Planning Services**

4.1 **The CITY may furnish a program setting forth the CITY's objectives, schedule, constraints and criteria, including space requirements and relationships, special equipment, systems and site requirements.** The CONSULTANT shall provide a preliminary evaluation of the information furnished by the CITY under this Agreement, including the CITY'S program and schedule requirements and budget for the Cost of the Work, each in terms of the other. The CONSULTANT shall review such information to ascertain that it is consistent with the requirements of the Project and shall notify the CITY of any other information or consultant services that may be reasonably needed for the Project.

4.2 The CONSULTANT shall provide a preliminary evaluation of the CITY's site for the Project based on the information provided by the CITY of site conditions, and the CITY'S program, schedule and budget for the Cost of the Work.

5.0 **Design Services**

5.1 SCHEMATIC DESIGN DOCUMENTS

5.1.1 The CONSULTANT shall provide Schematic Design Documents based on the mutually agreed-upon program, schedule, and budget for the Cost of the Work. The documents shall establish the conceptual design of the Project illustrating the scale and relationship of the Project components. The Schematic Design Documents shall include a conceptual site plan, if appropriate, and preliminary building plans, sections and elevations. At the CONSULTANT's option, the Schematic Design Documents may include study models, perspective sketches, electronic modeling or combinations of these media. Preliminary selections of major building systems and construction materials shall be noted on the drawings or described in writing.

5.2 DESIGN DEVELOPMENT DOCUMENTS

5.2.1 The CONSULTANT shall provide Design Development Documents based on the approved Schematic Design Documents and updated budget for the Cost of the Work. The Design Development Documents shall illustrate

and describe the refinement of the design of the Project, establishing the scope, relationships, forms, size and appearance of the Project by means of plans, sections and elevations, typical construction details, and equipment layouts. The Design Development Documents shall include specifications that identify major materials and systems and establish in general their quality levels.

5.3 CONSTRUCTION DOCUMENTS

5.3.1 The CONSULTANT shall provide Construction Documents based on the approved Design Development Documents and updated budget for the Cost of the Work. The Construction Documents shall set forth in detail the requirements for construction of the Project. The Construction Documents shall include Drawings and Specifications that establish in detail the quality levels of materials and systems required for the Project.

5.3.2 During the development of the Construction Documents, the CONSULTANT shall assist the CITY in the development and preparation of: (1) bidding and procurement information which describes the time, place and conditions of bidding; bidding or proposal forms; and the form of agreement between the CITY and the CONSULTANT; and (2) the Conditions of the Contract for Construction (General, Supplementary and other Conditions). The CONSULTANT also shall compile the Project Manual that includes the Conditions of the Contract for Construction and Specifications and may include bidding requirements and sample forms.

5.3.3 Progress submittals of design documents shall be delivered to the CITY for review and approval, at the 50% Construction Document Phase, the 100% Construction Document to be submitted for permit, and the 100% Construction Documents, approved for construction for each subproject. Such submittals shall be reissued as necessary to secure approval. CITY comments shall be incorporated into the next phase of the work. CONSULTANT is entitled to rely upon CITY'S approval that the design conforms to the program at each stage. The CITY and the CONSULTANT agree that they shall not proceed to the next phase, including the Construction Phase, until they have mutually agreed that the project is feasible in accordance with the budget approved by the CITY.

6.0 **Contract Administration Services**

6.1 GENERAL ADMINISTRATION

6.1.1 The CONSULTANT shall provide administration of the Contract between the CITY and the Contractor as set forth in the CITY'S Agreement with their Contractor.

- 6.1.2** The CONSULTANT'S responsibility to provide the Contract Administration Services under this Agreement commences with the Notice to Proceed to the Contractor and terminates at the issuance to the CITY of the final Certificate for Payment. However, the CONSULTANT may be entitled to a Change in Services in accordance with Section 47.2 if Contract Administration Services extend 60 days after the date of Final Completion of the Work.
- 6.1.3** The CONSULTANT shall be a representative of, and shall advise and consult with, the CITY during the provision of the Contract Administration Services. The CONSULTANT shall have authority to act on behalf of the CITY only to the extent provided in this Agreement unless otherwise modified by written amendment.
- 6.1.4** Duties, responsibilities and limitations of authority of the CONSULTANT under this Section 6.0 shall not be restricted, modified or extended without written agreement of the CITY and CONSULTANT.
- 6.1.5** The CONSULTANT shall review properly prepared, timely requests by the Contractor for additional information about the Contract Documents. A properly prepared request for additional information about the Contract Documents shall be in a form prepared or approved by the CONSULTANT and shall include a detailed written statement that indicates the specific Drawings or Specifications in need of clarification and the nature of the clarification requested.
- 6.1.6** If deemed appropriate by the CONSULTANT, the CONSULTANT shall on the CITY'S behalf prepare, reproduce and distribute supplemental Drawings and Specifications in response to requests for information by the Contractor.
- 6.1.7** The CONSULTANT shall interpret and decide matters concerning performance of the CITY and Contractor under, and requirements of, the Contract Documents on written request of either the CITY or Contractor. The CONSULTANT'S response to such requests shall be made in writing within any time limits agreed upon or otherwise with reasonable promptness.
- 6.1.8** Interpretations and decisions of the CONSULTANT shall be consistent with the intent of and reasonably inferable from the Contract Documents and shall be in writing or in the form of drawings. When making such interpretations and initial decisions, the CONSULTANT shall endeavor to secure faithful performance by both CITY and Contractor, shall not show partiality to either, and shall not be liable for the results of interpretations or decisions so rendered in good faith.
- 6.1.9** The CONSULTANT shall render initial decisions on claims, disputes or other matters in question between the CITY and CONSULTANT as provided in the Contract Documents. However, the CITY'S decisions on matters

relating to aesthetic effect shall be final if consistent with the intent expressed in the Contract Documents.

6.2 EVALUATIONS OF THE WORK

6.2.1 The CONSULTANT, as a representative of the CITY, shall visit the site at intervals appropriate to the stage of the Contractor's operations, or as otherwise agreed by the CITY and the CONSULTANT, (1) to become generally familiar with and to keep the CITY informed in writing about the progress and quality of the portion of the Work completed, (2) to endeavor to guard the CITY against defects and deficiencies in the Work, and (3) to determine in general if the Work is being performed in a manner indicating that the Work, when fully completed, will be in accordance with the Contract Documents. However, the CONSULTANT shall not be required to make exhaustive or continuous on-site inspections to check the quality or quantity of the Work. The CONSULTANT shall neither have control over or charge of, nor be responsible for, the construction means, methods, techniques, sequences or procedures, or for safety precautions and programs in connection with the Work, since these are solely the Contractor's rights and responsibilities under the Contract Documents.

6.2.2 The CONSULTANT shall report to the CITY known deviations from the Contract Documents and from the most recent construction schedule submitted by the Contractor. However, the CONSULTANT shall not be responsible for the Contractor's failure to perform the Work in accordance with the requirements of the Contract Documents. The CONSULTANT shall be responsible for the CONSULTANT'S negligent acts or omissions, but shall not have control over or charge of and shall not be responsible for acts or omissions of the Contractor, Sub-contractors, or their agents or employees, or of any other persons or entities performing portions of the Work.

6.2.3 The CONSULTANT shall at all times have access to the Work wherever it is in preparation or progress.

6.2.4 Except as may otherwise be provided in the Contract Documents or when direct communications have been specially authorized in writing, the CONSULTANT and Contractor shall communicate through the CITY. Communications by and with the CONSULTANT'S sub-consultants shall be through the CONSULTANT. The CONSULTANT shall respond to the CITY with the CONSULTANT'S written responses or correspondence within a reasonable length of time.

6.2.5 The CONSULTANT shall have authority to reject Work that does not conform to the Contract Documents. Whenever the CONSULTANT considers it necessary or advisable, the CONSULTANT, with the CITY'S approval, will have authority to require inspection or testing of the Work in

accordance with the provisions of the Contract Documents, whether or not such Work is fabricated, installed or completed. However, neither this authority of the CONSULTANT nor a decision made in good faith, either to exercise or not to exercise such authority, shall give rise to a duty or responsibility of the CONSULTANT to the Contractor, Sub-contractor, material and equipment suppliers, their agents or employees or other persons or entities performing portions of the Work. If the CONSULTANT requires inspection or testing of the Work without the CITY'S prior approval, the Work is deemed acceptable, the CONSULTANT will be responsible for any compensation due the Contractor.

6.3 CERTIFICATION OF PAYMENTS TO CONTRACTOR

6.3.1 The CONSULTANT shall review and certify the amounts due the Contractor and shall issue Certificates for Payment in such amounts. The CONSULTANT'S certification for payment shall constitute a representation to the CITY, based on the CONSULTANT'S evaluation of the Work as provided in Paragraph 6.2 and on the data comprising the Contractor's Application for Payment, that the Work has progressed to the point indicated and that, to the best of the CONSULTANT'S knowledge, information and belief, the quality of the Work is in accordance with the Contract Documents. The foregoing representations are subject (1) to an evaluation of the Work for conformance with the Contract Documents upon Substantial Completion, (2) to results of subsequent tests and inspections, (3) to correction of minor deviations from the Contract Documents prior to completion, and (4) to specific qualifications expressed by the CONSULTANT.

6.3.2 The issuance of a Certificate for Payment shall not be a representation that the CONSULTANT has (1) made exhaustive or continuous on-site inspections to check the quality or quantity of the Work, (2) reviewed construction means, methods, techniques, sequences or procedures, (3) reviewed copies of requisitions received from Sub-contractors and material suppliers and other data requested by the CITY to substantiate the Contractor's right to payment, or (4) ascertained how or for what purpose the Contractor has used money previously paid on account of the Contract Sum.

6.3.3 The CONSULTANT shall maintain a record of the Contractor's Applications for Payment.

6.4 SUBMITTALS

6.4.1 The CONSULTANT shall review and approve or take other appropriate action upon the Contractor's submittals such as Shop Drawings, Product Data and Samples, but only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. The CONSULTANT'S action shall be taken with such

reasonable promptness as to cause no delay in the Work or in the activities of the CITY, Contractor or separate contractor. Review of such submittals is not conducted for the purpose of determining the accuracy and completeness of other details such as dimensions and quantities, or for substantiating instructions for installation or performance of equipment or systems, all of which remain the responsibility of the Contractor as required by the Contract Documents. The CONSULTANT'S review shall not constitute approval of safety precautions or, unless otherwise specifically stated by the CONSULTANT, of any construction means, methods, techniques, sequences or procedures. The CONSULTANT'S approval of a specific item shall not indicate approval of an assembly of which the item is a component.

6.4.2 The CONSULTANT shall maintain a record of submittals and copies of submittals supplied by the Contractor in accordance with the requirements of the Contract Documents.

6.4.3 If professional design services or certifications by a design professional related to systems, materials or equipment are specifically required of the Contractor by the Contract Documents, the CONSULTANT shall specify appropriate performance and design criteria that such services must satisfy. Shop Drawings and other submittals related to the Work designed or certified by the design professional retained by the Contractor shall bear such professional's written approval when submitted to the CONSULTANT. The CONSULTANT shall be entitled to rely upon the adequacy, accuracy and completeness of the services, certifications or approvals performed by such design professionals.

6.5 CHANGES IN THE WORK

6.5.1 The CONSULTANT shall prepare Construction Change Directives and assist the City with the preparation of change orders and allowance authorizations for the CITY'S approval and execution in accordance with the Contract Documents. The CONSULTANT may authorize minor changes in the Work not involving an adjustment in Contract Sum or an extension of the Contract Time, which are consistent with the intent of the Contract Documents. If necessary, the CONSULTANT shall prepare, reproduce and distribute Drawings and Specifications to describe Work to be added, deleted or modified.

6.5.2 The CONSULTANT shall review properly prepared, timely requests by the CITY or Contractor for changes in the Work, including adjustments to the Contract Sum or Contract Time. A properly prepared request for a change in the Work shall be accompanied by sufficient supporting data and information to permit the CONSULTANT to make a reasonable determination without extensive investigation or preparation of additional

drawings or specifications. If the CONSULTANT determines that requested changes in the Work are not materially different from the requirements of the Contract Documents, the CONSULTANT may issue an order for a minor change in the Work or recommend to the CITY that the requested change be denied.

6.5.3 If the CONSULTANT determines that implementation of the requested changes would result in a material change to the Contract that may cause an adjustment in the Contract Time or Contract Sum, the CONSULTANT shall make a recommendation to the CITY, who may authorize further investigation of such change. Upon such authorization, and based upon information furnished by the Contractor, if any, the CONSULTANT shall estimate the additional cost and time that might result from such change, including any additional costs attributable to a Change in Services of the CONSULTANT. With the CITY'S approval, the CONSULTANT shall incorporate those estimates into a Change Order or other appropriate documentation for the CITY'S execution or negotiation with the Contractor.

6.5.4 The CONSULTANT shall maintain records relative to changes in the Work.

6.6 PROJECT COMPLETION

6.6.1 The CONSULTANT shall conduct inspections to determine the date or dates of Substantial Completion and the date of Final Completion, shall receive from the Contractor and forward to the CITY, for the CITY'S review and records, written warranties and related documents required by the Contract Documents and assembled by the Contractor, and shall issue a final Certificate for Payment based upon a final inspection indicating the Work complies with the requirements of the Contract Documents.

6.6.2 The CONSULTANT'S inspection shall be conducted with the CITY'S Designated Representative to check conformance of the Work with the requirements of the Contract Documents and to verify the accuracy and completeness of the list submitted by the CONSULTANT of Work to be completed or corrected.

6.6.3 When the Work is found to be substantially complete, the CONSULTANT shall inform the CITY about the balance of the Contract Sum remaining to be paid the Contractor, including any amounts needed to pay for final completion or correction of the Work.

6.6.4 The CONSULTANT shall receive from the Contractor and forward to the CITY: (1) consent of surety or sureties, if any, to reduction in or partial release of retainage or the making of final payment and (2) affidavits,

receipts, releases and waivers of liens or bonds indemnifying the CITY against liens.

7.0 Facility Operation Services

7.1 The CONSULTANT shall meet with the CITY or the CITY'S Designated Representative promptly after Substantial Completion to review the need for facility operation services.

7.2 Upon request of the CITY, and prior to the expiration of one year from the date of Substantial Completion, the CONSULTANT shall conduct a meeting with the CITY and the CITY'S Designated Representative to review the facility operations and performance and to make appropriate recommendations to the CITY.

8.0 Additional Services

8.1 The CONSULTANT may be authorized, via a duly executed CSA or CPO, to perform any or all of the additional services as set forth and further described on **Exhibit "B"**.

8.2 The following minimum Design and Contract Administration Services shall be provided by the CONSULTANT without a Change in Services in accordance with Section 47.2:

8.2.1 A reasonable number of reviews of each Shop Drawing, Product Data item, sample and similar submittal of the CONSULTANT.

8.2.2 Up to two (2) inspections for any portion of the Work to determine whether such portion of the Work is substantially complete in accordance with the requirements of the Contract Documents.

8.2.3 Up to two (2) inspections for any portion of the Work to determine final completion.

8.3 The following Design and Contract Administration Services shall be provided by the CONSULTANT as a Change in Services in accordance with Section 47.2:

8.3.1 Change Orders and Construction Change Directives requiring evaluation of proposals, including the preparation or revision of Instruments of Services, with prior approval by CITY;

8.3.2 Providing consultation concerning replacement of Work resulting from fire or other cause during construction;

8.3.3 Evaluation of substitutions proposed by the CITY'S consultants or contractors and making subsequent revisions to the Instruments of Service, with prior approval by CITY.

8.3.4 Preparation of design and documentation for alternate bid or proposal requests proposed by the CITY after the Guaranteed Maximum Price is established.

8.3.5 Contract Administration Services provided 60 (sixty) days after the date of Final Completion of the Work, as may be requested by the CITY.

8.4 The CONSULTANT shall furnish or provide the following services only if specifically designated:

- 8.4.1 Programming
- 8.4.2 Land Survey Services
- 8.4.3 Geotechnical Services
- 8.4.4 Space Schematics/Flow Diagrams
- 8.4.5 Existing Facilities Surveys
- 8.4.6 Economic Feasibility Studies
- 8.4.7 Site Analysis
- 8.4.8 Environmental Studies and Reports
- 8.4.9 User-Supplied Data
- 8.4.10 Schedule Development and Monitoring
- 8.4.11 Civil Design
- 8.4.12 Landscape Design
- 8.4.13 Interior Design
- 8.4.14 Value Analysis
- 8.4.15 Cost Estimating
- 8.4.16 On-Site Project Representation
- 8.4.17 Construction Management
- 8.4.18 Start-up Assistance
- 8.4.19 Record Drawings
- 8.4.20 Post-Contract Evaluation
- 8.4.21 Tenant-Related Services
- 8.4.22 Underground Field Drainage

9.0 **Compensation**

- 9.1 In consideration of the Services provided by the CONSULTANT pursuant to this Agreement, the CITY shall pay CONSULTANT compensation which may be negotiated as either a not-to-exceed price or a lump sum amount, in the CITY's sole discretion.

- 9.2. In the event a not to exceed price is negotiated, compensation shall be billed and paid based on and in accordance with the Hourly Rate Schedule attached hereto and incorporated herein as **Exhibit "A"**. The Hourly Rate Schedule identifies all job classifications which will perform billable services pursuant to this Agreement and the fee for each job classification. Performance of work by personnel in job classifications not listed on the fee schedule will result in nonpayment for such services.
- 9.3 All invoices must reference this Agreement number, using an invoice form approved by the CITY.
- 9.4 Each individual invoice shall be due and payable forty-five (45) days after receipt by the CITY of a correct, fully documented, invoice, in form and substance satisfactory to the CITY with all appropriate cost substantiations attached. All invoices shall be delivered to:

The City of Kissimmee

Public Works & Engineering

Attention: Facilities Management Director

101 Church Street

Kissimmee, FL 34741

- 9.5 In order for both parties herein to close their books and records for a particular Project, the CONSULTANT will clearly state "Final Invoice" on the CONSULTANT's final/last billing to the CITY for such Project. This certifies that all services have been properly performed and all charges and costs have been invoiced to the CITY. Since this account will thereupon be closed, any and other further charges if not properly included on this final invoice are waived by the CONSULTANT.
- 9.6 Payment of the final invoice for any particular Project shall not constitute evidence of the CITY's acceptance of the Work or Services.
- 9.7 Pursuant to Section 9.2, if a not to exceed fee is negotiated, invoices shall be accompanied by time and task records for all billable hours appearing on the invoice. Alternatively, if a lump sum amount is negotiated, invoices shall be made upon the completion of each phase of the work in proportion to the Services performed, as specifically set forth in the applicable CSA or CPO. Additional documentation may be requested by the CITY and, if so requested, shall be furnished by the CONSULTANT to the CITY Auditor's satisfaction.
- 9.8 A contract amendment/change order may be executed by both parties, after Substantial Completion, to incorporate any additional design fees due to the CONSULTANT. The amendment shall be based upon 7% of the additional cost of the work that has been added to the project where the CONSULTANT participated in

the design process.

- 9.9 If the services of the CONSULTANT are changed as described in Section 47.2.1 or 47.2.2, the CONSULTANT'S compensation shall be adjusted. Such adjustment shall be computed as a fixed fee on a task-by-task basis, or, in the discretion of the CITY, in an otherwise equitable manner. Adjustments to the CONSULTANT'S compensation may be approved by the Facilities Management Director, providing the compensation adjustment does not exceed the amount specified in the applicable CSA or CPO.
- 9.10 Forty (40) calendar days shall be allowed for the CITY's inspection and approval of the goods and services for which any invoice has been submitted.
- 9.11 No deduction shall be made from the CONSULTANT's compensation on account of penalty, liquidated damages, or other sums withheld from payments to contractors.
- 9.12 If any work designed or specified by the CONSULTANT during any phase of service is abandoned or suspended in whole or in part, the CONSULTANT is to be paid for the service performed on account of it prior to receipt of written notice from the CITY of such abandonment or suspension, together with reimbursements then due and any terminal expense resulting from abandonment or suspension for more than three months.

10.0 **Reimbursable Expense**

10.1 All requests for payment of out-of-pocket expenses eligible for reimbursement under the terms of this Agreement shall include copies of paid receipts, invoices or other documentation acceptable to the CITY. Such documentation shall be sufficient to establish that the expense was actually incurred and necessary in the performance of the Scope of Work described in this Agreement.

10.2 Reimbursable Expenses are the actual, pre-approved, expenses incurred directly in connection with the applicable Consultant Services Authorization, and include:

- Overnight Deliveries
- Reproduction
- Sub-Consultant
- Long Distance Telephone Calls (excluding Florida cities located outside the boundaries of Osceola County)

10.3 Mileage shall be reimbursed in accordance with Section 112.061, Florida Statutes, for pre-approved out-of-county travel (excluding travel from home offices located outside of Osceola County to the Osceola County line).

10.4 Reimbursable Expenses, including sub-consultants, shall be reimbursed at cost.

10.5 Pre-approved travel costs shall be reimbursed in accordance with Section 112.061, Florida Statutes.

10.6 All assets, i.e. durable goods, purchased as reimbursable expenses become the property of the CITY upon completion of the work for which the asset was utilized. All such assets must be surrendered by delivery to the City of Kissimmee Public Works and Engineering Division offices upon demand termination of the Agreement or the conclusion of the project, whichever occurs first.

10.7 The CITY shall reimburse the CONSULTANT for any documents required over and above the number specified in this Agreement per the City's Reimbursable Schedule that is attached hereto as **Exhibit "C"**.

11.0 Project Team

11.1 The Project Team, including the CITY'S Designated Representative and the CONSULTANT'S Designated Representative, shall be as specified in the applicable CSA or CPO.

11.2 The Commission (the "Board") hereby authorizes the CITY'S Designated Representative to act as the Board's agent and execute documents associated with a particular project. Examples of these documents are Notices of Commencements, Certificates of Substantial and Final Completion and permits from applicable agencies.

11.3 The persons or entities, in addition to the CITY'S Designated Representative, who have rights to review the CONSULTANT'S submittals to the CITY, shall be as specified in the applicable CSA or CPO.

11.4 The CITY'S other consultants and the CONSULTANT'S sub-consultants or any other person or entity retained at the CONSULTANT'S expense shall be as specified in the applicable CSA or CPO.

12.0 Consultant's Standard of Care

12.1 The CONSULTANT'S services shall be performed as expeditiously as is consistent with professional skill and care and the orderly progress of the Project. The CONSULTANT shall submit for the CITY'S approval a schedule for the performance of the CONSULTANT'S services which initially shall be consistent with the time periods established in the applicable CSA or CPO and which shall be adjusted, if necessary, as the Project proceeds. This schedule shall include allowances for periods of time required for the CITY'S review, for the performance of the CITY'S consultants, and for approval of submissions by authorities having jurisdiction over the Project. The CONSULTANT or CITY shall not, except for reasonable cause, exceed time limits established by this schedule approved by the

CITY.

12.2 The CONSULTANT'S Designated Representative, identified in the applicable CSA or CPO, shall be authorized to act on the CONSULTANT'S behalf with Respect to the Project.

12.3 The CONSULTANT shall maintain the confidentiality of information specifically designated as confidential by the CITY, unless withholding such information would violate the law, create the risk of significant harm to the public or prevent the CONSULTANT from establishing a claim or defense in an adjudicatory proceeding. The CONSULTANT shall require of the CONSULTANT'S consultants similar agreements to maintain the confidentiality of information specifically designated as confidential by the CITY.

12.4 Except with the CITY'S knowledge and prior express written consent, the CONSULTANT shall not engage in any activity, or accept any employment, interest or contribution that would reasonably appear to compromise the CONSULTANT'S professional judgment with respect to the Project.

12.5 The CONSULTANT shall review laws, codes and regulations applicable to the CONSULTANT'S services. The CONSULTANT shall design the Project to conform to the requirements imposed by governmental authorities having jurisdiction over the Project.

12.6 The CONSULTANT shall be entitled to rely on the accuracy and completeness of services and information furnished by the CITY. The CONSULTANT shall provide prompt written notice to the CITY if the CONSULTANT becomes aware of any errors, omissions or inconsistencies in such services or information.

12.7 The CONSULTANT has represented to the CITY that it has the personnel and experience necessary to perform the work in a professional and workmanlike manner.

12.8 The CONSULTANT shall exercise the same degree of care, skill, and diligence in the performance of the Services as is provided by a professional of like experience, knowledge and resources, under similar circumstances.

12.9 The CONSULTANT shall, at no additional cost to CITY, re-perform services which fail to satisfy the foregoing standard of care or otherwise fail to meet the requirement of this Agreement.

12.10 The CONSULTANT shall use skilled and competent personnel to perform the services.

13.0 **Insurance**

13.1 **General Provisions**

13.1.1 The CONSULTANT shall maintain, at all times, the following minimum levels of insurance and shall, without in any way altering their liability, obtain, pay for and maintain insurance for the coverage and amounts of coverage not less than those set forth below and provide the CITY with a certified copy of each policy applicable to this Agreement followed thereafter by an annual Certificate of Insurance satisfactory to the CITY to evidence such coverage before any work commences. Such certificates will provide that there shall be no termination, non-renewal, modification or expiration of such coverage without thirty (30) days prior written notice to the CITY .

13.1.2 The CITY shall be named as an additional insured on all CONSULTANT policies related to the project, excluding professional liability and worker's compensation. The general liability and workers' compensation policies shall contain a waiver of subrogation in favor of the CITY. All insurance coverage shall be written with an insurer having an A.M. Best Rating of a least the "A" category and size category of VIII.

13.1.3 The CONSULTANT's self-insured retention or deductible per line of coverage shall not exceed \$25,000.00 without the permission of the CITY.

13.1.4 Any failure by the CONSULTANT to comply with the requirements of this section to provide insurance, the CITY may, at its option, on notice to the CONSULTANT, suspend the work for cause until there is full compliance;

13.1.5 The CITY may, at its sole discretion, purchase such insurance at CONSULTANT's expense provided that the CITY shall have no obligation to do so and if the CITY shall do so, it shall not relieve CONSULTANT of its obligation to obtain insurance.

13.1.6 The CONSULTANT shall not be relieved of or excused from the obligation to obtain and maintain such insurance amount and coverages.

13.1.7 All CONSULTANT's sub-consultants shall be required to include CITY and CONSULTANT as additional insured on their General Liability Insurance policies.

13.1.8 In the event that sub-consultants used by the CONSULTANT do not have insurance, or do not meet the insurance limits, CONSULTANT shall indemnify and hold harmless the CITY for any claim in excess of the sub-consultants' insurance coverage.

13.1.9 The CONSULTANT shall not commence work under this Agreement until all insurance required as stated herein has been obtained and such insurance has been approved by the CITY.

13.2 Comprehensive Automobile Liability Insurance. \$1,000,000.00 combined single limit of liability for bodily injuries, death and property damage resulting from any one occurrence, including all owned, hired, and non-owned vehicles.

13.3 Commercial General Liability. \$1,000,000.00 combined single limit of liability for bodily injuries, death and property damage, and personal injury resulting from any one occurrence, including the following coverages:

13.3.1 Premises and Operations:

Broad Form Commercial General Liability Endorsement to include Blanket Contractual liability (specifically covering, but not limited to, the contractual obligations assumed by the Firm); Personal Injury (with employment and contractual exclusions deleted); and Broad Form Property Damage coverage.

13.3.2 Independent Contractors:

Delete Exclusion relative to collapse, explosion and underground; Property Damage Hazards; Cross Liability Endorsement; and Contractual liability (specifically covering, but not limited to, the contractual obligations assumed by the Firm)

13.4 Professional Liability Insurance. \$2,000,000 for design errors and omissions, exclusive of defense costs. The CONSULTANT shall be required to provide continuing Professional Liability Insurance to cover each project for a period of two (2) years after the project is completed. Insurance requirements may vary depending on projects as determined by the CITY Director of Risk Management and Insurance. The CITY may require the CONSULTANT to provide a higher level of coverage for a specific Project and time frame.

13.5 Performance, Payment and Other Bonds. CONSULTANT shall furnish Performance and Payment Bonds specific to each Project if required and agreed to under the applicable CSA or CPO for the Project.

13.6 Worker's Compensation. CONSULTANT shall provide, pay for, and maintain worker's compensation insurance on all employees, its agents or subcontractors as required by Florida Statutes.

13.7 Employers' Liability. \$1,000,000.

14.0 **Indemnification**

14.1 General. Having considered the risks and potential liabilities that may exist

during the performance of the Services and in consideration of the promises included herein, the CITY and the CONSULTANT agree to allocate such liabilities in accordance with this Section 14.0.

14.2 Indemnification.

14.2.1 The CONSULTANT, to the extent permitted by law, shall indemnify, defend (by counsel reasonably acceptable to the CITY) protect and hold the CITY, and its officers, employees and agents, free and harmless from and against any and all claims, actions, causes of action, liabilities (joint or several), penalties, forfeitures, damages, losses and expenses (including, without limitation, attorneys' fees and costs during negotiation, through litigation and all appeals therefrom), and including, without limitation, any liability or loss resulting from judgments or claims for personal injury, including death, or damage to any property whatsoever, which directly or indirectly result from or arise in connection with (i) the failure of the CONSULTANT to comply with applicable non-conflicting laws, rules or regulations, (ii) the breach by the CONSULTANT of its obligations under this Agreement, (iii) any claim for trademark, patent or copyright infringement arising out of the scope of the CONSULTANT's performance of this Agreement, or (iv) the negligent act, errors or omissions, or intentional or willful misconduct of the CONSULTANT, its sub-consultants, agents, employees and invitees; provided, however, that the CONSULTANT shall not be obligated to defend or indemnify the CITY with respect to any such claims or damages arising out of the CITY's sole negligence.

14.2.2 The CITY's review, comment and observation of the CONSULTANT's work and performance of this Agreement shall in no manner constitute a waiver of the indemnification provisions of this Agreement.

14.2.3 The CONSULTANT agrees that it bears sole legal responsibility for its work and work product, and the work and work product of sub-consultants and their employees, and/or for CONSULTANT's performance of this Agreement and its work product(s).

14.3 Survival. Upon completion of all Services, obligations and duties provided for in this Agreement, or in the event of termination of this Agreement for any reason, the terms and conditions of this Section 14.0 shall survive as if the Agreement were in full force and effect.

15.0 Independent Contractor

15.1 The CONSULTANT undertakes performance of the Services as an independent contractor and shall be wholly responsible for the methods of performance.

15.2 The CITY shall have no right to supervise the methods used, but the CITY shall have the right to observe such performance.

15.3 The CONSULTANT shall work closely with the CITY in performing Services under this Agreement.

15.4 The CONSULTANT shall not pledge the CITY's credit or make it a guarantor of payment or surety for any contract, debt, obligation, judgment, lien or any form of indebtedness and shall have no right to speak for or bind the CITY in any manner.

15.5 The CONSULTANT further warrants and represents that it has no obligation or indebtedness that would impair its ability to fulfill the terms of this Agreement.

16.0 **Authority to Practice**

16.1 The CONSULTANT hereby represents and warrants that it has and will continue to maintain all licenses and approvals required to conduct its business, and that it will at all times conduct its business activities in a reputable manner.

17.0 **Compliance with Laws**

17.1 In performance of the Services, the CONSULTANT will comply with applicable regulatory requirements including federal, state, special district, and local laws, rules, regulations, orders, codes, criteria and standards.

18.0 **Subcontracting**

18.1 The CITY reserves the right to accept the use of any proposed subcontractor or sub-consultant of the CONSULTANT (for purposes of this Section 18.0 referred to as a “subcontractor”), or to reject the selection of a particular subcontractor and to inspect all facilities of any subcontractor.

18.2 If a subcontractor fails to perform or make progress, as required by this Agreement, and it is necessary to replace the subcontractor to complete the work in a timely fashion, the CONSULTANT shall promptly do so, subject to acceptance of the new subcontractor by the CITY. Failure of a subcontractor to timely or properly perform its obligations shall not relieve CONSULTANT of its obligations hereunder.

19.0 **Federal and State Taxes**

19.1 The CITY is exempt from Federal Tax and State Sales and Use Taxes. Upon request, the CITY will provide an exemption certificate to the CONSULTANT. The CONSULTANT shall not be exempted from paying sales tax to its suppliers for materials to fulfill contractual obligations with the CITY, nor shall the CONSULTANT be authorized to use the CITY’s Tax Exemption Number in securing such materials.

20.0 **Public Entity Crimes**

20.1 The CONSULTANT understands and acknowledges that this Agreement with the CITY will be void, in the event the conditions under Section 287.133, Florida Statutes apply to the CONSULTANT, relating to conviction for a public entity crime.

21.0 **CITY’s Responsibilities**

21.1 The CITY shall be responsible for providing access to all CITY project sites, and providing information in the CITY’s possession that may reasonably be required by CONSULTANT, including existing reports, studies, financial information, and other required data that are available in the files of the CITY.

22.0 **Termination of Agreement**

22.1 This Agreement may be terminated by the CONSULTANT upon thirty (30) days prior written notice to the CITY in the event of substantial failure by the CITY to perform in accordance with the terms of the Agreement through no fault of the CONSULTANT.

22.2 This Agreement may be terminated by the CITY with or without cause immediately upon written notice to the CONSULTANT.

22.3 Unless the CONSULTANT is in breach of this Agreement, the

CONSULTANT shall be paid for services rendered to the CITY's satisfaction through the date of termination.

22.4 After receipt of written notice of termination of this Agreement, and except as otherwise directed by the CITY, the CONSULTANT shall:

22.4.1 Stop work on the date and to the extent specified.

22.4.2 Terminate and settle all orders and subcontracts relating to the performance of the terminated work.

22.4.3 Transfer all work in process, completed work, and other material related to the terminated work to the CITY.

22.4.4 Continue and complete all parts of the work that have not been terminated.

22.5 The CONSULTANT shall be paid for services actually rendered to the date of termination.

23.0 **Uncontrollable Forces (Force Majeure)**

23.1 Neither the CITY nor the CONSULTANT shall be considered to be in default of this Agreement if delays in or failure of performance shall be due to Uncontrollable Forces, the effect of which, by the exercise of reasonable diligence, the non-performing party could not avoid. The term "Uncontrollable Forces" shall mean any event which results in the prevention or delay of performance by a party of its obligations under this Agreement and which is beyond the reasonable control of the nonperforming party. It includes, but is not limited to fire, flood, earthquakes, storms, lightning, epidemic, war, riot, civil disturbance, sabotage, and governmental actions.

23.2 Neither Party shall, however, be excused from performance if nonperformance is due to forces which are preventable, removable, or remediable and which the nonperforming party could have, with the exercise of reasonable diligence, prevented, removed or remedied with reasonable dispatch.

23.3 The nonperforming party shall, within a reasonable time of being prevented or delayed from performance by an Uncontrollable Force, give written notice to the other party describing the circumstances and Uncontrollable Forces preventing continued performance of the obligations of this Agreement.

24.0 **Governing Law and Venue**

24.1 This Agreement shall be governed in all respects by the laws of the State of Florida and any litigation with respect thereto shall be brought only in the courts of Osceola County.

25.0 **Non-Discrimination**

25.1 The CONSULTANT warrants and represents that all of its employees are treated equally during employment without regard to race, color, religion, gender, age or national origin.

26.0 **Waiver**

26.1 A waiver by either the CITY or the CONSULTANT of any breach of this Agreement shall not be binding upon the waiving party unless such waiver is in writing. In the event of a written waiver, such a waiver shall not affect the waiving Party's rights with respect to any other or further breach. The making or acceptance of a payment by either party with knowledge of the existence of a default or breach shall not operate or be construed to operate as a waiver of any subsequent default or breach.

27.0 **Severability**

27.1 The invalidity, illegality, or unenforceability of any provision of this Agreement, or the occurrence of any event rendering any portion or provision of this Agreement void, shall in no way affect the validity or enforceability of any other portion or provision of the Agreement.

27.2 Any void provision shall be deemed severed from the Agreement and the balance of the Agreement shall be construed and enforced as if the Agreement did not contain the particular portion or provision held to be void.

27.3 The Parties further agree to reform the Agreement to replace any stricken provision with a valid provision that comes as close as possible to the intent of the stricken provision.

27.4 The provisions of this Section shall not prevent the entire Agreement from being void should a provision which is of the essence of the Agreement be determined to be void.

28.0 **Entirety of Agreement**

28.1 The CITY and the CONSULTANT agree that this Agreement sets forth the entire understanding between the Parties as to the subject matter contained herein, and that there are no promises or understandings between the parties other than those

stated herein.

28.2 This Agreement supersedes all prior agreements, contracts, proposals, representations, negotiations, letters or other communications between the CITY and the CONSULTANT pertaining to the Services, whether written or oral.

29.0 **Modification**

29.1 This Agreement may not be modified, added to, superseded or otherwise altered unless such modifications, additions or other alterations are evidenced in writing signed by both the CITY and the CONSULTANT. Such modifications shall be in the form of a written Amendment executed by both Parties.

30.0 **Successors and Assigns**

30.1 The CITY and the CONSULTANT each binds itself and its partners, successors, assigns, executors, administrators and legal representatives to the other Party to this Agreement and to their partners, successors, executors, administrators, assigns, and legal representatives.

30.2 The CONSULTANT shall not assign this Agreement without the express written approval of the CITY by executed amendment, which approval may be withheld in the CITY's sole and absolute discretion.

30.3 In the event of a merger, the surviving corporation shall be substituted for the contracting party to this Agreement and such substitution shall be affirmed by the City of Kissimmee Commission by executed amendment.

31.0 **Contingent Fees**

31.1 The CONSULTANT warrants that it has not employed or retained any company or person, other than a bona fide employee working solely for the CONSULTANT to solicit or secure this Agreement and that it has not paid or agreed to pay any person, company, corporation, individual or firm, other than bona fide employee working solely for the CONSULTANT, any fee, commission, percentage, gift or any other consideration contingent upon or resulting from the award or making of this Agreement.

32.0 **Truth-In-Negotiation Certificate**

32.1 Execution of this Agreement by the CONSULTANT shall act as the execution of a Truth-in-Negotiation certificate certifying that the wage rates and costs used to determine the compensation provided for in this Agreement are accurate, complete, and current as of the date of the Agreement.

32.2 The said rates and costs shall be adjusted to exclude any significant sums should the CITY determine that the rates and costs were increased due to inaccurate, incomplete or noncurrent wage rates or due to inaccurate representations of fees paid to outside consultants. The CITY shall exercise its rights under this Certificate within one (1) year following payment.

33.0 **Ownership of Documents**

33.1 The CONSULTANT shall be required to cooperate with other consultants relative to providing information requested in a timely manner and in the specified form. Any and all documents, records, disks, original drawings, or other information shall become the property of the CITY for its use and/or distribution as may be deemed appropriate by the CITY. The CONSULTANT is not liable for any damages, injury or costs associated with the CITY's use or distribution of these documents for purposes other than those originally intended by the CONSULTANT.

34.0 **Access and Audits**

34.1 The CONSULTANT shall maintain adequate records to justify all charges and costs incurred in performing the work for at least three (3) years after completion of this Agreement. The CITY shall have access to such books, records, and documents as required in this section for the purpose of inspection or audit during normal business hours at the CONSULTANT's place of business.

34.2 Misrepresentations of billable time or Reimbursable Expenses as determined by the City Auditor to the Commission shall result in the recovery of any resulting overpayments. The CITY's cost of recovery shall be the sole expense of the CONSULTANT, including accounting and legal fees, court costs and administrative expenses.

34.3 Intentional misrepresentations of billable hours and Reimbursable Expenses will be criminally prosecuted to the fullest extent of the law.

34.4 All invoices submitted are subject to audit and demand for refund of overpayment up to three (3) years following completion of all services related to this Agreement.

35.0 **Notice**

35.1 Any notice, demand, communication, or request required or permitted hereunder shall be in writing and delivered in person or sent by Federal-Express or by Certified Mail, postage prepaid as follows:

As to City: **City of Kissimmee**
Public Works & Engineering Department
Facilities Management Division
101 Church Street
Kissimmee, FL 34741
Attn: Purchasing Director

As to Consultant: **Forefront Architecture and Engineering**
1230 Oakley Seaver Drive, Unit 100
Clermont, FL 34711

35.2 Notices shall be effective when received at the addresses as specified above. Changes in the respective addresses to which such notice is to be directed may be made from time to time by either party by written notice to the other party. Facsimile transmission is acceptable notice effective when received, however, facsimile transmissions received (i.e.; printed) after 5:00 p.m., or on weekends or holidays, will be deemed received on the next business day. The original of the notice must additionally be mailed as required herein.

35.3 Nothing contained in this Article shall be construed to restrict the transmission of routine communications between representatives of the CONSULTANT and the CITY.

36.0 **Service of Process**

As to City: **City Attorney**
City of Kissimmee
101 Church Street
Kissimmee, Florida 34741

As to Consultant: **Forefront Architecture and Engineering**
1230 Oakley Seaver Drive, Unit 100,
Clermont, FL 34711

37.0 **Key Personnel**

37.1 The CONSULTANT shall notify the CITY in the event of key personnel changes which might affect this Agreement. To the extent possible, notification shall be made within ten (10) days prior to any such changes. The CONSULTANT, at the CITY's request, shall remove without consequence to the CITY any subcontractor or employee of the CONSULTANT and replace him/her with another employee having the required skill and experience. The CITY has the right to reject proposed changes in key personnel.

The following personnel shall be considered key personnel:

1. Khine Pwint, RA, NCARB – Project Manager
2. Chris Smith, PE - Engineering Lead
3. Mike Vitale, BCA – QC/Building Code Compliance
4. Patricia Mugnol, NCARB – Deputy Project Manager
5. Nunzie Burzo – Cost Estimating

38.0 **Annual Appropriations**

38.1 The CONSULTANT acknowledges that the CITY, during any fiscal year, shall not expend money, incur any liability, or enter into any agreement which, by its terms, involves the expenditure of money in excess of the amounts budgeted as available for expenditure during such fiscal year. Any agreement, verbal or written, made in violation of this subsection is null and void, and no money may be paid on such agreement. Nothing herein contained shall prevent the making of agreements for a period exceeding one year, but any agreement so made shall be executory only for the value of the services to be rendered or agreed to be paid for in succeeding fiscal years. Accordingly, the CITY's performance and obligation to pay under this agreement is contingent upon annual appropriation.

39.0 **Liquidated Damages**

39.1 The parties hereto agree that liquidated damages, in lieu of actual damages and in the amount stated in the applicable CSA or CPO, will be assessed against the CONSULTANT, as the CITY's remedy and not as a penalty, for CONSULTANT'S failure to meet the final deliverable date in the Performance Schedule in the Scope of Work, but only to the extent and in the proportion to CONSULTANT'S fault in causing the delay as compared to other causes, and to the extent the CONSULTANT is not delayed by reasons beyond CONSULTANT'S reasonable control. The parties agree that such assessment of liquidated damages is reasonable and appropriate, as it would be difficult or impossible to accurately determine the amount of actual damages the CITY would or may incur as a consequence of the CONSULTANT's failure described above.

40.0 **Unauthorized Alien(s)**

40.1 The CONSULTANT shall not employ or utilize unauthorized aliens in the performance of the Services. The CITY shall consider the employment or utilization of unauthorized aliens a violation of Section 274A(e) of the Immigration and Naturalization Act (8 U.S.C. 1324a). Such violation shall be cause for unilateral termination of this Agreement by the CITY. The Form "AFFIDAVIT CERTIFICATION IMMIGRATION LAWS" will be signed by the CONSULTANT and submitted as part of this Agreement.

40.2 To verify employee eligibility, the CONSULTANT may avail itself of a program by the U.S. Immigration and Customs Enforcement called E-Verify. E-Verify is an Internet-based system operated by U.S. Citizenship and Immigration Services (USCIS), part of the Department of Homeland Security (DHS), in partnership with the Social Security Administration (SSA). E-Verify is currently free to employers. E-Verify provides an automated link to Federal databases to help employers determine employment eligibility of new hires and the validity of their Social Security numbers.

41.0 **Limitation of Liability**

IN NO EVENT, SHALL EITHER PARTY BE LIABLE TO THE OTHER PARTY FOR INDIRECT, INCIDENTAL, CONSEQUENTIAL, SPECIAL, EXEMPLARY, OR PUNITIVE DAMAGES OF ANY KIND OR NATURE, INCLUDING LOSS OF PROFIT, WHETHER FORESEEABLE OR NOT, ARISING OUT OF OR RESULTING FROM THE NONPERFORMANCE OR BREACH OF THIS AGREEMENT BY A PARTY WHETHER BASED IN CONTRACT, COMMON LAW, WARRANTY, TORT, STRICT LIABILITY, CONTRIBUTION, INDEMNITY OR OTHERWISE.

42.0 **Default and Remedy**

42.1 If the CONSULTANT materially defaults in its obligations under this Agreement and fails to cure the same within fifteen (15) days after the date the CONSULTANT receives written notice of the default from the CITY, then the CITY shall have the right to (i) immediately terminate this Agreement by delivering written notice to the CONSULTANT, and (ii) pursue any and all remedies available in law, equity, and under this Agreement. If the CITY materially defaults in its obligations under this Agreement and fails to cure the same within fifteen (15) days after the date the CITY receives written notice of the default from the CONSULTANT, then the CONSULTANT shall have the right to immediately terminate this Agreement by delivering written notice to the CITY. Upon any such termination, the CITY shall pay the CONSULTANT the full amount due and owing for all Services performed through the date of Agreement termination.

43.0 **Attorneys' Fees and Costs**

43.1 Except as stated in Section 14.2.1, above, in connection with any dispute or any litigation arising out of, or relating to this Agreement, each party shall be responsible for its own legal and attorneys' fees, costs and expenses, including attorneys' fees, costs, and expenses incurred for any appellate or bankruptcy proceedings.

44.0 **Public Records Law**

44.1 CONSULTANT 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.

44.2 CONSULTANT shall keep and maintain public records required to perform the services contemplated by this Agreement, in accordance with Chapter 119, Florida Statutes "Public records" means all documents, papers, letters, maps, books, tapes, photographs, films, sound recordings, data processing software,

or other material, regardless of the physical form, characteristics, or means of transmission, made or received pursuant to law or ordinance or in connection with the transaction of official business by any agency.

44.3 CONSULTANT shall ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law for the duration of the contract term and following completion of the contract if the Construction Manager does not transfer the records to the CITY.

44.4 Questions regarding the application of Chapter 119, Florida Statutes, to the CONSULTANT's duty to provide public records relating to this Agreement, shall be directed to the CITY's Custodian of Public Records at 407-518-2308, cityclerkemail@kissimmee.org, and 101 Church Street, Kissimmee, Florida 34741.

45.0 **Americans with Disabilities Act**

45.1 The CONSULTANT shall conform its Drawings and Specifications to the requirements of the Americans with Disabilities Act Accessibility Guidelines ("ADAAG"), but CITY shall be responsible for compliance with the remaining provisions of the Americans with Disabilities Act ("ADA"). CITY and CONSULTANT further recognize that interpretations of ADA by governmental officials and/or courts of law may vary or change. Should such variance or change adopted after the date the 100% Design Development are completed, require the CONSULTANT to make the required modifications, such modifications shall be considered as Contingent Additional Services. Further, CITY acknowledges, that the ADA, including ADAAG, is a new law presenting numerous difficult interpretation issues. Accordingly, the CONSULTANT shall only be liable for gross negligence in connection with any allegation that its design does not properly comply with ADAAG.

46.0 **Additional Definitions**

46.1 **Contract Documents** means this Agreement, any CSA or CPO issued hereunder, the CITY'S contract with the Contractor, the Plans, Specifications, General Conditions and related Construction Documents or any other documents incorporated by reference.

46.2 **Cost of the Work** shall be the total cost or, to the extent the Project is not completed, the estimated cost to the CITY of all elements of the Project designed or specified by the CONSULTANT.

46.2.1 The Cost of the Work shall include the cost at current market rates of labor and materials furnished by the CITY and equipment designed,

specified, selected or specially provided for by the CONSULTANT, including the costs of management or supervision of construction or installation provided by a separate construction manager or CONSULTANT.

46.2.2 The Cost of the Work does not include the compensation of the CONSULTANT and the CONSULTANT'S sub-consultants, the costs of the land, rights-of-way and financing or other costs that are the responsibility of the CITY.

46.3 **Final Completion** means that the following items have been completed or satisfied:

46.3.1 Construction of the Project is completed, in accordance with the contract documents and certified as such by the CITY and CONSULTANT.

46.3.2 The Project is suitable for full use and occupancy as determined by the CITY and CONSULTANT.

46.3.3 All Punchlist items have been completed or otherwise disposed of or accounted for to the CITY'S satisfaction and approval.

46.3.4 A final Certificate of Occupancy and all other permits and approvals required have been legally and validly issued.

46.3.5 All required guarantees, affidavits, releases, bonds and waivers, manuals, record drawings, warranties and maintenance books including the Final Completion form have been delivered to the CITY.

46.4 **Punch list** means a list of items of work to be completed and deficiencies to be corrected, which items shall not affect the attainment of Substantial Completion. Such items shall be complete or otherwise disposed of prior to final acceptance.

46.5 **Schedule of Values** means the schedule to be used as a basis for progress payments to be made to the Contractor by the CITY during performance of the work, based on the then current percentage of progress of construction of the Project, subject to the approval of the CONSULTANT.

46.6 **Substantial Completion** means the Contractor has ascertained that the work or portions thereof is ready for the CITY and CONSULTANT substantial completion inspection. It is understood that the Construction Manager will provide a list of incomplete items to the CITY and CONSULTANT prior to this inspection. After the CITY'S and CONSULTANT's inspection, the Contractor will prepare a schedule for a completion of the list, indicating completion dates for the CITY'S review. The CITY and CONSULTANT will issue a Certificate of Substantial Completion when the work on the Contractor's pre-substantial punch-list has been accomplished, to the best of the Contractor's ability.

46.7 **Substantial Completion Date** means the date, certified by the CONSULTANT, that the Project, or designated portion thereof, is sufficiently complete, in accordance with the Construction Documents and a Certificate of Occupancy issued, so that the CITY can reasonably occupy or utilize the Project, or designated portion thereof, for its intended use.

47.0 **Additional Terms and Conditions**

47.1 INSTRUMENTS OF SERVICE

47.1.1 Drawings, specifications and other documents, including those in electronic form, prepared by the CONSULTANT and the CONSULTANT'S sub-consultants are Instruments of Service for use solely with respect to this Project. The CONSULTANT and the CONSULTANT'S sub-consultants shall be deemed the authors and owners of their respective Instruments of Service and shall retain all common law, statutory and other reserved rights, including copyrights.

47.1.2 Upon execution of this Agreement, the CONSULTANT grants to the CITY a nonexclusive license to reproduce the CONSULTANT'S Instrument of Service and thereafter use the same solely for purposes of constructing, using and maintaining, repairing and making additions and modifications to the Project, provided that the CITY shall comply with all obligations, including prompt payment of all sums when due, under the Agreement. The CONSULTANT shall obtain similar nonexclusive licenses from the CONSULTANT'S sub-consultants consistent with this Agreement. Any termination of this Agreement prior to completion of the Project shall terminate the license. Upon such termination, the CITY shall refrain from making further reproductions of Instrument of Service. If and upon the date the CONSULTANT is adjudged in default of this Agreement, the foregoing license shall be deemed terminated and replaced by a second, nonexclusive license permitting the CITY to authorize other similarly credentialed design professionals to reproduce and, where permitted by law, to make changes, corrections or additions to the Instruments of Service solely for purposes of completing, using and maintaining the Project.

47.1.3 Except for the licenses granted in Section 47.1.2, no other license or right shall be deemed granted or implied under this Agreement. The CITY shall not assign, delegate, sublicense, pledge or otherwise transfer any license granted herein to another party without the prior written agreement of the CONSULTANT. However, the CITY shall be permitted to authorize the Contractor, Subcontractors, and sub-subcontractors and material or equipment suppliers to reproduce applicable portions of the Instruments of Service to and for use in their execution of the Work by license granted in Section 47.1.2. Submission or distribution of Instruments of Service to meet

official regulatory requirements or for similar purposes in connection with the Project is not to be construed as publication in derogation of the reserved rights of the CONSULTANT and the CONSULTANT'S sub-consultants. The CITY agrees to pay the CONSULTANT a reasonable, mutually agreed upon amount for any reuse of the designs, drawings or specifications beyond this Agreement. The CITY shall not be responsible to pay the CONSULTANT for the use of the designs, drawings or specifications when used for reference purposes only.

- 47.1.4 If the CONSULTANT is required to deliver any services hereunder in the form of electronic encoded media, the printed representation of such media furnished by the CONSULTANT shall be the official records of the CONSULTANT'S service provided upon completion of the services and payment in full. The CITY shall have a right to rely on such printed representation in connection with any subsequent modification of such electronic media and agrees to hold the CONSULTANT harmless from all cost and expense, including attorney's fees, from claims which arise out of modification or re-use of such electronic media or printed representation by or on behalf of the CITY without the CONSULTANT'S consent. Under no circumstances shall transfer of drawings and other instruments of service on electronic media for use by the CITY, be deemed a sale by the CONSULTANT, and the CONSULTANT makes no warranties of merchantability or fitness for a particular purpose.

47.2 CHANGE IN SERVICES

- 47.2.1 Change in Services of the CONSULTANT, including services required of the CONSULTANT'S sub-consultants may be accomplished after execution of this Agreement, without invalidating the Agreement, if mutually agreed in writing, if required by circumstances beyond the CONSULTANT'S control, or if the CONSULTANT'S services are affected as described in Section 47.2B-2. In the absence of mutual agreement in writing, the CONSULTANT shall notify the CITY prior to providing such services. If the CITY deems that all or part of such Change in Services is not required, the CITY shall give prompt written notice to the CONSULTANT, and the CONSULTANT shall have no obligation to provide those services. Except for a change due to fault of the CONSULTANT, Change in Services of the CONSULTANT shall entitle the CONSULTANT to an adjustment in compensation pursuant to Section 9.8, and to any Reimbursable Expenses described in Section 10.0.
- 47.2.2 If any of the following circumstances affect the CONSULTANT'S services for the Project, the CONSULTANT shall be entitled to an appropriate adjustment in the CONSULTANT'S schedule and compensation:
- 47.2.2.1 Change in the instructions or approvals given by the CITY that constitute material changes to the Project parameters set forth above

and which necessitate revisions in Instruments of Service;

47.2.2.2 Enactment or revision of codes, laws or regulations or official interpretations, which necessitate changes to previously prepared Instruments of Service;

47.2.2.3 Significant change in the Project including, but not limited to, size, quality, complexity, the CITY'S schedule or budget, or procurement method;

47.2.2.4 Preparation for and attendance at a public hearing, a dispute resolution proceeding or a legal proceeding except where the CONSULTANT is party thereto.

47.3 ACCELERATED COMPLETION OF DESIGN PACKAGES. In order to minimize construction problems and change orders, the CONSULTANT's standard practice requires the completion of detailed working drawings, submission for review and comment by reviewing agencies and incorporation of those comments and/or changes prior to bidding and entering into firm construction contracts. However, CITY may choose to accelerate the completion of the Project so that it may be completed in a shorter time period than would normally be required. Should the CITY choose to make this selection, it shall not be considered Fast Track, or in any way relieve the CONSULTANT of its responsibilities and obligations set forth herein.

(THE REMAINDER OF THIS PAGE IS INTENTIONALLY LEFT BLANK; THE AGREEMENT CONTINUES ON THE FOLLOWING PAGE WITH THE PARTIES' SIGNATURES.)

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement as of the Effective Date.

Attest:

Linda Hansell
CITY CLERK

CITY OF KISSIMMEE,
a Municipal Corporation of the
State of Florida

By: _____
City Clerk

By: _____
Mayor
City of Kissimmee Commission

Date Approved by Commission: _____

Reviewed as to form and legal sufficiency:

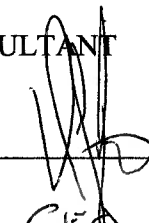
City Attorney's Office Date

Attest:



Corporate Secretary

CONSULTANT

By: 

Title: CEO

STATE OF FLORIDA
COUNTY OF Lake

The foregoing instrument was acknowledged before me this 21st day of November, 2023, by means of ☒ physical presence or ☐ online notarization, by (name of person) Hans Bentzen as (type of authority) CEO for (name of party on behalf of whom instrument was executed) Forefront Architecture & Engineering, a Florida corporation, who is personally known to me or has produced identification.

Notary Seal:

Notary: 
Print Name: Carissa Hess
My Commission Expires: Aug. 25, 2026

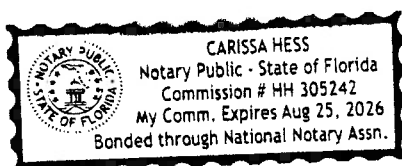


EXHIBIT “A”
HOURLY RATE SCHEDULE

SEE ATTACHED EXHIBIT A
FORFRONT ARCHITECTURE AND ENGINEERING
HOURLY RATE SCHEDULE

FOREFRONT ARCHITECTURE AND ENGINEERING

EXHIBIT A - HOURLY RATE SCHEDULE

Project Reference: RFQ 2023-006 Professional Architecture and Engineering Services

Billing Rates - Architecture Design and Engineering		
Personnel / Discipline	Licensure & Certification	Billable Hourly Rate
Principals	Not Required	\$225.00
Architect Level 2	Registered Architect	\$180.00
Architect Level 1	Registered Architect	\$145.00
Senior Designer	Not Required, Senior Level Experience	\$120.00
Designer or Specialist Level 4	Not Required, 5+ Years of Experience	\$110.00
Designer or Specialist Level 3	Not Required, 3+ Years of Experience	\$100.00
Designer or Specialist Level 2	Not Required	\$90.00
Designer or Specialist Level 1	Not Required	\$80.00
Senior Project Manager	Not Required	\$125.00
Project Manager	Not Required	\$100.00
BIM Manager	Not Required	\$120.00
BIM Specialist	Not Required	\$100.00
BIM Modeler	Not Required	\$80.00
CAD Technician Level 3	Not Required	\$90.00
CAD Technician Level 2	Not Required	\$80.00
CAD Technician Level 1	Not Required	\$75.00
Administrative or Clerical	Not Required	\$45.00

Billing Rates - Structural Design and Engineering (MEP, Civil, and Landscape Design)		
Personnel / Discipline	Licensure & Certification	Billable Hourly Rate
Principal Engineer	Registered Engineer	\$190.00
Senior Engineer	Registered Engineer	\$165.00
Engineer Level 2	Registered Engineer	\$145.00
Engineer Level 1	Registered Engineer	\$125.00
Senior Designer	Not Required, Senior Level Experience	\$120.00
Designer or Specialist Level 4	Not Required, 5+ Years of Experience	\$110.00
Designer or Specialist Level 3	Not Required, 3+ Years of Experience	\$100.00
Designer or Specialist Level 2	Not Required	\$90.00
Designer or Specialist Level 1	Not Required	\$80.00
Senior Project Manager	Not Required	\$125.00
Project Manager	Not Required	\$100.00
BIM Manager	Not Required	\$120.00
BIM Specialist	Not Required	\$100.00
BIM Modeler	Not Required	\$80.00
CAD Technician Level 3	Not Required	\$90.00
CAD Technician Level 2	Not Required	\$80.00
CAD Technician Level 1	Not Required	\$75.00
Administrative or Clerical	Not Required	\$45.00

EXHIBIT “B”

SCOPE OF SERVICES

In accordance with Sections 2.3 and 8.1 of the Agreement, in addition to any other Services described in the Agreement, the RFQ, and the CONSULTANT’s responsive proposal thereto, the CONSULTANT may also be authorized to perform any or all of those services set forth and further described below. In the event the CITY requests the CONSULTANT to furnish and perform any of the services listed and described in this Exhibit “B”, those services shall be listed and incorporated in the applicable CSA or CPO issued for a particular Project.

ALL PHASES:

1. PROJECT ADMINISTRATION AND MANAGEMENT SERVICES

1.1. Project Administration services consisting of administrative functions including:

- 1.1.1. Project Decision Structure
- 1.1.2. Project Directory
- 1.1.3. Consultation
- 1.1.4. Research
- 1.1.5. Communications; Meeting Minutes, Meeting Agendas (For meetings called by CONSULTANT during the Design phases of the project)
- 1.1.6. Direction of the work of architectural, engineering and other consultant personnel

1.2. Disciplines Coordination/Document Checking consisting of:

- 1.2.1. Coordination between the architectural work and the work of engineering and their disciplines involved in the Project.
- 1.2.2. Review and checking of documents prepared for the Project by the CONSULTANT and the CONSULTANT’s Consultants.

1.3. Agency Consulting/Review/Approval services, including:

- 1.3.1. Agency consultants
 - 1.3.1.1. City agencies
 - 1.3.1.2. Regional agencies
 - 1.3.1.3. State agencies
- 1.3.2. Research of critical applicable regulations.
- 1.3.3. Preparation of written and graphic explanatory materials.

1.4. Owner Coordination, including:

- 1.4.1. Review and coordination of data furnished for the Project as a responsibility of the Owner.

1.5. Schedule Development/Monitoring Services, including:

- 1.5.1. Participate in establishment and updating of design schedule in conjunction with CM for the performance of the CONSULTANT's services throughout the design of the project. Key decision-making points will be identified on this schedule.

1.6. Presentation services consisting of presentations and recommendations by the CONSULTANT to the following client representatives:

- 1.6.1. City of Kissimmee Commission
- 1.6.2. Executive Task Force
- 1.6.3. User group(s)
- 1.6.4. Construction Manager

PHASE I PROGRAMMING & MASTER PLANNING

2. NEEDS ASSESSMENT/DATA COLLECTION

2.1. Space Needs Assessments

- 2.1.1. Macro Level Space Requirements Analysis
- 2.1.2. Macro Level Adjacency Requirements
- 2.1.3. Parking Analysis

2.2. Analysis of the site and its surroundings to include the following:

- 2.2.1. Land Utilization
- 2.2.2. Building locations
- 2.2.3. Utility Systems
- 2.2.4. Surface and subsurface conditions (By Owner)
- 2.2.5. Vegetation (By Owner)
- 2.2.6. Survey (By Owner)
- 2.2.7. Land Use Restrictions
- 2.2.8. Historical analysis
- 2.2.9. Stormwater retention/detention areas

3. FUNCTIONAL PROGRAMMING

3.1. Prepare a detailed architectural program based on the scope established in Phase I to include the following services:

- 3.1.1. Functional Requirements Analysis
- 3.1.2. Interior Development Guidelines
- 3.1.3. Space Standards

- 3.1.4. Preliminary Program Space Estimates
- 3.1.5. Space and Equipment Program
- 3.1.6. Special Building System Requirements
- 3.1.7. Micro-Adjacency Requirements
- 3.1.8. Prepare Final Draft Program
- 3.1.9. Prepare Final Program Report

4. MASTER PLANNING

- 4.1** Prepare three different conceptual approaches for housing the space and parking requirements validated in the Needs Assessment. Include the following information, at a minimum:
 - 4.1.1 Existing facility renovation recommendations
 - 4.1.2 Site development planning issues (land utilization, pedestrian and vehicular circulation, parking, areas for expansion, stormwater retention/detention and landscape forms)
 - 4.1.3 Architectural concepts. The architectural concepts will include blocking and stacking diagrams, massing studies and character sketches.

PHASE II: DESIGN/ BIDDING/CONSTRUCTION ADMINISTRATION SERVICES

5. DESIGN SERVICES

5.1. Architectural Design/Documentation:

- 5.1.1. During the Schematic Design Phase, responding to program requirements and preparing:
 - 5.1.1.1. Conceptual Planning/Massing Options
 - 5.1.1.2. Final Conceptual Site and Building Plans
 - 5.1.1.3. Preliminary Sections and Elevations
 - 5.1.1.4. Preliminary Selection of Building Systems and Materials
 - 5.1.1.5. Development of Approximate Dimensions, Areas and Volumes
 - 5.1.1.6. Perspective sketch – eye level
 - 5.1.1.7. Study model
- 5.1.2. During the Design Development Phase consisting of continued development and expansion of architectural Schematic Design Documents to establish the final scope, relationships, forms, size and appearance of the Project through:
 - 5.1.2.1. Plans, sections and elevations
 - 5.1.2.2. Typical construction details
 - 5.1.2.3. Three-dimensional sketch
 - 5.1.2.4. Study model
 - 5.1.2.5. Final materials selection
 - 5.1.2.6. Equipment layouts

- 5.1.3. During the Contract Documents phase consisting of preparation of Drawings and Specifications based on approved Design Development documents setting forth in detail the architectural construction requirements for the Project.

5.2. Structural Design/Documentation:

- 5.2.1. During the Schematic Design Phase consisting of recommendations regarding basic structural materials and systems, analyses, and development of conceptual design solutions for:
 - 5.2.1.1. A structural system
 - 5.2.1.2. Alternate structural systems, if required
- 5.2.2. During the Design Development phase consisting of continued development of the specific structural system and Schematic Design documents in sufficient detail to establish:
 - 5.2.2.1. Basic structural system and dimensions
 - 5.2.2.2. Final structural design criteria
 - 5.2.2.3. Foundation design criteria
 - 5.2.2.4. Preliminary sizing of major structural components
 - 5.2.2.5. Critical coordination clearances
- 5.2.3. During the Contract Documents phase consisting of preparation of final structural engineering calculations, Drawings and Specifications based on approved Design Development documents, setting forth in detail the structural construction requirements for the Project.

5.3. Mechanical Design/Documentation:

- 5.3.1. During the Schematic Design phase, prepare a narrative, consisting of consideration of alternate materials, systems and equipment, and development of conceptual design solutions for:
 - 5.3.1.1. Energy source(s)
 - 5.3.1.2. Energy conservation and controls system concepts
 - 5.3.1.3. Heating and ventilating (systems selections and conceptual sizing and configuration analysis.)
 - 5.3.1.4. Air conditioning (systems selections and conceptual sizing and configuration analysis.)
 - 5.3.1.5. Plumbing
 - 5.3.1.6. Fire protection
 - 5.3.1.7. General space requirements
- 5.3.2. During the Design Development phase consisting of continued development and expansion of mechanical Schematic Design documents and development of outline Specifications or materials lists to establish:
 - 5.3.2.1. Approximate equipment sizes and capacities

- 5.3.2.2. Preliminary equipment layouts
- 5.3.2.3. Required space for equipment
- 5.3.2.4. Required chases and clearances
- 5.3.2.5. Acoustical and vibration control
- 5.3.2.6. Visual impacts
- 5.3.2.7. Energy conservation measures

- 5.3.3. During the Contract Documents phase consisting of preparation of final mechanical engineering calculations, Drawings and Specifications based on approved Design Development documents, setting forth in detail the mechanical construction requirements for the Project.

5.4. Electrical Design/Documentation

- 5.4.1. During the Schematic Design Phase, prepare a narrative, consisting of consideration of alternate systems, recommendations regarding basic electrical materials, systems and equipment, analyses, and development of conceptual solutions for:
 - 5.4.1.1. Power service and distribution
 - 5.4.1.2. Lighting
 - 5.4.1.3. Communication and data outlet location systems
 - 5.4.1.4. Fire detection and alarms
 - 5.4.1.5. General space requirements
 - 5.4.1.6. Audio/Visual systems
- 5.4.2. During the Design Development phase consisting of continued development and expansion of electrical Schematic Design documents and development of outline Specifications or materials lists to establish:
 - 5.4.2.1. Criteria for lighting, electrical and communications systems
 - 5.4.2.2. Approximate sizes and capacities of major components
 - 5.4.2.3. Preliminary equipment layouts
 - 5.4.2.4. Required space for equipment
 - 5.4.2.5. Required chases and clearances
- 5.4.3. During the Contract Documents phase, consisting of preparation of final electrical engineering calculations, Drawings and Specifications based on approved Design Development documents, setting forth in detail the electrical requirements for the Project.

5.5. Civil Design/Documentation:

- 5.5.1. During the Schematic Design phase consisting of consideration of alternate materials and systems and development of conceptual design solutions for:
 - 5.5.1.1. On-site utility systems
 - 5.5.1.2. Fire protection systems
 - 5.5.1.3. Drainage systems

5.5.1.4. Paving

- 5.5.2. During the Design Development phase consisting of continued development and expansion of civil Schematic Design documents and development of outline Specifications or materials lists to establish the final scope of and preliminary details for on-site civil engineering work.
- 5.5.3. During the Contract Documents phase, consisting of preparation of final civil engineering calculations, Drawings and Specifications based on approved Design Development documents, setting forth in detail the civil construction requirements for the Project.
- 5.5.4. Permit applications required for Water Distribution, Sewage Collection and Stormwater/Environment Management (Local, State, and Federal) shall be prepared for execution by the Owner. Permit applications to be paid by Owner. All necessary reports and drawings will be prepared to accompany the permit applications. Two meetings per agency as required to secure permits is included in services. City shall designate individual who has authority to sign permit applications.

5.6. Landscape Design/Documentation:

- 5.6.1. During the Schematic Design phase, prepare narrative conceptual design solutions, which will be developed for land forms, hardscape, lawns and plantings based on program requirements, physical site characteristics, design objectives and environmental determinants.
- 5.6.2. During the Design Development phase, Schematic Design documents will be further developed including outline Specifications and materials lists to establish final scope and preliminary details for landscape work.
- 5.6.3. During the Contract Documents phase, the Drawings and Specifications based on approved Design Development documents, setting forth in detail the landscape and hardscape construction requirements for the Project will be prepared.

5.7. Interior Design/Documentation:

- 5.7.1. During the Schematic Design phase consisting of space allocation and departmental utilization plans based on functional relationships:
 - 5.7.1.1. Types and qualities of finishes and materials for furniture, furnishings, and equipment.
- 5.7.2. During the Design Development phase consisting of continued development and expansion of interior Schematic Design documents and development of

outline Specifications or materials lists to establish final scope and preliminary details relative to:

- 5.7.2.1. Interior construction of the Project
- 5.7.2.2. Special interior design features
- 5.7.2.3. Space planning
- 5.7.2.4. Materials, finishes and colors
- 5.7.2.5. Furniture and equipment layouts

- 5.7.3. During the Contract Documents phase consisting of preparation of Drawings, Specifications and other documents based on approved Design Development documents, setting forth in detail the requirements for interior construction and furniture, furnishings and equipment for the Project.

5.8. Environmental Graphic Design Services: The scope shall include interior and exterior sign types and graphic elements to provide a comprehensive and cohesive signage and wayfinding system for users of the facility.

5.8.1. Design Development:

- 5.8.1.1. Consider design approaches; determine elements needed for identity, information and wayfinding.
- 5.8.1.2. Begin development of sign prototypes.
- 5.8.1.3. Develop preliminary location plans.

5.8.2. Construction document preparation.

5.8.3. Construction observation and submittal review.

5.8.4. Interior sign types to include:

- 5.8.4.1. Primary room ID (changeable name inserts in some locations).
- 5.8.4.2. Restroom ID.
- 5.8.4.3. Stairway ID and stairway level ID.
- 5.8.4.4. Building Code required ID.
- 5.8.4.5. Fire exit plan.
- 5.8.4.6. Building directories.

5.8.5. Exterior sign types include:

- 5.8.5.1. Main entrance identification.
- 5.8.5.2. Vehicular directional.
- 5.8.5.3. Regulatory / Warning identification.
- 5.8.5.4. Parking areas; handicap parking, authorized vehicles, visitor parking, etc.

5.8.6. Donor Recognition / Dedication Plaques – Prepare conceptual designs illustrating a graphic solution to recognize a significant donor for the facility.

5.9. Materials Research/Specifications:

5.9.1. During the Schematic Design phase consisting of:

- 5.9.1.1. Identification of potential materials, systems and equipment and their criteria and quality standards consistent with the conceptual design.

- 5.9.1.2. Investigation of availability and suitability of alternative materials, systems and equipment.
- 5.9.2. During the Design Development phase consisting of activities by in-house personnel in:
 - 5.9.2.1. Development of architectural and engineering project specific draft Specifications or itemized lists and brief form identification of significant architectural materials, systems and equipment, including their criteria and quality standards.
 - 5.9.2.2. Coordination of similar activities of other disciplines.
 - 5.9.2.3. Production of design manual including design criteria and outline specifications or material lists.
- 5.9.3. During the Contract Documents phase consisting of activities of in-house architectural personnel in:
 - 5.9.3.1. Review of the development and preparation of bidding and procurement information prepared by the Construction Manager.
 - 5.9.3.2. Assistance to the Owner and their agents in review of the Conditions of the Contract (General, Supplementary and other Conditions).
 - 5.9.3.3. Development and preparation of architectural Specifications describing materials, systems and equipment, workmanship, quality and performance criteria required for the construction of the Project.
 - 5.9.3.4. Coordination of the development of Specifications by other disciplines.
 - 5.9.3.5. Compilation of Project Manual including Conditions of the Contract, bidding and procurement information and Specifications.
- 5.10. At the conclusion of each Design Phase (Schematic Design, Design Development and Construction Document) the Architect/Engineer shall provide the Owner with two (2) sets of drawings and specifications. At the conclusion of Construction Documents one set of reproducible will also be made available to the City for printing of Bid Documents by the City or the Construction Manager.

6. BIDDING OR NEGOTIATION SERVICES

- 6.1. **Bidding Materials services** consisting of organizing and handling Bidding Documents for:
 - 6.1.1. Coordination
 - 6.1.2. Reproduction by Owner
 - 6.1.3. Completeness review
- 6.2. **Addenda services** consisting of preparation and distribution of Addenda as may be required during bidding or negotiation and including supplementary Drawings,

Specifications, instructions and notice(s) of changes in the bidding schedule and procedures.

6.3. Bidding/Negotiation services consisting of:

6.3.1. Responses to questions from Bidders and clarifications or interpretations of the Bidding Documents.

6.4. Analysis of Alternates/Substitutions consisting of consideration, analyses, comparisons, and recommendations relative to alternates or substitutions proposed by Bidders or proposers either prior to or subsequent to receipt of Bids or proposals.

7. CONSTRUCTION ADMINISTRATION

7.1. Submittal Services consisting of:

7.1.1. Processing of submittals, including receipt, review of, and appropriate action on Shop Drawings, Product Data, Samples and other submittals required by the Contract Documents.

7.1.2. Distribution of submittals to Construction Manager.

7.1.3. Related communications.

7.2. Observation services consisting of periodic visits by the Project Manager or Project CONSULTANT to the site at intervals appropriate to the state of the work or as otherwise agreed by the Owner and CONSULTANT in writing to become generally familiar with the progress and quality of the Work completed and to determine in general if the Work when completed will be in accordance with Contract Documents; preparing related reports and communications, and attendance at progress review meetings at the site.

7.2.1. Periodic site visits by other staff to observe the progress of the project.

7.3. Responses to Requests for Information (RFI)

7.3.1. Responding to requests for clarifications or additional information related to the Contract Documents.

7.4. Supplemental Documentation services consisting of:

7.4.1. Preparation, reproduction and distribution of supplemental Drawings, Specifications and interpretations in response to requests for clarification by Construction Manager or the Owner.

7.4.2. Providing guidance to the Construction Manager in conjunction with the Owner relative to changed requirements and schedule revisions.

7.5. Quotation Requests/Change Orders consisting of:

- 7.5.1. Preparation, reproduction and distribution of Drawings and Specifications to describe Work to be added, deleted or modified. Changes shall be clearly defined.
- 7.5.2. Review of proposals from Construction Manager for reasonableness of quantities and costs of labor and materials.
- 7.5.3. Review and recommendations relative to changes in time for Substantial Completion.
- 7.5.4. Review on Owner's behalf relative to costs of Work proposed to be added, deleted or modified.
- 7.5.5. Assisting in the preparation of appropriate Modifications of the Contract(s) for Construction.
- 7.5.6. Coordination of communications, approvals, notifications and record-keeping relative to changes in the Work.

7.6. Contract Cost Accounting services consisting of:

- 7.6.1. Review of records of payments on account of the Contract Sum and all changes thereto.
- 7.6.2. Evaluation of Applications for Payment and certification thereof.
- 7.6.3. Review and evaluation of expense data submitted by the Construction Manager for Work under cost-plus-fee arrangements.

7.7. Interpretations and Decisions consisting of:

- 7.7.1. Review of claims, disputes, or other matters between the Owner and Construction Manager relating to the execution or progress of the Work as provided in the Contract Documents.
- 7.7.2. Rendering written decisions.

7.8. Project Closeout services initiated upon notice from the Construction Manager that the Work, or a designated portion thereof which is acceptable to the Owner, is sufficiently complete in accordance with the Contract Documents to verify the list submitted by the Construction Manager of items to be completed or corrected.

- 7.8.1. Review with the Owner's representative for conformity of the Work to the Contract Documents to verify the list submitted by the Construction Manager of items to be completed or corrected.
- 7.8.2. Recommendation of the amounts to be withheld until final completion.
- 7.8.3. Securing and receipt of consent of surety or sureties, if any, to reduction in or partial release of retainage or the making of final payment(s).
- 7.8.4. Issuance of Certificate(s) of Substantial Completion.
- 7.8.5. Inspection(s) upon notice by the Construction Manager that the Work is ready for final inspection and acceptance.
- 7.8.6. Final inspection with the Owner's representative to verify final completion of the Work.

- 7.8.7. Securing and receipt of consent of surety or sureties, if any, to the making of final payment(s).
- 7.8.8. Issuance of final Certificate(s) for Payment.
- 7.8.9. Final inspection of Water Distribution, Sewage Collection and Stormwater/ Environmental Management Facilities. Preparation of certifications to agencies along with record documents prepared based upon record information supplied by the Construction Manager. Services include one final inspection for each certification.

8. POST-CONSTRUCTION SERVICES

8.1. Record Drawing services consisting of:

- 8.1.1. Making arrangements for obtaining from Construction Manager information in the form of marked-up prints, drawings and other data certified by them on changes made during performance of the Work, including Change Directives, RFI's, ASI's, etc.
- 8.1.2. Review of general accuracy of information submitted and certified by the Construction Manager.
- 8.1.3. Preparation of record drawings electronically based on certified information furnished by the Construction Manager.
- 8.1.4. Transmittal one set of full-size reproducible record drawings and general data, appropriately identified, to the Owner and others as directed. Two copies of all electronic data including CADD drawings on CD.

8.2. Warranty Review consisting of:

- 8.2.1. Consultation with and recommendation to the Owner during the duration of warranties in connection with inadequate performance of materials, systems and equipment under warranty.
- 8.2.2. Inspection(s) prior to expiration of the warranty period(s) to ascertain adequacy of performance of materials, systems and equipment.
- 8.2.3. Documenting defects or deficiencies and assisting the Owner in preparing instructions to the Construction Manager for correction of noted defects.

9. ADDITIONAL SERVICES/EXPENSES (not included in the base fee):

9.1. Owner-Provided Services:

- 9.1.1. Environmental assessment of site, if necessary.
- 9.1.2. Environmental assessment of existing facilities to be renovated and/or demolished, and the removal of any hazardous material, if necessary.
- 9.1.3. Printing of all Contract Documents issued for bidding and construction.
- 9.1.4. Distribution of Contract Documents to Construction Manager for estimating and bidding purposes.

- 9.2. Mock-Up Services** relating to any space for study during the design phases and consisting of:
- 9.2.1. Design and documentation for the required mock-up.
 - 9.2.2. Construction administration of mock-up construction activities.
 - 9.2.3. Arrangements for testing performance of mock-up.
 - 9.2.4. Review, analysis and reporting of results.
- 9.3. Prepare an Inventory** of existing furniture and equipment that will be placed in the new facilities.
- 9.4. Value Engineering** – Value engineering is the detailed, systematic review of the design concepts, construction techniques, materials and building types associated with a project solely in terms of life cycle costs in an attempt to obtain optimum value for every dollar spent. If Owner chooses to engage in value engineering, Owner shall either retain the services of an independent Value Engineer (“VE”) to perform the above review services to be complete at a stage no later than the completion of schematic design, or may pay a mutually negotiated sum “at the time the services are requested” to CONSULTANT to perform the above review services at a stage later than the completion of schematic design, Owner acknowledges that schedule and cost impacts may occur.
- 9.4.1. If Owner chooses to retain an independent VE, all recommendations of the VE shall be given to CONSULTANT for its review and adequate time will be provided for CONSULTANT to respond to these recommendations. CONSULTANT may be compensated as an additional service for time spent to review the recommendations of the VE and to incorporate those accepted by both Owner and CONSULTANT. Objections to any recommendations made by the VE shall be stated in writing. Owner agrees that CONSULTANT shall not be responsible for any damage, cost or liability which arises in connection with or as a result of the incorporation of such design changes.
- 9.5. Commissioning** – The performance of a functional and operational check of all systems and equipment to verify the installation is performing to the design criteria. CONSULTANT would prepare this service in conjunction with an independent contractor experienced in such activities.
- 9.6. Structural Blast Resistance** - Analysis of building structural systems to resist loads imposed by blast forces on exterior of facility. This would require an additional blast consultant to be obtained.
- 9.7. Security Systems:** The Security portion of the project will include the design and documentation of Electronic Security System from Schematic Design through Construction Administration Services. The Electronic Security System will include intrusion detection, access control, electronic door control and monitoring,

operational intercom, fixed duress alarms, monitoring and control panels, CCVE systems, control room layouts, rough-ins for x-ray screening/magnetometer at entry lobby, and parcel screening. As part of the overall security plan CONSULTANT will provide a site analysis to determine passive security measures to be incorporated for the facility. Deliverables for the above scope for each task are as listed below.

- 9.7.1. **Schematic Design (SDs):** CONSULTANT will provide a written security narrative describing the Electronic Security System, reflecting the design approach based on program requirements. In addition, CONSULTANT will provide two people for a one day on site Security Workshop to validate the security program and establish the design intent.
- 9.7.2. **Design Development (DDs):** CONSULTANT will provide job specific draft specifications of the Electronic Security System including plans indicating device locations, and outline specifications, and equipment selections reflecting design approach. CONSULTANT will provide one person for 1 day to attend an on-site design review with the Owner and Design Team members to review the Electronic Security System Design Development documents.
- 9.7.3. **Construction Documents (CDs):** Upon completion of this review, CONSULTANT will provide completed biddable documents including plans, details, schedules, riser diagrams, and specifications required to fully document the Electronic Security System. In addition, CONSULTANT will provide, at the completion of the Construction Documents phase, two (2) copies of a Design Information Manual (DIM) outlining major equipment selections utilized as the basis of design for the Electronic Security Systems. CONSULTANT will conduct mid-point design review with Owner and Design Team members to review the Electronic Security Construction Documents.
- 9.7.4. **Bidding:** CONSULTANT will review all questions related to the Electronic Security System submitted, and provide answers in written addendum as required.
- 9.7.5. **Construction Administration (CA):** CONSULTANT will provide one person for four, one day intermediate site visits during construction. In addition, upon written notification of substantial completion CONSULTANT will provide two persons for one day (16 hours total) to review and test the Electronic Security System.
 - 9.7.5.1. Included in this phase of work is the review of security shop drawing submittals and written responses to security RFI from the contractor.
 - 9.7.5.2. Deliverable for this phase of work will include a written field report for the intermediate site visits, and a final report and punch list of the site visit made following written notice of substantial completion.

9.7.6. **Expanded Security System Design** - The following systems and services can be provided in addition to the Electronic Security Design defined in previous sections:

9.7.6.1. Assistance Stations

9.7.6.2. Parking Area Equipment (cameras, card access control)

9.7.6.3. Wireless Duress

9.7.6.4. Hydraulic Barriers

9.7.6.5. Biometrics

9.7.6.6. Perimeter protection systems

9.7.6.7. Post Construction Services: CONSULTANT will provide two people for one day (16 hours total) to conduct a pre-warranty expiration review of the electronic security system. The review will focus on inspection of equipment, operational functions, defects or deficiencies within the system and will be documented in report form and issued to the owner.



EXHIBIT C

SCHEDULE OF REIMBURSABLES

1. Reproduction Cost			
A.Regular Copying	Single Side	Double	
Sided			
8 ½ x 11 (black & white).....	\$ 0.15/page	\$ 0.25/sheet	
8 ½ x 11 (color)	\$ 0.30/page	\$ 0.40/sheet	
8 ½ x 14 (black & white).....	\$ 0.15/page	\$ 0.25/sheet	
8 ½ x 14 (color)	\$ 0.30/page	\$ 0.40/sheet	
11 x 17 (black & white).....	\$ 0.25/page	\$ 0.35/sheet	
11 x 17 (color)	\$ 0.40/page	\$ 0.50/sheet	
9 ½ x 24 Single Side Only	\$ 1.00/page		
17 x 22 Single Side Only	\$ 2.00/page		
18 x 24 Single Side Only	\$ 2.00/page		
24 x 36 Single Side Only	\$ 3.00/page		
30 x 30 Single Side Only	\$ 5.00/page		
32 x 34 Single Side Only	\$ 5.00/page		
Other sizes-per square inch.....	\$ 0.03/page		
Compact Digital Disk	\$ 6.00/disk		
B. Blueprint Copy	\$10.00/page		
2. Subcontractor Services	Actual Costs		
3. Special Consultants	Actual costs		
4. Telecommunications			
A. Local	Non-reimbursable		
B. Non-Local	Actual Costs		
5. Computer Services	Non-reimbursable		
6. Travel Expenses	In accordance with Chapter 112.061, F.S.; and further defined in the City of Kissimmee Employee Handbook		
7. Postage, Fed Express, UPS	Actual Costs		
8. Pre-approved Equipment (includes purchase and rental of equipment used in project)	Actual Costs		

EXHIBIT D

AFFIDAVIT CERTIFICATION
IMMIGRATION LAWS

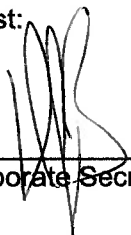
SOLICITATION NO.: RFP2023-006 PROJECT NAME: Architectural and Engineering Services

THE CITY OF KISSIMMEE, a MUNICIPAL CORPORATION OF THE STATE OF FLORIDA (CITY), WILL NOT INTENTIONALLY AWARD CITY CONTRACTS TO ANY CONTRACTOR WHO KNOWINGLY EMPLOYS UNAUTHORIZED ALIEN WORKERS, CONSTITUTING A VIOLATION OF THE EMPLOYMENT PROVISIONS CONTAINED IN 8 U.S.C. SECTION 1324 a(e) {SECTION 274A(e) OF THE IMMIGRATION AND NATIONALITY ACT ("INA").

THE CITY MAY CONSIDER THE EMPLOYMENT BY ANY CONTRACTOR OF UNAUTHORIZED ALIENS A VIOLATION OF SECTION 274A(e) OF THE INA. **SUCH VIOLATION BY THE RECIPIENT OF THE EMPLOYMENT PROVISIONS CONTAINED IN SECTION 274A(e) OF THE INA SHALL BE GROUNDS FOR UNILATERAL CANCELLATION OF THE CONTRACT BY THE CITY.**

BIDDER ATTESTS THAT THEY ARE FULLY COMPLIANT WITH ALL APPLICABLE IMMIGRATION LAWS (SPECIFICALLY TO THE 1986 IMMIGRATION ACT AND SUBSEQUENT AMENDMENTS).

Attest:



Corporate Secretary

CONSULTANT

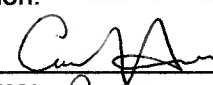
By: 

Title: CEO

STATE OF FLORIDA
COUNTY OF Lake

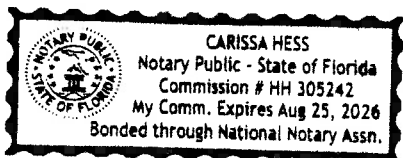
The foregoing instrument was acknowledged before me this 17th day of November, 2023, by means of ☒ physical presence or ☐ online notarization, by (name of person) Hans Bentzon as (type of authority) CEO for (name of party on behalf of whom instrument was executed) Forefront Architecture & Engineering, a Florida corporation, who is personally known to me or has produced identification.

Notary Seal:

Notary: 

Print Name: Carissa Hess

My Commission Expires: Aug. 25, 2026





FOREARC-01

ASOSTENUTO

CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)

11/20/2023

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 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 JCJ Insurance Agency, LLC 2208 Hillcrest Street Orlando, FL 32803	CONTACT NAME:	
	PHONE (A/C, No, Ext): (321) 445-1117	FAX (A/C, No): (321) 445-1076
	E-MAIL ADDRESS: certs@jcj-insurance.com	
	INSURER(S) AFFORDING COVERAGE	NAIC #
	INSURER A : Phoenix Insurance Co. (Travelers)	25623
INSURED Forefront Architecture & Engineering, LLC 1230 Oakley Seaver Dr. Ste 200 Clermont, FL 34711	INSURER B : Fidelity & Guaranty Insurance Company	35386
	INSURER C : Travelers Property & Casualty of America	25674
	INSURER D : Hudson Insurance Company	25054
	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 INSD	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
A	☒ COMMERCIAL GENERAL LIABILITY ☐ CLAIMS-MADE ☒ OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: ☐ POLICY ☒ PROJECT ☐ LOC OTHER:	X	X	6806H087776	9/1/2023	9/1/2024	EACH OCCURRENCE \$ 1,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 1,000,000 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
B	☐ AUTOMOBILE LIABILITY ☐ ANY AUTO OWNED AUTOS ONLY ☒ SCHEDULED AUTOS ☒ HIRED AUTOS ONLY ☒ NON-OWNED AUTOS ONLY	X	X	BA0X885055	9/1/2023	9/1/2024	COMBINED SINGLE LIMIT (Ea accident) \$ 1,000,000 BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$
C	☒ UMBRELLA LIAB ☒ OCCUR ☐ EXCESS LIAB ☐ CLAIMS-MADE DED ☒ RETENTION \$ 10,000	X	X	CUP6H087868	9/1/2023	9/1/2024	EACH OCCURRENCE \$ 4,000,000 AGGREGATE \$ 4,000,000
C	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) ☐ Y / N If yes, describe under DESCRIPTION OF OPERATIONS below	N / A	X	UB2L681157	9/1/2023	9/1/2024	☒ 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
D	Professional Liab			PRB 06 19 117217	9/1/2023	9/1/2024	Per Claim/Aggregate 2,000,000

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

The City of Kissimmee is an Additional Insureds with regards to General, Auto and Umbrella Liability when required by written contract. Coverage is Primary & Non-Contributory with respect to all policies. A Waiver of Subrogation for all policies applies when required by written contract. 30 Day Notice of Cancellation, except for 10 days for non-payment.

CERTIFICATE HOLDER

CANCELLATION

City of Kissimmee Public Works and Engineering Dept Facilities Management Division 101 Church Street 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 <i>Erin K. Kelley</i>

Architectural/Engineering Services Master Agreement

THIS ARCHITECTURAL/ENGINEERING MASTER SERVICES AGREEMENT (“Agreement”) is entered into as of the Effective Date (hereinafter defined) by and between the City of Kissimmee, a Municipal Corporation of the State of Florida, by and through its Commission, 101 Church Street, Kissimmee, Florida 34741 (hereinafter referred to as the “CITY”), and **Franklin Design, a KPM-KMF Joint Venture**, 222 Church Street, Kissimmee, FL 34741, whose Federal Identification Number is: 26-2592697 (hereinafter referred to as the “CONSULTANT”).

WITNESSETH:

WHEREAS, the CITY requires certain architectural and/or engineering services to be performed in the City of Kissimmee; and,

WHEREAS, the CITY has solicited for these professional services via RFQ2023-006, an advertised request for qualifications (the “RFQ”), and has received numerous responsive bids thereto; and

WHEREAS, the CONSULTANT remains agreeable to providing the CITY the professional services and represents that it is capable and prepared to do so;

NOW, THEREFORE, in consideration of the promises contained herein, the CITY and the CONSULTANT (collectively, the “Parties”) hereby agree, as follows:

1.0 **Term**

1.1 This Agreement shall take effect on the date of its execution by the Mayor, The City of Kissimmee Commission (the “Effective Date”).

1.2 The term of this Agreement shall be for a five (5) year period, commencing upon the Effective Date, unless otherwise terminated as provided herein.

2.0 **CONSULTANT –SERVICES -- GENERAL**

2.1 The CONSULTANT shall provide the CITY complete architectural and engineering services necessary to provide construction documents and administration for various projects (individually a “Project” and collectively, the “Projects”) throughout the Term, as may be further specifically designated and authorized by the CITY in writing. Such authorization shall be in the form of either a Consultant Services Authorization (“CSA”) or a Contract Purchase Order (“CPO”), and all provisions of this Agreement shall apply to the CSA or CPO with full force and effect as if appearing in full within each CSA or CPO. Each CSA or CPO will set forth a specific Scope of Services, maximum limit of compensation, schedule, liquidated damages, and completion date, and shall become effective upon the due execution. When the CONSULTANT and the CITY enter into a CSA or CPO where the term

thereof expires on a date that is later than the date of this Agreement, the CONSULTANT and the CITY agree that the terms of this Agreement and any amendments, attachments, or provisions thereof are automatically extended until the expiration or full completion of the requirements of the CSA or CPO, as applicable, have been performed. Cancellation by the CITY of any remaining service prior to the full completion of the requirements of the CSA/CPO shall cause the terms of this Agreement to terminate at the same time. This provision only applies when the expiration of the CSA/CPO extends beyond the expiration of this Agreement. It does not apply when a CSA/CPO expires or is cancelled prior to the expiration of this Agreement.

2.2 The CONSULTANT is not authorized to undertake any Project without a duly executed CSA or CPO, which shall specify the work to be performed. The CONSULTANT recognizes that the CITY may employ several different CONSULTANTS and engineers to perform the services described herein and that the CONSULTANT has not been employed as the exclusive agent to perform any such services.

2.3 In addition to the services described in this Section 2.0, the RFQ, the Consultant's responsive proposal thereto, and otherwise set forth and described in the body of this Agreement, the CONSULTANT may also be authorized to perform, via a duly executed CSA or CPO, any or all of those services set forth and further described in **Exhibit "B"**, attached hereto and incorporated herein (collectively, the "Services").

3.0 **Project Administration Services**

3.1 The CONSULTANT shall manage the CONSULTANT'S services and administer the Project. The CONSULTANT shall consult with the CITY, research applicable design criteria, attend Project meetings, and communicate with members of the Project team and issue progress reports. The CONSULTANT shall coordinate the services provided by the CONSULTANT and the CONSULTANT'S sub-consultants with those services provided by the CITY and the CITY'S consultants.

3.2 When Project requirements have been sufficiently identified, the CONSULTANT may be required to prepare, and periodically update, a Project schedule that shall identify milestone dates for decisions required of the CITY, design services furnished by the CONSULTANT, completion of documentation provided by the CONSULTANT, commencement of construction and Substantial Completion of the Work.

3.3 The CONSULTANT shall consider the value of alternative materials, building systems and equipment, together with other considerations based on program, budget and aesthetics in developing the design for the Project.

3.4 Upon request of the CITY, the CONSULTANT shall make a presentation to explain the design of the Project to representatives of the CITY.

3.5 The CONSULTANT shall submit design documents to the CITY at intervals appropriate to the design process for purposes of evaluation and approval by the CITY. The CONSULTANT shall be entitled to rely on approvals received from the CITY in the further development of the design.

3.6 The CONSULTANT shall assist the CITY in connection with the CITY'S responsibility for filing documents required for the approval of governmental authorities having jurisdiction over the Project.

3.7 EVALUATION OF BUDGET AND COST OF THE WORK.

3.7.1 When the Project requirements have been sufficiently identified, the CONSULTANT shall prepare a preliminary estimate of the Cost of the Work. This estimate may be based on current area, volume or similar conceptual estimating techniques. The CONSULTANT shall advise the CITY of any adjustments to previous estimates of the Cost of the Work indicated by changes in Project requirements or general market conditions. If at any time the estimate of the Cost of the Work exceeds the CITY'S budget, the CONSULTANT shall make appropriate recommendations to the CITY to adjust the Project's size, quality or budget, and the CITY shall cooperate with the CONSULTANT in making such adjustments.

3.7.2 Evaluations of the CITY'S budget for the Project, the preliminary estimate of the Cost of the Work, and updated estimates of the Cost of the Work represent the CONSULTANT'S judgment as a design professional familiar with the construction industry. It is recognized, however, that neither the CONSULTANT nor the CITY has control over the cost of labor, materials or equipment, over the CONSULTANT'S methods of determining bid prices, or over competitive bidding, market or negotiating conditions. Accordingly, the CONSULTANT cannot and does not warrant or represent that bids or negotiated prices will not vary from the CITY'S budget for the Project or from any estimate of the Cost of the Work or evaluation prepared or agreed to by the CONSULTANT.

3.7.3 In preparing estimates of the Cost of the Work, the CONSULTANT shall be permitted to include contingencies and allowances for design, bidding and price escalation; to determine what materials, equipment, component systems and types of construction are to be included in the Contract Documents; to make reasonable adjustments in the scope of the Project and to include in the Contract Documents alternate bids as may be necessary to adjust the estimated Cost of the Work to meet the CITY'S budget for the Cost of the Work.

3.7.4 If bidding or negotiation has not commenced within 90 days after the CONSULTANT submits the Construction Documents to the CITY, the

budget for the Cost of the Work shall be adjusted to reflect changes in the general level of prices in the construction industry.

- 3.7.5** If the budget for the Cost of the Work is exceeded by the lowest bona fide bid or negotiated proposal, and the CITY elects to revise the Project scope to reduce the Cost of the Work, then the CONSULTANT, without additional charge, shall modify the Contract Documents as necessary to comply with the fixed limit as a condition of this Agreement.

4.0 Evaluation and Planning Services

- 4.1** The CITY may furnish a program setting forth the CITY's objectives, schedule, constraints and criteria, including space requirements and relationships, special equipment, systems and site requirements. The CONSULTANT shall provide a preliminary evaluation of the information furnished by the CITY under this Agreement, including the CITY'S program and schedule requirements and budget for the Cost of the Work, each in terms of the other. The CONSULTANT shall review such information to ascertain that it is consistent with the requirements of the Project and shall notify the CITY of any other information or consultant services that may be reasonably needed for the Project.
- 4.2** The CONSULTANT shall provide a preliminary evaluation of the CITY's site for the Project based on the information provided by the CITY of site conditions, and the CITY'S program, schedule and budget for the Cost of the Work.

5.0 Design Services

5.1 SCHEMATIC DESIGN DOCUMENTS

5.1.1 The CONSULTANT shall provide Schematic Design Documents based on the mutually agreed-upon program, schedule, and budget for the Cost of the Work. The documents shall establish the conceptual design of the Project illustrating the scale and relationship of the Project components. The Schematic Design Documents shall include a conceptual site plan, if appropriate, and preliminary building plans, sections and elevations. At the CONSULTANT's option, the Schematic Design Documents may include study models, perspective sketches, electronic modeling or combinations of these media. Preliminary selections of major building systems and construction materials shall be noted on the drawings or described in writing.

5.2 DESIGN DEVELOPMENT DOCUMENTS

5.2.1 The CONSULTANT shall provide Design Development Documents based on the approved Schematic Design Documents and updated budget for the Cost of the Work. The Design Development Documents shall illustrate and describe the refinement of the design of the Project, establishing the scope, relationships, forms, size and appearance of the Project by means of

plans, sections and elevations, typical construction details, and equipment layouts. The Design Development Documents shall include specifications that identify major materials and systems and establish in general their quality levels.

5.3 CONSTRUCTION DOCUMENTS

5.3.1 The CONSULTANT shall provide Construction Documents based on the approved Design Development Documents and updated budget for the Cost of the Work. The Construction Documents shall set forth in detail the requirements for construction of the Project. The Construction Documents shall include Drawings and Specifications that establish in detail the quality levels of materials and systems required for the Project.

5.3.2 During the development of the Construction Documents, the CONSULTANT shall assist the CITY in the development and preparation of: (1) bidding and procurement information which describes the time, place and conditions of bidding; bidding or proposal forms; and the form of agreement between the CITY and the CONSULTANT; and (2) the Conditions of the Contract for Construction (General, Supplementary and other Conditions). The CONSULTANT also shall compile the Project Manual that includes the Conditions of the Contract for Construction and Specifications and may include bidding requirements and sample forms.

5.3.3 Progress submittals of design documents shall be delivered to the CITY for review and approval, at the 50% Construction Document Phase, the 100% Construction Document to be submitted for permit, and the 100% Construction Documents, approved for construction for each subproject. Such submittals shall be reissued as necessary to secure approval. CITY comments shall be incorporated into the next phase of the work. CONSULTANT is entitled to rely upon CITY'S approval that the design conforms to the program at each stage. The CITY and the CONSULTANT agree that they shall not proceed to the next phase, including the Construction Phase, until they have mutually agreed that the project is feasible in accordance with the budget approved by the CITY.

6.0 Contract Administration Services

6.1 GENERAL ADMINISTRATION

6.1.1 The CONSULTANT shall provide administration of the Contract between the CITY and the Contractor as set forth in the CITY'S Agreement with their Contractor.

6.1.2 The CONSULTANT'S responsibility to provide the Contract Administration Services under this Agreement commences with the Notice to Proceed to the

Contractor and terminates at the issuance to the CITY of the final Certificate for Payment. However, the CONSULTANT may be entitled to a Change in Services in accordance with Section 47.2 if Contract Administration Services extend 60 days after the date of Final Completion of the Work.

- 6.1.3** The CONSULTANT shall be a representative of, and shall advise and consult with, the CITY during the provision of the Contract Administration Services. The CONSULTANT shall have authority to act on behalf of the CITY only to the extent provided in this Agreement unless otherwise modified by written amendment.
- 6.1.4** Duties, responsibilities and limitations of authority of the CONSULTANT under this Section 6.0 shall not be restricted, modified or extended without written agreement of the CITY and CONSULTANT.
- 6.1.5** The CONSULTANT shall review properly prepared, timely requests by the Contractor for additional information about the Contract Documents. A properly prepared request for additional information about the Contract Documents shall be in a form prepared or approved by the CONSULTANT and shall include a detailed written statement that indicates the specific Drawings or Specifications in need of clarification and the nature of the clarification requested.
- 6.1.6** If deemed appropriate by the CONSULTANT, the CONSULTANT shall on the CITY'S behalf prepare, reproduce and distribute supplemental Drawings and Specifications in response to requests for information by the Contractor.
- 6.1.7** The CONSULTANT shall interpret and decide matters concerning performance of the CITY and Contractor under, and requirements of, the Contract Documents on written request of either the CITY or Contractor. The CONSULTANT'S response to such requests shall be made in writing within any time limits agreed upon or otherwise with reasonable promptness.
- 6.1.8** Interpretations and decisions of the CONSULTANT shall be consistent with the intent of and reasonably inferable from the Contract Documents and shall be in writing or in the form of drawings. When making such interpretations and initial decisions, the CONSULTANT shall endeavor to secure faithful performance by both CITY and Contractor, shall not show partiality to either, and shall not be liable for the results of interpretations or decisions so rendered in good faith.
- 6.1.9** The CONSULTANT shall render initial decisions on claims, disputes or other matters in question between the CITY and CONSULTANT as provided in the Contract Documents. However, the CITY'S decisions on matters relating to aesthetic effect shall be final if consistent with the intent expressed in the Contract Documents.

6.2 EVALUATIONS OF THE WORK

6.2.1 The CONSULTANT, as a representative of the CITY, shall visit the site at intervals appropriate to the stage of the Contractor's operations, or as otherwise agreed by the CITY and the CONSULTANT, (1) to become generally familiar with and to keep the CITY informed in writing about the progress and quality of the portion of the Work completed, (2) to endeavor to guard the CITY against defects and deficiencies in the Work, and (3) to determine in general if the Work is being performed in a manner indicating that the Work, when fully completed, will be in accordance with the Contract Documents. However, the CONSULTANT shall not be required to make exhaustive or continuous on-site inspections to check the quality or quantity of the Work. The CONSULTANT shall neither have control over or charge of, nor be responsible for, the construction means, methods, techniques, sequences or procedures, or for safety precautions and programs in connection with the Work, since these are solely the Contractor's rights and responsibilities under the Contract Documents.

6.2.2 The CONSULTANT shall report to the CITY known deviations from the Contract Documents and from the most recent construction schedule submitted by the Contractor. However, the CONSULTANT shall not be responsible for the Contractor's failure to perform the Work in accordance with the requirements of the Contract Documents. The CONSULTANT shall be responsible for the CONSULTANT'S negligent acts or omissions, but shall not have control over or charge of and shall not be responsible for acts or omissions of the Contractor, Sub-contractors, or their agents or employees, or of any other persons or entities performing portions of the Work.

6.2.3 The CONSULTANT shall at all times have access to the Work wherever it is in preparation or progress.

6.2.4 Except as may otherwise be provided in the Contract Documents or when direct communications have been specially authorized in writing, the CONSULTANT and Contractor shall communicate through the CITY. Communications by and with the CONSULTANT'S sub-consultants shall be through the CONSULTANT. The CONSULTANT shall respond to the CITY with the CONSULTANT'S written responses or correspondence within a reasonable length of time.

6.2.5 The CONSULTANT shall have authority to reject Work that does not conform to the Contract Documents. Whenever the CONSULTANT considers it necessary or advisable, the CONSULTANT, with the CITY'S approval, will have authority to require inspection or testing of the Work in accordance with the provisions of the Contract Documents, whether or not such Work is fabricated, installed or completed. However, neither this

authority of the CONSULTANT nor a decision made in good faith, either to exercise or not to exercise such authority, shall give rise to a duty or responsibility of the CONSULTANT to the Contractor, Sub-contractor, material and equipment suppliers, their agents or employees or other persons or entities performing portions of the Work. If the CONSULTANT requires inspection or testing of the Work without the CITY'S prior approval, the Work is deemed acceptable, the CONSULTANT will be responsible for any compensation due the Contractor.

6.3 CERTIFICATION OF PAYMENTS TO CONTRACTOR

6.3.1 The CONSULTANT shall review and certify the amounts due the Contractor and shall issue Certificates for Payment in such amounts. The CONSULTANT'S certification for payment shall constitute a representation to the CITY, based on the CONSULTANT'S evaluation of the Work as provided in Paragraph 6.2 and on the data comprising the Contractor's Application for Payment, that the Work has progressed to the point indicated and that, to the best of the CONSULTANT'S knowledge, information and belief, the quality of the Work is in accordance with the Contract Documents. The foregoing representations are subject (1) to an evaluation of the Work for conformance with the Contract Documents upon Substantial Completion, (2) to results of subsequent tests and inspections, (3) to correction of minor deviations from the Contract Documents prior to completion, and (4) to specific qualifications expressed by the CONSULTANT.

6.3.2 The issuance of a Certificate for Payment shall not be a representation that the CONSULTANT has (1) made exhaustive or continuous on-site inspections to check the quality or quantity of the Work, (2) reviewed construction means, methods, techniques, sequences or procedures, (3) reviewed copies of requisitions received from Sub-contractors and material suppliers and other data requested by the CITY to substantiate the Contractor's right to payment, or (4) ascertained how or for what purpose the Contractor has used money previously paid on account of the Contract Sum.

6.3.3 The CONSULTANT shall maintain a record of the Contractor's Applications for Payment.

6.4 SUBMITTALS

6.4.1 The CONSULTANT shall review and approve or take other appropriate action upon the Contractor's submittals such as Shop Drawings, Product Data and Samples, but only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. The CONSULTANT'S action shall be taken with such reasonable promptness as to cause no delay in the Work or in the activities of the CITY, Contractor or separate contractor. Review of such submittals is

not conducted for the purpose of determining the accuracy and completeness of other details such as dimensions and quantities, or for substantiating instructions for installation or performance of equipment or systems, all of which remain the responsibility of the Contractor as required by the Contract Documents. The CONSULTANT'S review shall not constitute approval of safety precautions or, unless otherwise specifically stated by the CONSULTANT, of any construction means, methods, techniques, sequences or procedures. The CONSULTANT'S approval of a specific item shall not indicate approval of an assembly of which the item is a component.

6.4.2 The CONSULTANT shall maintain a record of submittals and copies of submittals supplied by the Contractor in accordance with the requirements of the Contract Documents.

6.4.3 If professional design services or certifications by a design professional related to systems, materials or equipment are specifically required of the Contractor by the Contract Documents, the CONSULTANT shall specify appropriate performance and design criteria that such services must satisfy. Shop Drawings and other submittals related to the Work designed or certified by the design professional retained by the Contractor shall bear such professional's written approval when submitted to the CONSULTANT. The CONSULTANT shall be entitled to rely upon the adequacy, accuracy and completeness of the services, certifications or approvals performed by such design professionals.

6.5 CHANGES IN THE WORK

6.5.1 The CONSULTANT shall prepare Construction Change Directives and assist the City with the preparation of change orders and allowance authorizations for the CITY'S approval and execution in accordance with the Contract Documents. The CONSULTANT may authorize minor changes in the Work not involving an adjustment in Contract Sum or an extension of the Contract Time, which are consistent with the intent of the Contract Documents. If necessary, the CONSULTANT shall prepare, reproduce and distribute Drawings and Specifications to describe Work to be added, deleted or modified.

6.5.2 The CONSULTANT shall review properly prepared, timely requests by the CITY or Contractor for changes in the Work, including adjustments to the Contract Sum or Contract Time. A properly prepared request for a change in the Work shall be accompanied by sufficient supporting data and information to permit the CONSULTANT to make a reasonable determination without extensive investigation or preparation of additional drawings or specifications. If the CONSULTANT determines that requested changes in the Work are not materially different from the requirements of the

Contract Documents, the CONSULTANT may issue an order for a minor change in the Work or recommend to the CITY that the requested change be denied.

6.5.3 If the CONSULTANT determines that implementation of the requested changes would result in a material change to the Contract that may cause an adjustment in the Contract Time or Contract Sum, the CONSULTANT shall make a recommendation to the CITY, who may authorize further investigation of such change. Upon such authorization, and based upon information furnished by the Contractor, if any, the CONSULTANT shall estimate the additional cost and time that might result from such change, including any additional costs attributable to a Change in Services of the CONSULTANT. With the CITY'S approval, the CONSULTANT shall incorporate those estimates into a Change Order or other appropriate documentation for the CITY'S execution or negotiation with the Contractor.

6.5.4 The CONSULTANT shall maintain records relative to changes in the Work.

6.6 PROJECT COMPLETION

6.6.1 The CONSULTANT shall conduct inspections to determine the date or dates of Substantial Completion and the date of Final Completion, shall receive from the Contractor and forward to the CITY, for the CITY'S review and records, written warranties and related documents required by the Contract Documents and assembled by the Contractor, and shall issue a final Certificate for Payment based upon a final inspection indicating the Work complies with the requirements of the Contract Documents.

6.6.2 The CONSULTANT'S inspection shall be conducted with the CITY'S Designated Representative to check conformance of the Work with the requirements of the Contract Documents and to verify the accuracy and completeness of the list submitted by the CONSULTANT of Work to be completed or corrected.

6.6.3 When the Work is found to be substantially complete, the CONSULTANT shall inform the CITY about the balance of the Contract Sum remaining to be paid the Contractor, including any amounts needed to pay for final completion or correction of the Work.

6.6.4 The CONSULTANT shall receive from the Contractor and forward to the CITY: (1) consent of surety or sureties, if any, to reduction in or partial release of retainage or the making of final payment and (2) affidavits, receipts, releases and waivers of liens or bonds indemnifying the CITY against liens.

7.0 **Facility Operation Services**

7.1 The CONSULTANT shall meet with the CITY or the CITY'S Designated Representative promptly after Substantial Completion to review the need for facility operation services.

7.2 Upon request of the CITY, and prior to the expiration of one year from the date of Substantial Completion, the CONSULTANT shall conduct a meeting with the CITY and the CITY'S Designated Representative to review the facility operations and performance and to make appropriate recommendations to the CITY.

8.0 **Additional Services**

8.1 The CONSULTANT may be authorized, via a duly executed CSA or CPO, to perform any or all of the additional services as set forth and further described on **Exhibit "B"**.

8.2 The following minimum Design and Contract Administration Services shall be provided by the CONSULTANT without a Change in Services in accordance with Section 47.2:

8.2.1 A reasonable number of reviews of each Shop Drawing, Product Data item, sample and similar submittal of the CONSULTANT.

8.2.2 Up to two (2) inspections for any portion of the Work to determine whether such portion of the Work is substantially complete in accordance with the requirements of the Contract Documents.

8.2.3 Up to two (2) inspections for any portion of the Work to determine final completion.

8.3 The following Design and Contract Administration Services shall be provided by the CONSULTANT as a Change in Services in accordance with Section 47.2:

8.3.1 Change Orders and Construction Change Directives requiring evaluation of proposals, including the preparation or revision of Instruments of Services, with prior approval by CITY;

8.3.2 Providing consultation concerning replacement of Work resulting from fire or other cause during construction;

8.3.3 Evaluation of substitutions proposed by the CITY'S consultants or contractors and making subsequent revisions to the Instruments of Service, with prior approval by CITY.

8.3.4 Preparation of design and documentation for alternate bid or proposal requests proposed by the CITY after the Guaranteed Maximum Price is established.

8.3.5 Contract Administration Services provided 60 (sixty) days after the date of Final Completion of the Work, as may be requested by the CITY.

8.4 The CONSULTANT shall furnish or provide the following services only if specifically designated:

- 8.4.1 Programming
- 8.4.2 Land Survey Services
- 8.4.3 Geotechnical Services
- 8.4.4 Space Schematics/Flow Diagrams
- 8.4.5 Existing Facilities Surveys
- 8.4.6 Economic Feasibility Studies
- 8.4.7 Site Analysis
- 8.4.8 Environmental Studies and Reports
- 8.4.9 User-Supplied Data
- 8.4.10 Schedule Development and Monitoring
- 8.4.11 Civil Design
- 8.4.12 Landscape Design
- 8.4.13 Interior Design
- 8.4.14 Value Analysis
- 8.4.15 Cost Estimating
- 8.4.16 On-Site Project Representation
- 8.4.17 Construction Management
- 8.4.18 Start-up Assistance
- 8.4.19 Record Drawings
- 8.4.20 Post-Contract Evaluation
- 8.4.21 Tenant-Related Services
- 8.4.22 Underground Field Drainage

9.0 **Compensation**

- 9.1 In consideration of the Services provided by the CONSULTANT pursuant to this Agreement, the CITY shall pay CONSULTANT compensation which may be negotiated as either a not-to-exceed price or a lump sum amount, in the CITY's sole discretion.
- 9.2 In the event a not to exceed price is negotiated, compensation shall be billed and paid based on and in accordance with the Hourly Rate Schedule attached hereto and incorporated herein as **Exhibit "A"**. The Hourly Rate Schedule identifies all job

classifications which will perform billable services pursuant to this Agreement and the fee for each job classification. Performance of work by personnel in job classifications not listed on the fee schedule will result in nonpayment for such services.

- 9.3 All invoices must reference this Agreement number, using an invoice form approved by the CITY.
- 9.4 Each individual invoice shall be due and payable forty-five (45) days after receipt by the CITY of a correct, fully documented, invoice, in form and substance satisfactory to the CITY with all appropriate cost substantiations attached. All invoices shall be delivered to:

The City of Kissimmee

Public Works & Engineering

Attention: Facilities Management Director

101 Church Street

Kissimmee, FL 34741

- 9.5 In order for both parties herein to close their books and records for a particular Project, the CONSULTANT will clearly state "Final Invoice" on the CONSULTANT's final/last billing to the CITY for such Project. This certifies that all services have been properly performed and all charges and costs have been invoiced to the CITY. Since this account will thereupon be closed, any and other further charges if not properly included on this final invoice are waived by the CONSULTANT.
- 9.6 Payment of the final invoice for any particular Project shall not constitute evidence of the CITY's acceptance of the Work or Services.
- 9.7 Pursuant to Section 9.2, if a not to exceed fee is negotiated, invoices shall be accompanied by time and task records for all billable hours appearing on the invoice. Alternatively, if a lump sum amount is negotiated, invoices shall be made upon the completion of each phase of the work in proportion to the Services performed, as specifically set forth in the applicable CSA or CPO. Additional documentation may be requested by the CITY and, if so requested, shall be furnished by the CONSULTANT to the CITY Auditor's satisfaction.
- 9.8 A contract amendment/change order may be executed by both parties, after Substantial Completion, to incorporate any additional design fees due to the CONSULTANT. The amendment shall be based upon 7% of the additional cost of the work that has been added to the project where the CONSULTANT participated in the design process.
- 9.9 If the services of the CONSULTANT are changed as described in Section 47.2.1 or

47.2.2, the CONSULTANT'S compensation shall be adjusted. Such adjustment shall be computed as a fixed fee on a task-by-task basis, or, in the discretion of the CITY, in an otherwise equitable manner. Adjustments to the CONSULTANT'S compensation may be approved by the Facilities Management Director, providing the compensation adjustment does not exceed the amount specified in the applicable CSA or CPO.

- 9.10 Forty (40) calendar days shall be allowed for the CITY's inspection and approval of the goods and services for which any invoice has been submitted.
- 9.11 No deduction shall be made from the CONSULTANT's compensation on account of penalty, liquidated damages, or other sums withheld from payments to contractors.
- 9.12 If any work designed or specified by the CONSULTANT during any phase of service is abandoned or suspended in whole or in part, the CONSULTANT is to be paid for the service performed on account of it prior to receipt of written notice from the CITY of such abandonment or suspension, together with reimbursements then due and any terminal expense resulting from abandonment or suspension for more than three months.

10.0 **Reimbursable Expense**

10.1 All requests for payment of out-of-pocket expenses eligible for reimbursement under the terms of this Agreement shall include copies of paid receipts, invoices or other documentation acceptable to the CITY. Such documentation shall be sufficient to establish that the expense was actually incurred and necessary in the performance of the Scope of Work described in this Agreement.

10.2 Reimbursable Expenses are the actual, pre-approved, expenses incurred directly in connection with the applicable Consultant Services Authorization, and include:

- Overnight Deliveries
- Reproduction
- Sub-Consultant
- Long Distance Telephone Calls (excluding Florida cities located outside the boundaries of Osceola County)

10.3 Mileage shall be reimbursed in accordance with Section 112.061, Florida Statutes, for pre-approved out-of-county travel (excluding travel from home offices located outside of Osceola County to the Osceola County line).

10.4 Reimbursable Expenses, including sub-consultants, shall be reimbursed at cost.

10.5 Pre-approved travel costs shall be reimbursed in accordance with Section 112.061, Florida Statutes.

10.6 All assets, i.e. durable goods, purchased as reimbursable expenses become the property of the CITY upon completion of the work for which the asset was utilized. All such assets must be surrendered by delivery to the City of Kissimmee Public Works and Engineering Division offices upon demand termination of the Agreement or the conclusion of the project, whichever occurs first.

10.7 The CITY shall reimburse the CONSULTANT for any documents required over and above the number specified in this Agreement per the City's Reimbursable Schedule that is attached hereto as **Exhibit "C"**.

11.0 **Project Team**

11.1 The Project Team, including the CITY'S Designated Representative and the CONSULTANT'S Designated Representative, shall be as specified in the applicable CSA or CPO.

11.2 The Commission (the "Board") hereby authorizes the CITY'S Designated Representative to act as the Board's agent and execute documents associated with a particular project. Examples of these documents are Notices of Commencements, Certificates of Substantial and Final Completion and permits from applicable agencies.

11.3 The persons or entities, in addition to the CITY'S Designated Representative, who have rights to review the CONSULTANT'S submittals to the CITY, shall be as specified in the applicable CSA or CPO.

11.4 The CITY'S other consultants and the CONSULTANT'S sub-consultants or any other person or entity retained at the CONSULTANT'S expense shall be as specified in the applicable CSA or CPO.

12.0 **Consultant's Standard of Care**

12.1 The CONSULTANT'S services shall be performed as expeditiously as is consistent with professional skill and care and the orderly progress of the Project. The CONSULTANT shall submit for the CITY'S approval a schedule for the performance of the CONSULTANT'S services which initially shall be consistent with the time periods established in the applicable CSA or CPO and which shall be adjusted, if necessary, as the Project proceeds. This schedule shall include allowances for periods of time required for the CITY'S review, for the performance of the CITY'S consultants, and for approval of submissions by authorities having jurisdiction over the Project. The CONSULTANT or CITY shall not, except for reasonable cause, exceed time limits established by this schedule approved by the CITY.

12.2 The CONSULTANT'S Designated Representative, identified in the

applicable CSA or CPO, shall be authorized to act on the CONSULTANT'S behalf with Respect to the Project.

12.3 The CONSULTANT shall maintain the confidentiality of information specifically designated as confidential by the CITY, unless withholding such information would violate the law, create the risk of significant harm to the public or prevent the CONSULTANT from establishing a claim or defense in an adjudicatory proceeding. The CONSULTANT shall require of the CONSULTANT'S consultants similar agreements to maintain the confidentiality of information specifically designated as confidential by the CITY.

12.4 Except with the CITY'S knowledge and prior express written consent, the CONSULTANT shall not engage in any activity, or accept any employment, interest or contribution that would reasonably appear to compromise the CONSULTANT'S professional judgment with respect to the Project.

12.5 The CONSULTANT shall review laws, codes and regulations applicable to the CONSULTANT'S services. The CONSULTANT shall design the Project to conform to the requirements imposed by governmental authorities having jurisdiction over the Project.

12.6 The CONSULTANT shall be entitled to rely on the accuracy and completeness of services and information furnished by the CITY. The CONSULTANT shall provide prompt written notice to the CITY if the CONSULTANT becomes aware of any errors, omissions or inconsistencies in such services or information.

12.7 The CONSULTANT has represented to the CITY that it has the personnel and experience necessary to perform the work in a professional and workmanlike manner.

12.8 The CONSULTANT shall exercise the same degree of care, skill, and diligence in the performance of the Services as is provided by a professional of like experience, knowledge and resources, under similar circumstances.

12.9 The CONSULTANT shall, at no additional cost to CITY, re-perform services which fail to satisfy the foregoing standard of care or otherwise fail to meet the requirement of this Agreement.

12.10 The CONSULTANT shall use skilled and competent personnel to perform the services.

13.0 **Insurance**

13.1 **General Provisions**

13.1.1 The CONSULTANT shall maintain, at all times, the following minimum levels of insurance and shall, without in any way altering their liability, obtain, pay for and maintain insurance for the coverage and amounts of coverage not less than those set forth below and provide the CITY with a certified copy of each policy applicable to this Agreement followed thereafter by an annual Certificate of Insurance satisfactory to the CITY to evidence such coverage before any work commences. Such certificates will provide that there shall be no termination, non-renewal, modification or expiration of such coverage without thirty (30) days prior written notice to the CITY .

13.1.2 The CITY shall be named as an additional insured on all CONSULTANT policies related to the project, excluding professional liability and worker's compensation. The general liability and workers' compensation policies shall contain a waiver of subrogation in favor of the CITY. All insurance coverage shall be written with an insurer having an A.M. Best Rating of a least the "A" category and size category of VIII.

13.1.3 The CONSULTANT's self-insured retention or deductible per line of coverage shall not exceed \$25,000.00 without the permission of the CITY.

13.1.4 Any failure by the CONSULTANT to comply with the requirements of this section to provide insurance, the CITY may, at its option, on notice to the CONSULTANT, suspend the work for cause until there is full compliance;

13.1.5 The CITY may, at its sole discretion, purchase such insurance at CONSULTANT's expense provided that the CITY shall have no obligation to do so and if the CITY shall do so, it shall not relieve CONSULTANT of its obligation to obtain insurance.

13.1.6 The CONSULTANT shall not be relieved of or excused from the obligation to obtain and maintain such insurance amount and coverages.

13.1.7 All CONSULTANT's sub-consultants shall be required to include CITY and CONSULTANT as additional insured on their General Liability Insurance policies.

13.1.8 In the event that sub-consultants used by the CONSULTANT do not have insurance, or do not meet the insurance limits, CONSULTANT shall indemnify and hold harmless the CITY for any claim in excess of the sub-consultants' insurance coverage.

13.1.9 The CONSULTANT shall not commence work under this Agreement until all insurance required as stated herein has been obtained and such insurance has been approved by the CITY.

13.2 Comprehensive Automobile Liability Insurance. \$1,000,000.00 combined single limit of liability for bodily injuries, death and property damage resulting from any one occurrence, including all owned, hired, and non-owned vehicles.

13.3 Commercial General Liability. \$1,000,000.00 combined single limit of liability for bodily injuries, death and property damage, and personal injury resulting from any one occurrence, including the following coverages:

13.3.1 Premises and Operations:

Broad Form Commercial General Liability Endorsement to include Blanket Contractual liability (specifically covering, but not limited to, the contractual obligations assumed by the Firm); Personal Injury (with employment and contractual exclusions deleted); and Broad Form Property Damage coverage.

13.3.2 Independent Contractors:

Delete Exclusion relative to collapse, explosion and underground; Property Damage Hazards; Cross Liability Endorsement; and Contractual liability (specifically covering, but not limited to, the contractual obligations assumed by the Firm)

13.4 Professional Liability Insurance. \$2,000,000 for design errors and omissions, exclusive of defense costs. The CONSULTANT shall be required to provide continuing Professional Liability Insurance to cover each project for a period of two (2) years after the project is completed. Insurance requirements may vary depending on projects as determined by the CITY Director of Risk Management and Insurance. The CITY may require the CONSULTANT to provide a higher level of coverage for a specific Project and time frame.

13.5 Performance, Payment and Other Bonds. CONSULTANT shall furnish Performance and Payment Bonds specific to each Project if required and agreed to under the applicable CSA or CPO for the Project.

13.6 Worker's Compensation. CONSULTANT shall provide, pay for, and maintain worker's compensation insurance on all employees, its agents or subcontractors as required by Florida Statutes.

13.7 Employers' Liability. \$1,000,000.

14.0 **Indemnification**

14.1 General. Having considered the risks and potential liabilities that may exist during the performance of the Services and in consideration of the promises included herein, the CITY and the CONSULTANT agree to allocate such liabilities in accordance with this Section 14.0.

14.2 Indemnification.

14.2.1 The CONSULTANT, to the extent permitted by law, shall indemnify, defend (by counsel reasonably acceptable to the CITY) protect and hold the CITY, and its officers, employees and agents, free and harmless from and against any and all claims, actions, causes of action, liabilities (joint or several), penalties, forfeitures, damages, losses and expenses (including, without limitation, attorneys' fees and costs during negotiation, through litigation and all appeals therefrom), and including, without limitation, any liability or loss resulting from judgments or claims for personal injury, including death, or damage to any property whatsoever, which directly or indirectly result from or arise in connection with (i) the failure of the CONSULTANT to comply with applicable non-conflicting laws, rules or regulations, (ii) the breach by the CONSULTANT of its obligations under this Agreement, (iii) any claim for trademark, patent or copyright infringement arising out of the scope of the CONSULTANT's performance of this Agreement, or (iv) the negligent act, errors or omissions, or intentional or willful misconduct of the CONSULTANT, its sub-consultants, agents, employees and invitees; provided, however, that the CONSULTANT shall not be obligated to defend or indemnify the CITY with respect to any such claims or damages arising out of the CITY's sole negligence.

14.2.2 The CITY's review, comment and observation of the CONSULTANT's work and performance of this Agreement shall in no manner constitute a waiver of the indemnification provisions of this Agreement.

14.2.3 The CONSULTANT agrees that it bears sole legal responsibility for its work and work product, and the work and work product of sub-consultants and their employees, and/or for CONSULTANT's performance of this Agreement and its work product(s).

14.3 Survival. Upon completion of all Services, obligations and duties provided for in this Agreement, or in the event of termination of this Agreement for any reason, the terms and conditions of this Section 14.0 shall survive as if the Agreement were in full force and effect.

15.0 Independent Contractor

15.1 The CONSULTANT undertakes performance of the Services as an independent contractor and shall be wholly responsible for the methods of performance.

15.2 The CITY shall have no right to supervise the methods used, but the CITY shall have the right to observe such performance.

15.3 The CONSULTANT shall work closely with the CITY in performing Services under this Agreement.

15.4 The CONSULTANT shall not pledge the CITY's credit or make it a guarantor of payment or surety for any contract, debt, obligation, judgment, lien or any form of indebtedness and shall have no right to speak for or bind the CITY in any manner.

15.5 The CONSULTANT further warrants and represents that it has no obligation or indebtedness that would impair its ability to fulfill the terms of this Agreement.

16.0 **Authority to Practice**

16.1 The CONSULTANT hereby represents and warrants that it has and will continue to maintain all licenses and approvals required to conduct its business, and that it will at all times conduct its business activities in a reputable manner.

17.0 **Compliance with Laws**

17.1 In performance of the Services, the CONSULTANT will comply with applicable regulatory requirements including federal, state, special district, and local laws, rules, regulations, orders, codes, criteria and standards.

18.0 **Subcontracting**

18.1 The CITY reserves the right to accept the use of any proposed subcontractor or sub-consultant of the CONSULTANT (for purposes of this Section 18.0 referred to as a “subcontractor”), or to reject the selection of a particular subcontractor and to inspect all facilities of any subcontractor.

18.2 If a subcontractor fails to perform or make progress, as required by this Agreement, and it is necessary to replace the subcontractor to complete the work in a timely fashion, the CONSULTANT shall promptly do so, subject to acceptance of the new subcontractor by the CITY. Failure of a subcontractor to timely or properly perform its obligations shall not relieve CONSULTANT of its obligations hereunder.

19.0 **Federal and State Taxes**

19.1 The CITY is exempt from Federal Tax and State Sales and Use Taxes. Upon request, the CITY will provide an exemption certificate to the CONSULTANT. The CONSULTANT shall not be exempted from paying sales tax to its suppliers for materials to fulfill contractual obligations with the CITY, nor shall the CONSULTANT be authorized to use the CITY’s Tax Exemption Number in securing such materials.

20.0 **Public Entity Crimes**

20.1 The CONSULTANT understands and acknowledges that this Agreement with the CITY will be void, in the event the conditions under Section 287.133, Florida Statutes apply to the CONSULTANT, relating to conviction for a public entity crime.

21.0 **CITY’s Responsibilities**

21.1 The CITY shall be responsible for providing access to all CITY project sites, and providing information in the CITY’s possession that may reasonably be required by CONSULTANT, including existing reports, studies, financial information, and other required data that are available in the files of the CITY.

22.0 **Termination of Agreement**

22.1 This Agreement may be terminated by the CONSULTANT upon thirty (30) days prior written notice to the CITY in the event of substantial failure by the CITY to perform in accordance with the terms of the Agreement through no fault of the CONSULTANT.

22.2 This Agreement may be terminated by the CITY with or without cause immediately upon written notice to the CONSULTANT.

22.3 Unless the CONSULTANT is in breach of this Agreement, the

CONSULTANT shall be paid for services rendered to the CITY's satisfaction through the date of termination.

22.4 After receipt of written notice of termination of this Agreement, and except as otherwise directed by the CITY, the CONSULTANT shall:

22.4.1 Stop work on the date and to the extent specified.

22.4.2 Terminate and settle all orders and subcontracts relating to the performance of the terminated work.

22.4.3 Transfer all work in process, completed work, and other material related to the terminated work to the CITY.

22.4.4 Continue and complete all parts of the work that have not been terminated.

22.5 The CONSULTANT shall be paid for services actually rendered to the date of termination.

23.0 **Uncontrollable Forces (Force Majeure)**

23.1 Neither the CITY nor the CONSULTANT shall be considered to be in default of this Agreement if delays in or failure of performance shall be due to Uncontrollable Forces, the effect of which, by the exercise of reasonable diligence, the non-performing party could not avoid. The term "Uncontrollable Forces" shall mean any event which results in the prevention or delay of performance by a party of its obligations under this Agreement and which is beyond the reasonable control of the nonperforming party. It includes, but is not limited to fire, flood, earthquakes, storms, lightning, epidemic, war, riot, civil disturbance, sabotage, and governmental actions.

23.2 Neither Party shall, however, be excused from performance if nonperformance is due to forces which are preventable, removable, or remediable and which the nonperforming party could have, with the exercise of reasonable diligence, prevented, removed or remedied with reasonable dispatch.

23.3 The nonperforming party shall, within a reasonable time of being prevented or delayed from performance by an Uncontrollable Force, give written notice to the other party describing the circumstances and Uncontrollable Forces preventing continued performance of the obligations of this Agreement.

24.0 **Governing Law and Venue**

24.1 This Agreement shall be governed in all respects by the laws of the State of Florida and any litigation with respect thereto shall be brought only in the courts of Osceola County.

25.0 **Non-Discrimination**

25.1 The CONSULTANT warrants and represents that all of its employees are treated equally during employment without regard to race, color, religion, gender, age or national origin.

26.0 **Waiver**

26.1 A waiver by either the CITY or the CONSULTANT of any breach of this Agreement shall not be binding upon the waiving party unless such waiver is in writing. In the event of a written waiver, such a waiver shall not affect the waiving Party's rights with respect to any other or further breach. The making or acceptance of a payment by either party with knowledge of the existence of a default or breach shall not operate or be construed to operate as a waiver of any subsequent default or breach.

27.0 **Severability**

27.1 The invalidity, illegality, or unenforceability of any provision of this Agreement, or the occurrence of any event rendering any portion or provision of this Agreement void, shall in no way affect the validity or enforceability of any other portion or provision of the Agreement.

27.2 Any void provision shall be deemed severed from the Agreement and the balance of the Agreement shall be construed and enforced as if the Agreement did not contain the particular portion or provision held to be void.

27.3 The Parties further agree to reform the Agreement to replace any stricken provision with a valid provision that comes as close as possible to the intent of the stricken provision.

27.4 The provisions of this Section shall not prevent the entire Agreement from being void should a provision which is of the essence of the Agreement be determined to be void.

28.0 **Entirety of Agreement**

28.1 The CITY and the CONSULTANT agree that this Agreement sets forth the entire understanding between the Parties as to the subject matter contained herein, and that there are no promises or understandings between the parties other than those

stated herein.

28.2 This Agreement supersedes all prior agreements, contracts, proposals, representations, negotiations, letters or other communications between the CITY and the CONSULTANT pertaining to the Services, whether written or oral.

29.0 **Modification**

29.1 This Agreement may not be modified, added to, superseded or otherwise altered unless such modifications, additions or other alterations are evidenced in writing signed by both the CITY and the CONSULTANT. Such modifications shall be in the form of a written Amendment executed by both Parties.

30.0 **Successors and Assigns**

30.1 The CITY and the CONSULTANT each binds itself and its partners, successors, assigns, executors, administrators and legal representatives to the other Party to this Agreement and to their partners, successors, executors, administrators, assigns, and legal representatives.

30.2 The CONSULTANT shall not assign this Agreement without the express written approval of the CITY by executed amendment, which approval may be withheld in the CITY's sole and absolute discretion.

30.3 In the event of a merger, the surviving corporation shall be substituted for the contracting party to this Agreement and such substitution shall be affirmed by the City of Kissimmee Commission by executed amendment.

31.0 **Contingent Fees**

31.1 The CONSULTANT warrants that it has not employed or retained any company or person, other than a bona fide employee working solely for the CONSULTANT to solicit or secure this Agreement and that it has not paid or agreed to pay any person, company, corporation, individual or firm, other than bona fide employee working solely for the CONSULTANT, any fee, commission, percentage, gift or any other consideration contingent upon or resulting from the award or making of this Agreement.

32.0 **Truth-In-Negotiation Certificate**

32.1 Execution of this Agreement by the CONSULTANT shall act as the execution of a Truth-in-Negotiation certificate certifying that the wage rates and costs used to determine the compensation provided for in this Agreement are accurate, complete, and current as of the date of the Agreement.

32.2 The said rates and costs shall be adjusted to exclude any significant sums should the CITY determine that the rates and costs were increased due to inaccurate, incomplete or noncurrent wage rates or due to inaccurate representations of fees paid to outside consultants. The CITY shall exercise its rights under this Certificate within one (1) year following payment.

33.0 **Ownership of Documents**

33.1 The CONSULTANT shall be required to cooperate with other consultants relative to providing information requested in a timely manner and in the specified form. Any and all documents, records, disks, original drawings, or other information shall become the property of the CITY for its use and/or distribution as may be deemed appropriate by the CITY. The CONSULTANT is not liable for any damages, injury or costs associated with the CITY's use or distribution of these documents for purposes other than those originally intended by the CONSULTANT.

34.0 **Access and Audits**

34.1 The CONSULTANT shall maintain adequate records to justify all charges and costs incurred in performing the work for at least three (3) years after completion of this Agreement. The CITY shall have access to such books, records, and documents as required in this section for the purpose of inspection or audit during normal business hours at the CONSULTANT's place of business.

34.2 Misrepresentations of billable time or Reimbursable Expenses as determined by the City Auditor to the Commission shall result in the recovery of any resulting overpayments. The CITY's cost of recovery shall be the sole expense of the CONSULTANT, including accounting and legal fees, court costs and administrative expenses.

34.3 Intentional misrepresentations of billable hours and Reimbursable Expenses will be criminally prosecuted to the fullest extent of the law.

34.4 All invoices submitted are subject to audit and demand for refund of overpayment up to three (3) years following completion of all services related to this Agreement.

35.0 **Notice**

35.1 Any notice, demand, communication, or request required or permitted hereunder shall be in writing and delivered in person or sent by Federal-Express or by Certified Mail, postage prepaid as follows:

As to City: **City of Kissimmee**
Public Works & Engineering Department
Facilities Management Division
101 Church Street
Kissimmee, FL 34741
Attn: Purchasing Director

As to Consultant:

35.2 Notices shall be effective when received at the addresses as specified above. Changes in the respective addresses to which such notice is to be directed may be made from time to time by either party by written notice to the other party. Facsimile transmission is acceptable notice effective when received, however, facsimile transmissions received (i.e.; printed) after 5:00 p.m., or on weekends or holidays, will be deemed received on the next business day. The original of the notice must additionally be mailed as required herein.

35.3 Nothing contained in this Article shall be construed to restrict the transmission of routine communications between representatives of the CONSULTANT and the CITY.

36.0 Service of Process

As to City: **City Attorney**
City of Kissimmee
101 Church Street
Kissimmee, Florida 34741

As to Consultant: Franklin Design, a KPM-KMF Joint Venture

37.0 Key Personnel

37.1 The CONSULTANT shall notify the CITY in the event of key personnel changes which might affect this Agreement. To the extent possible, notification shall be made within ten (10) days prior to any such changes. The CONSULTANT, at the CITY's request, shall remove without consequence to the CITY any subcontractor or employee of the CONSULTANT and replace him/her with another employee having the required skill and experience. The CITY has the right to reject proposed changes in key personnel.

The following personnel shall be considered key personnel:

Name: Joseph Morgan
 Eric Kleinsteuber
 Robby Moon

Name:

38.0. **Annual Appropriations**

38.1 The CONSULTANT acknowledges that the CITY, during any fiscal year, shall not expend money, incur any liability, or enter into any agreement which, by its terms, involves the expenditure of money in excess of the amounts budgeted as available for expenditure during such fiscal year. Any agreement, verbal or written, made in violation of this subsection is null and void, and no money may be paid on such agreement. Nothing herein contained shall prevent the making of agreements for a period exceeding one year, but any agreement so made shall be executory only for the value of the services to be rendered or agreed to be paid for in succeeding fiscal years. Accordingly, the CITY's performance and obligation to pay under this agreement is contingent upon annual appropriation.

39.0 **Liquidated Damages**

39.1 The parties hereto agree that liquidated damages, in lieu of actual damages and in the amount stated in the applicable CSA or CPO, will be assessed against the CONSULTANT, as the CITY's remedy and not as a penalty, for CONSULTANT'S failure to meet the final deliverable date in the Performance Schedule in the Scope of Work, but only to the extent and in the proportion to CONSULTANT'S fault in causing the delay as compared to other causes, and to the extent the CONSULTANT is not delayed by reasons beyond CONSULTANT'S reasonable control. The parties agree that such assessment of liquidated damages is reasonable and appropriate, as it would be difficult or impossible to accurately determine the amount of actual damages the CITY would or may incur as a consequence of the CONSULTANT's failure described above.

40.0 **Unauthorized Alien(s)**

40.1 The CONSULTANT shall not employ or utilize unauthorized aliens in the performance of the Services. The CITY shall consider the employment or utilization of unauthorized aliens a violation of Section 274A(e) of the Immigration and Naturalization Act (8 U.S.C. 1324a). Such violation shall be cause for unilateral termination of this Agreement by the CITY. The Form "AFFIDAVIT CERTIFICATION IMMIGRATION LAWS" will be signed by the CONSULTANT and submitted as part of this Agreement.

40.2 To verify employee eligibility, the CONSULTANT may avail itself of a program by the U.S. Immigration and Customs Enforcement called E-Verify. E-Verify is an Internet-based system operated by U.S. Citizenship and Immigration Services (USCIS), part of the Department of Homeland Security (DHS), in partnership with the Social Security Administration (SSA). E-Verify is currently free to employers. E-Verify provides an automated link to Federal databases to help employers determine employment eligibility of new hires and the validity of their Social Security numbers.

41.0 **Limitation of Liability**

IN NO EVENT, SHALL EITHER PARTY BE LIABLE TO THE OTHER PARTY FOR INDIRECT, INCIDENTAL, CONSEQUENTIAL, SPECIAL, EXEMPLARY, OR PUNITIVE DAMAGES OF ANY KIND OR NATURE, INCLUDING LOSS OF PROFIT, WHETHER FORESEEABLE OR NOT, ARISING OUT OF OR RESULTING FROM THE NONPERFORMANCE OR BREACH OF THIS AGREEMENT BY A PARTY WHETHER BASED IN CONTRACT, COMMON LAW, WARRANTY, TORT, STRICT LIABILITY, CONTRIBUTION, INDEMNITY OR OTHERWISE.

42.0 **Default and Remedy**

42.1 If the CONSULTANT materially defaults in its obligations under this Agreement and fails to cure the same within fifteen (15) days after the date the CONSULTANT receives written notice of the default from the CITY, then the CITY shall have the right to (i) immediately terminate this Agreement by delivering written notice to the CONSULTANT, and (ii) pursue any and all remedies available in law, equity, and under this Agreement. If the CITY materially defaults in its obligations under this Agreement and fails to cure the same within fifteen (15) days after the date the CITY receives written notice of the default from the CONSULTANT, then the CONSULTANT shall have the right to immediately terminate this Agreement by delivering written notice to the CITY. Upon any such termination, the CITY shall pay the CONSULTANT the full amount due and owing for all Services performed through the date of Agreement termination.

43.0 **Attorneys' Fees and Costs**

43.1 Except as stated in Section 14.2.1, above, in connection with any dispute or any litigation arising out of, or relating to this Agreement, each party shall be responsible for its own legal and attorneys' fees, costs and expenses, including attorneys' fees, costs, and expenses incurred for any appellate or bankruptcy proceedings.

44.0 **Public Records Law**

44.1 CONSULTANT 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.

44.2 CONSULTANT shall keep and maintain public records required to perform the services contemplated by this Agreement, in accordance with Chapter 119, Florida Statutes "Public records" means all documents, papers, letters, maps, books, tapes, photographs, films, sound recordings, data processing software,

or other material, regardless of the physical form, characteristics, or means of transmission, made or received pursuant to law or ordinance or in connection with the transaction of official business by any agency.

44.3 CONSULTANT shall ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law for the duration of the contract term and following completion of the contract if the Construction Manager does not transfer the records to the CITY.

44.4 Questions regarding the application of Chapter 119, Florida Statutes, to the CONSULTANT's duty to provide public records relating to this Agreement, shall be directed to the CITY's Custodian of Public Records at 407-518-2308, cityclerkemail@kissimmee.org, and 101 Church Street, Kissimmee, Florida 34741.

45.0 **Americans with Disabilities Act**

45.1 The CONSULTANT shall conform its Drawings and Specifications to the requirements of the Americans with Disabilities Act Accessibility Guidelines ("ADAAG"), but CITY shall be responsible for compliance with the remaining provisions of the Americans with Disabilities Act ("ADA"). CITY and CONSULTANT further recognize that interpretations of ADA by governmental officials and/or courts of law may vary or change. Should such variance or change adopted after the date the 100% Design Development are completed, require the CONSULTANT to make the required modifications, such modifications shall be considered as Contingent Additional Services. Further, CITY acknowledges, that the ADA, including ADAAG, is a new law presenting numerous difficult interpretation issues. Accordingly, the CONSULTANT shall only be liable for gross negligence in connection with any allegation that its design does not properly comply with ADAAG.

46.0 **Additional Definitions**

46.1 **Contract Documents** means this Agreement, any CSA or CPO issued hereunder, the CITY'S contract with the Contractor, the Plans, Specifications, General Conditions and related Construction Documents or any other documents incorporated by reference.

46.2 **Cost of the Work** shall be the total cost or, to the extent the Project is not completed, the estimated cost to the CITY of all elements of the Project designed or specified by the CONSULTANT.

46.2.1 The Cost of the Work shall include the cost at current market rates of labor and materials furnished by the CITY and equipment designed,

specified, selected or specially provided for by the CONSULTANT, including the costs of management or supervision of construction or installation provided by a separate construction manager or CONSULTANT.

46.2.2 The Cost of the Work does not include the compensation of the CONSULTANT and the CONSULTANT'S sub-consultants, the costs of the land, rights-of-way and financing or other costs that are the responsibility of the CITY.

46.3 **Final Completion** means that the following items have been completed or satisfied:

46.3.1 Construction of the Project is completed, in accordance with the contract documents and certified as such by the CITY and CONSULTANT.

46.3.2 The Project is suitable for full use and occupancy as determined by the CITY and CONSULTANT.

46.3.3 All Punchlist items have been completed or otherwise disposed of or accounted for to the CITY'S satisfaction and approval.

46.3.4 A final Certificate of Occupancy and all other permits and approvals required have been legally and validly issued.

46.3.5 All required guarantees, affidavits, releases, bonds and waivers, manuals, record drawings, warranties and maintenance books including the Final Completion form have been delivered to the CITY.

46.4 **Punch list** means a list of items of work to be completed and deficiencies to be corrected, which items shall not affect the attainment of Substantial Completion. Such items shall be complete or otherwise disposed of prior to final acceptance.

46.5 **Schedule of Values** means the schedule to be used as a basis for progress payments to be made to the Contractor by the CITY during performance of the work, based on the then current percentage of progress of construction of the Project, subject to the approval of the CONSULTANT.

46.6 **Substantial Completion** means the Contractor has ascertained that the work or portions thereof is ready for the CITY and CONSULTANT substantial completion inspection. It is understood that the Construction Manager will provide a list of incomplete items to the CITY and CONSULTANT prior to this inspection. After the CITY'S and CONSULTANT's inspection, the Contractor will prepare a schedule for a completion of the list, indicating completion dates for the CITY'S review. The CITY and CONSULTANT will issue a Certificate of Substantial Completion when the work on the Contractor's pre-substantial punch-list has been accomplished, to the best of the Contractor's ability.

46.7 **Substantial Completion Date** means the date, certified by the CONSULTANT, that the Project, or designated portion thereof, is sufficiently complete, in accordance with the Construction Documents and a Certificate of Occupancy issued, so that the CITY can reasonably occupy or utilize the Project, or designated portion thereof, for its intended use.

47.0 **Additional Terms and Conditions**

47.1 INSTRUMENTS OF SERVICE

47.1.1 Drawings, specifications and other documents, including those in electronic form, prepared by the CONSULTANT and the CONSULTANT'S sub-consultants are Instruments of Service for use solely with respect to this Project. The CONSULTANT and the CONSULTANT'S sub-consultants shall be deemed the authors and owners of their respective Instruments of Service and shall retain all common law, statutory and other reserved rights, including copyrights.

47.1.2 Upon execution of this Agreement, the CONSULTANT grants to the CITY a nonexclusive license to reproduce the CONSULTANT'S Instrument of Service and thereafter use the same solely for purposes of constructing, using and maintaining, repairing and making additions and modifications to the Project, provided that the CITY shall comply with all obligations, including prompt payment of all sums when due, under the Agreement. The CONSULTANT shall obtain similar nonexclusive licenses from the CONSULTANT'S sub-consultants consistent with this Agreement. Any termination of this Agreement prior to completion of the Project shall terminate the license. Upon such termination, the CITY shall refrain from making further reproductions of Instrument of Service. If and upon the date the CONSULTANT is adjudged in default of this Agreement, the foregoing license shall be deemed terminated and replaced by a second, nonexclusive license permitting the CITY to authorize other similarly credentialed design professionals to reproduce and, where permitted by law, to make changes, corrections or additions to the Instruments of Service solely for purposes of completing, using and maintaining the Project.

47.1.3 Except for the licenses granted in Section 47.1.2, no other license or right shall be deemed granted or implied under this Agreement. The CITY shall not assign, delegate, sublicense, pledge or otherwise transfer any license granted herein to another party without the prior written agreement of the CONSULTANT. However, the CITY shall be permitted to authorize the Contractor, Subcontractors, and sub-subcontractors and material or equipment suppliers to reproduce applicable portions of the Instruments of Service to and for use in their execution of the Work by license granted in Section 47.1.2. Submission or distribution of Instruments of Service to meet

official regulatory requirements or for similar purposes in connection with the Project is not to be construed as publication in derogation of the reserved rights of the CONSULTANT and the CONSULTANT'S sub-consultants. The CITY agrees to pay the CONSULTANT a reasonable, mutually agreed upon amount for any reuse of the designs, drawings or specifications beyond this Agreement. The CITY shall not be responsible to pay the CONSULTANT for the use of the designs, drawings or specifications when used for reference purposes only.

- 47.1.4 If the CONSULTANT is required to deliver any services hereunder in the form of electronic encoded media, the printed representation of such media furnished by the CONSULTANT shall be the official records of the CONSULTANT'S service provided upon completion of the services and payment in full. The CITY shall have a right to rely on such printed representation in connection with any subsequent modification of such electronic media and agrees to hold the CONSULTANT harmless from all cost and expense, including attorney's fees, from claims which arise out of modification or re-use of such electronic media or printed representation by or on behalf of the CITY without the CONSULTANT'S consent. Under no circumstances shall transfer of drawings and other instruments of service on electronic media for use by the CITY, be deemed a sale by the CONSULTANT, and the CONSULTANT makes no warranties of merchantability or fitness for a particular purpose.

47.2 CHANGE IN SERVICES

- 47.2.1 Change in Services of the CONSULTANT, including services required of the CONSULTANT'S sub-consultants may be accomplished after execution of this Agreement, without invalidating the Agreement, if mutually agreed in writing, if required by circumstances beyond the CONSULTANT'S control, or if the CONSULTANT'S services are affected as described in Section 47.2B-2. In the absence of mutual agreement in writing, the CONSULTANT shall notify the CITY prior to providing such services. If the CITY deems that all or part of such Change in Services is not required, the CITY shall give prompt written notice to the CONSULTANT, and the CONSULTANT shall have no obligation to provide those services. Except for a change due to fault of the CONSULTANT, Change in Services of the CONSULTANT shall entitle the CONSULTANT to an adjustment in compensation pursuant to Section 9.8, and to any Reimbursable Expenses described in Section 10.0.
- 47.2.2 If any of the following circumstances affect the CONSULTANT'S services for the Project, the CONSULTANT shall be entitled to an appropriate adjustment in the CONSULTANT'S schedule and compensation:
- 47.2.2.1 Change in the instructions or approvals given by the CITY that constitute material changes to the Project parameters set forth above

and which necessitate revisions in Instruments of Service;

47.2.2.2 Enactment or revision of codes, laws or regulations or official interpretations, which necessitate changes to previously prepared Instruments of Service;

47.2.2.3 Significant change in the Project including, but not limited to, size, quality, complexity, the CITY'S schedule or budget, or procurement method;

47.2.2.4 Preparation for and attendance at a public hearing, a dispute resolution proceeding or a legal proceeding except where the CONSULTANT is party thereto.

47.3 ACCELERATED COMPLETION OF DESIGN PACKAGES. In order to minimize construction problems and change orders, the CONSULTANT's standard practice requires the completion of detailed working drawings, submission for review and comment by reviewing agencies and incorporation of those comments and/or changes prior to bidding and entering into firm construction contracts. However, CITY may choose to accelerate the completion of the Project so that it may be completed in a shorter time period than would normally be required. Should the CITY choose to make this selection, it shall not be considered Fast Track, or in any way relieve the CONSULTANT of its responsibilities and obligations set forth herein.

(THE REMAINDER OF THIS PAGE IS INTENTIONALLY LEFT BLANK; THE AGREEMENT CONTINUES ON THE FOLLOWING PAGE WITH THE PARTIES' SIGNATURES.)

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement as of the Effective Date.

Attest:

Linda Hansell
CITY CLERK

CITY OF KISSIMMEE,
a Municipal Corporation of the
State of Florida

By: _____
City Clerk

By: _____
Mayor
City of Kissimmee Commission

Date Approved by Commission: _____

Reviewed as to form and legal sufficiency:

City Attorney's Office Date

CONSULTANT

Attest:

Corporate Secretary

By: Joseph L. Morgan
Title: MANAGING MEMBER

STATE OF FLORIDA
COUNTY OF Orange

The foregoing instrument was acknowledged before me this 1st day of December, 2023, by means of ☒ physical presence or ☐ online notarization, by (name of person) Joseph Morgan as (type of authority) Managing Member for (name of party on behalf of whom instrument was executed) Franklin Design, a Florida corporation, who is personally known to me or has produced identification.

Notary Seal:



Erika Meaghan Lord
Notary Public
State of Florida
Comm# GG987287
Expires 5/11/2024

Notary: Erika Meaghan Lord
Print Name: Erika Meaghan Lord
My Commission Expires: 5/11/2024

EXHIBIT “A”

HOURLY RATE SCHEDULE



ARCHITECTS

PROFESSIONAL SERVICES HOURLY RATES

CATEGORY	HOURLY BILLING RATE
Principal / Design Director	\$249
Senior Architect / Project Manager	\$189
Architect	\$145
Project / BIM Coordinator	\$129
Design Team	\$99
Operations Director	\$159
Administration & Accounting	\$79

DIRECT EXPENSES SCHEDULE

CAD Plotting	<i>Per Exhibit C</i>	Per sf
B&W Prints / Copies 8.5x11	<i>Per Exhibit C</i>	Each
B&W Prints / Copies 11x17	<i>Per Exhibit C</i>	Each
Color Prints / Copies 8.5x11	<i>Per Exhibit C</i>	Each
Color Prints / Copies 11x17	<i>Per Exhibit C</i>	Each
Shipping - All Services	Actual Cost plus, \$1 plus 10%	
Any Fees (Permitting etc)	Actual Cost plus 15%	
Mileage	<i>Per Exhibit C</i>	
Airfare	Total Billed Rate plus 10%	
Meals	Actual Cost or \$10 Breakfast, \$15 Lunch, \$20 Dinner, per person, whichever is less.	
All Other Expenses (w/ Prior Client Approval)	Actual Cost plus 10%	

These rates are expected effective through December 31, 2024, but may change at any time.
Rates are effective for 60 days from the date on the original proposal.

Professional Services Fee Schedule

Administrative / Office Support

Administrative Support I	\$50.00
Administrative Support II	\$65.00
Administrative Support III	\$75.00
Administrative Support IV	\$85.00
Administrative Support V	\$100.00

Engineering

Engineering Technician I	\$50.00
Engineering Technician II	\$60.00
Engineering Technician III	\$75.00
Engineering Technician IV	\$90.00
Engineering Technician V	\$100.00
Engineering Technician VI	\$120.00
Engineering Technician VII	\$135.00
Engineering Technician VIII	\$150.00
Engineer I	\$95.00
Engineer II	\$105.00
Engineer III	\$120.00
Engineer IV	\$130.00
Engineer V	\$150.00
Engineer VI	\$160.00
Engineer VII	\$175.00
Engineer VIII	\$190.00
Engineer IX	\$210.00
Engineer X	\$225.00

Planning and Landscape Architecture

Landscape Designer	\$100.00
Landscape Architect	\$135.00
Senior Landscape Architect	\$160.00
Planner I	\$90.00
Planner II	\$110.00
Planner III	\$130.00
Planner IV	\$150.00

Survey

Surveying Technician I	\$65.00
Surveying Technician II	\$80.00
Surveying Technician III	\$95.00
Surveying Technician IV	\$105.00
Surveying Technician V	\$115.00
Surveying Technician VI	\$125.00
Surveyor I	\$100.00
Surveyor II	\$110.00
Surveyor III	\$120.00
Surveyor IV	\$135.00
Surveyor V	\$145.00
Surveyor VI	\$160.00
1-Man Survey Crew	\$120.00
2-Man Survey Crew	\$160.00
3-Man Survey Crew	\$210.00
4-Man Survey Crew	\$255.00
UAV Photometric	\$180.00
UAV Lidar	\$220.00

Management

Project Manager I	\$110.00
Project Manager II	\$130.00
Project Manager III	\$160.00
Project Manager IV	\$200.00
Project Manager V	\$225.00
Department Manager	\$225.00
Division Manager	\$250.00
Principal	\$275.00

Expert Witness

Expert Witness Testimony	\$250.00
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Identifiable out of pocket expense and other reimbursables will be billed at cost, without a markup.

Effective January 17, 2023, subject to review and revisions

EXHIBIT “B”

SCOPE OF SERVICES

In accordance with Sections 2.3 and 8.1 of the Agreement, in addition to any other Services described in the Agreement, the RFQ, and the CONSULTANT’s responsive proposal thereto, the CONSULTANT may also be authorized to perform any or all of those services set forth and further described below. In the event the CITY requests the CONSULTANT to furnish and perform any of the services listed and described in this Exhibit “B”, those services shall be listed and incorporated in the applicable CSA or CPO issued for a particular Project.

ALL PHASES:

1. PROJECT ADMINISTRATION AND MANAGEMENT SERVICES

1.1. Project Administration services consisting of administrative functions including:

- 1.1.1. Project Decision Structure
- 1.1.2. Project Directory
- 1.1.3. Consultation
- 1.1.4. Research
- 1.1.5. Communications; Meeting Minutes, Meeting Agendas (For meetings called by CONSULTANT during the Design phases of the project)
- 1.1.6. Direction of the work of architectural, engineering and other consultant personnel

1.2. Disciplines Coordination/Document Checking consisting of:

- 1.2.1. Coordination between the architectural work and the work of engineering and their disciplines involved in the Project.
- 1.2.2. Review and checking of documents prepared for the Project by the CONSULTANT and the CONSULTANT’s Consultants.

1.3. Agency Consulting/Review/Approval services, including:

- 1.3.1. Agency consultants
 - 1.3.1.1. City agencies
 - 1.3.1.2. Regional agencies
 - 1.3.1.3. State agencies
- 1.3.2. Research of critical applicable regulations.
- 1.3.3. Preparation of written and graphic explanatory materials.

1.4. Owner Coordination, including:

- 1.4.1. Review and coordination of data furnished for the Project as a responsibility of the Owner.

1.5. Schedule Development/Monitoring Services, including:

- 1.5.1. Participate in establishment and updating of design schedule in conjunction with CM for the performance of the CONSULTANT's services throughout the design of the project. Key decision-making points will be identified on this schedule.

1.6. Presentation services consisting of presentations and recommendations by the CONSULTANT to the following client representatives:

- 1.6.1. City of Kissimmee Commission
- 1.6.2. Executive Task Force
- 1.6.3. User group(s)
- 1.6.4. Construction Manager

PHASE I PROGRAMMING & MASTER PLANNING

2. NEEDS ASSESSMENT/DATA COLLECTION

2.1. Space Needs Assessments

- 2.1.1. Macro Level Space Requirements Analysis
- 2.1.2. Macro Level Adjacency Requirements
- 2.1.3. Parking Analysis

2.2. Analysis of the site and its surroundings to include the following:

- 2.2.1. Land Utilization
- 2.2.2. Building locations
- 2.2.3. Utility Systems
- 2.2.4. Surface and subsurface conditions (By Owner)
- 2.2.5. Vegetation (By Owner)
- 2.2.6. Survey (By Owner)
- 2.2.7. Land Use Restrictions
- 2.2.8. Historical analysis
- 2.2.9. Stormwater retention/detention areas

3. FUNCTIONAL PROGRAMMING

3.1. Prepare a detailed architectural program based on the scope established in Phase I to include the following services:

- 3.1.1. Functional Requirements Analysis
- 3.1.2. Interior Development Guidelines
- 3.1.3. Space Standards

- 3.1.4. Preliminary Program Space Estimates
- 3.1.5. Space and Equipment Program
- 3.1.6. Special Building System Requirements
- 3.1.7. Micro-Adjacency Requirements
- 3.1.8. Prepare Final Draft Program
- 3.1.9. Prepare Final Program Report

4. MASTER PLANNING

- 4.1 Prepare three different conceptual approaches for housing the space and parking requirements validated in the Needs Assessment. Include the following information, at a minimum:
 - 4.1.1 Existing facility renovation recommendations
 - 4.1.2 Site development planning issues (land utilization, pedestrian and vehicular circulation, parking, areas for expansion, stormwater retention/detention and landscape forms)
 - 4.1.3 Architectural concepts. The architectural concepts will include blocking and stacking diagrams, massing studies and character sketches.

PHASE II: DESIGN/ BIDDING/CONSTRUCTION ADMINISTRATION SERVICES

5. DESIGN SERVICES

5.1. Architectural Design/Documentation:

- 5.1.1. During the Schematic Design Phase, responding to program requirements and preparing:
 - 5.1.1.1. Conceptual Planning/Massing Options
 - 5.1.1.2. Final Conceptual Site and Building Plans
 - 5.1.1.3. Preliminary Sections and Elevations
 - 5.1.1.4. Preliminary Selection of Building Systems and Materials
 - 5.1.1.5. Development of Approximate Dimensions, Areas and Volumes
 - 5.1.1.6. Perspective sketch – eye level
 - 5.1.1.7. Study model
- 5.1.2. During the Design Development Phase consisting of continued development and expansion of architectural Schematic Design Documents to establish the final scope, relationships, forms, size and appearance of the Project through:
 - 5.1.2.1. Plans, sections and elevations
 - 5.1.2.2. Typical construction details
 - 5.1.2.3. Three-dimensional sketch
 - 5.1.2.4. Study model
 - 5.1.2.5. Final materials selection
 - 5.1.2.6. Equipment layouts

- 5.1.3. During the Contract Documents phase consisting of preparation of Drawings and Specifications based on approved Design Development documents setting forth in detail the architectural construction requirements for the Project.

5.2. Structural Design/Documentation:

- 5.2.1. During the Schematic Design Phase consisting of recommendations regarding basic structural materials and systems, analyses, and development of conceptual design solutions for:
 - 5.2.1.1. A structural system
 - 5.2.1.2. Alternate structural systems, if required
- 5.2.2. During the Design Development phase consisting of continued development of the specific structural system and Schematic Design documents in sufficient detail to establish:
 - 5.2.2.1. Basic structural system and dimensions
 - 5.2.2.2. Final structural design criteria
 - 5.2.2.3. Foundation design criteria
 - 5.2.2.4. Preliminary sizing of major structural components
 - 5.2.2.5. Critical coordination clearances
- 5.2.3. During the Contract Documents phase consisting of preparation of final structural engineering calculations, Drawings and Specifications based on approved Design Development documents, setting forth in detail the structural construction requirements for the Project.

5.3. Mechanical Design/Documentation:

- 5.3.1. During the Schematic Design phase, prepare a narrative, consisting of consideration of alternate materials, systems and equipment, and development of conceptual design solutions for:
 - 5.3.1.1. Energy source(s)
 - 5.3.1.2. Energy conservation and controls system concepts
 - 5.3.1.3. Heating and ventilating (systems selections and conceptual sizing and configuration analysis.)
 - 5.3.1.4. Air conditioning (systems selections and conceptual sizing and configuration analysis.)
 - 5.3.1.5. Plumbing
 - 5.3.1.6. Fire protection
 - 5.3.1.7. General space requirements
- 5.3.2. During the Design Development phase consisting of continued development and expansion of mechanical Schematic Design documents and development of outline Specifications or materials lists to establish:
 - 5.3.2.1. Approximate equipment sizes and capacities

- 5.3.2.2. Preliminary equipment layouts
- 5.3.2.3. Required space for equipment
- 5.3.2.4. Required chases and clearances
- 5.3.2.5. Acoustical and vibration control
- 5.3.2.6. Visual impacts
- 5.3.2.7. Energy conservation measures

- 5.3.3. During the Contract Documents phase consisting of preparation of final mechanical engineering calculations, Drawings and Specifications based on approved Design Development documents, setting forth in detail the mechanical construction requirements for the Project.

5.4. Electrical Design/Documentation

- 5.4.1. During the Schematic Design Phase, prepare a narrative, consisting of consideration of alternate systems, recommendations regarding basic electrical materials, systems and equipment, analyses, and development of conceptual solutions for:
 - 5.4.1.1. Power service and distribution
 - 5.4.1.2. Lighting
 - 5.4.1.3. Communication and data outlet location systems
 - 5.4.1.4. Fire detection and alarms
 - 5.4.1.5. General space requirements
 - 5.4.1.6. Audio/Visual systems
- 5.4.2. During the Design Development phase consisting of continued development and expansion of electrical Schematic Design documents and development of outline Specifications or materials lists to establish:
 - 5.4.2.1. Criteria for lighting, electrical and communications systems
 - 5.4.2.2. Approximate sizes and capacities of major components
 - 5.4.2.3. Preliminary equipment layouts
 - 5.4.2.4. Required space for equipment
 - 5.4.2.5. Required chases and clearances
- 5.4.3. During the Contract Documents phase, consisting of preparation of final electrical engineering calculations, Drawings and Specifications based on approved Design Development documents, setting forth in detail the electrical requirements for the Project.

5.5. Civil Design/Documentation:

- 5.5.1. During the Schematic Design phase consisting of consideration of alternate materials and systems and development of conceptual design solutions for:
 - 5.5.1.1. On-site utility systems
 - 5.5.1.2. Fire protection systems
 - 5.5.1.3. Drainage systems

5.5.1.4. Paving

- 5.5.2. During the Design Development phase consisting of continued development and expansion of civil Schematic Design documents and development of outline Specifications or materials lists to establish the final scope of and preliminary details for on-site civil engineering work.
- 5.5.3. During the Contract Documents phase, consisting of preparation of final civil engineering calculations, Drawings and Specifications based on approved Design Development documents, setting forth in detail the civil construction requirements for the Project.
- 5.5.4. Permit applications required for Water Distribution, Sewage Collection and Stormwater/Environment Management (Local, State, and Federal) shall be prepared for execution by the Owner. Permit applications to be paid by Owner. All necessary reports and drawings will be prepared to accompany the permit applications. Two meetings per agency as required to secure permits is included in services. City shall designate individual who has authority to sign permit applications.

5.6. Landscape Design/Documentation:

- 5.6.1. During the Schematic Design phase, prepare narrative conceptual design solutions, which will be developed for land forms, hardscape, lawns and plantings based on program requirements, physical site characteristics, design objectives and environmental determinants.
- 5.6.2. During the Design Development phase, Schematic Design documents will be further developed including outline Specifications and materials lists to establish final scope and preliminary details for landscape work.
- 5.6.3. During the Contract Documents phase, the Drawings and Specifications based on approved Design Development documents, setting forth in detail the landscape and hardscape construction requirements for the Project will be prepared.

5.7. Interior Design/Documentation:

- 5.7.1. During the Schematic Design phase consisting of space allocation and departmental utilization plans based on functional relationships:
 - 5.7.1.1. Types and qualities of finishes and materials for furniture, furnishings, and equipment.
- 5.7.2. During the Design Development phase consisting of continued development and expansion of interior Schematic Design documents and development of

outline Specifications or materials lists to establish final scope and preliminary details relative to:

5.7.2.1. Interior construction of the Project

5.7.2.2. Special interior design features

5.7.2.3.Space planning

5.7.2.4. Materials, finishes and colors

5.7.2.5. Furniture and equipment layouts

5.7.3. During the Contract Documents phase consisting of preparation of Drawings, Specifications and other documents based on approved Design Development documents, setting forth in detail the requirements for interior construction and furniture, furnishings and equipment for the Project.

5.8. Environmental Graphic Design Services: The scope shall include interior and exterior sign types and graphic elements to provide a comprehensive and cohesive signage and wayfinding system for users of the facility.

5.8.1. Design Development:

5.8.1.1.Consider design approaches; determine elements needed for identity, information and wayfinding.

5.8.1.2. Begin development of sign prototypes.

5.8.1.3. Develop preliminary location plans.

5.8.2. Construction document preparation.

5.8.3. Construction observation and submittal review.

5.8.4. Interior sign types to include:

5.8.4.1. Primary room ID (changeable name inserts in some locations).

5.8.4.2. Restroom ID.

5.8.4.3. Stairway ID and stairway level ID.

5.8.4.4. Building Code required ID.

5.8.4.5. Fire exit plan.

5.8.4.6. Building directories.

5.8.5. Exterior sign types include:

5.8.5.1. Main entrance identification.

5.8.5.2. Vehicular directional.

5.8.5.3. Regulatory / Warning identification.

5.8.5.4.Parking areas; handicap parking, authorized vehicles, visitor parking, etc.

5.8.6. Donor Recognition / Dedication Plaques – Prepare conceptual designs illustrating a graphic solution to recognize a significant donor for the facility.

5.9. Materials Research/Specifications:

5.9.1. During the Schematic Design phase consisting of:

5.9.1.1.Identification of potential materials, systems and equipment and their criteria and quality standards consistent with the conceptual design.

- 5.9.1.2. Investigation of availability and suitability of alternative materials, systems and equipment.
- 5.9.2. During the Design Development phase consisting of activities by in-house personnel in:
 - 5.9.2.1. Development of architectural and engineering project specific draft Specifications or itemized lists and brief form identification of significant architectural materials, systems and equipment, including their criteria and quality standards.
 - 5.9.2.2. Coordination of similar activities of other disciplines.
 - 5.9.2.3. Production of design manual including design criteria and outline specifications or material lists.
- 5.9.3. During the Contract Documents phase consisting of activities of in-house architectural personnel in:
 - 5.9.3.1. Review of the development and preparation of bidding and procurement information prepared by the Construction Manager.
 - 5.9.3.2. Assistance to the Owner and their agents in review of the Conditions of the Contract (General, Supplementary and other Conditions).
 - 5.9.3.3. Development and preparation of architectural Specifications describing materials, systems and equipment, workmanship, quality and performance criteria required for the construction of the Project.
 - 5.9.3.4. Coordination of the development of Specifications by other disciplines.
 - 5.9.3.5. Compilation of Project Manual including Conditions of the Contract, bidding and procurement information and Specifications.
- 5.10. At the conclusion of each Design Phase (Schematic Design, Design Development and Construction Document) the Architect/Engineer shall provide the Owner with two (2) sets of drawings and specifications. At the conclusion of Construction Documents one set of reproducible will also be made available to the City for printing of Bid Documents by the City or the Construction Manager.

6. BIDDING OR NEGOTIATION SERVICES

- 6.1. **Bidding Materials services** consisting of organizing and handling Bidding Documents for:
 - 6.1.1. Coordination
 - 6.1.2. Reproduction by Owner
 - 6.1.3. Completeness review
- 6.2. **Addenda services** consisting of preparation and distribution of Addenda as may be required during bidding or negotiation and including supplementary Drawings,

Specifications, instructions and notice(s) of changes in the bidding schedule and procedures.

6.3. Bidding/Negotiation services consisting of:

6.3.1. Responses to questions from Bidders and clarifications or interpretations of the Bidding Documents.

6.4. Analysis of Alternates/Substitutions consisting of consideration, analyses, comparisons, and recommendations relative to alternates or substitutions proposed by Bidders or proposers either prior to or subsequent to receipt of Bids or proposals.

7. CONSTRUCTION ADMINISTRATION

7.1. Submittal Services consisting of:

7.1.1. Processing of submittals, including receipt, review of, and appropriate action on Shop Drawings, Product Data, Samples and other submittals required by the Contract Documents.

7.1.2. Distribution of submittals to Construction Manager.

7.1.3. Related communications.

7.2. Observation services consisting of periodic visits by the Project Manager or Project CONSULTANT to the site at intervals appropriate to the state of the work or as otherwise agreed by the Owner and CONSULTANT in writing to become generally familiar with the progress and quality of the Work completed and to determine in general if the Work when completed will be in accordance with Contract Documents; preparing related reports and communications, and attendance at progress review meetings at the site.

7.2.1. Periodic site visits by other staff to observe the progress of the project.

7.3. Responses to Requests for Information (RFI)

7.3.1. Responding to requests for clarifications or additional information related to the Contract Documents.

7.4. Supplemental Documentation services consisting of:

7.4.1. Preparation, reproduction and distribution of supplemental Drawings, Specifications and interpretations in response to requests for clarification by Construction Manager or the Owner.

7.4.2. Providing guidance to the Construction Manager in conjunction with the Owner -relative to changed requirements and schedule revisions.

7.5. Quotation Requests/Change Orders consisting of:

- 7.5.1. Preparation, reproduction and distribution of Drawings and Specifications to describe Work to be added, deleted or modified. Changes shall be clearly defined.
- 7.5.2. Review of proposals from Construction Manager for reasonableness of quantities and costs of labor and materials.
- 7.5.3. Review and recommendations relative to changes in time for Substantial Completion.
- 7.5.4. Review on Owner's behalf relative to costs of Work proposed to be added, deleted or modified.
- 7.5.5. Assisting in the preparation of appropriate Modifications of the Contract(s) for Construction.
- 7.5.6. Coordination of communications, approvals, notifications and record-keeping relative to changes in the Work.

7.6. Contract Cost Accounting services consisting of:

- 7.6.1. Review of records of payments on account of the Contract Sum and all changes thereto.
- 7.6.2. Evaluation of Applications for Payment and certification thereof.
- 7.6.3. Review and evaluation of expense data submitted by the Construction Manager for Work under cost-plus-fee arrangements.

7.7. Interpretations and Decisions consisting of:

- 7.7.1. Review of claims, disputes, or other matters between the Owner and Construction Manager relating to the execution or progress of the Work as provided in the Contract Documents.
- 7.7.2. Rendering written decisions.

7.8. Project Closeout services initiated upon notice from the Construction Manager that the Work, or a designated portion thereof which is acceptable to the Owner, is sufficiently complete in accordance with the Contract Documents to verify the list submitted by the Construction Manager of items to be completed or corrected.

- 7.8.1. Review with the Owner's representative for conformity of the Work to the Contract Documents to verify the list submitted by the Construction Manager of items to be completed or corrected.
- 7.8.2. Recommendation of the amounts to be withheld until final completion.
- 7.8.3. Securing and receipt of consent of surety or sureties, if any, to reduction in or partial release of retainage or the making of final payment(s).
- 7.8.4. Issuance of Certificate(s) of Substantial Completion.
- 7.8.5. Inspection(s) upon notice by the Construction Manager that the Work is ready for final inspection and acceptance.
- 7.8.6. Final inspection with the Owner's representative to verify final completion of the Work.

- 7.8.7. Securing and receipt of consent of surety or sureties, if any, to the making of final payment(s).
- 7.8.8. Issuance of final Certificate(s) for Payment.
- 7.8.9. Final inspection of Water Distribution, Sewage Collection and Stormwater/ Environmental Management Facilities. Preparation of certifications to agencies along with record documents prepared based upon record information supplied by the Construction Manager. Services include one final inspection for each certification.

8. POST-CONSTRUCTION SERVICES

8.1. Record Drawing services consisting of:

- 8.1.1. Making arrangements for obtaining from Construction Manager information in the form of marked-up prints, drawings and other data certified by them on changes made during performance of the Work, including Change Directives, RFI's, ASI's, etc.
- 8.1.2. Review of general accuracy of information submitted and certified by the Construction Manager.
- 8.1.3. Preparation of record drawings electronically based on certified information furnished by the Construction Manager.
- 8.1.4. Transmittal one set of full-size reproducible record drawings and general data, appropriately identified, to the Owner and others as directed. Two copies of all electronic data including CADD drawings on CD.

8.2. Warranty Review consisting of:

- 8.2.1. Consultation with and recommendation to the Owner during the duration of warranties in connection with inadequate performance of materials, systems and equipment under warranty.
- 8.2.2. Inspection(s) prior to expiration of the warranty period(s) to ascertain adequacy of performance of materials, systems and equipment.
- 8.2.3. Documenting defects or deficiencies and assisting the Owner in preparing instructions to the Construction Manager for correction of noted defects.

9. ADDITIONAL SERVICES/EXPENSES (not included in the base fee):

9.1. Owner-Provided Services:

- 9.1.1. Environmental assessment of site, if necessary.
- 9.1.2. Environmental assessment of existing facilities to be renovated and/or demolished, and the removal of any hazardous material, if necessary.
- 9.1.3. Printing of all Contract Documents issued for bidding and construction.
- 9.1.4. Distribution of Contract Documents to Construction Manager for estimating and bidding purposes.

- 9.2. Mock-Up Services** relating to any space for study during the design phases and consisting of:
- 9.2.1. Design and documentation for the required mock-up.
 - 9.2.2. Construction administration of mock-up construction activities.
 - 9.2.3. Arrangements for testing performance of mock-up.
 - 9.2.4. Review, analysis and reporting of results.
- 9.3. Prepare an Inventory** of existing furniture and equipment that will be placed in the new facilities.
- 9.4. Value Engineering** – Value engineering is the detailed, systematic review of the design concepts, construction techniques, materials and building types associated with a project solely in terms of life cycle costs in an attempt to obtain optimum value for every dollar spent. If Owner chooses to engage in value engineering, Owner shall either retain the services of an independent Value Engineer (“VE”) to perform the above review services to be complete at a stage no later than the completion of schematic design, or may pay a mutually negotiated sum “at the time the services are requested” to CONSULTANT to perform the above review services at a stage later than the completion of schematic design, Owner acknowledges that schedule and cost impacts may occur.
- 9.4.1. If Owner chooses to retain an independent VE, all recommendations of the VE shall be given to CONSULTANT for its review and adequate time will be provided for CONSULTANT to respond to these recommendations. CONSULTANT may be compensated as an additional service for time spent to review the recommendations of the VE and to incorporate those accepted by both Owner and CONSULTANT. Objections to any recommendations made by the VE shall be stated in writing. Owner agrees that CONSULTANT shall not be responsible for any damage, cost or liability which arises in connection with or as a result of the incorporation of such design changes.
- 9.5. Commissioning** – The performance of a functional and operational check of all systems and equipment to verify the installation is performing to the design criteria. CONSULTANT would prepare this service in conjunction with an independent contractor experienced in such activities.
- 9.6. Structural Blast Resistance** - Analysis of building structural systems to resist loads imposed by blast forces on exterior of facility. This would require an additional blast consultant to be obtained.
- 9.7. Security Systems:** The Security portion of the project will include the design and documentation of Electronic Security System from Schematic Design through Construction Administration Services. The Electronic Security System will include intrusion detection, access control, electronic door control and monitoring,

operational intercom, fixed duress alarms, monitoring and control panels, CCVE systems, control room layouts, rough-ins for x-ray screening/magnetometer at entry lobby, and parcel screening. As part of the overall security plan CONSULTANT will provide a site analysis to determine passive security measures to be incorporated for the facility. Deliverables for the above scope for each task are as listed below.

- 9.7.1. **Schematic Design (SDs):** CONSULTANT will provide a written security narrative describing the Electronic Security System, reflecting the design approach based on program requirements. In addition, CONSULTANT will provide two people for a one day on site Security Workshop to validate the security program and establish the design intent.
- 9.7.2. **Design Development (DDs):** CONSULTANT will provide job specific draft specifications of the Electronic Security System including plans indicating device locations, and outline specifications, and equipment selections reflecting design approach. CONSULTANT will provide one person for 1 day to attend an on-site design review with the Owner and Design Team members to review the Electronic Security System Design Development documents.
- 9.7.3. **Construction Documents (CDs):** Upon completion of this review, CONSULTANT will provide completed biddable documents including plans, details, schedules, riser diagrams, and specifications required to fully document the Electronic Security System. In addition, CONSULTANT will provide, at the completion of the Construction Documents phase, two (2) copies of a Design Information Manual (DIM) outlining major equipment selections utilized as the basis of design for the Electronic Security Systems. CONSULTANT will conduct mid-point design review with Owner and Design Team members to review the Electronic Security Construction Documents.
- 9.7.4. **Bidding:** CONSULTANT will review all questions related to the Electronic Security System submitted, and provide answers in written addendum as required.
- 9.7.5. **Construction Administration (CA):** CONSULTANT will provide one person for four, one day intermediate site visits during construction. In addition, upon written notification of substantial completion CONSULTANT will provide two persons for one day (16 hours total) to review and test the Electronic Security System.
 - 9.7.5.1. Included in this phase of work is the review of security shop drawing submittals and written responses to security RFI from the contractor.
 - 9.7.5.2. Deliverable for this phase of work will include a written field report for the intermediate site visits, and a final report and punch list of the site visit made following written notice of substantial completion.

9.7.6. **Expanded Security System Design** - The following systems and services can be provided in addition to the Electronic Security Design defined in previous sections:

9.7.6.1. Assistance Stations

9.7.6.2. Parking Area Equipment (cameras, card access control)

9.7.6.3. Wireless Duress

9.7.6.4. Hydraulic Barriers

9.7.6.5. Biometrics

9.7.6.6. Perimeter protection systems

9.7.6.7. Post Construction Services: CONSULTANT will provide two people for one day (16 hours total) to conduct a pre-warranty expiration review of the electronic security system. The review will focus on inspection of equipment, operational functions, defects or deficiencies within the system and will be documented in report form and issued to the owner.



EXHIBIT C

SCHEDULE OF REIMBURSABLES

1. Reproduction Cost			
A.....Regular Copying	Single Side	Double	
Sided			
8 ½ x 11 (black & white).....\$ 0.15/page	\$ 0.25/sheet		
8 ½ x 11 (color)\$ 0.30/page	\$ 0.40/sheet		
8 ½ x 14 (black & white).....\$ 0.15/page	\$ 0.25/sheet		
8 ½ x 14 (color)\$ 0.30/page	\$ 0.40/sheet		
11 x 17 (black & white).....\$ 0.25/page	\$ 0.35/sheet		
11 x 17 (color)\$ 0.40/page	\$ 0.50/sheet		
9 ½ x 24 Single Side Only.....\$ 1.00/page			
17 x 22 Single Side Only.....\$ 2.00/page			
18 x 24 Single Side Only.....\$ 2.00/page			
24 x 36 Single Side Only.....\$ 3.00/page			
30 x 30 Single Side Only.....\$ 5.00/page			
32 x 34 Single Side Only.....\$ 5.00/page			
Other sizes-per square inch\$ 0.03/page			
Compact Digital Disk.....\$ 6.00/disk			
B. Blueprint Copy.....	\$10.00/page		
2. Subcontractor Services	Actual Costs		
3. Special Consultants	Actual costs		
4. Telecommunications			
A. Local	Non-reimbursable		
B. Non-Local	Actual Costs		
5. Computer Services	Non-reimbursable		
6. Travel Expenses	In accordance with Chapter 112.061, F.S.; and further defined in the City of Kissimmee Employee Handbook		
7. Postage, Fed Express, UPS	Actual Costs		
8. Pre-approved Equipment (includes purchase and rental of equipment used in project)	Actual Costs		

EXHIBIT D

AFFIDAVIT CERTIFICATION
IMMIGRATION LAWS

SOLICITATION NO.: RFP2023-006 PROJECT NAME: Architectural and Engineering Services

THE CITY OF KISSIMMEE, a MUNICIPAL CORPRATION OF THE STATE OF FLORIDA (CITY), WILL NOT INTENTIONALLY AWARD CITY CONTRACTS TO ANY CONTRACTOR WHO KNOWINGLY EMPLOYS UNAUTHORIZED ALIEN WORKERS, CONSTITUTING A VIOLATION OF THE EMPLOYMENT PROVISIONS CONTAINED IN 8 U.S.C. SECTION 1324 a(e) {SECTION 274A(e) OF THE IMMIGRATION AND NATIONALITY ACT ("INA").

THE CITY MAY CONSIDER THE EMPLOYMENT BY ANY CONTRACTOR OF UNAUTHORIZED ALIENS A VIOLATION OF SECTION 274A(e) OF THE INA. **SUCH VIOLATION BY THE RECIPIENT OF THE EMPLOYMENT PROVISIONS CONTAINED IN SECTION 274A(e) OF THE INA SHALL BE GROUNDS FOR UNILATERAL CANCELLATION OF THE CONTRACT BY THE CITY.**

BIDDER ATTESTS THAT THEY ARE FULLY COMPLIANT WITH ALL APPLICABLE IMMIGRATION LAWS (SPECIFICALLY TO THE 1986 IMMIGRATION ACT AND SUBSEQUENT AMENDMENTS).

Attest:

CONSULTANT

By: _____

Corporate Secretary

Title: _____

STATE OF FLORIDA
COUNTY OF _____

The foregoing instrument was acknowledged before me this _____ day of _____, 2023, by means of ☐ physical presence or ☐ online notarization, by (name of person) as (type of authority) for (name of party on behalf of whom instrument was executed), a Florida corporation, who is personally known to me or has produced identification.

Notary Seal:

Notary: _____

Print Name: _____

My Commission Expires: _____

AFFIDAVIT CERTIFICATION IMMIGRATION LAWS

SOLICITATION NO.: RFQ2023-006 PROJECT NAME: Architectural and Engineering Services

THE CITY OF KISSIMMEE WILL NOT INTENTIONALLY AWARD CITY CONTRACTS TO ANY CONTRACTOR WHO KNOWINGLY EMPLOYS UNAUTHORIZED ALIEN WORKERS, CONSTITUTING A VIOLATION OF THE EMPLOYMENT PROVISIONS CONTAINED IN 8 U.S.C. SECTION 1324 a(e) {SECTION 274A(e) OF THE IMMIGRATION AND NATIONALITY ACT ("INA").

THE CITY OF KISSIMMEE MAY CONSIDER THE EMPLOYMENT BY ANY CONTRACTOR OF UNAUTHORIZED ALIENS A VIOLATION OF SECTION 274A(e) OF THE INA. **SUCH VIOLATION BY THE RECIPIENT OF THE EMPLOYMENT PROVISIONS CONTAINED IN SECTION 274A(e) OF THE INA SHALL BE GROUNDS FOR UNILATERAL CANCELLATION OF THE CONTRACT BY CITY OF KISSIMMEE.**

BIDDER ATTESTS THAT THEY ARE FULLY COMPLIANT WITH ALL APPLICABLE IMMIGRATION LAWS (SPECIFICALLY TO THE 1986 IMMIGRATION ACT AND SUBSEQUENT AMENDMENTS).

Company Name: FRANKLIN DESIGN - A KPM - KMF JOINT VENTURE LLC
Signature: Joseph L Morgan Title: MANAGING MEMBER Date: AUG 31, 2023

STATE OF FLORIDA
COUNTY OF Orange

The foregoing instrument was acknowledged before me this 31st day of August, 2023, by means of ☒ physical presence or ☐ online notarization, by (name of person) Joseph Morgan as (type of authority) Managing Member for (name of party on behalf of whom instrument was executed) Franklin Design, a Florida corporation, who is personally known to me or has produced identification.

Notary Seal:



Erika Meaghan Lord
Notary Public
State of Florida
Comm# GG987287
Expires 5/11/2024

Notary: Erika Meaghan Lord
Print Name: Erika Meaghan Lord
My Commission Expires: 5/11/2024

Architectural/Engineering Services Master Agreement

THIS ARCHITECTURAL/ENGINEERING MASTER SERVICES AGREEMENT (“Agreement”) is entered into as of the Effective Date (hereinafter defined) by and between the City of Kissimmee, a Municipal Corporation of the State of Florida, by and through its Commission, 101 Church Street, Kissimmee, Florida 34741 (hereinafter referred to as the “CITY”), and **Florida Technical Consultants, LLC (FTC)**, 533 East Ocean Avenue, Suite #2 Boynton Beach, FL 33435, whose Federal Identification Number is: 47-1886339 (hereinafter referred to as the “CONSULTANT”).

WITNESSETH:

WHEREAS, the CITY requires certain architectural and/or engineering services to be performed in the City of Kissimmee; and,

WHEREAS, the CITY has solicited for these professional services via RFQ2023-006, an advertised request for qualifications (the “RFQ”), and has received numerous responsive bids thereto; and

WHEREAS, the CONSULTANT remains agreeable to providing the CITY the professional services and represents that it is capable and prepared to do so;

NOW, THEREFORE, in consideration of the promises contained herein, the CITY and the CONSULTANT (collectively, the “Parties”) hereby agree, as follows:

1.0 **Term**

1.1 This Agreement shall take effect on the date of its execution by the Mayor, The City of Kissimmee Commission (the “Effective Date”).

1.2 The term of this Agreement shall be for a five (5) year period, commencing upon the Effective Date, unless otherwise terminated as provided herein.

2.0 **CONSULTANT –SERVICES -- GENERAL**

2.1 The CONSULTANT shall provide the CITY complete architectural and engineering services necessary to provide construction documents and administration for various projects (individually a “Project” and collectively, the “Projects”) throughout the Term, as may be further specifically designated and authorized by the CITY in writing. Such authorization shall be in the form of either a Consultant Services Authorization (“CSA”) or a Contract Purchase Order (“CPO”), and all provisions of this Agreement shall apply to the CSA or CPO with full force and effect as if appearing in full within each CSA or CPO. Each CSA or CPO will set forth a specific Scope of Services, maximum limit of compensation, schedule, liquidated damages, and completion date, and shall become effective upon the due execution. When the CONSULTANT and the CITY enter into a CSA or CPO where the term

thereof expires on a date that is later than the date of this Agreement, the CONSULTANT and the CITY agree that the terms of this Agreement and any amendments, attachments, or provisions thereof are automatically extended until the expiration or full completion of the requirements of the CSA or CPO, as applicable, have been performed. Cancellation by the CITY of any remaining service prior to the full completion of the requirements of the CSA/CPO shall cause the terms of this Agreement to terminate at the same time. This provision only applies when the expiration of the CSA/CPO extends beyond the expiration of this Agreement. It does not apply when a CSA/CPO expires or is cancelled prior to the expiration of this Agreement.

2.2 The CONSULTANT is not authorized to undertake any Project without a duly executed CSA or CPO, which shall specify the work to be performed. The CONSULTANT recognizes that the CITY may employ several different CONSULTANTS and engineers to perform the services described herein and that the CONSULTANT has not been employed as the exclusive agent to perform any such services.

2.3 In addition to the services described in this Section 2.0, the RFQ, the Consultant's responsive proposal thereto, and otherwise set forth and described in the body of this Agreement, the CONSULTANT may also be authorized to perform, via a duly executed CSA or CPO, any or all of those services set forth and further described in **Exhibit "B"**, attached hereto and incorporated herein (collectively, the "Services").

3.0 **Project Administration Services**

3.1 The CONSULTANT shall manage the CONSULTANT'S services and administer the Project. The CONSULTANT shall consult with the CITY, research applicable design criteria, attend Project meetings, and communicate with members of the Project team and issue progress reports. The CONSULTANT shall coordinate the services provided by the CONSULTANT and the CONSULTANT'S sub-consultants with those services provided by the CITY and the CITY'S consultants.

3.2 When Project requirements have been sufficiently identified, the CONSULTANT may be required to prepare, and periodically update, a Project schedule that shall identify milestone dates for decisions required of the CITY, design services furnished by the CONSULTANT, completion of documentation provided by the CONSULTANT, commencement of construction and Substantial Completion of the Work.

3.3 The CONSULTANT shall consider the value of alternative materials, building systems and equipment, together with other considerations based on program, budget and aesthetics in developing the design for the Project.

3.4 Upon request of the CITY, the CONSULTANT shall make a presentation to explain the design of the Project to representatives of the CITY.

3.5 The CONSULTANT shall submit design documents to the CITY at intervals appropriate to the design process for purposes of evaluation and approval by the CITY. The CONSULTANT shall be entitled to rely on approvals received from the CITY in the further development of the design.

3.6 The CONSULTANT shall assist the CITY in connection with the CITY'S responsibility for filing documents required for the approval of governmental authorities having jurisdiction over the Project.

3.7 EVALUATION OF BUDGET AND COST OF THE WORK.

3.7.1 When the Project requirements have been sufficiently identified, the CONSULTANT shall prepare a preliminary estimate of the Cost of the Work. This estimate may be based on current area, volume or similar conceptual estimating techniques. The CONSULTANT shall advise the CITY of any adjustments to previous estimates of the Cost of the Work indicated by changes in Project requirements or general market conditions. If at any time the estimate of the Cost of the Work exceeds the CITY'S budget, the CONSULTANT shall make appropriate recommendations to the CITY to adjust the Project's size, quality or budget, and the CITY shall cooperate with the CONSULTANT in making such adjustments.

3.7.2 Evaluations of the CITY'S budget for the Project, the preliminary estimate of the Cost of the Work, and updated estimates of the Cost of the Work represent the CONSULTANT'S judgment as a design professional familiar with the construction industry. It is recognized, however, that neither the CONSULTANT nor the CITY has control over the cost of labor, materials or equipment, over the CONSULTANT'S methods of determining bid prices, or over competitive bidding, market or negotiating conditions. Accordingly, the CONSULTANT cannot and does not warrant or represent that bids or negotiated prices will not vary from the CITY'S budget for the Project or from any estimate of the Cost of the Work or evaluation prepared or agreed to by the CONSULTANT.

3.7.3 In preparing estimates of the Cost of the Work, the CONSULTANT shall be permitted to include contingencies and allowances for design, bidding and price escalation; to determine what materials, equipment, component systems and types of construction are to be included in the Contract Documents; to make reasonable adjustments in the scope of the Project and to include in the Contract Documents alternate bids as may be necessary to adjust the estimated Cost of the Work to meet the CITY'S budget for the Cost of the Work.

3.7.4 If bidding or negotiation has not commenced within 90 days after the CONSULTANT submits the Construction Documents to the CITY, the

budget for the Cost of the Work shall be adjusted to reflect changes in the general level of prices in the construction industry.

- 3.7.5** If the budget for the Cost of the Work is exceeded by the lowest bona fide bid or negotiated proposal, and the CITY elects to revise the Project scope to reduce the Cost of the Work, then the CONSULTANT, without additional charge, shall modify the Contract Documents as necessary to comply with the fixed limit as a condition of this Agreement.

4.0 Evaluation and Planning Services

- 4.1** The CITY may furnish a program setting forth the CITY's objectives, schedule, constraints and criteria, including space requirements and relationships, special equipment, systems and site requirements. The CONSULTANT shall provide a preliminary evaluation of the information furnished by the CITY under this Agreement, including the CITY'S program and schedule requirements and budget for the Cost of the Work, each in terms of the other. The CONSULTANT shall review such information to ascertain that it is consistent with the requirements of the Project and shall notify the CITY of any other information or consultant services that may be reasonably needed for the Project.
- 4.2** The CONSULTANT shall provide a preliminary evaluation of the CITY's site for the Project based on the information provided by the CITY of site conditions, and the CITY'S program, schedule and budget for the Cost of the Work.

5.0 Design Services

5.1 SCHEMATIC DESIGN DOCUMENTS

5.1.1 The CONSULTANT shall provide Schematic Design Documents based on the mutually agreed-upon program, schedule, and budget for the Cost of the Work. The documents shall establish the conceptual design of the Project illustrating the scale and relationship of the Project components. The Schematic Design Documents shall include a conceptual site plan, if appropriate, and preliminary building plans, sections and elevations. At the CONSULTANT's option, the Schematic Design Documents may include study models, perspective sketches, electronic modeling or combinations of these media. Preliminary selections of major building systems and construction materials shall be noted on the drawings or described in writing.

5.2 DESIGN DEVELOPMENT DOCUMENTS

5.2.1 The CONSULTANT shall provide Design Development Documents based on the approved Schematic Design Documents and updated budget for the Cost of the Work. The Design Development Documents shall illustrate and describe the refinement of the design of the Project, establishing the scope, relationships, forms, size and appearance of the Project by means of

plans, sections and elevations, typical construction details, and equipment layouts. The Design Development Documents shall include specifications that identify major materials and systems and establish in general their quality levels.

5.3 CONSTRUCTION DOCUMENTS

5.3.1 The CONSULTANT shall provide Construction Documents based on the approved Design Development Documents and updated budget for the Cost of the Work. The Construction Documents shall set forth in detail the requirements for construction of the Project. The Construction Documents shall include Drawings and Specifications that establish in detail the quality levels of materials and systems required for the Project.

5.3.2 During the development of the Construction Documents, the CONSULTANT shall assist the CITY in the development and preparation of: (1) bidding and procurement information which describes the time, place and conditions of bidding; bidding or proposal forms; and the form of agreement between the CITY and the CONSULTANT; and (2) the Conditions of the Contract for Construction (General, Supplementary and other Conditions). The CONSULTANT also shall compile the Project Manual that includes the Conditions of the Contract for Construction and Specifications and may include bidding requirements and sample forms.

5.3.3 Progress submittals of design documents shall be delivered to the CITY for review and approval, at the 50% Construction Document Phase, the 100% Construction Document to be submitted for permit, and the 100% Construction Documents, approved for construction for each subproject. Such submittals shall be reissued as necessary to secure approval. CITY comments shall be incorporated into the next phase of the work. CONSULTANT is entitled to rely upon CITY'S approval that the design conforms to the program at each stage. The CITY and the CONSULTANT agree that they shall not proceed to the next phase, including the Construction Phase, until they have mutually agreed that the project is feasible in accordance with the budget approved by the CITY.

6.0 Contract Administration Services

6.1 GENERAL ADMINISTRATION

6.1.1 The CONSULTANT shall provide administration of the Contract between the CITY and the Contractor as set forth in the CITY'S Agreement with their Contractor.

6.1.2 The CONSULTANT'S responsibility to provide the Contract Administration Services under this Agreement commences with the Notice to Proceed to the

Contractor and terminates at the issuance to the CITY of the final Certificate for Payment. However, the CONSULTANT may be entitled to a Change in Services in accordance with Section 47.2 if Contract Administration Services extend 60 days after the date of Final Completion of the Work.

- 6.1.3** The CONSULTANT shall be a representative of, and shall advise and consult with, the CITY during the provision of the Contract Administration Services. The CONSULTANT shall have authority to act on behalf of the CITY only to the extent provided in this Agreement unless otherwise modified by written amendment.
- 6.1.4** Duties, responsibilities and limitations of authority of the CONSULTANT under this Section 6.0 shall not be restricted, modified or extended without written agreement of the CITY and CONSULTANT.
- 6.1.5** The CONSULTANT shall review properly prepared, timely requests by the Contractor for additional information about the Contract Documents. A properly prepared request for additional information about the Contract Documents shall be in a form prepared or approved by the CONSULTANT and shall include a detailed written statement that indicates the specific Drawings or Specifications in need of clarification and the nature of the clarification requested.
- 6.1.6** If deemed appropriate by the CONSULTANT, the CONSULTANT shall on the CITY'S behalf prepare, reproduce and distribute supplemental Drawings and Specifications in response to requests for information by the Contractor.
- 6.1.7** The CONSULTANT shall interpret and decide matters concerning performance of the CITY and Contractor under, and requirements of, the Contract Documents on written request of either the CITY or Contractor. The CONSULTANT'S response to such requests shall be made in writing within any time limits agreed upon or otherwise with reasonable promptness.
- 6.1.8** Interpretations and decisions of the CONSULTANT shall be consistent with the intent of and reasonably inferable from the Contract Documents and shall be in writing or in the form of drawings. When making such interpretations and initial decisions, the CONSULTANT shall endeavor to secure faithful performance by both CITY and Contractor, shall not show partiality to either, and shall not be liable for the results of interpretations or decisions so rendered in good faith.
- 6.1.9** The CONSULTANT shall render initial decisions on claims, disputes or other matters in question between the CITY and CONSULTANT as provided in the Contract Documents. However, the CITY'S decisions on matters relating to aesthetic effect shall be final if consistent with the intent expressed in the Contract Documents.

6.2 EVALUATIONS OF THE WORK

6.2.1 The CONSULTANT, as a representative of the CITY, shall visit the site at intervals appropriate to the stage of the Contractor's operations, or as otherwise agreed by the CITY and the CONSULTANT, (1) to become generally familiar with and to keep the CITY informed in writing about the progress and quality of the portion of the Work completed, (2) to endeavor to guard the CITY against defects and deficiencies in the Work, and (3) to determine in general if the Work is being performed in a manner indicating that the Work, when fully completed, will be in accordance with the Contract Documents. However, the CONSULTANT shall not be required to make exhaustive or continuous on-site inspections to check the quality or quantity of the Work. The CONSULTANT shall neither have control over or charge of, nor be responsible for, the construction means, methods, techniques, sequences or procedures, or for safety precautions and programs in connection with the Work, since these are solely the Contractor's rights and responsibilities under the Contract Documents.

6.2.2 The CONSULTANT shall report to the CITY known deviations from the Contract Documents and from the most recent construction schedule submitted by the Contractor. However, the CONSULTANT shall not be responsible for the Contractor's failure to perform the Work in accordance with the requirements of the Contract Documents. The CONSULTANT shall be responsible for the CONSULTANT'S negligent acts or omissions, but shall not have control over or charge of and shall not be responsible for acts or omissions of the Contractor, Sub-contractors, or their agents or employees, or of any other persons or entities performing portions of the Work.

6.2.3 The CONSULTANT shall at all times have access to the Work wherever it is in preparation or progress.

6.2.4 Except as may otherwise be provided in the Contract Documents or when direct communications have been specially authorized in writing, the CONSULTANT and Contractor shall communicate through the CITY. Communications by and with the CONSULTANT'S sub-consultants shall be through the CONSULTANT. The CONSULTANT shall respond to the CITY with the CONSULTANT'S written responses or correspondence within a reasonable length of time.

6.2.5 The CONSULTANT shall have authority to reject Work that does not conform to the Contract Documents. Whenever the CONSULTANT considers it necessary or advisable, the CONSULTANT, with the CITY'S approval, will have authority to require inspection or testing of the Work in accordance with the provisions of the Contract Documents, whether or not such Work is fabricated, installed or completed. However, neither this

authority of the CONSULTANT nor a decision made in good faith, either to exercise or not to exercise such authority, shall give rise to a duty or responsibility of the CONSULTANT to the Contractor, Sub-contractor, material and equipment suppliers, their agents or employees or other persons or entities performing portions of the Work. If the CONSULTANT requires inspection or testing of the Work without the CITY'S prior approval, the Work is deemed acceptable, the CONSULTANT will be responsible for any compensation due the Contractor.

6.3 CERTIFICATION OF PAYMENTS TO CONTRACTOR

6.3.1 The CONSULTANT shall review and certify the amounts due the Contractor and shall issue Certificates for Payment in such amounts. The CONSULTANT'S certification for payment shall constitute a representation to the CITY, based on the CONSULTANT'S evaluation of the Work as provided in Paragraph 6.2 and on the data comprising the Contractor's Application for Payment, that the Work has progressed to the point indicated and that, to the best of the CONSULTANT'S knowledge, information and belief, the quality of the Work is in accordance with the Contract Documents. The foregoing representations are subject (1) to an evaluation of the Work for conformance with the Contract Documents upon Substantial Completion, (2) to results of subsequent tests and inspections, (3) to correction of minor deviations from the Contract Documents prior to completion, and (4) to specific qualifications expressed by the CONSULTANT.

6.3.2 The issuance of a Certificate for Payment shall not be a representation that the CONSULTANT has (1) made exhaustive or continuous on-site inspections to check the quality or quantity of the Work, (2) reviewed construction means, methods, techniques, sequences or procedures, (3) reviewed copies of requisitions received from Sub-contractors and material suppliers and other data requested by the CITY to substantiate the Contractor's right to payment, or (4) ascertained how or for what purpose the Contractor has used money previously paid on account of the Contract Sum.

6.3.3 The CONSULTANT shall maintain a record of the Contractor's Applications for Payment.

6.4 SUBMITTALS

6.4.1 The CONSULTANT shall review and approve or take other appropriate action upon the Contractor's submittals such as Shop Drawings, Product Data and Samples, but only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. The CONSULTANT'S action shall be taken with such reasonable promptness as to cause no delay in the Work or in the activities of the CITY, Contractor or separate contractor. Review of such submittals is

not conducted for the purpose of determining the accuracy and completeness of other details such as dimensions and quantities, or for substantiating instructions for installation or performance of equipment or systems, all of which remain the responsibility of the Contractor as required by the Contract Documents. The CONSULTANT'S review shall not constitute approval of safety precautions or, unless otherwise specifically stated by the CONSULTANT, of any construction means, methods, techniques, sequences or procedures. The CONSULTANT'S approval of a specific item shall not indicate approval of an assembly of which the item is a component.

6.4.2 The CONSULTANT shall maintain a record of submittals and copies of submittals supplied by the Contractor in accordance with the requirements of the Contract Documents.

6.4.3 If professional design services or certifications by a design professional related to systems, materials or equipment are specifically required of the Contractor by the Contract Documents, the CONSULTANT shall specify appropriate performance and design criteria that such services must satisfy. Shop Drawings and other submittals related to the Work designed or certified by the design professional retained by the Contractor shall bear such professional's written approval when submitted to the CONSULTANT. The CONSULTANT shall be entitled to rely upon the adequacy, accuracy and completeness of the services, certifications or approvals performed by such design professionals.

6.5 CHANGES IN THE WORK

6.5.1 The CONSULTANT shall prepare Construction Change Directives and assist the City with the preparation of change orders and allowance authorizations for the CITY'S approval and execution in accordance with the Contract Documents. The CONSULTANT may authorize minor changes in the Work not involving an adjustment in Contract Sum or an extension of the Contract Time, which are consistent with the intent of the Contract Documents. If necessary, the CONSULTANT shall prepare, reproduce and distribute Drawings and Specifications to describe Work to be added, deleted or modified.

6.5.2 The CONSULTANT shall review properly prepared, timely requests by the CITY or Contractor for changes in the Work, including adjustments to the Contract Sum or Contract Time. A properly prepared request for a change in the Work shall be accompanied by sufficient supporting data and information to permit the CONSULTANT to make a reasonable determination without extensive investigation or preparation of additional drawings or specifications. If the CONSULTANT determines that requested changes in the Work are not materially different from the requirements of the

Contract Documents, the CONSULTANT may issue an order for a minor change in the Work or recommend to the CITY that the requested change be denied.

6.5.3 If the CONSULTANT determines that implementation of the requested changes would result in a material change to the Contract that may cause an adjustment in the Contract Time or Contract Sum, the CONSULTANT shall make a recommendation to the CITY, who may authorize further investigation of such change. Upon such authorization, and based upon information furnished by the Contractor, if any, the CONSULTANT shall estimate the additional cost and time that might result from such change, including any additional costs attributable to a Change in Services of the CONSULTANT. With the CITY'S approval, the CONSULTANT shall incorporate those estimates into a Change Order or other appropriate documentation for the CITY'S execution or negotiation with the Contractor.

6.5.4 The CONSULTANT shall maintain records relative to changes in the Work.

6.6 PROJECT COMPLETION

6.6.1 The CONSULTANT shall conduct inspections to determine the date or dates of Substantial Completion and the date of Final Completion, shall receive from the Contractor and forward to the CITY, for the CITY'S review and records, written warranties and related documents required by the Contract Documents and assembled by the Contractor, and shall issue a final Certificate for Payment based upon a final inspection indicating the Work complies with the requirements of the Contract Documents.

6.6.2 The CONSULTANT'S inspection shall be conducted with the CITY'S Designated Representative to check conformance of the Work with the requirements of the Contract Documents and to verify the accuracy and completeness of the list submitted by the CONSULTANT of Work to be completed or corrected.

6.6.3 When the Work is found to be substantially complete, the CONSULTANT shall inform the CITY about the balance of the Contract Sum remaining to be paid the Contractor, including any amounts needed to pay for final completion or correction of the Work.

6.6.4 The CONSULTANT shall receive from the Contractor and forward to the CITY: (1) consent of surety or sureties, if any, to reduction in or partial release of retainage or the making of final payment and (2) affidavits, receipts, releases and waivers of liens or bonds indemnifying the CITY against liens.

7.0 **Facility Operation Services**

7.1 The CONSULTANT shall meet with the CITY or the CITY'S Designated Representative promptly after Substantial Completion to review the need for facility operation services.

7.2 Upon request of the CITY, and prior to the expiration of one year from the date of Substantial Completion, the CONSULTANT shall conduct a meeting with the CITY and the CITY'S Designated Representative to review the facility operations and performance and to make appropriate recommendations to the CITY.

8.0 **Additional Services**

8.1 The CONSULTANT may be authorized, via a duly executed CSA or CPO, to perform any or all of the additional services as set forth and further described on **Exhibit "B"**.

8.2 The following minimum Design and Contract Administration Services shall be provided by the CONSULTANT without a Change in Services in accordance with Section 47.2:

8.2.1 A reasonable number of reviews of each Shop Drawing, Product Data item, sample and similar submittal of the CONSULTANT.

8.2.2 Up to two (2) inspections for any portion of the Work to determine whether such portion of the Work is substantially complete in accordance with the requirements of the Contract Documents.

8.2.3 Up to two (2) inspections for any portion of the Work to determine final completion.

8.3 The following Design and Contract Administration Services shall be provided by the CONSULTANT as a Change in Services in accordance with Section 47.2:

8.3.1 Change Orders and Construction Change Directives requiring evaluation of proposals, including the preparation or revision of Instruments of Services, with prior approval by CITY;

8.3.2 Providing consultation concerning replacement of Work resulting from fire or other cause during construction;

8.3.3 Evaluation of substitutions proposed by the CITY'S consultants or contractors and making subsequent revisions to the Instruments of Service, with prior approval by CITY.

8.3.4 Preparation of design and documentation for alternate bid or proposal requests proposed by the CITY after the Guaranteed Maximum Price is established.

8.3.5 Contract Administration Services provided 60 (sixty) days after the date of Final Completion of the Work, as may be requested by the CITY.

8.4 The CONSULTANT shall furnish or provide the following services only if specifically designated:

- 8.4.1 Programming
- 8.4.2 Land Survey Services
- 8.4.3 Geotechnical Services
- 8.4.4 Space Schematics/Flow Diagrams
- 8.4.5 Existing Facilities Surveys
- 8.4.6 Economic Feasibility Studies
- 8.4.7 Site Analysis
- 8.4.8 Environmental Studies and Reports
- 8.4.9 User-Supplied Data
- 8.4.10 Schedule Development and Monitoring
- 8.4.11 Civil Design
- 8.4.12 Landscape Design
- 8.4.13 Interior Design
- 8.4.14 Value Analysis
- 8.4.15 Cost Estimating
- 8.4.16 On-Site Project Representation
- 8.4.17 Construction Management
- 8.4.18 Start-up Assistance
- 8.4.19 Record Drawings
- 8.4.20 Post-Contract Evaluation
- 8.4.21 Tenant-Related Services
- 8.4.22 Underground Field Drainage

9.0 **Compensation**

- 9.1 In consideration of the Services provided by the CONSULTANT pursuant to this Agreement, the CITY shall pay CONSULTANT compensation which may be negotiated as either a not-to-exceed price or a lump sum amount, in the CITY's sole discretion.
- 9.2 In the event a not to exceed price is negotiated, compensation shall be billed and paid based on and in accordance with the Hourly Rate Schedule attached hereto and incorporated herein as **Exhibit "A"**. The Hourly Rate Schedule identifies all job

classifications which will perform billable services pursuant to this Agreement and the fee for each job classification. Performance of work by personnel in job classifications not listed on the fee schedule will result in nonpayment for such services.

- 9.3 All invoices must reference this Agreement number, using an invoice form approved by the CITY.
- 9.4 Each individual invoice shall be due and payable forty-five (45) days after receipt by the CITY of a correct, fully documented, invoice, in form and substance satisfactory to the CITY with all appropriate cost substantiations attached. All invoices shall be delivered to:

The City of Kissimmee

Public Works & Engineering

Attention: Facilities Management Director

101 Church Street

Kissimmee, FL 34741

- 9.5 In order for both parties herein to close their books and records for a particular Project, the CONSULTANT will clearly state "Final Invoice" on the CONSULTANT's final/last billing to the CITY for such Project. This certifies that all services have been properly performed and all charges and costs have been invoiced to the CITY. Since this account will thereupon be closed, any and other further charges if not properly included on this final invoice are waived by the CONSULTANT.
- 9.6 Payment of the final invoice for any particular Project shall not constitute evidence of the CITY's acceptance of the Work or Services.
- 9.7 Pursuant to Section 9.2, if a not to exceed fee is negotiated, invoices shall be accompanied by time and task records for all billable hours appearing on the invoice. Alternatively, if a lump sum amount is negotiated, invoices shall be made upon the completion of each phase of the work in proportion to the Services performed, as specifically set forth in the applicable CSA or CPO. Additional documentation may be requested by the CITY and, if so requested, shall be furnished by the CONSULTANT to the CITY Auditor's satisfaction.
- 9.8 A contract amendment/change order may be executed by both parties, after Substantial Completion, to incorporate any additional design fees due to the CONSULTANT. The amendment shall be based upon 7% of the additional cost of the work that has been added to the project where the CONSULTANT participated in the design process.
- 9.9 If the services of the CONSULTANT are changed as described in Section 47.2.1 or

47.2.2, the CONSULTANT'S compensation shall be adjusted. Such adjustment shall be computed as a fixed fee on a task-by-task basis, or, in the discretion of the CITY, in an otherwise equitable manner. Adjustments to the CONSULTANT'S compensation may be approved by the Facilities Management Director, providing the compensation adjustment does not exceed the amount specified in the applicable CSA or CPO.

- 9.10 Forty (40) calendar days shall be allowed for the CITY's inspection and approval of the goods and services for which any invoice has been submitted.
- 9.11 No deduction shall be made from the CONSULTANT's compensation on account of penalty, liquidated damages, or other sums withheld from payments to contractors.
- 9.12 If any work designed or specified by the CONSULTANT during any phase of service is abandoned or suspended in whole or in part, the CONSULTANT is to be paid for the service performed on account of it prior to receipt of written notice from the CITY of such abandonment or suspension, together with reimbursements then due and any terminal expense resulting from abandonment or suspension for more than three months.

10.0 **Reimbursable Expense**

10.1 All requests for payment of out-of-pocket expenses eligible for reimbursement under the terms of this Agreement shall include copies of paid receipts, invoices or other documentation acceptable to the CITY. Such documentation shall be sufficient to establish that the expense was actually incurred and necessary in the performance of the Scope of Work described in this Agreement.

10.2 Reimbursable Expenses are the actual, pre-approved, expenses incurred directly in connection with the applicable Consultant Services Authorization, and include:

- Overnight Deliveries
- Reproduction
- Sub-Consultant
- Long Distance Telephone Calls (excluding Florida cities located outside the boundaries of Osceola County)

10.3 Mileage shall be reimbursed in accordance with Section 112.061, Florida Statutes, for pre-approved out-of-county travel (excluding travel from home offices located outside of Osceola County to the Osceola County line).

10.4 Reimbursable Expenses, including sub-consultants, shall be reimbursed at cost.

10.5 Pre-approved travel costs shall be reimbursed in accordance with Section 112.061, Florida Statutes.

10.6 All assets, i.e. durable goods, purchased as reimbursable expenses become the property of the CITY upon completion of the work for which the asset was utilized. All such assets must be surrendered by delivery to the City of Kissimmee Public Works and Engineering Division offices upon demand termination of the Agreement or the conclusion of the project, whichever occurs first.

10.7 The CITY shall reimburse the CONSULTANT for any documents required over and above the number specified in this Agreement per the City's Reimbursable Schedule that is attached hereto as **Exhibit "C"**.

11.0 **Project Team**

11.1 The Project Team, including the CITY'S Designated Representative and the CONSULTANT'S Designated Representative, shall be as specified in the applicable CSA or CPO.

11.2 The Commission (the "Board") hereby authorizes the CITY'S Designated Representative to act as the Board's agent and execute documents associated with a particular project. Examples of these documents are Notices of Commencements, Certificates of Substantial and Final Completion and permits from applicable agencies.

11.3 The persons or entities, in addition to the CITY'S Designated Representative, who have rights to review the CONSULTANT'S submittals to the CITY, shall be as specified in the applicable CSA or CPO.

11.4 The CITY'S other consultants and the CONSULTANT'S sub-consultants or any other person or entity retained at the CONSULTANT'S expense shall be as specified in the applicable CSA or CPO.

12.0 **Consultant's Standard of Care**

12.1 The CONSULTANT'S services shall be performed as expeditiously as is consistent with professional skill and care and the orderly progress of the Project. The CONSULTANT shall submit for the CITY'S approval a schedule for the performance of the CONSULTANT'S services which initially shall be consistent with the time periods established in the applicable CSA or CPO and which shall be adjusted, if necessary, as the Project proceeds. This schedule shall include allowances for periods of time required for the CITY'S review, for the performance of the CITY'S consultants, and for approval of submissions by authorities having jurisdiction over the Project. The CONSULTANT or CITY shall not, except for reasonable cause, exceed time limits established by this schedule approved by the CITY.

12.2 The CONSULTANT'S Designated Representative, identified in the

applicable CSA or CPO, shall be authorized to act on the CONSULTANT'S behalf with Respect to the Project.

12.3 The CONSULTANT shall maintain the confidentiality of information specifically designated as confidential by the CITY, unless withholding such information would violate the law, create the risk of significant harm to the public or prevent the CONSULTANT from establishing a claim or defense in an adjudicatory proceeding. The CONSULTANT shall require of the CONSULTANT'S consultants similar agreements to maintain the confidentiality of information specifically designated as confidential by the CITY.

12.4 Except with the CITY'S knowledge and prior express written consent, the CONSULTANT shall not engage in any activity, or accept any employment, interest or contribution that would reasonably appear to compromise the CONSULTANT'S professional judgment with respect to the Project.

12.5 The CONSULTANT shall review laws, codes and regulations applicable to the CONSULTANT'S services. The CONSULTANT shall design the Project to conform to the requirements imposed by governmental authorities having jurisdiction over the Project.

12.6 The CONSULTANT shall be entitled to rely on the accuracy and completeness of services and information furnished by the CITY. The CONSULTANT shall provide prompt written notice to the CITY if the CONSULTANT becomes aware of any errors, omissions or inconsistencies in such services or information.

12.7 The CONSULTANT has represented to the CITY that it has the personnel and experience necessary to perform the work in a professional and workmanlike manner.

12.8 The CONSULTANT shall exercise the same degree of care, skill, and diligence in the performance of the Services as is provided by a professional of like experience, knowledge and resources, under similar circumstances.

12.9 The CONSULTANT shall, at no additional cost to CITY, re-perform services which fail to satisfy the foregoing standard of care or otherwise fail to meet the requirement of this Agreement.

12.10 The CONSULTANT shall use skilled and competent personnel to perform the services.

13.0 **Insurance**

13.1 **General Provisions**

13.1.1 The CONSULTANT shall maintain, at all times, the following minimum levels of insurance and shall, without in any way altering their liability, obtain, pay for and maintain insurance for the coverage and amounts of coverage not less than those set forth below and provide the CITY with a certified copy of each policy applicable to this Agreement followed thereafter by an annual Certificate of Insurance satisfactory to the CITY to evidence such coverage before any work commences. Such certificates will provide that there shall be no termination, non-renewal, modification or expiration of such coverage without thirty (30) days prior written notice to the CITY .

13.1.2 The CITY shall be named as an additional insured on all CONSULTANT policies related to the project, excluding professional liability and worker's compensation. The general liability and workers' compensation policies shall contain a waiver of subrogation in favor of the CITY. All insurance coverage shall be written with an insurer having an A.M. Best Rating of a least the "A" category and size category of VIII.

13.1.3 The CONSULTANT's self-insured retention or deductible per line of coverage shall not exceed \$25,000.00 without the permission of the CITY.

13.1.4 Any failure by the CONSULTANT to comply with the requirements of this section to provide insurance, the CITY may, at its option, on notice to the CONSULTANT, suspend the work for cause until there is full compliance;

13.1.5 The CITY may, at its sole discretion, purchase such insurance at CONSULTANT's expense provided that the CITY shall have no obligation to do so and if the CITY shall do so, it shall not relieve CONSULTANT of its obligation to obtain insurance.

13.1.6 The CONSULTANT shall not be relieved of or excused from the obligation to obtain and maintain such insurance amount and coverages.

13.1.7 All CONSULTANT's sub-consultants shall be required to include CITY and CONSULTANT as additional insured on their General Liability Insurance policies.

13.1.8 In the event that sub-consultants used by the CONSULTANT do not have insurance, or do not meet the insurance limits, CONSULTANT shall indemnify and hold harmless the CITY for any claim in excess of the sub-consultants' insurance coverage.

13.1.9 The CONSULTANT shall not commence work under this Agreement until all insurance required as stated herein has been obtained and such insurance has been approved by the CITY.

13.2 Comprehensive Automobile Liability Insurance. \$1,000,000.00 combined single limit of liability for bodily injuries, death and property damage resulting from any one occurrence, including all owned, hired, and non-owned vehicles.

13.3 Commercial General Liability. \$1,000,000.00 combined single limit of liability for bodily injuries, death and property damage, and personal injury resulting from any one occurrence, including the following coverages:

13.3.1 Premises and Operations:

Broad Form Commercial General Liability Endorsement to include Blanket Contractual liability (specifically covering, but not limited to, the contractual obligations assumed by the Firm); Personal Injury (with employment and contractual exclusions deleted); and Broad Form Property Damage coverage.

13.3.2 Independent Contractors:

Delete Exclusion relative to collapse, explosion and underground; Property Damage Hazards; Cross Liability Endorsement; and Contractual liability (specifically covering, but not limited to, the contractual obligations assumed by the Firm)

13.4 Professional Liability Insurance. \$2,000,000 for design errors and omissions, exclusive of defense costs. The CONSULTANT shall be required to provide continuing Professional Liability Insurance to cover each project for a period of two (2) years after the project is completed. Insurance requirements may vary depending on projects as determined by the CITY Director of Risk Management and Insurance. The CITY may require the CONSULTANT to provide a higher level of coverage for a specific Project and time frame.

13.5 Performance, Payment and Other Bonds. CONSULTANT shall furnish Performance and Payment Bonds specific to each Project if required and agreed to under the applicable CSA or CPO for the Project.

13.6 Worker's Compensation. CONSULTANT shall provide, pay for, and maintain worker's compensation insurance on all employees, its agents or subcontractors as required by Florida Statutes.

13.7 Employers' Liability. \$1,000,000.

14.0 **Indemnification**

14.1 General. Having considered the risks and potential liabilities that may exist during the performance of the Services and in consideration of the promises included herein, the CITY and the CONSULTANT agree to allocate such liabilities in accordance with this Section 14.0.

14.2 Indemnification.

14.2.1 The CONSULTANT, to the extent permitted by law, shall indemnify, defend (by counsel reasonably acceptable to the CITY) protect and hold the CITY, and its officers, employees and agents, free and harmless from and against any and all claims, actions, causes of action, liabilities (joint or several), penalties, forfeitures, damages, losses and expenses (including, without limitation, attorneys' fees and costs during negotiation, through litigation and all appeals therefrom), and including, without limitation, any liability or loss resulting from judgments or claims for personal injury, including death, or damage to any property whatsoever, which directly or indirectly result from or arise in connection with (i) the failure of the CONSULTANT to comply with applicable non-conflicting laws, rules or regulations, (ii) the breach by the CONSULTANT of its obligations under this Agreement, (iii) any claim for trademark, patent or copyright infringement arising out of the scope of the CONSULTANT's performance of this Agreement, or (iv) the negligent act, errors or omissions, or intentional or willful misconduct of the CONSULTANT, its sub-consultants, agents, employees and invitees; provided, however, that the CONSULTANT shall not be obligated to defend or indemnify the CITY with respect to any such claims or damages arising out of the CITY's sole negligence.

14.2.2 The CITY's review, comment and observation of the CONSULTANT's work and performance of this Agreement shall in no manner constitute a waiver of the indemnification provisions of this Agreement.

14.2.3 The CONSULTANT agrees that it bears sole legal responsibility for its work and work product, and the work and work product of sub-consultants and their employees, and/or for CONSULTANT's performance of this Agreement and its work product(s).

14.3 Survival. Upon completion of all Services, obligations and duties provided for in this Agreement, or in the event of termination of this Agreement for any reason, the terms and conditions of this Section 14.0 shall survive as if the Agreement were in full force and effect.

15.0 Independent Contractor

15.1 The CONSULTANT undertakes performance of the Services as an independent contractor and shall be wholly responsible for the methods of performance.

15.2 The CITY shall have no right to supervise the methods used, but the CITY shall have the right to observe such performance.

15.3 The CONSULTANT shall work closely with the CITY in performing Services under this Agreement.

15.4 The CONSULTANT shall not pledge the CITY's credit or make it a guarantor of payment or surety for any contract, debt, obligation, judgment, lien or any form of indebtedness and shall have no right to speak for or bind the CITY in any manner.

15.5 The CONSULTANT further warrants and represents that it has no obligation or indebtedness that would impair its ability to fulfill the terms of this Agreement.

16.0 **Authority to Practice**

16.1 The CONSULTANT hereby represents and warrants that it has and will continue to maintain all licenses and approvals required to conduct its business, and that it will at all times conduct its business activities in a reputable manner.

17.0 **Compliance with Laws**

17.1 In performance of the Services, the CONSULTANT will comply with applicable regulatory requirements including federal, state, special district, and local laws, rules, regulations, orders, codes, criteria and standards.

18.0 **Subcontracting**

18.1 The CITY reserves the right to accept the use of any proposed subcontractor or sub-consultant of the CONSULTANT (for purposes of this Section 18.0 referred to as a “subcontractor”), or to reject the selection of a particular subcontractor and to inspect all facilities of any subcontractor.

18.2 If a subcontractor fails to perform or make progress, as required by this Agreement, and it is necessary to replace the subcontractor to complete the work in a timely fashion, the CONSULTANT shall promptly do so, subject to acceptance of the new subcontractor by the CITY. Failure of a subcontractor to timely or properly perform its obligations shall not relieve CONSULTANT of its obligations hereunder.

19.0 **Federal and State Taxes**

19.1 The CITY is exempt from Federal Tax and State Sales and Use Taxes. Upon request, the CITY will provide an exemption certificate to the CONSULTANT. The CONSULTANT shall not be exempted from paying sales tax to its suppliers for materials to fulfill contractual obligations with the CITY, nor shall the CONSULTANT be authorized to use the CITY’s Tax Exemption Number in securing such materials.

20.0 **Public Entity Crimes**

20.1 The CONSULTANT understands and acknowledges that this Agreement with the CITY will be void, in the event the conditions under Section 287.133, Florida Statutes apply to the CONSULTANT, relating to conviction for a public entity crime.

21.0 **CITY’s Responsibilities**

21.1 The CITY shall be responsible for providing access to all CITY project sites, and providing information in the CITY’s possession that may reasonably be required by CONSULTANT, including existing reports, studies, financial information, and other required data that are available in the files of the CITY.

22.0 **Termination of Agreement**

22.1 This Agreement may be terminated by the CONSULTANT upon thirty (30) days prior written notice to the CITY in the event of substantial failure by the CITY to perform in accordance with the terms of the Agreement through no fault of the CONSULTANT.

22.2 This Agreement may be terminated by the CITY with or without cause immediately upon written notice to the CONSULTANT.

22.3 Unless the CONSULTANT is in breach of this Agreement, the

CONSULTANT shall be paid for services rendered to the CITY's satisfaction through the date of termination.

22.4 After receipt of written notice of termination of this Agreement, and except as otherwise directed by the CITY, the CONSULTANT shall:

22.4.1 Stop work on the date and to the extent specified.

22.4.2 Terminate and settle all orders and subcontracts relating to the performance of the terminated work.

22.4.3 Transfer all work in process, completed work, and other material related to the terminated work to the CITY.

22.4.4 Continue and complete all parts of the work that have not been terminated.

22.5 The CONSULTANT shall be paid for services actually rendered to the date of termination.

23.0 **Uncontrollable Forces (Force Majeure)**

23.1 Neither the CITY nor the CONSULTANT shall be considered to be in default of this Agreement if delays in or failure of performance shall be due to Uncontrollable Forces, the effect of which, by the exercise of reasonable diligence, the non-performing party could not avoid. The term "Uncontrollable Forces" shall mean any event which results in the prevention or delay of performance by a party of its obligations under this Agreement and which is beyond the reasonable control of the nonperforming party. It includes, but is not limited to fire, flood, earthquakes, storms, lightning, epidemic, war, riot, civil disturbance, sabotage, and governmental actions.

23.2 Neither Party shall, however, be excused from performance if nonperformance is due to forces which are preventable, removable, or remediable and which the nonperforming party could have, with the exercise of reasonable diligence, prevented, removed or remedied with reasonable dispatch.

23.3 The nonperforming party shall, within a reasonable time of being prevented or delayed from performance by an Uncontrollable Force, give written notice to the other party describing the circumstances and Uncontrollable Forces preventing continued performance of the obligations of this Agreement.

24.0 **Governing Law and Venue**

24.1 This Agreement shall be governed in all respects by the laws of the State of Florida and any litigation with respect thereto shall be brought only in the courts of Osceola County.

25.0 **Non-Discrimination**

25.1 The CONSULTANT warrants and represents that all of its employees are treated equally during employment without regard to race, color, religion, gender, age or national origin.

26.0 **Waiver**

26.1 A waiver by either the CITY or the CONSULTANT of any breach of this Agreement shall not be binding upon the waiving party unless such waiver is in writing. In the event of a written waiver, such a waiver shall not affect the waiving Party's rights with respect to any other or further breach. The making or acceptance of a payment by either party with knowledge of the existence of a default or breach shall not operate or be construed to operate as a waiver of any subsequent default or breach.

27.0 **Severability**

27.1 The invalidity, illegality, or unenforceability of any provision of this Agreement, or the occurrence of any event rendering any portion or provision of this Agreement void, shall in no way affect the validity or enforceability of any other portion or provision of the Agreement.

27.2 Any void provision shall be deemed severed from the Agreement and the balance of the Agreement shall be construed and enforced as if the Agreement did not contain the particular portion or provision held to be void.

27.3 The Parties further agree to reform the Agreement to replace any stricken provision with a valid provision that comes as close as possible to the intent of the stricken provision.

27.4 The provisions of this Section shall not prevent the entire Agreement from being void should a provision which is of the essence of the Agreement be determined to be void.

28.0 **Entirety of Agreement**

28.1 The CITY and the CONSULTANT agree that this Agreement sets forth the entire understanding between the Parties as to the subject matter contained herein, and that there are no promises or understandings between the parties other than those

stated herein.

28.2 This Agreement supersedes all prior agreements, contracts, proposals, representations, negotiations, letters or other communications between the CITY and the CONSULTANT pertaining to the Services, whether written or oral.

29.0 **Modification**

29.1 This Agreement may not be modified, added to, superseded or otherwise altered unless such modifications, additions or other alterations are evidenced in writing signed by both the CITY and the CONSULTANT. Such modifications shall be in the form of a written Amendment executed by both Parties.

30.0 **Successors and Assigns**

30.1 The CITY and the CONSULTANT each binds itself and its partners, successors, assigns, executors, administrators and legal representatives to the other Party to this Agreement and to their partners, successors, executors, administrators, assigns, and legal representatives.

30.2 The CONSULTANT shall not assign this Agreement without the express written approval of the CITY by executed amendment, which approval may be withheld in the CITY's sole and absolute discretion.

30.3 In the event of a merger, the surviving corporation shall be substituted for the contracting party to this Agreement and such substitution shall be affirmed by the City of Kissimmee Commission by executed amendment.

31.0 **Contingent Fees**

31.1 The CONSULTANT warrants that it has not employed or retained any company or person, other than a bona fide employee working solely for the CONSULTANT to solicit or secure this Agreement and that it has not paid or agreed to pay any person, company, corporation, individual or firm, other than bona fide employee working solely for the CONSULTANT, any fee, commission, percentage, gift or any other consideration contingent upon or resulting from the award or making of this Agreement.

32.0 **Truth-In-Negotiation Certificate**

32.1 Execution of this Agreement by the CONSULTANT shall act as the execution of a Truth-in-Negotiation certificate certifying that the wage rates and costs used to determine the compensation provided for in this Agreement are accurate, complete, and current as of the date of the Agreement.

32.2 The said rates and costs shall be adjusted to exclude any significant sums should the CITY determine that the rates and costs were increased due to inaccurate, incomplete or noncurrent wage rates or due to inaccurate representations of fees paid to outside consultants. The CITY shall exercise its rights under this Certificate within one (1) year following payment.

33.0 **Ownership of Documents**

33.1 The CONSULTANT shall be required to cooperate with other consultants relative to providing information requested in a timely manner and in the specified form. Any and all documents, records, disks, original drawings, or other information shall become the property of the CITY for its use and/or distribution as may be deemed appropriate by the CITY. The CONSULTANT is not liable for any damages, injury or costs associated with the CITY's use or distribution of these documents for purposes other than those originally intended by the CONSULTANT.

34.0 **Access and Audits**

34.1 The CONSULTANT shall maintain adequate records to justify all charges and costs incurred in performing the work for at least three (3) years after completion of this Agreement. The CITY shall have access to such books, records, and documents as required in this section for the purpose of inspection or audit during normal business hours at the CONSULTANT's place of business.

34.2 Misrepresentations of billable time or Reimbursable Expenses as determined by the City Auditor to the Commission shall result in the recovery of any resulting overpayments. The CITY's cost of recovery shall be the sole expense of the CONSULTANT, including accounting and legal fees, court costs and administrative expenses.

34.3 Intentional misrepresentations of billable hours and Reimbursable Expenses will be criminally prosecuted to the fullest extent of the law.

34.4 All invoices submitted are subject to audit and demand for refund of overpayment up to three (3) years following completion of all services related to this Agreement.

35.0 **Notice**

35.1 Any notice, demand, communication, or request required or permitted hereunder shall be in writing and delivered in person or sent by Federal-Express or by Certified Mail, postage prepaid as follows:

As to City: **City of Kissimmee**
Public Works & Engineering Department
Facilities Management Division
101 Church Street
Kissimmee, FL 34741
Attn: Purchasing Director

As to Consultant: **Florida Technical Consultants**
2240 Woolbright Road, Suite 400
Boynton Beach, FL 33426

35.2 Notices shall be effective when received at the addresses as specified above. Changes in the respective addresses to which such notice is to be directed may be made from time to time by either party by written notice to the other party. Facsimile transmission is acceptable notice effective when received, however, facsimile transmissions received (i.e.; printed) after 5:00 p.m., or on weekends or holidays, will be deemed received on the next business day. The original of the notice must additionally be mailed as required herein.

35.3 Nothing contained in this Article shall be construed to restrict the transmission of routine communications between representatives of the CONSULTANT and the CITY.

36.0 **Service of Process**

As to City: **City Attorney**
City of Kissimmee
101 Church Street
Kissimmee, Florida 34741

As to Consultant: **Florida Technical Consultants, LLC**
2240 Woolbright Road, Suite 400
Boynton Beach, FL 33426

37.0 **Key Personnel**

37.1 The CONSULTANT shall notify the CITY in the event of key personnel changes which might affect this Agreement. To the extent possible, notification shall be made within ten (10) days prior to any such changes. The CONSULTANT, at the CITY's request, shall remove without consequence to the CITY any subcontractor or employee of the CONSULTANT and replace him/her with another employee having the required skill and experience. The CITY has the right to reject proposed changes in key personnel.

The following personnel shall be considered key personnel:

Name: James Barton P.E.

Name: Teresa Chapman
Matthew Davis
Marcus Austin
Angelica Sanchez-Luque
Nikolina Trifonova
Chelsea Lodato
Walter Broll

38.0. **Annual Appropriations**

38.1 The CONSULTANT acknowledges that the CITY, during any fiscal year, shall not expend money, incur any liability, or enter into any agreement which, by its terms, involves the expenditure of money in excess of the amounts budgeted as available for expenditure during such fiscal year. Any agreement, verbal or written, made in violation of this subsection is null and void, and no money may be paid on such agreement. Nothing herein contained shall prevent the making of agreements for a period exceeding one year, but any agreement so made shall be executory only for the value of the services to be rendered or agreed to be paid for in succeeding fiscal years. Accordingly, the CITY's performance and obligation to pay under this agreement is contingent upon annual appropriation.

39.0 **Liquidated Damages**

39.1 The parties hereto agree that liquidated damages, in lieu of actual damages and in the amount stated in the applicable CSA or CPO, will be assessed against the CONSULTANT, as the CITY's remedy and not as a penalty, for CONSULTANT'S failure to meet the final deliverable date in the Performance Schedule in the Scope of Work, but only to the extent and in the proportion to CONSULTANT'S fault in causing the delay as compared to other causes, and to the extent the CONSULTANT is not delayed by reasons beyond CONSULTANT'S reasonable control. The parties agree that such assessment of liquidated damages is reasonable and appropriate, as it would be difficult or impossible to accurately determine the amount of actual damages the CITY would or may incur as a consequence of the CONSULTANT's failure described above.

40.0 **Unauthorized Alien(s)**

40.1 The CONSULTANT shall not employ or utilize unauthorized aliens in the performance of the Services. The CITY shall consider the employment or utilization of unauthorized aliens a violation of Section 274A(e) of the Immigration and Naturalization Act (8 U.S.C. 1324a). Such violation shall be cause for unilateral termination of this Agreement by the CITY. The Form "AFFIDAVIT CERTIFICATION IMMIGRATION LAWS" will be signed by the CONSULTANT and submitted as part of this Agreement.

40.2 To verify employee eligibility, the CONSULTANT may avail itself of a program by the U.S. Immigration and Customs Enforcement called E-Verify. E-Verify is an Internet-based system operated by U.S. Citizenship and Immigration Services (USCIS), part of the Department of Homeland Security (DHS), in partnership with the Social Security Administration (SSA). E-Verify is currently free to employers. E-Verify provides an automated link to Federal databases to help employers determine employment eligibility of new hires and the validity of their Social Security numbers.

41.0 **Limitation of Liability**

IN NO EVENT, SHALL EITHER PARTY BE LIABLE TO THE OTHER PARTY FOR INDIRECT, INCIDENTAL, CONSEQUENTIAL, SPECIAL, EXEMPLARY, OR PUNITIVE DAMAGES OF ANY KIND OR NATURE, INCLUDING LOSS OF PROFIT, WHETHER FORESEEABLE OR NOT, ARISING OUT OF OR RESULTING FROM THE NONPERFORMANCE OR BREACH OF THIS AGREEMENT BY A PARTY WHETHER BASED IN CONTRACT, COMMON LAW, WARRANTY, TORT, STRICT LIABILITY, CONTRIBUTION, INDEMNITY OR OTHERWISE.

42.0 **Default and Remedy**

42.1 If the CONSULTANT materially defaults in its obligations under this Agreement and fails to cure the same within fifteen (15) days after the date the CONSULTANT receives written notice of the default from the CITY, then the CITY shall have the right to (i) immediately terminate this Agreement by delivering written notice to the CONSULTANT, and (ii) pursue any and all remedies available in law, equity, and under this Agreement. If the CITY materially defaults in its obligations under this Agreement and fails to cure the same within fifteen (15) days after the date the CITY receives written notice of the default from the CONSULTANT, then the CONSULTANT shall have the right to immediately terminate this Agreement by delivering written notice to the CITY. Upon any such termination, the CITY shall pay the CONSULTANT the full amount due and owing for all Services performed through the date of Agreement termination.

43.0 **Attorneys' Fees and Costs**

43.1 Except as stated in Section 14.2.1, above, in connection with any dispute or any litigation arising out of, or relating to this Agreement, each party shall be responsible for its own legal and attorneys' fees, costs and expenses, including attorneys' fees, costs, and expenses incurred for any appellate or bankruptcy proceedings.

44.0 **Public Records Law**

44.1 CONSULTANT 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.

44.2 CONSULTANT shall keep and maintain public records required to perform the services contemplated by this Agreement, in accordance with Chapter 119, Florida Statutes "Public records" means all documents, papers, letters, maps, books, tapes, photographs, films, sound recordings, data processing software,

or other material, regardless of the physical form, characteristics, or means of transmission, made or received pursuant to law or ordinance or in connection with the transaction of official business by any agency.

44.3 CONSULTANT shall ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law for the duration of the contract term and following completion of the contract if the Construction Manager does not transfer the records to the CITY.

44.4 Questions regarding the application of Chapter 119, Florida Statutes, to the CONSULTANT's duty to provide public records relating to this Agreement, shall be directed to the CITY's Custodian of Public Records at 407-518-2308, cityclerkemail@kissimmee.org, and 101 Church Street, Kissimmee, Florida 34741.

45.0 **Americans with Disabilities Act**

45.1 The CONSULTANT shall conform its Drawings and Specifications to the requirements of the Americans with Disabilities Act Accessibility Guidelines ("ADAAG"), but CITY shall be responsible for compliance with the remaining provisions of the Americans with Disabilities Act ("ADA"). CITY and CONSULTANT further recognize that interpretations of ADA by governmental officials and/or courts of law may vary or change. Should such variance or change adopted after the date the 100% Design Development are completed, require the CONSULTANT to make the required modifications, such modifications shall be considered as Contingent Additional Services. Further, CITY acknowledges, that the ADA, including ADAAG, is a new law presenting numerous difficult interpretation issues. Accordingly, the CONSULTANT shall only be liable for gross negligence in connection with any allegation that its design does not properly comply with ADAAG.

46.0 **Additional Definitions**

46.1 **Contract Documents** means this Agreement, any CSA or CPO issued hereunder, the CITY'S contract with the Contractor, the Plans, Specifications, General Conditions and related Construction Documents or any other documents incorporated by reference.

46.2 **Cost of the Work** shall be the total cost or, to the extent the Project is not completed, the estimated cost to the CITY of all elements of the Project designed or specified by the CONSULTANT.

46.2.1 The Cost of the Work shall include the cost at current market rates of labor and materials furnished by the CITY and equipment designed,

specified, selected or specially provided for by the CONSULTANT, including the costs of management or supervision of construction or installation provided by a separate construction manager or CONSULTANT.

46.2.2 The Cost of the Work does not include the compensation of the CONSULTANT and the CONSULTANT'S sub-consultants, the costs of the land, rights-of-way and financing or other costs that are the responsibility of the CITY.

46.3 **Final Completion** means that the following items have been completed or satisfied:

46.3.1 Construction of the Project is completed, in accordance with the contract documents and certified as such by the CITY and CONSULTANT.

46.3.2 The Project is suitable for full use and occupancy as determined by the CITY and CONSULTANT.

46.3.3 All Punchlist items have been completed or otherwise disposed of or accounted for to the CITY'S satisfaction and approval.

46.3.4 A final Certificate of Occupancy and all other permits and approvals required have been legally and validly issued.

46.3.5 All required guarantees, affidavits, releases, bonds and waivers, manuals, record drawings, warranties and maintenance books including the Final Completion form have been delivered to the CITY.

46.4 **Punch list** means a list of items of work to be completed and deficiencies to be corrected, which items shall not affect the attainment of Substantial Completion. Such items shall be complete or otherwise disposed of prior to final acceptance.

46.5 **Schedule of Values** means the schedule to be used as a basis for progress payments to be made to the Contractor by the CITY during performance of the work, based on the then current percentage of progress of construction of the Project, subject to the approval of the CONSULTANT.

46.6 **Substantial Completion** means the Contractor has ascertained that the work or portions thereof is ready for the CITY and CONSULTANT substantial completion inspection. It is understood that the Construction Manager will provide a list of incomplete items to the CITY and CONSULTANT prior to this inspection. After the CITY'S and CONSULTANT's inspection, the Contractor will prepare a schedule for a completion of the list, indicating completion dates for the CITY'S review. The CITY and CONSULTANT will issue a Certificate of Substantial Completion when the work on the Contractor's pre-substantial punch-list has been accomplished, to the best of the Contractor's ability.

46.7 **Substantial Completion Date** means the date, certified by the CONSULTANT, that the Project, or designated portion thereof, is sufficiently complete, in accordance with the Construction Documents and a Certificate of Occupancy issued, so that the CITY can reasonably occupy or utilize the Project, or designated portion thereof, for its intended use.

47.0 **Additional Terms and Conditions**

47.1 INSTRUMENTS OF SERVICE

47.1.1 Drawings, specifications and other documents, including those in electronic form, prepared by the CONSULTANT and the CONSULTANT'S sub-consultants are Instruments of Service for use solely with respect to this Project. The CONSULTANT and the CONSULTANT'S sub-consultants shall be deemed the authors and owners of their respective Instruments of Service and shall retain all common law, statutory and other reserved rights, including copyrights.

47.1.2 Upon execution of this Agreement, the CONSULTANT grants to the CITY a nonexclusive license to reproduce the CONSULTANT'S Instrument of Service and thereafter use the same solely for purposes of constructing, using and maintaining, repairing and making additions and modifications to the Project, provided that the CITY shall comply with all obligations, including prompt payment of all sums when due, under the Agreement. The CONSULTANT shall obtain similar nonexclusive licenses from the CONSULTANT'S sub-consultants consistent with this Agreement. Any termination of this Agreement prior to completion of the Project shall terminate the license. Upon such termination, the CITY shall refrain from making further reproductions of Instrument of Service. If and upon the date the CONSULTANT is adjudged in default of this Agreement, the foregoing license shall be deemed terminated and replaced by a second, nonexclusive license permitting the CITY to authorize other similarly credentialed design professionals to reproduce and, where permitted by law, to make changes, corrections or additions to the Instruments of Service solely for purposes of completing, using and maintaining the Project.

47.1.3 Except for the licenses granted in Section 47.1.2, no other license or right shall be deemed granted or implied under this Agreement. The CITY shall not assign, delegate, sublicense, pledge or otherwise transfer any license granted herein to another party without the prior written agreement of the CONSULTANT. However, the CITY shall be permitted to authorize the Contractor, Subcontractors, and sub-subcontractors and material or equipment suppliers to reproduce applicable portions of the Instruments of Service to and for use in their execution of the Work by license granted in Section 47.1.2. Submission or distribution of Instruments of Service to meet

official regulatory requirements or for similar purposes in connection with the Project is not to be construed as publication in derogation of the reserved rights of the CONSULTANT and the CONSULTANT'S sub-consultants. The CITY agrees to pay the CONSULTANT a reasonable, mutually agreed upon amount for any reuse of the designs, drawings or specifications beyond this Agreement. The CITY shall not be responsible to pay the CONSULTANT for the use of the designs, drawings or specifications when used for reference purposes only.

- 47.1.4 If the CONSULTANT is required to deliver any services hereunder in the form of electronic encoded media, the printed representation of such media furnished by the CONSULTANT shall be the official records of the CONSULTANT'S service provided upon completion of the services and payment in full. The CITY shall have a right to rely on such printed representation in connection with any subsequent modification of such electronic media and agrees to hold the CONSULTANT harmless from all cost and expense, including attorney's fees, from claims which arise out of modification or re-use of such electronic media or printed representation by or on behalf of the CITY without the CONSULTANT'S consent. Under no circumstances shall transfer of drawings and other instruments of service on electronic media for use by the CITY, be deemed a sale by the CONSULTANT, and the CONSULTANT makes no warranties of merchantability or fitness for a particular purpose.

47.2 CHANGE IN SERVICES

- 47.2.1 Change in Services of the CONSULTANT, including services required of the CONSULTANT'S sub-consultants may be accomplished after execution of this Agreement, without invalidating the Agreement, if mutually agreed in writing, if required by circumstances beyond the CONSULTANT'S control, or if the CONSULTANT'S services are affected as described in Section 47.2B-2. In the absence of mutual agreement in writing, the CONSULTANT shall notify the CITY prior to providing such services. If the CITY deems that all or part of such Change in Services is not required, the CITY shall give prompt written notice to the CONSULTANT, and the CONSULTANT shall have no obligation to provide those services. Except for a change due to fault of the CONSULTANT, Change in Services of the CONSULTANT shall entitle the CONSULTANT to an adjustment in compensation pursuant to Section 9.8, and to any Reimbursable Expenses described in Section 10.0.
- 47.2.2 If any of the following circumstances affect the CONSULTANT'S services for the Project, the CONSULTANT shall be entitled to an appropriate adjustment in the CONSULTANT'S schedule and compensation:
- 47.2.2.1 Change in the instructions or approvals given by the CITY that constitute material changes to the Project parameters set forth above

and which necessitate revisions in Instruments of Service;

47.2.2.2 Enactment or revision of codes, laws or regulations or official interpretations, which necessitate changes to previously prepared Instruments of Service;

47.2.2.3 Significant change in the Project including, but not limited to, size, quality, complexity, the CITY'S schedule or budget, or procurement method;

47.2.2.4 Preparation for and attendance at a public hearing, a dispute resolution proceeding or a legal proceeding except where the CONSULTANT is party thereto.

47.3 ACCELERATED COMPLETION OF DESIGN PACKAGES. In order to minimize construction problems and change orders, the CONSULTANT's standard practice requires the completion of detailed working drawings, submission for review and comment by reviewing agencies and incorporation of those comments and/or changes prior to bidding and entering into firm construction contracts. However, CITY may choose to accelerate the completion of the Project so that it may be completed in a shorter time period than would normally be required. Should the CITY choose to make this selection, it shall not be considered Fast Track, or in any way relieve the CONSULTANT of its responsibilities and obligations set forth herein.

(THE REMAINDER OF THIS PAGE IS INTENTIONALLY LEFT BLANK; THE AGREEMENT CONTINUES ON THE FOLLOWING PAGE WITH THE PARTIES' SIGNATURES.)

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement as of the Effective Date.

Attest:

Linda Hansell
CITY CLERK

CITY OF KISSIMMEE,
a Municipal Corporation of the
State of Florida

By: _____
City Clerk

By: _____
Mayor
City of Kissimmee Commission

Date Approved by Commission: _____

Reviewed as to form and legal sufficiency:

City Attorney's Office Date

CONSULTANT

Attest:

By: James Barton _____



Corporate Secretary

Title: President _____

STATE OF FLORIDA
COUNTY OF Palm Beach

The foregoing instrument was acknowledged before me this 17th day of November, 2023, by means of ☒ physical presence or ☐ online notarization, by James Barton, PE, LEED AP as President for (Florida Technical Consultants, LLC), a Florida corporation, **who is personally known to me** or has produced identification.

Notary Seal:

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

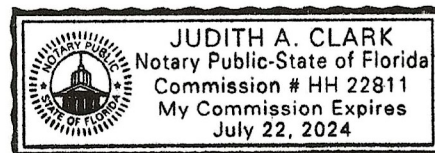
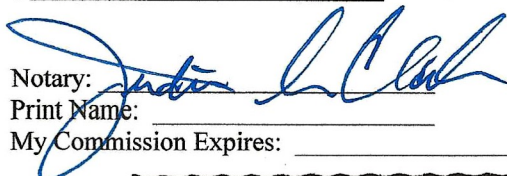


EXHIBIT “A”

HOURLY RATE SCHEDULE

Position	Rate	Rate	Rate
	Oct 2022 – Sept 2024	Oct 2024 – Sept 2026	Oct 2026 – Sept 2028
Principal	\$160	\$165	\$170
Project Manager	\$150	\$155	\$160
Senior Professional Engineer	\$150	\$155	\$160
Project Engineer III	\$140	\$145	\$150
Project Engineer II	\$130	\$135	\$140
Project Engineer I	\$120	\$125	\$130
CAD Technician	\$115	\$120	\$125
Junior CAD Technician	\$95	\$100	\$105
Senior GIS Solutions Analyst	\$160	\$165	\$170
Project GIS Analyst III	\$140	\$145	\$150
Project GIS Analyst II	\$130	\$135	\$140
Project GIS Analyst I	\$120	\$125	\$130
GIS Technician	\$105	\$110	\$115
Junior GIS Technician	\$95	\$100	\$105
Construction Services Manager	\$140	\$145	\$150
Construction Inspector II	\$125	\$130	\$135
Construction Inspector I	\$105	\$110	\$115
Clerical	\$65	\$70	\$75

EXHIBIT “B”

SCOPE OF SERVICES

In accordance with Sections 2.3 and 8.1 of the Agreement, in addition to any other Services described in the Agreement, the RFQ, and the CONSULTANT’s responsive proposal thereto, the CONSULTANT may also be authorized to perform any or all of those services set forth and further described below. In the event the CITY requests the CONSULTANT to furnish and perform any of the services listed and described in this Exhibit “B”, those services shall be listed and incorporated in the applicable CSA or CPO issued for a particular Project.

ALL PHASES:

1. PROJECT ADMINISTRATION AND MANAGEMENT SERVICES

1.1. Project Administration services consisting of administrative functions including:

- 1.1.1. Project Decision Structure
- 1.1.2. Project Directory
- 1.1.3. Consultation
- 1.1.4. Research
- 1.1.5. Communications; Meeting Minutes, Meeting Agendas (For meetings called by CONSULTANT during the Design phases of the project)
- 1.1.6. Direction of the work of architectural, engineering and other consultant personnel

1.2. Disciplines Coordination/Document Checking consisting of:

- 1.2.1. Coordination between the architectural work and the work of engineering and their disciplines involved in the Project.
- 1.2.2. Review and checking of documents prepared for the Project by the CONSULTANT and the CONSULTANT’s Consultants.

1.3. Agency Consulting/Review/Approval services, including:

- 1.3.1. Agency consultants
 - 1.3.1.1. City agencies
 - 1.3.1.2. Regional agencies
 - 1.3.1.3. State agencies
- 1.3.2. Research of critical applicable regulations.
- 1.3.3. Preparation of written and graphic explanatory materials.

1.4. Owner Coordination, including:

- 1.4.1. Review and coordination of data furnished for the Project as a responsibility of the Owner.

1.5. Schedule Development/Monitoring Services, including:

- 1.5.1. Participate in establishment and updating of design schedule in conjunction with CM for the performance of the CONSULTANT's services throughout the design of the project. Key decision-making points will be identified on this schedule.

1.6. Presentation services consisting of presentations and recommendations by the CONSULTANT to the following client representatives:

- 1.6.1. City of Kissimmee Commission
- 1.6.2. Executive Task Force
- 1.6.3. User group(s)
- 1.6.4. Construction Manager

PHASE I PROGRAMMING & MASTER PLANNING

2. NEEDS ASSESSMENT/DATA COLLECTION

2.1. Space Needs Assessments

- 2.1.1. Macro Level Space Requirements Analysis
- 2.1.2. Macro Level Adjacency Requirements
- 2.1.3. Parking Analysis

2.2. Analysis of the site and its surroundings to include the following:

- 2.2.1. Land Utilization
- 2.2.2. Building locations
- 2.2.3. Utility Systems
- 2.2.4. Surface and subsurface conditions (By Owner)
- 2.2.5. Vegetation (By Owner)
- 2.2.6. Survey (By Owner)
- 2.2.7. Land Use Restrictions
- 2.2.8. Historical analysis
- 2.2.9. Stormwater retention/detention areas

3. FUNCTIONAL PROGRAMMING

3.1. Prepare a detailed architectural program based on the scope established in Phase I to include the following services:

- 3.1.1. Functional Requirements Analysis
- 3.1.2. Interior Development Guidelines
- 3.1.3. Space Standards

- 3.1.4. Preliminary Program Space Estimates
- 3.1.5. Space and Equipment Program
- 3.1.6. Special Building System Requirements
- 3.1.7. Micro-Adjacency Requirements
- 3.1.8. Prepare Final Draft Program
- 3.1.9. Prepare Final Program Report

4. MASTER PLANNING

- 4.1** Prepare three different conceptual approaches for housing the space and parking requirements validated in the Needs Assessment. Include the following information, at a minimum:
 - 4.1.1 Existing facility renovation recommendations
 - 4.1.2 Site development planning issues (land utilization, pedestrian and vehicular circulation, parking, areas for expansion, stormwater retention/detention and landscape forms)
 - 4.1.3 Architectural concepts. The architectural concepts will include blocking and stacking diagrams, massing studies and character sketches.

PHASE II: DESIGN/ BIDDING/CONSTRUCTION ADMINISTRATION SERVICES

5. DESIGN SERVICES

5.1. Architectural Design/Documentation:

- 5.1.1. During the Schematic Design Phase, responding to program requirements and preparing:
 - 5.1.1.1. Conceptual Planning/Massing Options
 - 5.1.1.2. Final Conceptual Site and Building Plans
 - 5.1.1.3. Preliminary Sections and Elevations
 - 5.1.1.4. Preliminary Selection of Building Systems and Materials
 - 5.1.1.5. Development of Approximate Dimensions, Areas and Volumes
 - 5.1.1.6. Perspective sketch – eye level
 - 5.1.1.7. Study model
- 5.1.2. During the Design Development Phase consisting of continued development and expansion of architectural Schematic Design Documents to establish the final scope, relationships, forms, size and appearance of the Project through:
 - 5.1.2.1. Plans, sections and elevations
 - 5.1.2.2. Typical construction details
 - 5.1.2.3. Three-dimensional sketch
 - 5.1.2.4. Study model
 - 5.1.2.5. Final materials selection
 - 5.1.2.6. Equipment layouts

- 5.1.3. During the Contract Documents phase consisting of preparation of Drawings and Specifications based on approved Design Development documents setting forth in detail the architectural construction requirements for the Project.

5.2. Structural Design/Documentation:

- 5.2.1. During the Schematic Design Phase consisting of recommendations regarding basic structural materials and systems, analyses, and development of conceptual design solutions for:
 - 5.2.1.1. A structural system
 - 5.2.1.2. Alternate structural systems, if required
- 5.2.2. During the Design Development phase consisting of continued development of the specific structural system and Schematic Design documents in sufficient detail to establish:
 - 5.2.2.1. Basic structural system and dimensions
 - 5.2.2.2. Final structural design criteria
 - 5.2.2.3. Foundation design criteria
 - 5.2.2.4. Preliminary sizing of major structural components
 - 5.2.2.5. Critical coordination clearances
- 5.2.3. During the Contract Documents phase consisting of preparation of final structural engineering calculations, Drawings and Specifications based on approved Design Development documents, setting forth in detail the structural construction requirements for the Project.

5.3. Mechanical Design/Documentation:

- 5.3.1. During the Schematic Design phase, prepare a narrative, consisting of consideration of alternate materials, systems and equipment, and development of conceptual design solutions for:
 - 5.3.1.1. Energy source(s)
 - 5.3.1.2. Energy conservation and controls system concepts
 - 5.3.1.3. Heating and ventilating (systems selections and conceptual sizing and configuration analysis.)
 - 5.3.1.4. Air conditioning (systems selections and conceptual sizing and configuration analysis.)
 - 5.3.1.5. Plumbing
 - 5.3.1.6. Fire protection
 - 5.3.1.7. General space requirements
- 5.3.2. During the Design Development phase consisting of continued development and expansion of mechanical Schematic Design documents and development of outline Specifications or materials lists to establish:
 - 5.3.2.1. Approximate equipment sizes and capacities

- 5.3.2.2. Preliminary equipment layouts
- 5.3.2.3. Required space for equipment
- 5.3.2.4. Required chases and clearances
- 5.3.2.5. Acoustical and vibration control
- 5.3.2.6. Visual impacts
- 5.3.2.7. Energy conservation measures

- 5.3.3. During the Contract Documents phase consisting of preparation of final mechanical engineering calculations, Drawings and Specifications based on approved Design Development documents, setting forth in detail the mechanical construction requirements for the Project.

5.4. Electrical Design/Documentation

- 5.4.1. During the Schematic Design Phase, prepare a narrative, consisting of consideration of alternate systems, recommendations regarding basic electrical materials, systems and equipment, analyses, and development of conceptual solutions for:
 - 5.4.1.1. Power service and distribution
 - 5.4.1.2. Lighting
 - 5.4.1.3. Communication and data outlet location systems
 - 5.4.1.4. Fire detection and alarms
 - 5.4.1.5. General space requirements
 - 5.4.1.6. Audio/Visual systems
- 5.4.2. During the Design Development phase consisting of continued development and expansion of electrical Schematic Design documents and development of outline Specifications or materials lists to establish:
 - 5.4.2.1. Criteria for lighting, electrical and communications systems
 - 5.4.2.2. Approximate sizes and capacities of major components
 - 5.4.2.3. Preliminary equipment layouts
 - 5.4.2.4. Required space for equipment
 - 5.4.2.5. Required chases and clearances
- 5.4.3. During the Contract Documents phase, consisting of preparation of final electrical engineering calculations, Drawings and Specifications based on approved Design Development documents, setting forth in detail the electrical requirements for the Project.

5.5. Civil Design/Documentation:

- 5.5.1. During the Schematic Design phase consisting of consideration of alternate materials and systems and development of conceptual design solutions for:
 - 5.5.1.1. On-site utility systems
 - 5.5.1.2. Fire protection systems
 - 5.5.1.3. Drainage systems

5.5.1.4. Paving

- 5.5.2. During the Design Development phase consisting of continued development and expansion of civil Schematic Design documents and development of outline Specifications or materials lists to establish the final scope of and preliminary details for on-site civil engineering work.
- 5.5.3. During the Contract Documents phase, consisting of preparation of final civil engineering calculations, Drawings and Specifications based on approved Design Development documents, setting forth in detail the civil construction requirements for the Project.
- 5.5.4. Permit applications required for Water Distribution, Sewage Collection and Stormwater/Environment Management (Local, State, and Federal) shall be prepared for execution by the Owner. Permit applications to be paid by Owner. All necessary reports and drawings will be prepared to accompany the permit applications. Two meetings per agency as required to secure permits is included in services. City shall designate individual who has authority to sign permit applications.

5.6. Landscape Design/Documentation:

- 5.6.1. During the Schematic Design phase, prepare narrative conceptual design solutions, which will be developed for land forms, hardscape, lawns and plantings based on program requirements, physical site characteristics, design objectives and environmental determinants.
- 5.6.2. During the Design Development phase, Schematic Design documents will be further developed including outline Specifications and materials lists to establish final scope and preliminary details for landscape work.
- 5.6.3. During the Contract Documents phase, the Drawings and Specifications based on approved Design Development documents, setting forth in detail the landscape and hardscape construction requirements for the Project will be prepared.

5.7. Interior Design/Documentation:

- 5.7.1. During the Schematic Design phase consisting of space allocation and departmental utilization plans based on functional relationships:
 - 5.7.1.1. Types and qualities of finishes and materials for furniture, furnishings, and equipment.
- 5.7.2. During the Design Development phase consisting of continued development and expansion of interior Schematic Design documents and development of

outline Specifications or materials lists to establish final scope and preliminary details relative to:

5.7.2.1. Interior construction of the Project

5.7.2.2. Special interior design features

5.7.2.3.Space planning

5.7.2.4. Materials, finishes and colors

5.7.2.5. Furniture and equipment layouts

5.7.3. During the Contract Documents phase consisting of preparation of Drawings, Specifications and other documents based on approved Design Development documents, setting forth in detail the requirements for interior construction and furniture, furnishings and equipment for the Project.

5.8. Environmental Graphic Design Services: The scope shall include interior and exterior sign types and graphic elements to provide a comprehensive and cohesive signage and wayfinding system for users of the facility.

5.8.1. Design Development:

5.8.1.1.Consider design approaches; determine elements needed for identity, information and wayfinding.

5.8.1.2. Begin development of sign prototypes.

5.8.1.3. Develop preliminary location plans.

5.8.2. Construction document preparation.

5.8.3. Construction observation and submittal review.

5.8.4. Interior sign types to include:

5.8.4.1. Primary room ID (changeable name inserts in some locations).

5.8.4.2. Restroom ID.

5.8.4.3. Stairway ID and stairway level ID.

5.8.4.4. Building Code required ID.

5.8.4.5. Fire exit plan.

5.8.4.6. Building directories.

5.8.5. Exterior sign types include:

5.8.5.1. Main entrance identification.

5.8.5.2. Vehicular directional.

5.8.5.3. Regulatory / Warning identification.

5.8.5.4.Parking areas; handicap parking, authorized vehicles, visitor parking, etc.

5.8.6. Donor Recognition / Dedication Plaques – Prepare conceptual designs illustrating a graphic solution to recognize a significant donor for the facility.

5.9. Materials Research/Specifications:

5.9.1. During the Schematic Design phase consisting of:

5.9.1.1.Identification of potential materials, systems and equipment and their criteria and quality standards consistent with the conceptual design.

- 5.9.1.2. Investigation of availability and suitability of alternative materials, systems and equipment.
- 5.9.2. During the Design Development phase consisting of activities by in-house personnel in:
 - 5.9.2.1. Development of architectural and engineering project specific draft Specifications or itemized lists and brief form identification of significant architectural materials, systems and equipment, including their criteria and quality standards.
 - 5.9.2.2. Coordination of similar activities of other disciplines.
 - 5.9.2.3. Production of design manual including design criteria and outline specifications or material lists.
- 5.9.3. During the Contract Documents phase consisting of activities of in-house architectural personnel in:
 - 5.9.3.1. Review of the development and preparation of bidding and procurement information prepared by the Construction Manager.
 - 5.9.3.2. Assistance to the Owner and their agents in review of the Conditions of the Contract (General, Supplementary and other Conditions).
 - 5.9.3.3. Development and preparation of architectural Specifications describing materials, systems and equipment, workmanship, quality and performance criteria required for the construction of the Project.
 - 5.9.3.4. Coordination of the development of Specifications by other disciplines.
 - 5.9.3.5. Compilation of Project Manual including Conditions of the Contract, bidding and procurement information and Specifications.
- 5.10. At the conclusion of each Design Phase (Schematic Design, Design Development and Construction Document) the Architect/Engineer shall provide the Owner with two (2) sets of drawings and specifications. At the conclusion of Construction Documents one set of reproducible will also be made available to the City for printing of Bid Documents by the City or the Construction Manager.

6. BIDDING OR NEGOTIATION SERVICES

- 6.1. **Bidding Materials services** consisting of organizing and handling Bidding Documents for:
 - 6.1.1. Coordination
 - 6.1.2. Reproduction by Owner
 - 6.1.3. Completeness review
- 6.2. **Addenda services** consisting of preparation and distribution of Addenda as may be required during bidding or negotiation and including supplementary Drawings,

Specifications, instructions and notice(s) of changes in the bidding schedule and procedures.

6.3. Bidding/Negotiation services consisting of:

6.3.1. Responses to questions from Bidders and clarifications or interpretations of the Bidding Documents.

6.4. Analysis of Alternates/Substitutions consisting of consideration, analyses, comparisons, and recommendations relative to alternates or substitutions proposed by Bidders or proposers either prior to or subsequent to receipt of Bids or proposals.

7. CONSTRUCTION ADMINISTRATION

7.1. Submittal Services consisting of:

7.1.1. Processing of submittals, including receipt, review of, and appropriate action on Shop Drawings, Product Data, Samples and other submittals required by the Contract Documents.

7.1.2. Distribution of submittals to Construction Manager.

7.1.3. Related communications.

7.2. Observation services consisting of periodic visits by the Project Manager or Project CONSULTANT to the site at intervals appropriate to the state of the work or as otherwise agreed by the Owner and CONSULTANT in writing to become generally familiar with the progress and quality of the Work completed and to determine in general if the Work when completed will be in accordance with Contract Documents; preparing related reports and communications, and attendance at progress review meetings at the site.

7.2.1. Periodic site visits by other staff to observe the progress of the project.

7.3. Responses to Requests for Information (RFI)

7.3.1. Responding to requests for clarifications or additional information related to the Contract Documents.

7.4. Supplemental Documentation services consisting of:

7.4.1. Preparation, reproduction and distribution of supplemental Drawings, Specifications and interpretations in response to requests for clarification by Construction Manager or the Owner.

7.4.2. Providing guidance to the Construction Manager in conjunction with the Owner -relative to changed requirements and schedule revisions.

7.5. Quotation Requests/Change Orders consisting of:

- 7.5.1. Preparation, reproduction and distribution of Drawings and Specifications to describe Work to be added, deleted or modified. Changes shall be clearly defined.
- 7.5.2. Review of proposals from Construction Manager for reasonableness of quantities and costs of labor and materials.
- 7.5.3. Review and recommendations relative to changes in time for Substantial Completion.
- 7.5.4. Review on Owner's behalf relative to costs of Work proposed to be added, deleted or modified.
- 7.5.5. Assisting in the preparation of appropriate Modifications of the Contract(s) for Construction.
- 7.5.6. Coordination of communications, approvals, notifications and record-keeping relative to changes in the Work.

7.6. Contract Cost Accounting services consisting of:

- 7.6.1. Review of records of payments on account of the Contract Sum and all changes thereto.
- 7.6.2. Evaluation of Applications for Payment and certification thereof.
- 7.6.3. Review and evaluation of expense data submitted by the Construction Manager for Work under cost-plus-fee arrangements.

7.7. Interpretations and Decisions consisting of:

- 7.7.1. Review of claims, disputes, or other matters between the Owner and Construction Manager relating to the execution or progress of the Work as provided in the Contract Documents.
- 7.7.2. Rendering written decisions.

7.8. Project Closeout services initiated upon notice from the Construction Manager that the Work, or a designated portion thereof which is acceptable to the Owner, is sufficiently complete in accordance with the Contract Documents to verify the list submitted by the Construction Manager of items to be completed or corrected.

- 7.8.1. Review with the Owner's representative for conformity of the Work to the Contract Documents to verify the list submitted by the Construction Manager of items to be completed or corrected.
- 7.8.2. Recommendation of the amounts to be withheld until final completion.
- 7.8.3. Securing and receipt of consent of surety or sureties, if any, to reduction in or partial release of retainage or the making of final payment(s).
- 7.8.4. Issuance of Certificate(s) of Substantial Completion.
- 7.8.5. Inspection(s) upon notice by the Construction Manager that the Work is ready for final inspection and acceptance.
- 7.8.6. Final inspection with the Owner's representative to verify final completion of the Work.

- 7.8.7. Securing and receipt of consent of surety or sureties, if any, to the making of final payment(s).
- 7.8.8. Issuance of final Certificate(s) for Payment.
- 7.8.9. Final inspection of Water Distribution, Sewage Collection and Stormwater/ Environmental Management Facilities. Preparation of certifications to agencies along with record documents prepared based upon record information supplied by the Construction Manager. Services include one final inspection for each certification.

8. POST-CONSTRUCTION SERVICES

8.1. Record Drawing services consisting of:

- 8.1.1. Making arrangements for obtaining from Construction Manager information in the form of marked-up prints, drawings and other data certified by them on changes made during performance of the Work, including Change Directives, RFI's, ASI's, etc.
- 8.1.2. Review of general accuracy of information submitted and certified by the Construction Manager.
- 8.1.3. Preparation of record drawings electronically based on certified information furnished by the Construction Manager.
- 8.1.4. Transmittal one set of full-size reproducible record drawings and general data, appropriately identified, to the Owner and others as directed. Two copies of all electronic data including CADD drawings on CD.

8.2. Warranty Review consisting of:

- 8.2.1. Consultation with and recommendation to the Owner during the duration of warranties in connection with inadequate performance of materials, systems and equipment under warranty.
- 8.2.2. Inspection(s) prior to expiration of the warranty period(s) to ascertain adequacy of performance of materials, systems and equipment.
- 8.2.3. Documenting defects or deficiencies and assisting the Owner in preparing instructions to the Construction Manager for correction of noted defects.

9. ADDITIONAL SERVICES/EXPENSES (not included in the base fee):

9.1. Owner-Provided Services:

- 9.1.1. Environmental assessment of site, if necessary.
- 9.1.2. Environmental assessment of existing facilities to be renovated and/or demolished, and the removal of any hazardous material, if necessary.
- 9.1.3. Printing of all Contract Documents issued for bidding and construction.
- 9.1.4. Distribution of Contract Documents to Construction Manager for estimating and bidding purposes.

- 9.2. Mock-Up Services** relating to any space for study during the design phases and consisting of:
- 9.2.1. Design and documentation for the required mock-up.
 - 9.2.2. Construction administration of mock-up construction activities.
 - 9.2.3. Arrangements for testing performance of mock-up.
 - 9.2.4. Review, analysis and reporting of results.
- 9.3. Prepare an Inventory** of existing furniture and equipment that will be placed in the new facilities.
- 9.4. Value Engineering** – Value engineering is the detailed, systematic review of the design concepts, construction techniques, materials and building types associated with a project solely in terms of life cycle costs in an attempt to obtain optimum value for every dollar spent. If Owner chooses to engage in value engineering, Owner shall either retain the services of an independent Value Engineer (“VE”) to perform the above review services to be complete at a stage no later than the completion of schematic design, or may pay a mutually negotiated sum “at the time the services are requested” to CONSULTANT to perform the above review services at a stage later than the completion of schematic design, Owner acknowledges that schedule and cost impacts may occur.
- 9.4.1. If Owner chooses to retain an independent VE, all recommendations of the VE shall be given to CONSULTANT for its review and adequate time will be provided for CONSULTANT to respond to these recommendations. CONSULTANT may be compensated as an additional service for time spent to review the recommendations of the VE and to incorporate those accepted by both Owner and CONSULTANT. Objections to any recommendations made by the VE shall be stated in writing. Owner agrees that CONSULTANT shall not be responsible for any damage, cost or liability which arises in connection with or as a result of the incorporation of such design changes.
- 9.5. Commissioning** – The performance of a functional and operational check of all systems and equipment to verify the installation is performing to the design criteria. CONSULTANT would prepare this service in conjunction with an independent contractor experienced in such activities.
- 9.6. Structural Blast Resistance** - Analysis of building structural systems to resist loads imposed by blast forces on exterior of facility. This would require an additional blast consultant to be obtained.
- 9.7. Security Systems:** The Security portion of the project will include the design and documentation of Electronic Security System from Schematic Design through Construction Administration Services. The Electronic Security System will include intrusion detection, access control, electronic door control and monitoring,

operational intercom, fixed duress alarms, monitoring and control panels, CCVE systems, control room layouts, rough-ins for x-ray screening/magnetometer at entry lobby, and parcel screening. As part of the overall security plan CONSULTANT will provide a site analysis to determine passive security measures to be incorporated for the facility. Deliverables for the above scope for each task are as listed below.

- 9.7.1. **Schematic Design (SDs):** CONSULTANT will provide a written security narrative describing the Electronic Security System, reflecting the design approach based on program requirements. In addition, CONSULTANT will provide two people for a one day on site Security Workshop to validate the security program and establish the design intent.
- 9.7.2. **Design Development (DDs):** CONSULTANT will provide job specific draft specifications of the Electronic Security System including plans indicating device locations, and outline specifications, and equipment selections reflecting design approach. CONSULTANT will provide one person for 1 day to attend an on-site design review with the Owner and Design Team members to review the Electronic Security System Design Development documents.
- 9.7.3. **Construction Documents (CDs):** Upon completion of this review, CONSULTANT will provide completed biddable documents including plans, details, schedules, riser diagrams, and specifications required to fully document the Electronic Security System. In addition, CONSULTANT will provide, at the completion of the Construction Documents phase, two (2) copies of a Design Information Manual (DIM) outlining major equipment selections utilized as the basis of design for the Electronic Security Systems. CONSULTANT will conduct mid-point design review with Owner and Design Team members to review the Electronic Security Construction Documents.
- 9.7.4. **Bidding:** CONSULTANT will review all questions related to the Electronic Security System submitted, and provide answers in written addendum as required.
- 9.7.5. **Construction Administration (CA):** CONSULTANT will provide one person for four, one day intermediate site visits during construction. In addition, upon written notification of substantial completion CONSULTANT will provide two persons for one day (16 hours total) to review and test the Electronic Security System.
 - 9.7.5.1. Included in this phase of work is the review of security shop drawing submittals and written responses to security RFI from the contractor.
 - 9.7.5.2. Deliverable for this phase of work will include a written field report for the intermediate site visits, and a final report and punch list of the site visit made following written notice of substantial completion.

9.7.6. **Expanded Security System Design** - The following systems and services can be provided in addition to the Electronic Security Design defined in previous sections:

9.7.6.1. Assistance Stations

9.7.6.2. Parking Area Equipment (cameras, card access control)

9.7.6.3. Wireless Duress

9.7.6.4. Hydraulic Barriers

9.7.6.5. Biometrics

9.7.6.6. Perimeter protection systems

9.7.6.7. Post Construction Services: CONSULTANT will provide two people for one day (16 hours total) to conduct a pre-warranty expiration review of the electronic security system. The review will focus on inspection of equipment, operational functions, defects or deficiencies within the system and will be documented in report form and issued to the owner.



EXHIBIT C

SCHEDULE OF REIMBURSABLES

1. Reproduction Cost			
A.....	Regular Copying	Single Side	Double
Sided			
8 ½ x 11 (black & white).....	\$ 0.15/page	\$ 0.25/sheet	
8 ½ x 11 (color)	\$ 0.30/page	\$ 0.40/sheet	
8 ½ x 14 (black & white).....	\$ 0.15/page	\$ 0.25/sheet	
8 ½ x 14 (color)	\$ 0.30/page	\$ 0.40/sheet	
11 x 17 (black & white).....	\$ 0.25/page	\$ 0.35/sheet	
11 x 17 (color)	\$ 0.40/page	\$ 0.50/sheet	
9 ½ x 24 Single Side Only.....	\$ 1.00/page		
17 x 22 Single Side Only.....	\$ 2.00/page		
18 x 24 Single Side Only.....	\$ 2.00/page		
24 x 36 Single Side Only.....	\$ 3.00/page		
30 x 30 Single Side Only.....	\$ 5.00/page		
32 x 34 Single Side Only.....	\$ 5.00/page		
Other sizes-per square inch	\$ 0.03/page		
Compact Digital Disk.....	\$ 6.00/disk		
B. Blueprint Copy.....		\$10.00/page	
2. Subcontractor Services		Actual Costs	
3. Special Consultants		Actual costs	
4. Telecommunications			
A. Local		Non-reimbursable	
B. Non-Local		Actual Costs	
5. Computer Services		Non-reimbursable	
6. Travel Expenses		In accordance with Chapter 112.061, F.S.;	
		and further defined in the City of	
		Kissimmee	
		Employee Handbook	
7. Postage, Fed Express, UPS		Actual Costs	
8. Pre-approved Equipment			
(includes purchase and rental of equipment used in project)		Actual Costs	

EXHIBIT D

AFFIDAVIT CERTIFICATION
IMMIGRATION LAWS

SOLICITATION NO.: RFP2023-006 PROJECT NAME: Architectural and Engineering Services

THE CITY OF KISSIMMEE, a MUNICIPAL CORPORATION OF THE STATE OF FLORIDA (CITY), WILL NOT INTENTIONALLY AWARD CITY CONTRACTS TO ANY CONTRACTOR WHO KNOWINGLY EMPLOYS UNAUTHORIZED ALIEN WORKERS, CONSTITUTING A VIOLATION OF THE EMPLOYMENT PROVISIONS CONTAINED IN 8 U.S.C. SECTION 1324 a(e) {SECTION 274A(e) OF THE IMMIGRATION AND NATIONALITY ACT ("INA").

THE CITY MAY CONSIDER THE EMPLOYMENT BY ANY CONTRACTOR OF UNAUTHORIZED ALIENS A VIOLATION OF SECTION 274A(e) OF THE INA. **SUCH VIOLATION BY THE RECIPIENT OF THE EMPLOYMENT PROVISIONS CONTAINED IN SECTION 274A(e) OF THE INA SHALL BE GROUNDS FOR UNILATERAL CANCELLATION OF THE CONTRACT BY THE CITY.**

BIDDER ATTESTS THAT THEY ARE FULLY COMPLIANT WITH ALL APPLICABLE IMMIGRATION LAWS (SPECIFICALLY TO THE 1986 IMMIGRATION ACT AND SUBSEQUENT AMENDMENTS).

Attest:

CONSULTANT

By: James Barton



Corporate Secretary

Title: President

STATE OF FLORIDA
COUNTY OF Palm Beach

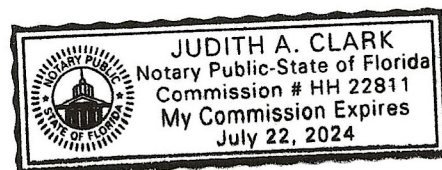
The foregoing instrument was acknowledged before me this 17th day of November, 2023, by means of ☒ physical presence or ☐ online notarization, by James Barton, PE, LEED AP (President) for (Florida Technical Consultants, LLC), a Florida corporation, **who is personally known to me** or has produced identification.

Notary Seal:

Notary: 

Print Name: _____

My Commission Expires: _____



Architectural/Engineering Services Master Agreement

THIS ARCHITECTURAL/ENGINEERING MASTER SERVICES AGREEMENT (“Agreement”) is entered into as of the Effective Date (hereinafter defined) by and between the City of Kissimmee, a Municipal Corporation of the State of Florida, by and through its Commission, 101 Church Street, Kissimmee, Florida 34741 (hereinafter referred to as the “CITY”), and **HARVARD JOLLY-PBK** 100 S. Orange Avenue, Suite 400, Orlando, FL 32801, whose Federal Identification Number is: 59-1430579 (hereinafter referred to as the “CONSULTANT”).

WITNESSETH:

WHEREAS, the CITY requires certain architectural and/or engineering services to be performed in the City of Kissimmee; and,

WHEREAS, the CITY has solicited for these professional services via RFQ2023-006, an advertised request for qualifications (the “RFQ”), and has received numerous responsive bids thereto; and

WHEREAS, the CONSULTANT remains agreeable to providing the CITY the professional services and represents that it is capable and prepared to do so;

NOW, THEREFORE, in consideration of the promises contained herein, the CITY and the CONSULTANT (collectively, the “Parties”) hereby agree, as follows:

1.0 **Term**

1.1 This Agreement shall take effect on the date of its execution by the Mayor, The City of Kissimmee Commission (the “Effective Date”).

1.2 The term of this Agreement shall be for a five (5) year period, commencing upon the Effective Date, unless otherwise terminated as provided herein.

2.0 **CONSULTANT –SERVICES -- GENERAL**

2.1 The CONSULTANT shall provide the CITY complete architectural and engineering services necessary to provide construction documents and administration for various projects (individually a “Project” and collectively, the “Projects”) throughout the Term, as may be further specifically designated and authorized by the CITY in writing. Such authorization shall be in the form of either a Consultant Services Authorization (“CSA”) or a Contract Purchase Order (“CPO”), and all provisions of this Agreement shall apply to the CSA or CPO with full force and effect as if appearing in full within each CSA or CPO. Each CSA or CPO will set forth a specific Scope of Services, maximum limit of compensation, schedule, liquidated damages, and completion date, and shall become effective upon the due execution. When the CONSULTANT and the CITY enter into a CSA or CPO where the term

thereof expires on a date that is later than the date of this Agreement, the CONSULTANT and the CITY agree that the terms of this Agreement and any amendments, attachments, or provisions thereof are automatically extended until the expiration or full completion of the requirements of the CSA or CPO, as applicable, have been performed. Cancellation by the CITY of any remaining service prior to the full completion of the requirements of the CSA/CPO shall cause the terms of this Agreement to terminate at the same time. This provision only applies when the expiration of the CSA/CPO extends beyond the expiration of this Agreement. It does not apply when a CSA/CPO expires or is cancelled prior to the expiration of this Agreement.

2.2 The CONSULTANT is not authorized to undertake any Project without a duly executed CSA or CPO, which shall specify the work to be performed. The CONSULTANT recognizes that the CITY may employ several different CONSULTANTS and engineers to perform the services described herein and that the CONSULTANT has not been employed as the exclusive agent to perform any such services.

2.3 In addition to the services described in this Section 2.0, the RFQ, the Consultant's responsive proposal thereto, and otherwise set forth and described in the body of this Agreement, the CONSULTANT may also be authorized to perform, via a duly executed CSA or CPO, any or all of those services set forth and further described in **Exhibit "B"**, attached hereto and incorporated herein (collectively, the "Services").

3.0 **Project Administration Services**

3.1 The CONSULTANT shall manage the CONSULTANT'S services and administer the Project. The CONSULTANT shall consult with the CITY, research applicable design criteria, attend Project meetings, and communicate with members of the Project team and issue progress reports. The CONSULTANT shall coordinate the services provided by the CONSULTANT and the CONSULTANT'S sub-consultants with those services provided by the CITY and the CITY'S consultants.

3.2 When Project requirements have been sufficiently identified, the CONSULTANT may be required to prepare, and periodically update, a Project schedule that shall identify milestone dates for decisions required of the CITY, design services furnished by the CONSULTANT, completion of documentation provided by the CONSULTANT, commencement of construction and Substantial Completion of the Work.

3.3 The CONSULTANT shall consider the value of alternative materials, building systems and equipment, together with other considerations based on program, budget and aesthetics in developing the design for the Project.

3.4 Upon request of the CITY, the CONSULTANT shall make a presentation to explain the design of the Project to representatives of the CITY.

3.5 The CONSULTANT shall submit design documents to the CITY at intervals appropriate to the design process for purposes of evaluation and approval by the CITY. The CONSULTANT shall be entitled to rely on approvals received from the CITY in the further development of the design.

3.6 The CONSULTANT shall assist the CITY in connection with the CITY'S responsibility for filing documents required for the approval of governmental authorities having jurisdiction over the Project.

3.7 EVALUATION OF BUDGET AND COST OF THE WORK.

3.7.1 When the Project requirements have been sufficiently identified, the CONSULTANT shall prepare a preliminary estimate of the Cost of the Work. This estimate may be based on current area, volume or similar conceptual estimating techniques. The CONSULTANT shall advise the CITY of any adjustments to previous estimates of the Cost of the Work indicated by changes in Project requirements or general market conditions. If at any time the estimate of the Cost of the Work exceeds the CITY'S budget, the CONSULTANT shall make appropriate recommendations to the CITY to adjust the Project's size, quality or budget, and the CITY shall cooperate with the CONSULTANT in making such adjustments.

3.7.2 Evaluations of the CITY'S budget for the Project, the preliminary estimate of the Cost of the Work, and updated estimates of the Cost of the Work represent the CONSULTANT'S judgment as a design professional familiar with the construction industry. It is recognized, however, that neither the CONSULTANT nor the CITY has control over the cost of labor, materials or equipment, over the CONSULTANT'S methods of determining bid prices, or over competitive bidding, market or negotiating conditions. Accordingly, the CONSULTANT cannot and does not warrant or represent that bids or negotiated prices will not vary from the CITY'S budget for the Project or from any estimate of the Cost of the Work or evaluation prepared or agreed to by the CONSULTANT.

3.7.3 In preparing estimates of the Cost of the Work, the CONSULTANT shall be permitted to include contingencies and allowances for design, bidding and price escalation; to determine what materials, equipment, component systems and types of construction are to be included in the Contract Documents; to make reasonable adjustments in the scope of the Project and to include in the Contract Documents alternate bids as may be necessary to adjust the estimated Cost of the Work to meet the CITY'S budget for the Cost of the Work.

3.7.4 If bidding or negotiation has not commenced within 90 days after the CONSULTANT submits the Construction Documents to the CITY, the

budget for the Cost of the Work shall be adjusted to reflect changes in the general level of prices in the construction industry.

- 3.7.5** If the budget for the Cost of the Work is exceeded by the lowest bona fide bid or negotiated proposal, and the CITY elects to revise the Project scope to reduce the Cost of the Work, then the CONSULTANT, without additional charge, shall modify the Contract Documents as necessary to comply with the fixed limit as a condition of this Agreement.

4.0 Evaluation and Planning Services

- 4.1** The CITY may furnish a program setting forth the CITY's objectives, schedule, constraints and criteria, including space requirements and relationships, special equipment, systems and site requirements. The CONSULTANT shall provide a preliminary evaluation of the information furnished by the CITY under this Agreement, including the CITY'S program and schedule requirements and budget for the Cost of the Work, each in terms of the other. The CONSULTANT shall review such information to ascertain that it is consistent with the requirements of the Project and shall notify the CITY of any other information or consultant services that may be reasonably needed for the Project.
- 4.2** The CONSULTANT shall provide a preliminary evaluation of the CITY's site for the Project based on the information provided by the CITY of site conditions, and the CITY'S program, schedule and budget for the Cost of the Work.

5.0 Design Services

5.1 SCHEMATIC DESIGN DOCUMENTS

5.1.1 The CONSULTANT shall provide Schematic Design Documents based on the mutually agreed-upon program, schedule, and budget for the Cost of the Work. The documents shall establish the conceptual design of the Project illustrating the scale and relationship of the Project components. The Schematic Design Documents shall include a conceptual site plan, if appropriate, and preliminary building plans, sections and elevations. At the CONSULTANT's option, the Schematic Design Documents may include study models, perspective sketches, electronic modeling or combinations of these media. Preliminary selections of major building systems and construction materials shall be noted on the drawings or described in writing.

5.2 DESIGN DEVELOPMENT DOCUMENTS

5.2.1 The CONSULTANT shall provide Design Development Documents based on the approved Schematic Design Documents and updated budget for the Cost of the Work. The Design Development Documents shall illustrate and describe the refinement of the design of the Project, establishing the scope, relationships, forms, size and appearance of the Project by means of

plans, sections and elevations, typical construction details, and equipment layouts. The Design Development Documents shall include specifications that identify major materials and systems and establish in general their quality levels.

5.3 CONSTRUCTION DOCUMENTS

5.3.1 The CONSULTANT shall provide Construction Documents based on the approved Design Development Documents and updated budget for the Cost of the Work. The Construction Documents shall set forth in detail the requirements for construction of the Project. The Construction Documents shall include Drawings and Specifications that establish in detail the quality levels of materials and systems required for the Project.

5.3.2 During the development of the Construction Documents, the CONSULTANT shall assist the CITY in the development and preparation of: (1) bidding and procurement information which describes the time, place and conditions of bidding; bidding or proposal forms; and the form of agreement between the CITY and the CONSULTANT; and (2) the Conditions of the Contract for Construction (General, Supplementary and other Conditions). The CONSULTANT also shall compile the Project Manual that includes the Conditions of the Contract for Construction and Specifications and may include bidding requirements and sample forms.

5.3.3 Progress submittals of design documents shall be delivered to the CITY for review and approval, at the 50% Construction Document Phase, the 100% Construction Document to be submitted for permit, and the 100% Construction Documents, approved for construction for each subproject. Such submittals shall be reissued as necessary to secure approval. CITY comments shall be incorporated into the next phase of the work. CONSULTANT is entitled to rely upon CITY'S approval that the design conforms to the program at each stage. The CITY and the CONSULTANT agree that they shall not proceed to the next phase, including the Construction Phase, until they have mutually agreed that the project is feasible in accordance with the budget approved by the CITY.

6.0 Contract Administration Services

6.1 GENERAL ADMINISTRATION

6.1.1 The CONSULTANT shall provide administration of the Contract between the CITY and the Contractor as set forth in the CITY'S Agreement with their Contractor.

6.1.2 The CONSULTANT'S responsibility to provide the Contract Administration Services under this Agreement commences with the Notice to Proceed to the

Contractor and terminates at the issuance to the CITY of the final Certificate for Payment. However, the CONSULTANT may be entitled to a Change in Services in accordance with Section 47.2 if Contract Administration Services extend 60 days after the date of Final Completion of the Work.

- 6.1.3** The CONSULTANT shall be a representative of, and shall advise and consult with, the CITY during the provision of the Contract Administration Services. The CONSULTANT shall have authority to act on behalf of the CITY only to the extent provided in this Agreement unless otherwise modified by written amendment.
- 6.1.4** Duties, responsibilities and limitations of authority of the CONSULTANT under this Section 6.0 shall not be restricted, modified or extended without written agreement of the CITY and CONSULTANT.
- 6.1.5** The CONSULTANT shall review properly prepared, timely requests by the Contractor for additional information about the Contract Documents. A properly prepared request for additional information about the Contract Documents shall be in a form prepared or approved by the CONSULTANT and shall include a detailed written statement that indicates the specific Drawings or Specifications in need of clarification and the nature of the clarification requested.
- 6.1.6** If deemed appropriate by the CONSULTANT, the CONSULTANT shall on the CITY'S behalf prepare, reproduce and distribute supplemental Drawings and Specifications in response to requests for information by the Contractor.
- 6.1.7** The CONSULTANT shall interpret and decide matters concerning performance of the CITY and Contractor under, and requirements of, the Contract Documents on written request of either the CITY or Contractor. The CONSULTANT'S response to such requests shall be made in writing within any time limits agreed upon or otherwise with reasonable promptness.
- 6.1.8** Interpretations and decisions of the CONSULTANT shall be consistent with the intent of and reasonably inferable from the Contract Documents and shall be in writing or in the form of drawings. When making such interpretations and initial decisions, the CONSULTANT shall endeavor to secure faithful performance by both CITY and Contractor, shall not show partiality to either, and shall not be liable for the results of interpretations or decisions so rendered in good faith.
- 6.1.9** The CONSULTANT shall render initial decisions on claims, disputes or other matters in question between the CITY and CONSULTANT as provided in the Contract Documents. However, the CITY'S decisions on matters relating to aesthetic effect shall be final if consistent with the intent expressed in the Contract Documents.

6.2 EVALUATIONS OF THE WORK

6.2.1 The CONSULTANT, as a representative of the CITY, shall visit the site at intervals appropriate to the stage of the Contractor's operations, or as otherwise agreed by the CITY and the CONSULTANT, (1) to become generally familiar with and to keep the CITY informed in writing about the progress and quality of the portion of the Work completed, (2) to endeavor to guard the CITY against defects and deficiencies in the Work, and (3) to determine in general if the Work is being performed in a manner indicating that the Work, when fully completed, will be in accordance with the Contract Documents. However, the CONSULTANT shall not be required to make exhaustive or continuous on-site inspections to check the quality or quantity of the Work. The CONSULTANT shall neither have control over or charge of, nor be responsible for, the construction means, methods, techniques, sequences or procedures, or for safety precautions and programs in connection with the Work, since these are solely the Contractor's rights and responsibilities under the Contract Documents.

6.2.2 The CONSULTANT shall report to the CITY known deviations from the Contract Documents and from the most recent construction schedule submitted by the Contractor. However, the CONSULTANT shall not be responsible for the Contractor's failure to perform the Work in accordance with the requirements of the Contract Documents. The CONSULTANT shall be responsible for the CONSULTANT'S negligent acts or omissions, but shall not have control over or charge of and shall not be responsible for acts or omissions of the Contractor, Sub-contractors, or their agents or employees, or of any other persons or entities performing portions of the Work.

6.2.3 The CONSULTANT shall at all times have access to the Work wherever it is in preparation or progress.

6.2.4 Except as may otherwise be provided in the Contract Documents or when direct communications have been specially authorized in writing, the CONSULTANT and Contractor shall communicate through the CITY. Communications by and with the CONSULTANT'S sub-consultants shall be through the CONSULTANT. The CONSULTANT shall respond to the CITY with the CONSULTANT'S written responses or correspondence within a reasonable length of time.

6.2.5 The CONSULTANT shall have authority to reject Work that does not conform to the Contract Documents. Whenever the CONSULTANT considers it necessary or advisable, the CONSULTANT, with the CITY'S approval, will have authority to require inspection or testing of the Work in accordance with the provisions of the Contract Documents, whether or not such Work is fabricated, installed or completed. However, neither this

authority of the CONSULTANT nor a decision made in good faith, either to exercise or not to exercise such authority, shall give rise to a duty or responsibility of the CONSULTANT to the Contractor, Sub-contractor, material and equipment suppliers, their agents or employees or other persons or entities performing portions of the Work. If the CONSULTANT requires inspection or testing of the Work without the CITY'S prior approval, the Work is deemed acceptable, the CONSULTANT will be responsible for any compensation due the Contractor.

6.3 CERTIFICATION OF PAYMENTS TO CONTRACTOR

6.3.1 The CONSULTANT shall review and certify the amounts due the Contractor and shall issue Certificates for Payment in such amounts. The CONSULTANT'S certification for payment shall constitute a representation to the CITY, based on the CONSULTANT'S evaluation of the Work as provided in Paragraph 6.2 and on the data comprising the Contractor's Application for Payment, that the Work has progressed to the point indicated and that, to the best of the CONSULTANT'S knowledge, information and belief, the quality of the Work is in accordance with the Contract Documents. The foregoing representations are subject (1) to an evaluation of the Work for conformance with the Contract Documents upon Substantial Completion, (2) to results of subsequent tests and inspections, (3) to correction of minor deviations from the Contract Documents prior to completion, and (4) to specific qualifications expressed by the CONSULTANT.

6.3.2 The issuance of a Certificate for Payment shall not be a representation that the CONSULTANT has (1) made exhaustive or continuous on-site inspections to check the quality or quantity of the Work, (2) reviewed construction means, methods, techniques, sequences or procedures, (3) reviewed copies of requisitions received from Sub-contractors and material suppliers and other data requested by the CITY to substantiate the Contractor's right to payment, or (4) ascertained how or for what purpose the Contractor has used money previously paid on account of the Contract Sum.

6.3.3 The CONSULTANT shall maintain a record of the Contractor's Applications for Payment.

6.4 SUBMITTALS

6.4.1 The CONSULTANT shall review and approve or take other appropriate action upon the Contractor's submittals such as Shop Drawings, Product Data and Samples, but only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. The CONSULTANT'S action shall be taken with such reasonable promptness as to cause no delay in the Work or in the activities of the CITY, Contractor or separate contractor. Review of such submittals is

not conducted for the purpose of determining the accuracy and completeness of other details such as dimensions and quantities, or for substantiating instructions for installation or performance of equipment or systems, all of which remain the responsibility of the Contractor as required by the Contract Documents. The CONSULTANT'S review shall not constitute approval of safety precautions or, unless otherwise specifically stated by the CONSULTANT, of any construction means, methods, techniques, sequences or procedures. The CONSULTANT'S approval of a specific item shall not indicate approval of an assembly of which the item is a component.

6.4.2 The CONSULTANT shall maintain a record of submittals and copies of submittals supplied by the Contractor in accordance with the requirements of the Contract Documents.

6.4.3 If professional design services or certifications by a design professional related to systems, materials or equipment are specifically required of the Contractor by the Contract Documents, the CONSULTANT shall specify appropriate performance and design criteria that such services must satisfy. Shop Drawings and other submittals related to the Work designed or certified by the design professional retained by the Contractor shall bear such professional's written approval when submitted to the CONSULTANT. The CONSULTANT shall be entitled to rely upon the adequacy, accuracy and completeness of the services, certifications or approvals performed by such design professionals.

6.5 CHANGES IN THE WORK

6.5.1 The CONSULTANT shall prepare Construction Change Directives and assist the City with the preparation of change orders and allowance authorizations for the CITY'S approval and execution in accordance with the Contract Documents. The CONSULTANT may authorize minor changes in the Work not involving an adjustment in Contract Sum or an extension of the Contract Time, which are consistent with the intent of the Contract Documents. If necessary, the CONSULTANT shall prepare, reproduce and distribute Drawings and Specifications to describe Work to be added, deleted or modified.

6.5.2 The CONSULTANT shall review properly prepared, timely requests by the CITY or Contractor for changes in the Work, including adjustments to the Contract Sum or Contract Time. A properly prepared request for a change in the Work shall be accompanied by sufficient supporting data and information to permit the CONSULTANT to make a reasonable determination without extensive investigation or preparation of additional drawings or specifications. If the CONSULTANT determines that requested changes in the Work are not materially different from the requirements of the

Contract Documents, the CONSULTANT may issue an order for a minor change in the Work or recommend to the CITY that the requested change be denied.

6.5.3 If the CONSULTANT determines that implementation of the requested changes would result in a material change to the Contract that may cause an adjustment in the Contract Time or Contract Sum, the CONSULTANT shall make a recommendation to the CITY, who may authorize further investigation of such change. Upon such authorization, and based upon information furnished by the Contractor, if any, the CONSULTANT shall estimate the additional cost and time that might result from such change, including any additional costs attributable to a Change in Services of the CONSULTANT. With the CITY'S approval, the CONSULTANT shall incorporate those estimates into a Change Order or other appropriate documentation for the CITY'S execution or negotiation with the Contractor.

6.5.4 The CONSULTANT shall maintain records relative to changes in the Work.

6.6 PROJECT COMPLETION

6.6.1 The CONSULTANT shall conduct inspections to determine the date or dates of Substantial Completion and the date of Final Completion, shall receive from the Contractor and forward to the CITY, for the CITY'S review and records, written warranties and related documents required by the Contract Documents and assembled by the Contractor, and shall issue a final Certificate for Payment based upon a final inspection indicating the Work complies with the requirements of the Contract Documents.

6.6.2 The CONSULTANT'S inspection shall be conducted with the CITY'S Designated Representative to check conformance of the Work with the requirements of the Contract Documents and to verify the accuracy and completeness of the list submitted by the CONSULTANT of Work to be completed or corrected.

6.6.3 When the Work is found to be substantially complete, the CONSULTANT shall inform the CITY about the balance of the Contract Sum remaining to be paid the Contractor, including any amounts needed to pay for final completion or correction of the Work.

6.6.4 The CONSULTANT shall receive from the Contractor and forward to the CITY: (1) consent of surety or sureties, if any, to reduction in or partial release of retainage or the making of final payment and (2) affidavits, receipts, releases and waivers of liens or bonds indemnifying the CITY against liens.

7.0 **Facility Operation Services**

7.1 The CONSULTANT shall meet with the CITY or the CITY'S Designated Representative promptly after Substantial Completion to review the need for facility operation services.

7.2 Upon request of the CITY, and prior to the expiration of one year from the date of Substantial Completion, the CONSULTANT shall conduct a meeting with the CITY and the CITY'S Designated Representative to review the facility operations and performance and to make appropriate recommendations to the CITY.

8.0 **Additional Services**

8.1 The CONSULTANT may be authorized, via a duly executed CSA or CPO, to perform any or all of the additional services as set forth and further described on **Exhibit "B"**.

8.2 The following minimum Design and Contract Administration Services shall be provided by the CONSULTANT without a Change in Services in accordance with Section 47.2:

8.2.1 A reasonable number of reviews of each Shop Drawing, Product Data item, sample and similar submittal of the CONSULTANT.

8.2.2 Up to two (2) inspections for any portion of the Work to determine whether such portion of the Work is substantially complete in accordance with the requirements of the Contract Documents.

8.2.3 Up to two (2) inspections for any portion of the Work to determine final completion.

8.3 The following Design and Contract Administration Services shall be provided by the CONSULTANT as a Change in Services in accordance with Section 47.2:

8.3.1 Change Orders and Construction Change Directives requiring evaluation of proposals, including the preparation or revision of Instruments of Services, with prior approval by CITY;

8.3.2 Providing consultation concerning replacement of Work resulting from fire or other cause during construction;

8.3.3 Evaluation of substitutions proposed by the CITY'S consultants or contractors and making subsequent revisions to the Instruments of Service, with prior approval by CITY.

8.3.4 Preparation of design and documentation for alternate bid or proposal requests proposed by the CITY after the Guaranteed Maximum Price is established.

8.3.5 Contract Administration Services provided 60 (sixty) days after the date of Final Completion of the Work, as may be requested by the CITY.

8.4 The CONSULTANT shall furnish or provide the following services only if specifically designated:

- 8.4.1 Programming
- 8.4.2 Land Survey Services
- 8.4.3 Geotechnical Services
- 8.4.4 Space Schematics/Flow Diagrams
- 8.4.5 Existing Facilities Surveys
- 8.4.6 Economic Feasibility Studies
- 8.4.7 Site Analysis
- 8.4.8 Environmental Studies and Reports
- 8.4.9 User-Supplied Data
- 8.4.10 Schedule Development and Monitoring
- 8.4.11 Civil Design
- 8.4.12 Landscape Design
- 8.4.13 Interior Design
- 8.4.14 Value Analysis
- 8.4.15 Cost Estimating
- 8.4.16 On-Site Project Representation
- 8.4.17 Construction Management
- 8.4.18 Start-up Assistance
- 8.4.19 Record Drawings
- 8.4.20 Post-Contract Evaluation
- 8.4.21 Tenant-Related Services
- 8.4.22 Underground Field Drainage

9.0 **Compensation**

- 9.1 In consideration of the Services provided by the CONSULTANT pursuant to this Agreement, the CITY shall pay CONSULTANT compensation which may be negotiated as either a not-to-exceed price or a lump sum amount, in the CITY's sole discretion.
- 9.2 In the event a not to exceed price is negotiated, compensation shall be billed and paid based on and in accordance with the Hourly Rate Schedule attached hereto and incorporated herein as **Exhibit "A"**. The Hourly Rate Schedule identifies all job

classifications which will perform billable services pursuant to this Agreement and the fee for each job classification. Performance of work by personnel in job classifications not listed on the fee schedule will result in nonpayment for such services.

- 9.3 All invoices must reference this Agreement number, using an invoice form approved by the CITY.
- 9.4 Each individual invoice shall be due and payable forty-five (45) days after receipt by the CITY of a correct, fully documented, invoice, in form and substance satisfactory to the CITY with all appropriate cost substantiations attached. All invoices shall be delivered to:

The City of Kissimmee

Public Works & Engineering

Attention: Facilities Management Director

101 Church Street

Kissimmee, FL 34741

- 9.5 In order for both parties herein to close their books and records for a particular Project, the CONSULTANT will clearly state "Final Invoice" on the CONSULTANT's final/last billing to the CITY for such Project. This certifies that all services have been properly performed and all charges and costs have been invoiced to the CITY. Since this account will thereupon be closed, any and other further charges if not properly included on this final invoice are waived by the CONSULTANT.
- 9.6 Payment of the final invoice for any particular Project shall not constitute evidence of the CITY's acceptance of the Work or Services.
- 9.7 Pursuant to Section 9.2, if a not to exceed fee is negotiated, invoices shall be accompanied by time and task records for all billable hours appearing on the invoice. Alternatively, if a lump sum amount is negotiated, invoices shall be made upon the completion of each phase of the work in proportion to the Services performed, as specifically set forth in the applicable CSA or CPO. Additional documentation may be requested by the CITY and, if so requested, shall be furnished by the CONSULTANT to the CITY Auditor's satisfaction.
- 9.8 A contract amendment/change order may be executed by both parties, after Substantial Completion, to incorporate any additional design fees due to the CONSULTANT. The amendment shall be based upon 7% of the additional cost of the work that has been added to the project where the CONSULTANT participated in the design process.
- 9.9 If the services of the CONSULTANT are changed as described in Section 47.2.1 or

47.2.2, the CONSULTANT'S compensation shall be adjusted. Such adjustment shall be computed as a fixed fee on a task-by-task basis, or, in the discretion of the CITY, in an otherwise equitable manner. Adjustments to the CONSULTANT'S compensation may be approved by the Facilities Management Director, providing the compensation adjustment does not exceed the amount specified in the applicable CSA or CPO.

- 9.10 Forty (40) calendar days shall be allowed for the CITY's inspection and approval of the goods and services for which any invoice has been submitted.
- 9.11 No deduction shall be made from the CONSULTANT's compensation on account of penalty, liquidated damages, or other sums withheld from payments to contractors.
- 9.12 If any work designed or specified by the CONSULTANT during any phase of service is abandoned or suspended in whole or in part, the CONSULTANT is to be paid for the service performed on account of it prior to receipt of written notice from the CITY of such abandonment or suspension, together with reimbursements then due and any terminal expense resulting from abandonment or suspension for more than three months.

10.0 **Reimbursable Expense**

10.1 All requests for payment of out-of-pocket expenses eligible for reimbursement under the terms of this Agreement shall include copies of paid receipts, invoices or other documentation acceptable to the CITY. Such documentation shall be sufficient to establish that the expense was actually incurred and necessary in the performance of the Scope of Work described in this Agreement.

10.2 Reimbursable Expenses are the actual, pre-approved, expenses incurred directly in connection with the applicable Consultant Services Authorization, and include:

- Overnight Deliveries
- Reproduction
- Sub-Consultant
- Long Distance Telephone Calls (excluding Florida cities located outside the boundaries of Osceola County)

10.3 Mileage shall be reimbursed in accordance with Section 112.061, Florida Statutes, for pre-approved out-of-county travel (excluding travel from home offices located outside of Osceola County to the Osceola County line).

10.4 Reimbursable Expenses, including sub-consultants, shall be reimbursed at cost.

10.5 Pre-approved travel costs shall be reimbursed in accordance with Section 112.061, Florida Statutes.

10.6 All assets, i.e. durable goods, purchased as reimbursable expenses become the property of the CITY upon completion of the work for which the asset was utilized. All such assets must be surrendered by delivery to the City of Kissimmee Public Works and Engineering Division offices upon demand termination of the Agreement or the conclusion of the project, whichever occurs first.

10.7 The CITY shall reimburse the CONSULTANT for any documents required over and above the number specified in this Agreement per the City's Reimbursable Schedule that is attached hereto as **Exhibit "C"**.

11.0 **Project Team**

11.1 The Project Team, including the CITY'S Designated Representative and the CONSULTANT'S Designated Representative, shall be as specified in the applicable CSA or CPO.

11.2 The Commission (the "Board") hereby authorizes the CITY'S Designated Representative to act as the Board's agent and execute documents associated with a particular project. Examples of these documents are Notices of Commencements, Certificates of Substantial and Final Completion and permits from applicable agencies.

11.3 The persons or entities, in addition to the CITY'S Designated Representative, who have rights to review the CONSULTANT'S submittals to the CITY, shall be as specified in the applicable CSA or CPO.

11.4 The CITY'S other consultants and the CONSULTANT'S sub-consultants or any other person or entity retained at the CONSULTANT'S expense shall be as specified in the applicable CSA or CPO.

12.0 **Consultant's Standard of Care**

12.1 The CONSULTANT'S services shall be performed as expeditiously as is consistent with professional skill and care and the orderly progress of the Project. The CONSULTANT shall submit for the CITY'S approval a schedule for the performance of the CONSULTANT'S services which initially shall be consistent with the time periods established in the applicable CSA or CPO and which shall be adjusted, if necessary, as the Project proceeds. This schedule shall include allowances for periods of time required for the CITY'S review, for the performance of the CITY'S consultants, and for approval of submissions by authorities having jurisdiction over the Project. The CONSULTANT or CITY shall not, except for reasonable cause, exceed time limits established by this schedule approved by the CITY.

12.2 The CONSULTANT'S Designated Representative, identified in the

applicable CSA or CPO, shall be authorized to act on the CONSULTANT'S behalf with Respect to the Project.

12.3 The CONSULTANT shall maintain the confidentiality of information specifically designated as confidential by the CITY, unless withholding such information would violate the law, create the risk of significant harm to the public or prevent the CONSULTANT from establishing a claim or defense in an adjudicatory proceeding. The CONSULTANT shall require of the CONSULTANT'S consultants similar agreements to maintain the confidentiality of information specifically designated as confidential by the CITY.

12.4 Except with the CITY'S knowledge and prior express written consent, the CONSULTANT shall not engage in any activity, or accept any employment, interest or contribution that would reasonably appear to compromise the CONSULTANT'S professional judgment with respect to the Project.

12.5 The CONSULTANT shall review laws, codes and regulations applicable to the CONSULTANT'S services. The CONSULTANT shall design the Project to conform to the requirements imposed by governmental authorities having jurisdiction over the Project.

12.6 The CONSULTANT shall be entitled to rely on the accuracy and completeness of services and information furnished by the CITY. The CONSULTANT shall provide prompt written notice to the CITY if the CONSULTANT becomes aware of any errors, omissions or inconsistencies in such services or information.

12.7 The CONSULTANT has represented to the CITY that it has the personnel and experience necessary to perform the work in a professional and workmanlike manner.

12.8 The CONSULTANT shall exercise the same degree of care, skill, and diligence in the performance of the Services as is provided by a professional of like experience, knowledge and resources, under similar circumstances.

12.9 The CONSULTANT shall, at no additional cost to CITY, re-perform services which fail to satisfy the foregoing standard of care or otherwise fail to meet the requirement of this Agreement.

12.10 The CONSULTANT shall use skilled and competent personnel to perform the services.

13.0 **Insurance**

13.1 **General Provisions**

13.1.1 The CONSULTANT shall maintain, at all times, the following minimum levels of insurance and shall, without in any way altering their liability, obtain, pay for and maintain insurance for the coverage and amounts of coverage not less than those set forth below and provide the CITY with a certified copy of each policy applicable to this Agreement followed thereafter by an annual Certificate of Insurance satisfactory to the CITY to evidence such coverage before any work commences. Such certificates will provide that there shall be no termination, non-renewal, modification or expiration of such coverage without thirty (30) days prior written notice to the CITY .

13.1.2 The CITY shall be named as an additional insured on all CONSULTANT policies related to the project, excluding professional liability and worker's compensation. The general liability and workers' compensation policies shall contain a waiver of subrogation in favor of the CITY. All insurance coverage shall be written with an insurer having an A.M. Best Rating of a least the "A" category and size category of VIII.

13.1.3 The CONSULTANT's self-insured retention or deductible per line of coverage shall not exceed \$25,000.00 without the permission of the CITY.

13.1.4 Any failure by the CONSULTANT to comply with the requirements of this section to provide insurance, the CITY may, at its option, on notice to the CONSULTANT, suspend the work for cause until there is full compliance;

13.1.5 The CITY may, at its sole discretion, purchase such insurance at CONSULTANT's expense provided that the CITY shall have no obligation to do so and if the CITY shall do so, it shall not relieve CONSULTANT of its obligation to obtain insurance.

13.1.6 The CONSULTANT shall not be relieved of or excused from the obligation to obtain and maintain such insurance amount and coverages.

13.1.7 All CONSULTANT's sub-consultants shall be required to include CITY and CONSULTANT as additional insured on their General Liability Insurance policies.

13.1.8 In the event that sub-consultants used by the CONSULTANT do not have insurance, or do not meet the insurance limits, CONSULTANT shall indemnify and hold harmless the CITY for any claim in excess of the sub-consultants' insurance coverage.

13.1.9 The CONSULTANT shall not commence work under this Agreement until all insurance required as stated herein has been obtained and such insurance has been approved by the CITY.

13.2 Comprehensive Automobile Liability Insurance. \$1,000,000.00 combined single limit of liability for bodily injuries, death and property damage resulting from any one occurrence, including all owned, hired, and non-owned vehicles.

13.3 Commercial General Liability. \$1,000,000.00 combined single limit of liability for bodily injuries, death and property damage, and personal injury resulting from any one occurrence, including the following coverages:

13.3.1 Premises and Operations:

Broad Form Commercial General Liability Endorsement to include Blanket Contractual liability (specifically covering, but not limited to, the contractual obligations assumed by the Firm); Personal Injury (with employment and contractual exclusions deleted); and Broad Form Property Damage coverage.

13.3.2 Independent Contractors:

Delete Exclusion relative to collapse, explosion and underground; Property Damage Hazards; Cross Liability Endorsement; and Contractual liability (specifically covering, but not limited to, the contractual obligations assumed by the Firm)

13.4 Professional Liability Insurance. \$2,000,000 for design errors and omissions, exclusive of defense costs. The CONSULTANT shall be required to provide continuing Professional Liability Insurance to cover each project for a period of two (2) years after the project is completed. Insurance requirements may vary depending on projects as determined by the CITY Director of Risk Management and Insurance. The CITY may require the CONSULTANT to provide a higher level of coverage for a specific Project and time frame.

13.5 Performance, Payment and Other Bonds. CONSULTANT shall furnish Performance and Payment Bonds specific to each Project if required and agreed to under the applicable CSA or CPO for the Project.

13.6 Worker's Compensation. CONSULTANT shall provide, pay for, and maintain worker's compensation insurance on all employees, its agents or subcontractors as required by Florida Statutes.

13.7 Employers' Liability. \$1,000,000.

14.0 **Indemnification**

14.1 General. Having considered the risks and potential liabilities that may exist during the performance of the Services and in consideration of the promises included herein, the CITY and the CONSULTANT agree to allocate such liabilities in accordance with this Section 14.0.

14.2 Indemnification.

14.2.1 The CONSULTANT, to the extent permitted by law, shall indemnify, defend (by counsel reasonably acceptable to the CITY) protect and hold the CITY, and its officers, employees and agents, free and harmless from and against any and all claims, actions, causes of action, liabilities (joint or several), penalties, forfeitures, damages, losses and expenses (including, without limitation, attorneys' fees and costs during negotiation, through litigation and all appeals therefrom), and including, without limitation, any liability or loss resulting from judgments or claims for personal injury, including death, or damage to any property whatsoever, which directly or indirectly result from or arise in connection with (i) the failure of the CONSULTANT to comply with applicable non-conflicting laws, rules or regulations, (ii) the breach by the CONSULTANT of its obligations under this Agreement, (iii) any claim for trademark, patent or copyright infringement arising out of the scope of the CONSULTANT's performance of this Agreement, or (iv) the negligent act, errors or omissions, or intentional or willful misconduct of the CONSULTANT, its sub-consultants, agents, employees and invitees; provided, however, that the CONSULTANT shall not be obligated to defend or indemnify the CITY with respect to any such claims or damages arising out of the CITY's sole negligence.

14.2.2 The CITY's review, comment and observation of the CONSULTANT's work and performance of this Agreement shall in no manner constitute a waiver of the indemnification provisions of this Agreement.

14.2.3 The CONSULTANT agrees that it bears sole legal responsibility for its work and work product, and the work and work product of sub-consultants and their employees, and/or for CONSULTANT's performance of this Agreement and its work product(s).

14.3 Survival. Upon completion of all Services, obligations and duties provided for in this Agreement, or in the event of termination of this Agreement for any reason, the terms and conditions of this Section 14.0 shall survive as if the Agreement were in full force and effect.

15.0 Independent Contractor

15.1 The CONSULTANT undertakes performance of the Services as an independent contractor and shall be wholly responsible for the methods of performance.

15.2 The CITY shall have no right to supervise the methods used, but the CITY shall have the right to observe such performance.

15.3 The CONSULTANT shall work closely with the CITY in performing Services under this Agreement.

15.4 The CONSULTANT shall not pledge the CITY's credit or make it a guarantor of payment or surety for any contract, debt, obligation, judgment, lien or any form of indebtedness and shall have no right to speak for or bind the CITY in any manner.

15.5 The CONSULTANT further warrants and represents that it has no obligation or indebtedness that would impair its ability to fulfill the terms of this Agreement.

16.0 **Authority to Practice**

16.1 The CONSULTANT hereby represents and warrants that it has and will continue to maintain all licenses and approvals required to conduct its business, and that it will at all times conduct its business activities in a reputable manner.

17.0 **Compliance with Laws**

17.1 In performance of the Services, the CONSULTANT will comply with applicable regulatory requirements including federal, state, special district, and local laws, rules, regulations, orders, codes, criteria and standards.

18.0 **Subcontracting**

18.1 The CITY reserves the right to accept the use of any proposed subcontractor or sub-consultant of the CONSULTANT (for purposes of this Section 18.0 referred to as a “subcontractor”), or to reject the selection of a particular subcontractor and to inspect all facilities of any subcontractor.

18.2 If a subcontractor fails to perform or make progress, as required by this Agreement, and it is necessary to replace the subcontractor to complete the work in a timely fashion, the CONSULTANT shall promptly do so, subject to acceptance of the new subcontractor by the CITY. Failure of a subcontractor to timely or properly perform its obligations shall not relieve CONSULTANT of its obligations hereunder.

19.0 **Federal and State Taxes**

19.1 The CITY is exempt from Federal Tax and State Sales and Use Taxes. Upon request, the CITY will provide an exemption certificate to the CONSULTANT. The CONSULTANT shall not be exempted from paying sales tax to its suppliers for materials to fulfill contractual obligations with the CITY, nor shall the CONSULTANT be authorized to use the CITY’s Tax Exemption Number in securing such materials.

20.0 **Public Entity Crimes**

20.1 The CONSULTANT understands and acknowledges that this Agreement with the CITY will be void, in the event the conditions under Section 287.133, Florida Statutes apply to the CONSULTANT, relating to conviction for a public entity crime.

21.0 **CITY’s Responsibilities**

21.1 The CITY shall be responsible for providing access to all CITY project sites, and providing information in the CITY’s possession that may reasonably be required by CONSULTANT, including existing reports, studies, financial information, and other required data that are available in the files of the CITY.

22.0 **Termination of Agreement**

22.1 This Agreement may be terminated by the CONSULTANT upon thirty (30) days prior written notice to the CITY in the event of substantial failure by the CITY to perform in accordance with the terms of the Agreement through no fault of the CONSULTANT.

22.2 This Agreement may be terminated by the CITY with or without cause immediately upon written notice to the CONSULTANT.

22.3 Unless the CONSULTANT is in breach of this Agreement, the

CONSULTANT shall be paid for services rendered to the CITY's satisfaction through the date of termination.

22.4 After receipt of written notice of termination of this Agreement, and except as otherwise directed by the CITY, the CONSULTANT shall:

22.4.1 Stop work on the date and to the extent specified.

22.4.2 Terminate and settle all orders and subcontracts relating to the performance of the terminated work.

22.4.3 Transfer all work in process, completed work, and other material related to the terminated work to the CITY.

22.4.4 Continue and complete all parts of the work that have not been terminated.

22.5 The CONSULTANT shall be paid for services actually rendered to the date of termination.

23.0 **Uncontrollable Forces (Force Majeure)**

23.1 Neither the CITY nor the CONSULTANT shall be considered to be in default of this Agreement if delays in or failure of performance shall be due to Uncontrollable Forces, the effect of which, by the exercise of reasonable diligence, the non-performing party could not avoid. The term "Uncontrollable Forces" shall mean any event which results in the prevention or delay of performance by a party of its obligations under this Agreement and which is beyond the reasonable control of the nonperforming party. It includes, but is not limited to fire, flood, earthquakes, storms, lightning, epidemic, war, riot, civil disturbance, sabotage, and governmental actions.

23.2 Neither Party shall, however, be excused from performance if nonperformance is due to forces which are preventable, removable, or remediable and which the nonperforming party could have, with the exercise of reasonable diligence, prevented, removed or remedied with reasonable dispatch.

23.3 The nonperforming party shall, within a reasonable time of being prevented or delayed from performance by an Uncontrollable Force, give written notice to the other party describing the circumstances and Uncontrollable Forces preventing continued performance of the obligations of this Agreement.

24.0 **Governing Law and Venue**

24.1 This Agreement shall be governed in all respects by the laws of the State of Florida and any litigation with respect thereto shall be brought only in the courts of Osceola County.

25.0 **Non-Discrimination**

25.1 The CONSULTANT warrants and represents that all of its employees are treated equally during employment without regard to race, color, religion, gender, age or national origin.

26.0 **Waiver**

26.1 A waiver by either the CITY or the CONSULTANT of any breach of this Agreement shall not be binding upon the waiving party unless such waiver is in writing. In the event of a written waiver, such a waiver shall not affect the waiving Party's rights with respect to any other or further breach. The making or acceptance of a payment by either party with knowledge of the existence of a default or breach shall not operate or be construed to operate as a waiver of any subsequent default or breach.

27.0 **Severability**

27.1 The invalidity, illegality, or unenforceability of any provision of this Agreement, or the occurrence of any event rendering any portion or provision of this Agreement void, shall in no way affect the validity or enforceability of any other portion or provision of the Agreement.

27.2 Any void provision shall be deemed severed from the Agreement and the balance of the Agreement shall be construed and enforced as if the Agreement did not contain the particular portion or provision held to be void.

27.3 The Parties further agree to reform the Agreement to replace any stricken provision with a valid provision that comes as close as possible to the intent of the stricken provision.

27.4 The provisions of this Section shall not prevent the entire Agreement from being void should a provision which is of the essence of the Agreement be determined to be void.

28.0 **Entirety of Agreement**

28.1 The CITY and the CONSULTANT agree that this Agreement sets forth the entire understanding between the Parties as to the subject matter contained herein, and that there are no promises or understandings between the parties other than those

stated herein.

28.2 This Agreement supersedes all prior agreements, contracts, proposals, representations, negotiations, letters or other communications between the CITY and the CONSULTANT pertaining to the Services, whether written or oral.

29.0 **Modification**

29.1 This Agreement may not be modified, added to, superseded or otherwise altered unless such modifications, additions or other alterations are evidenced in writing signed by both the CITY and the CONSULTANT. Such modifications shall be in the form of a written Amendment executed by both Parties.

30.0 **Successors and Assigns**

30.1 The CITY and the CONSULTANT each binds itself and its partners, successors, assigns, executors, administrators and legal representatives to the other Party to this Agreement and to their partners, successors, executors, administrators, assigns, and legal representatives.

30.2 The CONSULTANT shall not assign this Agreement without the express written approval of the CITY by executed amendment, which approval may be withheld in the CITY's sole and absolute discretion.

30.3 In the event of a merger, the surviving corporation shall be substituted for the contracting party to this Agreement and such substitution shall be affirmed by the City of Kissimmee Commission by executed amendment.

31.0 **Contingent Fees**

31.1 The CONSULTANT warrants that it has not employed or retained any company or person, other than a bona fide employee working solely for the CONSULTANT to solicit or secure this Agreement and that it has not paid or agreed to pay any person, company, corporation, individual or firm, other than bona fide employee working solely for the CONSULTANT, any fee, commission, percentage, gift or any other consideration contingent upon or resulting from the award or making of this Agreement.

32.0 **Truth-In-Negotiation Certificate**

32.1 Execution of this Agreement by the CONSULTANT shall act as the execution of a Truth-in-Negotiation certificate certifying that the wage rates and costs used to determine the compensation provided for in this Agreement are accurate, complete, and current as of the date of the Agreement.

32.2 The said rates and costs shall be adjusted to exclude any significant sums should the CITY determine that the rates and costs were increased due to inaccurate, incomplete or noncurrent wage rates or due to inaccurate representations of fees paid to outside consultants. The CITY shall exercise its rights under this Certificate within one (1) year following payment.

33.0 **Ownership of Documents**

33.1 The CONSULTANT shall be required to cooperate with other consultants relative to providing information requested in a timely manner and in the specified form. Any and all documents, records, disks, original drawings, or other information shall become the property of the CITY for its use and/or distribution as may be deemed appropriate by the CITY. The CONSULTANT is not liable for any damages, injury or costs associated with the CITY's use or distribution of these documents for purposes other than those originally intended by the CONSULTANT.

34.0 **Access and Audits**

34.1 The CONSULTANT shall maintain adequate records to justify all charges and costs incurred in performing the work for at least three (3) years after completion of this Agreement. The CITY shall have access to such books, records, and documents as required in this section for the purpose of inspection or audit during normal business hours at the CONSULTANT's place of business.

34.2 Misrepresentations of billable time or Reimbursable Expenses as determined by the City Auditor to the Commission shall result in the recovery of any resulting overpayments. The CITY's cost of recovery shall be the sole expense of the CONSULTANT, including accounting and legal fees, court costs and administrative expenses.

34.3 Intentional misrepresentations of billable hours and Reimbursable Expenses will be criminally prosecuted to the fullest extent of the law.

34.4 All invoices submitted are subject to audit and demand for refund of overpayment up to three (3) years following completion of all services related to this Agreement.

35.0 **Notice**

35.1 Any notice, demand, communication, or request required or permitted hereunder shall be in writing and delivered in person or sent by Federal-Express or by Certified Mail, postage prepaid as follows:

As to City: **City of Kissimmee**
Public Works & Engineering Department
Facilities Management Division
101 Church Street
Kissimmee, FL 34741
Attn: Purchasing Director

As to Consultant:

35.2 Notices shall be effective when received at the addresses as specified above. Changes in the respective addresses to which such notice is to be directed may be made from time to time by either party by written notice to the other party. Facsimile transmission is acceptable notice effective when received, however, facsimile transmissions received (i.e.; printed) after 5:00 p.m., or on weekends or holidays, will be deemed received on the next business day. The original of the notice must additionally be mailed as required herein.

35.3 Nothing contained in this Article shall be construed to restrict the transmission of routine communications between representatives of the CONSULTANT and the CITY.

36.0 Service of Process

As to City: **City Attorney**
City of Kissimmee
101 Church Street
Kissimmee, Florida 34741

As to Consultant: **HARVARD JOLLY-PBK**

37.0 Key Personnel

37.1 The CONSULTANT shall notify the CITY in the event of key personnel changes which might affect this Agreement. To the extent possible, notification shall be made within ten (10) days prior to any such changes. The CONSULTANT, at the CITY's request, shall remove without consequence to the CITY any subcontractor or employee of the CONSULTANT and replace him/her with another employee having the required skill and experience. The CITY has the right to reject proposed changes in key personnel.

The following personnel shall be considered key personnel:

Name: [Chad Jones, AIA, LEED AP](#)
 [407-667-7727 office](#)
 [314-518-1897 cell](#)

Name: Phil Trezza, AIA, LEED AP
813-286-8206 office
727-692-2412 cell

38.0. Annual Appropriations

38.1 The CONSULTANT acknowledges that the CITY, during any fiscal year, shall not expend money, incur any liability, or enter into any agreement which, by its terms, involves the expenditure of money in excess of the amounts budgeted as available for expenditure during such fiscal year. Any agreement, verbal or written, made in violation of this subsection is null and void, and no money may be paid on such agreement. Nothing herein contained shall prevent the making of agreements for a period exceeding one year, but any agreement so made shall be executory only for the value of the services to be rendered or agreed to be paid for in succeeding fiscal years. Accordingly, the CITY's performance and obligation to pay under this agreement is contingent upon annual appropriation.

39.0 Liquidated Damages

39.1 The parties hereto agree that liquidated damages, in lieu of actual damages and in the amount stated in the applicable CSA or CPO, will be assessed against the CONSULTANT, as the CITY's remedy and not as a penalty, for CONSULTANT'S failure to meet the final deliverable date in the Performance Schedule in the Scope of Work, but only to the extent and in the proportion to CONSULTANT'S fault in causing the delay as compared to other causes, and to the extent the CONSULTANT is not delayed by reasons beyond CONSULTANT'S reasonable control. The parties agree that such assessment of liquidated damages is reasonable and appropriate, as it would be difficult or impossible to accurately determine the amount of actual damages the CITY would or may incur as a consequence of the CONSULTANT's failure described above.

40.0 Unauthorized Alien(s)

40.1 The CONSULTANT shall not employ or utilize unauthorized aliens in the performance of the Services. The CITY shall consider the employment or utilization of unauthorized aliens a violation of Section 274A(e) of the Immigration and Naturalization Act (8 U.S.C. 1324a). Such violation shall be cause for unilateral termination of this Agreement by the CITY. The Form "AFFIDAVIT CERTIFICATION IMMIGRATION LAWS" will be signed by the CONSULTANT and submitted as part of this Agreement.

40.2 To verify employee eligibility, the CONSULTANT may avail itself of a program by the U.S. Immigration and Customs Enforcement called E-Verify. E-Verify is an Internet-based system operated by U.S. Citizenship and Immigration Services (USCIS), part of the Department of Homeland Security (DHS), in partnership with the Social Security Administration (SSA). E-Verify is currently free to employers. E-Verify provides an automated link to Federal databases to help employers determine employment eligibility of new hires and the validity of their Social Security numbers.

41.0 **Limitation of Liability**

IN NO EVENT, SHALL EITHER PARTY BE LIABLE TO THE OTHER PARTY FOR INDIRECT, INCIDENTAL, CONSEQUENTIAL, SPECIAL, EXEMPLARY, OR PUNITIVE DAMAGES OF ANY KIND OR NATURE, INCLUDING LOSS OF PROFIT, WHETHER FORESEEABLE OR NOT, ARISING OUT OF OR RESULTING FROM THE NONPERFORMANCE OR BREACH OF THIS AGREEMENT BY A PARTY WHETHER BASED IN CONTRACT, COMMON LAW, WARRANTY, TORT, STRICT LIABILITY, CONTRIBUTION, INDEMNITY OR OTHERWISE.

42.0 **Default and Remedy**

42.1 If the CONSULTANT materially defaults in its obligations under this Agreement and fails to cure the same within fifteen (15) days after the date the CONSULTANT receives written notice of the default from the CITY, then the CITY shall have the right to (i) immediately terminate this Agreement by delivering written notice to the CONSULTANT, and (ii) pursue any and all remedies available in law, equity, and under this Agreement. If the CITY materially defaults in its obligations under this Agreement and fails to cure the same within fifteen (15) days after the date the CITY receives written notice of the default from the CONSULTANT, then the CONSULTANT shall have the right to immediately terminate this Agreement by delivering written notice to the CITY. Upon any such termination, the CITY shall pay the CONSULTANT the full amount due and owing for all Services performed through the date of Agreement termination.

43.0 **Attorneys' Fees and Costs**

43.1 Except as stated in Section 14.2.1, above, in connection with any dispute or any litigation arising out of, or relating to this Agreement, each party shall be responsible for its own legal and attorneys' fees, costs and expenses, including attorneys' fees, costs, and expenses incurred for any appellate or bankruptcy proceedings.

44.0 **Public Records Law**

44.1 CONSULTANT 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.

44.2 CONSULTANT shall keep and maintain public records required to perform the services contemplated by this Agreement, in accordance with Chapter 119, Florida Statutes "Public records" means all documents, papers, letters, maps, books, tapes, photographs, films, sound recordings, data processing software,

or other material, regardless of the physical form, characteristics, or means of transmission, made or received pursuant to law or ordinance or in connection with the transaction of official business by any agency.

44.3 CONSULTANT shall ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law for the duration of the contract term and following completion of the contract if the Construction Manager does not transfer the records to the CITY.

44.4 Questions regarding the application of Chapter 119, Florida Statutes, to the CONSULTANT's duty to provide public records relating to this Agreement, shall be directed to the CITY's Custodian of Public Records at 407-518-2308, cityclerkemail@kissimmee.org, and 101 Church Street, Kissimmee, Florida 34741.

45.0 **Americans with Disabilities Act**

45.1 The CONSULTANT shall conform its Drawings and Specifications to the requirements of the Americans with Disabilities Act Accessibility Guidelines ("ADAAG"), but CITY shall be responsible for compliance with the remaining provisions of the Americans with Disabilities Act ("ADA"). CITY and CONSULTANT further recognize that interpretations of ADA by governmental officials and/or courts of law may vary or change. Should such variance or change adopted after the date the 100% Design Development are completed, require the CONSULTANT to make the required modifications, such modifications shall be considered as Contingent Additional Services. Further, CITY acknowledges, that the ADA, including ADAAG, is a new law presenting numerous difficult interpretation issues. Accordingly, the CONSULTANT shall only be liable for gross negligence in connection with any allegation that its design does not properly comply with ADAAG.

46.0 **Additional Definitions**

46.1 **Contract Documents** means this Agreement, any CSA or CPO issued hereunder, the CITY'S contract with the Contractor, the Plans, Specifications, General Conditions and related Construction Documents or any other documents incorporated by reference.

46.2 **Cost of the Work** shall be the total cost or, to the extent the Project is not completed, the estimated cost to the CITY of all elements of the Project designed or specified by the CONSULTANT.

46.2.1 The Cost of the Work shall include the cost at current market rates of labor and materials furnished by the CITY and equipment designed,

specified, selected or specially provided for by the CONSULTANT, including the costs of management or supervision of construction or installation provided by a separate construction manager or CONSULTANT.

46.2.2 The Cost of the Work does not include the compensation of the CONSULTANT and the CONSULTANT'S sub-consultants, the costs of the land, rights-of-way and financing or other costs that are the responsibility of the CITY.

46.3 **Final Completion** means that the following items have been completed or satisfied:

46.3.1 Construction of the Project is completed, in accordance with the contract documents and certified as such by the CITY and CONSULTANT.

46.3.2 The Project is suitable for full use and occupancy as determined by the CITY and CONSULTANT.

46.3.3 All Punchlist items have been completed or otherwise disposed of or accounted for to the CITY'S satisfaction and approval.

46.3.4 A final Certificate of Occupancy and all other permits and approvals required have been legally and validly issued.

46.3.5 All required guarantees, affidavits, releases, bonds and waivers, manuals, record drawings, warranties and maintenance books including the Final Completion form have been delivered to the CITY.

46.4 **Punch list** means a list of items of work to be completed and deficiencies to be corrected, which items shall not affect the attainment of Substantial Completion. Such items shall be complete or otherwise disposed of prior to final acceptance.

46.5 **Schedule of Values** means the schedule to be used as a basis for progress payments to be made to the Contractor by the CITY during performance of the work, based on the then current percentage of progress of construction of the Project, subject to the approval of the CONSULTANT.

46.6 **Substantial Completion** means the Contractor has ascertained that the work or portions thereof is ready for the CITY and CONSULTANT substantial completion inspection. It is understood that the Construction Manager will provide a list of incomplete items to the CITY and CONSULTANT prior to this inspection. After the CITY'S and CONSULTANT's inspection, the Contractor will prepare a schedule for a completion of the list, indicating completion dates for the CITY'S review. The CITY and CONSULTANT will issue a Certificate of Substantial Completion when the work on the Contractor's pre-substantial punch-list has been accomplished, to the best of the Contractor's ability.

46.7 **Substantial Completion Date** means the date, certified by the CONSULTANT, that the Project, or designated portion thereof, is sufficiently complete, in accordance with the Construction Documents and a Certificate of Occupancy issued, so that the CITY can reasonably occupy or utilize the Project, or designated portion thereof, for its intended use.

47.0 **Additional Terms and Conditions**

47.1 INSTRUMENTS OF SERVICE

47.1.1 Drawings, specifications and other documents, including those in electronic form, prepared by the CONSULTANT and the CONSULTANT'S sub-consultants are Instruments of Service for use solely with respect to this Project. The CONSULTANT and the CONSULTANT'S sub-consultants shall be deemed the authors and owners of their respective Instruments of Service and shall retain all common law, statutory and other reserved rights, including copyrights.

47.1.2 Upon execution of this Agreement, the CONSULTANT grants to the CITY a nonexclusive license to reproduce the CONSULTANT'S Instrument of Service and thereafter use the same solely for purposes of constructing, using and maintaining, repairing and making additions and modifications to the Project, provided that the CITY shall comply with all obligations, including prompt payment of all sums when due, under the Agreement. The CONSULTANT shall obtain similar nonexclusive licenses from the CONSULTANT'S sub-consultants consistent with this Agreement. Any termination of this Agreement prior to completion of the Project shall terminate the license. Upon such termination, the CITY shall refrain from making further reproductions of Instrument of Service. If and upon the date the CONSULTANT is adjudged in default of this Agreement, the foregoing license shall be deemed terminated and replaced by a second, nonexclusive license permitting the CITY to authorize other similarly credentialed design professionals to reproduce and, where permitted by law, to make changes, corrections or additions to the Instruments of Service solely for purposes of completing, using and maintaining the Project.

47.1.3 Except for the licenses granted in Section 47.1.2, no other license or right shall be deemed granted or implied under this Agreement. The CITY shall not assign, delegate, sublicense, pledge or otherwise transfer any license granted herein to another party without the prior written agreement of the CONSULTANT. However, the CITY shall be permitted to authorize the Contractor, Subcontractors, and sub-subcontractors and material or equipment suppliers to reproduce applicable portions of the Instruments of Service to and for use in their execution of the Work by license granted in Section 47.1.2. Submission or distribution of Instruments of Service to meet

official regulatory requirements or for similar purposes in connection with the Project is not to be construed as publication in derogation of the reserved rights of the CONSULTANT and the CONSULTANT'S sub-consultants. The CITY agrees to pay the CONSULTANT a reasonable, mutually agreed upon amount for any reuse of the designs, drawings or specifications beyond this Agreement. The CITY shall not be responsible to pay the CONSULTANT for the use of the designs, drawings or specifications when used for reference purposes only.

- 47.1.4 If the CONSULTANT is required to deliver any services hereunder in the form of electronic encoded media, the printed representation of such media furnished by the CONSULTANT shall be the official records of the CONSULTANT'S service provided upon completion of the services and payment in full. The CITY shall have a right to rely on such printed representation in connection with any subsequent modification of such electronic media and agrees to hold the CONSULTANT harmless from all cost and expense, including attorney's fees, from claims which arise out of modification or re-use of such electronic media or printed representation by or on behalf of the CITY without the CONSULTANT'S consent. Under no circumstances shall transfer of drawings and other instruments of service on electronic media for use by the CITY, be deemed a sale by the CONSULTANT, and the CONSULTANT makes no warranties of merchantability or fitness for a particular purpose.

47.2 CHANGE IN SERVICES

- 47.2.1 Change in Services of the CONSULTANT, including services required of the CONSULTANT'S sub-consultants may be accomplished after execution of this Agreement, without invalidating the Agreement, if mutually agreed in writing, if required by circumstances beyond the CONSULTANT'S control, or if the CONSULTANT'S services are affected as described in Section 47.2B-2. In the absence of mutual agreement in writing, the CONSULTANT shall notify the CITY prior to providing such services. If the CITY deems that all or part of such Change in Services is not required, the CITY shall give prompt written notice to the CONSULTANT, and the CONSULTANT shall have no obligation to provide those services. Except for a change due to fault of the CONSULTANT, Change in Services of the CONSULTANT shall entitle the CONSULTANT to an adjustment in compensation pursuant to Section 9.8, and to any Reimbursable Expenses described in Section 10.0.
- 47.2.2 If any of the following circumstances affect the CONSULTANT'S services for the Project, the CONSULTANT shall be entitled to an appropriate adjustment in the CONSULTANT'S schedule and compensation:
- 47.2.2.1 Change in the instructions or approvals given by the CITY that constitute material changes to the Project parameters set forth above

and which necessitate revisions in Instruments of Service;

47.2.2.2 Enactment or revision of codes, laws or regulations or official interpretations, which necessitate changes to previously prepared Instruments of Service;

47.2.2.3 Significant change in the Project including, but not limited to, size, quality, complexity, the CITY'S schedule or budget, or procurement method;

47.2.2.4 Preparation for and attendance at a public hearing, a dispute resolution proceeding or a legal proceeding except where the CONSULTANT is party thereto.

47.3 ACCELERATED COMPLETION OF DESIGN PACKAGES. In order to minimize construction problems and change orders, the CONSULTANT's standard practice requires the completion of detailed working drawings, submission for review and comment by reviewing agencies and incorporation of those comments and/or changes prior to bidding and entering into firm construction contracts. However, CITY may choose to accelerate the completion of the Project so that it may be completed in a shorter time period than would normally be required. Should the CITY choose to make this selection, it shall not be considered Fast Track, or in any way relieve the CONSULTANT of its responsibilities and obligations set forth herein.

(THE REMAINDER OF THIS PAGE IS INTENTIONALLY LEFT BLANK; THE AGREEMENT CONTINUES ON THE FOLLOWING PAGE WITH THE PARTIES' SIGNATURES.)

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement as of the Effective Date.

Attest:

Linda Hansell
CITY CLERK

CITY OF KISSIMMEE,
a Municipal Corporation of the
State of Florida

By: _____
City Clerk

By: _____
Mayor
City of Kissimmee Commission

Date Approved by Commission: _____

Reviewed as to form and legal sufficiency:

City Attorney's Office Date

CONSULTANT

Attest:



Corporate Secretary

By: 
Philip L. Trezza, Jr., AIA, LEED AP
Title: Senior Vice President

STATE OF FLORIDA
COUNTY OF HILLSBOROUGH

The foregoing instrument was acknowledged before me this 27th day of November, 2023, by means of ☒ physical presence or ☐ online notarization, by (name of person) Phil Trezza as (type of authority) for (name of party on behalf of whom instrument was executed), a Florida corporation, who is personally known to me or has produced identification.

Notary Seal:



Notary: 
Print Name: Melanie A. Rambeau
My Commission Expires: 08/14/2025

EXHIBIT “A”
HOURLY RATE SCHEDULE

2023 HOURLY BILLING RATES

PRINCIPAL	\$215.00
SR. PROJECT MANAGER	\$190.00
SR. PROJECT ARCHITECT	\$165.00
PROJECT ARCHITECT	\$150.00
ARCHITECT	\$145.00
INTERIOR DESIGNER.....	\$140.00
CONSTRUCTION ADMINISTRATOR	\$140.00
PROJECT MANAGER	\$140.00
PROJECT DESIGNER/PRODUCTION	\$120.00
ADMINISTRATIVE.....	\$90.00

***These rates are in effect from January 1, 2023 to December 31, 2023 and are subject to annual adjustments.
Annual rate increases average 6% per year.***

EXHIBIT “B”

SCOPE OF SERVICES

In accordance with Sections 2.3 and 8.1 of the Agreement, in addition to any other Services described in the Agreement, the RFQ, and the CONSULTANT’s responsive proposal thereto, the CONSULTANT may also be authorized to perform any or all of those services set forth and further described below. In the event the CITY requests the CONSULTANT to furnish and perform any of the services listed and described in this Exhibit “B”, those services shall be listed and incorporated in the applicable CSA or CPO issued for a particular Project.

ALL PHASES:

1. PROJECT ADMINISTRATION AND MANAGEMENT SERVICES

1.1. Project Administration services consisting of administrative functions including:

- 1.1.1. Project Decision Structure
- 1.1.2. Project Directory
- 1.1.3. Consultation
- 1.1.4. Research
- 1.1.5. Communications; Meeting Minutes, Meeting Agendas (For meetings called by CONSULTANT during the Design phases of the project)
- 1.1.6. Direction of the work of architectural, engineering and other consultant personnel

1.2. Disciplines Coordination/Document Checking consisting of:

- 1.2.1. Coordination between the architectural work and the work of engineering and their disciplines involved in the Project.
- 1.2.2. Review and checking of documents prepared for the Project by the CONSULTANT and the CONSULTANT’s Consultants.

1.3. Agency Consulting/Review/Approval services, including:

- 1.3.1. Agency consultants
 - 1.3.1.1. City agencies
 - 1.3.1.2. Regional agencies
 - 1.3.1.3. State agencies
- 1.3.2. Research of critical applicable regulations.
- 1.3.3. Preparation of written and graphic explanatory materials.

1.4. Owner Coordination, including:

- 1.4.1. Review and coordination of data furnished for the Project as a responsibility of the Owner.

1.5. Schedule Development/Monitoring Services, including:

- 1.5.1. Participate in establishment and updating of design schedule in conjunction with CM for the performance of the CONSULTANT's services throughout the design of the project. Key decision-making points will be identified on this schedule.

1.6. Presentation services consisting of presentations and recommendations by the CONSULTANT to the following client representatives:

- 1.6.1. City of Kissimmee Commission
- 1.6.2. Executive Task Force
- 1.6.3. User group(s)
- 1.6.4. Construction Manager

PHASE I PROGRAMMING & MASTER PLANNING

2. NEEDS ASSESSMENT/DATA COLLECTION

2.1. Space Needs Assessments

- 2.1.1. Macro Level Space Requirements Analysis
- 2.1.2. Macro Level Adjacency Requirements
- 2.1.3. Parking Analysis

2.2. Analysis of the site and its surroundings to include the following:

- 2.2.1. Land Utilization
- 2.2.2. Building locations
- 2.2.3. Utility Systems
- 2.2.4. Surface and subsurface conditions (By Owner)
- 2.2.5. Vegetation (By Owner)
- 2.2.6. Survey (By Owner)
- 2.2.7. Land Use Restrictions
- 2.2.8. Historical analysis
- 2.2.9. Stormwater retention/detention areas

3. FUNCTIONAL PROGRAMMING

3.1. Prepare a detailed architectural program based on the scope established in Phase I to include the following services:

- 3.1.1. Functional Requirements Analysis
- 3.1.2. Interior Development Guidelines
- 3.1.3. Space Standards

- 3.1.4. Preliminary Program Space Estimates
- 3.1.5. Space and Equipment Program
- 3.1.6. Special Building System Requirements
- 3.1.7. Micro-Adjacency Requirements
- 3.1.8. Prepare Final Draft Program
- 3.1.9. Prepare Final Program Report

4. MASTER PLANNING

- 4.1** Prepare three different conceptual approaches for housing the space and parking requirements validated in the Needs Assessment. Include the following information, at a minimum:
 - 4.1.1 Existing facility renovation recommendations
 - 4.1.2 Site development planning issues (land utilization, pedestrian and vehicular circulation, parking, areas for expansion, stormwater retention/detention and landscape forms)
 - 4.1.3 Architectural concepts. The architectural concepts will include blocking and stacking diagrams, massing studies and character sketches.

PHASE II: DESIGN/ BIDDING/CONSTRUCTION ADMINISTRATION SERVICES

5. DESIGN SERVICES

5.1. Architectural Design/Documentation:

- 5.1.1. During the Schematic Design Phase, responding to program requirements and preparing:
 - 5.1.1.1. Conceptual Planning/Massing Options
 - 5.1.1.2. Final Conceptual Site and Building Plans
 - 5.1.1.3. Preliminary Sections and Elevations
 - 5.1.1.4. Preliminary Selection of Building Systems and Materials
 - 5.1.1.5. Development of Approximate Dimensions, Areas and Volumes
 - 5.1.1.6. Perspective sketch – eye level
 - 5.1.1.7. Study model
- 5.1.2. During the Design Development Phase consisting of continued development and expansion of architectural Schematic Design Documents to establish the final scope, relationships, forms, size and appearance of the Project through:
 - 5.1.2.1. Plans, sections and elevations
 - 5.1.2.2. Typical construction details
 - 5.1.2.3. Three-dimensional sketch
 - 5.1.2.4. Study model
 - 5.1.2.5. Final materials selection
 - 5.1.2.6. Equipment layouts

- 5.1.3. During the Contract Documents phase consisting of preparation of Drawings and Specifications based on approved Design Development documents setting forth in detail the architectural construction requirements for the Project.

5.2. Structural Design/Documentation:

- 5.2.1. During the Schematic Design Phase consisting of recommendations regarding basic structural materials and systems, analyses, and development of conceptual design solutions for:
 - 5.2.1.1. A structural system
 - 5.2.1.2. Alternate structural systems, if required
- 5.2.2. During the Design Development phase consisting of continued development of the specific structural system and Schematic Design documents in sufficient detail to establish:
 - 5.2.2.1. Basic structural system and dimensions
 - 5.2.2.2. Final structural design criteria
 - 5.2.2.3. Foundation design criteria
 - 5.2.2.4. Preliminary sizing of major structural components
 - 5.2.2.5. Critical coordination clearances
- 5.2.3. During the Contract Documents phase consisting of preparation of final structural engineering calculations, Drawings and Specifications based on approved Design Development documents, setting forth in detail the structural construction requirements for the Project.

5.3. Mechanical Design/Documentation:

- 5.3.1. During the Schematic Design phase, prepare a narrative, consisting of consideration of alternate materials, systems and equipment, and development of conceptual design solutions for:
 - 5.3.1.1. Energy source(s)
 - 5.3.1.2. Energy conservation and controls system concepts
 - 5.3.1.3. Heating and ventilating (systems selections and conceptual sizing and configuration analysis.)
 - 5.3.1.4. Air conditioning (systems selections and conceptual sizing and configuration analysis.)
 - 5.3.1.5. Plumbing
 - 5.3.1.6. Fire protection
 - 5.3.1.7. General space requirements
- 5.3.2. During the Design Development phase consisting of continued development and expansion of mechanical Schematic Design documents and development of outline Specifications or materials lists to establish:
 - 5.3.2.1. Approximate equipment sizes and capacities

- 5.3.2.2. Preliminary equipment layouts
- 5.3.2.3. Required space for equipment
- 5.3.2.4. Required chases and clearances
- 5.3.2.5. Acoustical and vibration control
- 5.3.2.6. Visual impacts
- 5.3.2.7. Energy conservation measures

- 5.3.3. During the Contract Documents phase consisting of preparation of final mechanical engineering calculations, Drawings and Specifications based on approved Design Development documents, setting forth in detail the mechanical construction requirements for the Project.

5.4. Electrical Design/Documentation

- 5.4.1. During the Schematic Design Phase, prepare a narrative, consisting of consideration of alternate systems, recommendations regarding basic electrical materials, systems and equipment, analyses, and development of conceptual solutions for:
 - 5.4.1.1. Power service and distribution
 - 5.4.1.2. Lighting
 - 5.4.1.3. Communication and data outlet location systems
 - 5.4.1.4. Fire detection and alarms
 - 5.4.1.5. General space requirements
 - 5.4.1.6. Audio/Visual systems
- 5.4.2. During the Design Development phase consisting of continued development and expansion of electrical Schematic Design documents and development of outline Specifications or materials lists to establish:
 - 5.4.2.1. Criteria for lighting, electrical and communications systems
 - 5.4.2.2. Approximate sizes and capacities of major components
 - 5.4.2.3. Preliminary equipment layouts
 - 5.4.2.4. Required space for equipment
 - 5.4.2.5. Required chases and clearances
- 5.4.3. During the Contract Documents phase, consisting of preparation of final electrical engineering calculations, Drawings and Specifications based on approved Design Development documents, setting forth in detail the electrical requirements for the Project.

5.5. Civil Design/Documentation:

- 5.5.1. During the Schematic Design phase consisting of consideration of alternate materials and systems and development of conceptual design solutions for:
 - 5.5.1.1. On-site utility systems
 - 5.5.1.2. Fire protection systems
 - 5.5.1.3. Drainage systems

5.5.1.4. Paving

- 5.5.2. During the Design Development phase consisting of continued development and expansion of civil Schematic Design documents and development of outline Specifications or materials lists to establish the final scope of and preliminary details for on-site civil engineering work.
- 5.5.3. During the Contract Documents phase, consisting of preparation of final civil engineering calculations, Drawings and Specifications based on approved Design Development documents, setting forth in detail the civil construction requirements for the Project.
- 5.5.4. Permit applications required for Water Distribution, Sewage Collection and Stormwater/Environment Management (Local, State, and Federal) shall be prepared for execution by the Owner. Permit applications to be paid by Owner. All necessary reports and drawings will be prepared to accompany the permit applications. Two meetings per agency as required to secure permits is included in services. City shall designate individual who has authority to sign permit applications.

5.6. Landscape Design/Documentation:

- 5.6.1. During the Schematic Design phase, prepare narrative conceptual design solutions, which will be developed for land forms, hardscape, lawns and plantings based on program requirements, physical site characteristics, design objectives and environmental determinants.
- 5.6.2. During the Design Development phase, Schematic Design documents will be further developed including outline Specifications and materials lists to establish final scope and preliminary details for landscape work.
- 5.6.3. During the Contract Documents phase, the Drawings and Specifications based on approved Design Development documents, setting forth in detail the landscape and hardscape construction requirements for the Project will be prepared.

5.7. Interior Design/Documentation:

- 5.7.1. During the Schematic Design phase consisting of space allocation and departmental utilization plans based on functional relationships:
 - 5.7.1.1.Types and qualities of finishes and materials for furniture, furnishings, and equipment.
- 5.7.2. During the Design Development phase consisting of continued development and expansion of interior Schematic Design documents and development of

outline Specifications or materials lists to establish final scope and preliminary details relative to:

- 5.7.2.1. Interior construction of the Project
- 5.7.2.2. Special interior design features
- 5.7.2.3. Space planning
- 5.7.2.4. Materials, finishes and colors
- 5.7.2.5. Furniture and equipment layouts

- 5.7.3. During the Contract Documents phase consisting of preparation of Drawings, Specifications and other documents based on approved Design Development documents, setting forth in detail the requirements for interior construction and furniture, furnishings and equipment for the Project.

5.8. Environmental Graphic Design Services: The scope shall include interior and exterior sign types and graphic elements to provide a comprehensive and cohesive signage and wayfinding system for users of the facility.

- 5.8.1. Design Development:
 - 5.8.1.1. Consider design approaches; determine elements needed for identity, information and wayfinding.
 - 5.8.1.2. Begin development of sign prototypes.
 - 5.8.1.3. Develop preliminary location plans.
- 5.8.2. Construction document preparation.
- 5.8.3. Construction observation and submittal review.
- 5.8.4. Interior sign types to include:
 - 5.8.4.1. Primary room ID (changeable name inserts in some locations).
 - 5.8.4.2. Restroom ID.
 - 5.8.4.3. Stairway ID and stairway level ID.
 - 5.8.4.4. Building Code required ID.
 - 5.8.4.5. Fire exit plan.
 - 5.8.4.6. Building directories.
- 5.8.5. Exterior sign types include:
 - 5.8.5.1. Main entrance identification.
 - 5.8.5.2. Vehicular directional.
 - 5.8.5.3. Regulatory / Warning identification.
 - 5.8.5.4. Parking areas; handicap parking, authorized vehicles, visitor parking, etc.
- 5.8.6. Donor Recognition / Dedication Plaques – Prepare conceptual designs illustrating a graphic solution to recognize a significant donor for the facility.

5.9. Materials Research/Specifications:

- 5.9.1. During the Schematic Design phase consisting of:
 - 5.9.1.1. Identification of potential materials, systems and equipment and their criteria and quality standards consistent with the conceptual design.

- 5.9.1.2. Investigation of availability and suitability of alternative materials, systems and equipment.
- 5.9.2. During the Design Development phase consisting of activities by in-house personnel in:
 - 5.9.2.1. Development of architectural and engineering project specific draft Specifications or itemized lists and brief form identification of significant architectural materials, systems and equipment, including their criteria and quality standards.
 - 5.9.2.2. Coordination of similar activities of other disciplines.
 - 5.9.2.3. Production of design manual including design criteria and outline specifications or material lists.
- 5.9.3. During the Contract Documents phase consisting of activities of in-house architectural personnel in:
 - 5.9.3.1. Review of the development and preparation of bidding and procurement information prepared by the Construction Manager.
 - 5.9.3.2. Assistance to the Owner and their agents in review of the Conditions of the Contract (General, Supplementary and other Conditions).
 - 5.9.3.3. Development and preparation of architectural Specifications describing materials, systems and equipment, workmanship, quality and performance criteria required for the construction of the Project.
 - 5.9.3.4. Coordination of the development of Specifications by other disciplines.
 - 5.9.3.5. Compilation of Project Manual including Conditions of the Contract, bidding and procurement information and Specifications.
- 5.10. At the conclusion of each Design Phase (Schematic Design, Design Development and Construction Document) the Architect/Engineer shall provide the Owner with two (2) sets of drawings and specifications. At the conclusion of Construction Documents one set of reproducible will also be made available to the City for printing of Bid Documents by the City or the Construction Manager.

6. BIDDING OR NEGOTIATION SERVICES

- 6.1. **Bidding Materials services** consisting of organizing and handling Bidding Documents for:
 - 6.1.1. Coordination
 - 6.1.2. Reproduction by Owner
 - 6.1.3. Completeness review
- 6.2. **Addenda services** consisting of preparation and distribution of Addenda as may be required during bidding or negotiation and including supplementary Drawings,

Specifications, instructions and notice(s) of changes in the bidding schedule and procedures.

6.3. Bidding/Negotiation services consisting of:

6.3.1. Responses to questions from Bidders and clarifications or interpretations of the Bidding Documents.

6.4. Analysis of Alternates/Substitutions consisting of consideration, analyses, comparisons, and recommendations relative to alternates or substitutions proposed by Bidders or proposers either prior to or subsequent to receipt of Bids or proposals.

7. CONSTRUCTION ADMINISTRATION

7.1. Submittal Services consisting of:

7.1.1. Processing of submittals, including receipt, review of, and appropriate action on Shop Drawings, Product Data, Samples and other submittals required by the Contract Documents.

7.1.2. Distribution of submittals to Construction Manager.

7.1.3. Related communications.

7.2. Observation services consisting of periodic visits by the Project Manager or Project CONSULTANT to the site at intervals appropriate to the state of the work or as otherwise agreed by the Owner and CONSULTANT in writing to become generally familiar with the progress and quality of the Work completed and to determine in general if the Work when completed will be in accordance with Contract Documents; preparing related reports and communications, and attendance at progress review meetings at the site.

7.2.1. Periodic site visits by other staff to observe the progress of the project.

7.3. Responses to Requests for Information (RFI)

7.3.1. Responding to requests for clarifications or additional information related to the Contract Documents.

7.4. Supplemental Documentation services consisting of:

7.4.1. Preparation, reproduction and distribution of supplemental Drawings, Specifications and interpretations in response to requests for clarification by Construction Manager or the Owner.

7.4.2. Providing guidance to the Construction Manager in conjunction with the Owner -relative to changed requirements and schedule revisions.

7.5. Quotation Requests/Change Orders consisting of:

- 7.5.1. Preparation, reproduction and distribution of Drawings and Specifications to describe Work to be added, deleted or modified. Changes shall be clearly defined.
- 7.5.2. Review of proposals from Construction Manager for reasonableness of quantities and costs of labor and materials.
- 7.5.3. Review and recommendations relative to changes in time for Substantial Completion.
- 7.5.4. Review on Owner's behalf relative to costs of Work proposed to be added, deleted or modified.
- 7.5.5. Assisting in the preparation of appropriate Modifications of the Contract(s) for Construction.
- 7.5.6. Coordination of communications, approvals, notifications and record-keeping relative to changes in the Work.

7.6. Contract Cost Accounting services consisting of:

- 7.6.1. Review of records of payments on account of the Contract Sum and all changes thereto.
- 7.6.2. Evaluation of Applications for Payment and certification thereof.
- 7.6.3. Review and evaluation of expense data submitted by the Construction Manager for Work under cost-plus-fee arrangements.

7.7. Interpretations and Decisions consisting of:

- 7.7.1. Review of claims, disputes, or other matters between the Owner and Construction Manager relating to the execution or progress of the Work as provided in the Contract Documents.
- 7.7.2. Rendering written decisions.

7.8. Project Closeout services initiated upon notice from the Construction Manager that the Work, or a designated portion thereof which is acceptable to the Owner, is sufficiently complete in accordance with the Contract Documents to verify the list submitted by the Construction Manager of items to be completed or corrected.

- 7.8.1. Review with the Owner's representative for conformity of the Work to the Contract Documents to verify the list submitted by the Construction Manager of items to be completed or corrected.
- 7.8.2. Recommendation of the amounts to be withheld until final completion.
- 7.8.3. Securing and receipt of consent of surety or sureties, if any, to reduction in or partial release of retainage or the making of final payment(s).
- 7.8.4. Issuance of Certificate(s) of Substantial Completion.
- 7.8.5. Inspection(s) upon notice by the Construction Manager that the Work is ready for final inspection and acceptance.
- 7.8.6. Final inspection with the Owner's representative to verify final completion of the Work.

- 7.8.7. Securing and receipt of consent of surety or sureties, if any, to the making of final payment(s).
- 7.8.8. Issuance of final Certificate(s) for Payment.
- 7.8.9. Final inspection of Water Distribution, Sewage Collection and Stormwater/ Environmental Management Facilities. Preparation of certifications to agencies along with record documents prepared based upon record information supplied by the Construction Manager. Services include one final inspection for each certification.

8. POST-CONSTRUCTION SERVICES

8.1. Record Drawing services consisting of:

- 8.1.1. Making arrangements for obtaining from Construction Manager information in the form of marked-up prints, drawings and other data certified by them on changes made during performance of the Work, including Change Directives, RFI's, ASI's, etc.
- 8.1.2. Review of general accuracy of information submitted and certified by the Construction Manager.
- 8.1.3. Preparation of record drawings electronically based on certified information furnished by the Construction Manager.
- 8.1.4. Transmittal one set of full-size reproducible record drawings and general data, appropriately identified, to the Owner and others as directed. Two copies of all electronic data including CADD drawings on CD.

8.2. Warranty Review consisting of:

- 8.2.1. Consultation with and recommendation to the Owner during the duration of warranties in connection with inadequate performance of materials, systems and equipment under warranty.
- 8.2.2. Inspection(s) prior to expiration of the warranty period(s) to ascertain adequacy of performance of materials, systems and equipment.
- 8.2.3. Documenting defects or deficiencies and assisting the Owner in preparing instructions to the Construction Manager for correction of noted defects.

9. ADDITIONAL SERVICES/EXPENSES (not included in the base fee):

9.1. Owner-Provided Services:

- 9.1.1. Environmental assessment of site, if necessary.
- 9.1.2. Environmental assessment of existing facilities to be renovated and/or demolished, and the removal of any hazardous material, if necessary.
- 9.1.3. Printing of all Contract Documents issued for bidding and construction.
- 9.1.4. Distribution of Contract Documents to Construction Manager for estimating and bidding purposes.

- 9.2. Mock-Up Services** relating to any space for study during the design phases and consisting of:
- 9.2.1. Design and documentation for the required mock-up.
 - 9.2.2. Construction administration of mock-up construction activities.
 - 9.2.3. Arrangements for testing performance of mock-up.
 - 9.2.4. Review, analysis and reporting of results.
- 9.3. Prepare an Inventory** of existing furniture and equipment that will be placed in the new facilities.
- 9.4. Value Engineering** – Value engineering is the detailed, systematic review of the design concepts, construction techniques, materials and building types associated with a project solely in terms of life cycle costs in an attempt to obtain optimum value for every dollar spent. If Owner chooses to engage in value engineering, Owner shall either retain the services of an independent Value Engineer (“VE”) to perform the above review services to be complete at a stage no later than the completion of schematic design, or may pay a mutually negotiated sum “at the time the services are requested” to CONSULTANT to perform the above review services at a stage later than the completion of schematic design, Owner acknowledges that schedule and cost impacts may occur.
- 9.4.1. If Owner chooses to retain an independent VE, all recommendations of the VE shall be given to CONSULTANT for its review and adequate time will be provided for CONSULTANT to respond to these recommendations. CONSULTANT may be compensated as an additional service for time spent to review the recommendations of the VE and to incorporate those accepted by both Owner and CONSULTANT. Objections to any recommendations made by the VE shall be stated in writing. Owner agrees that CONSULTANT shall not be responsible for any damage, cost or liability which arises in connection with or as a result of the incorporation of such design changes.
- 9.5. Commissioning** – The performance of a functional and operational check of all systems and equipment to verify the installation is performing to the design criteria. CONSULTANT would prepare this service in conjunction with an independent contractor experienced in such activities.
- 9.6. Structural Blast Resistance** - Analysis of building structural systems to resist loads imposed by blast forces on exterior of facility. This would require an additional blast consultant to be obtained.
- 9.7. Security Systems:** The Security portion of the project will include the design and documentation of Electronic Security System from Schematic Design through Construction Administration Services. The Electronic Security System will include intrusion detection, access control, electronic door control and monitoring,

operational intercom, fixed duress alarms, monitoring and control panels, CCVE systems, control room layouts, rough-ins for x-ray screening/magnetometer at entry lobby, and parcel screening. As part of the overall security plan CONSULTANT will provide a site analysis to determine passive security measures to be incorporated for the facility. Deliverables for the above scope for each task are as listed below.

- 9.7.1. **Schematic Design (SDs):** CONSULTANT will provide a written security narrative describing the Electronic Security System, reflecting the design approach based on program requirements. In addition, CONSULTANT will provide two people for a one day on site Security Workshop to validate the security program and establish the design intent.
- 9.7.2. **Design Development (DDs):** CONSULTANT will provide job specific draft specifications of the Electronic Security System including plans indicating device locations, and outline specifications, and equipment selections reflecting design approach. CONSULTANT will provide one person for 1 day to attend an on-site design review with the Owner and Design Team members to review the Electronic Security System Design Development documents.
- 9.7.3. **Construction Documents (CDs):** Upon completion of this review, CONSULTANT will provide completed biddable documents including plans, details, schedules, riser diagrams, and specifications required to fully document the Electronic Security System. In addition, CONSULTANT will provide, at the completion of the Construction Documents phase, two (2) copies of a Design Information Manual (DIM) outlining major equipment selections utilized as the basis of design for the Electronic Security Systems. CONSULTANT will conduct mid-point design review with Owner and Design Team members to review the Electronic Security Construction Documents.
- 9.7.4. **Bidding:** CONSULTANT will review all questions related to the Electronic Security System submitted, and provide answers in written addendum as required.
- 9.7.5. **Construction Administration (CA):** CONSULTANT will provide one person for four, one day intermediate site visits during construction. In addition, upon written notification of substantial completion CONSULTANT will provide two persons for one day (16 hours total) to review and test the Electronic Security System.
 - 9.7.5.1. Included in this phase of work is the review of security shop drawing submittals and written responses to security RFI from the contractor.
 - 9.7.5.2. Deliverable for this phase of work will include a written field report for the intermediate site visits, and a final report and punch list of the site visit made following written notice of substantial completion.

9.7.6. **Expanded Security System Design** - The following systems and services can be provided in addition to the Electronic Security Design defined in previous sections:

9.7.6.1. Assistance Stations

9.7.6.2. Parking Area Equipment (cameras, card access control)

9.7.6.3. Wireless Duress

9.7.6.4. Hydraulic Barriers

9.7.6.5. Biometrics

9.7.6.6. Perimeter protection systems

9.7.6.7. Post Construction Services: CONSULTANT will provide two people for one day (16 hours total) to conduct a pre-warranty expiration review of the electronic security system. The review will focus on inspection of equipment, operational functions, defects or deficiencies within the system and will be documented in report form and issued to the owner.



EXHIBIT C

SCHEDULE OF REIMBURSABLES

1. Reproduction Cost
 - A.....Regular Copying Single Side Double

Sided			
8 ½ x 11 (black & white).....	\$ 0.15/page	\$ 0.25/sheet	
8 ½ x 11 (color)	\$ 0.30/page	\$ 0.40/sheet	
8 ½ x 14 (black & white).....	\$ 0.15/page	\$ 0.25/sheet	
8 ½ x 14 (color)	\$ 0.30/page	\$ 0.40/sheet	
11 x 17 (black & white).....	\$ 0.25/page	\$ 0.35/sheet	
11 x 17 (color)	\$ 0.40/page	\$ 0.50/sheet	
9 ½ x 24 Single Side Only.....	\$ 1.00/page		
17 x 22 Single Side Only.....	\$ 2.00/page		
18 x 24 Single Side Only.....	\$ 2.00/page		
24 x 36 Single Side Only.....	\$ 3.00/page		
30 x 30 Single Side Only.....	\$ 5.00/page		
32 x 34 Single Side Only.....	\$ 5.00/page		
Other sizes-per square inch	\$ 0.03/page		
Compact Digital Disk	\$ 6.00/disk		
 - B. Blueprint Copy.....\$10.00/page
2. Subcontractor Services Actual Costs
3. Special Consultants Actual costs
4. Telecommunications
 - A. Local Non-reimbursable
 - B. Non-Local Actual Costs
5. Computer Services Non-reimbursable
6. Travel Expenses In accordance with Chapter 112.061, F.S.;
and further defined in the City of
Kissimmee
Employee Handbook
7. Postage, Fed Express, UPS Actual Costs
8. Pre-approved Equipment
(includes purchase and rental of equipment used in project) Actual Costs

EXHIBIT D

AFFIDAVIT CERTIFICATION
IMMIGRATION LAWS

SOLICITATION NO.: RFP2023-006 PROJECT NAME: Architectural and Engineering Services

THE CITY OF KISSIMMEE, a MUNICIPAL CORPORATION OF THE STATE OF FLORIDA (CITY), WILL NOT INTENTIONALLY AWARD CITY CONTRACTS TO ANY CONTRACTOR WHO KNOWINGLY EMPLOYS UNAUTHORIZED ALIEN WORKERS, CONSTITUTING A VIOLATION OF THE EMPLOYMENT PROVISIONS CONTAINED IN 8 U.S.C. SECTION 1324 a(e) {SECTION 274A(e) OF THE IMMIGRATION AND NATIONALITY ACT ("INA").

THE CITY MAY CONSIDER THE EMPLOYMENT BY ANY CONTRACTOR OF UNAUTHORIZED ALIENS A VIOLATION OF SECTION 274A(e) OF THE INA. **SUCH VIOLATION BY THE RECIPIENT OF THE EMPLOYMENT PROVISIONS CONTAINED IN SECTION 274A(e) OF THE INA SHALL BE GROUNDS FOR UNILATERAL CANCELLATION OF THE CONTRACT BY THE CITY.**

BIDDER ATTESTS THAT THEY ARE FULLY COMPLIANT WITH ALL APPLICABLE IMMIGRATION LAWS (SPECIFICALLY TO THE 1986 IMMIGRATION ACT AND SUBSEQUENT AMENDMENTS).

Attest:



Corporate Secretary

CONSULTANT

By: 

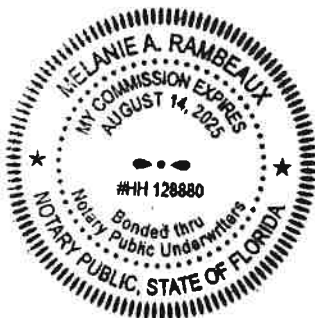
Philip L. Trezza, Jr., AIA, LEED AP
Title: Senior Vice President

STATE OF FLORIDA
COUNTY OF Itusborough

The foregoing instrument was acknowledged before me this 27th day of November, 2023, by means of ☒ physical presence or ☐ online notarization, by (name of person) Phil Trezza as (type of authority) for (name of party on behalf of whom instrument was executed), a Florida corporation, who is personally known to me or has produced identification.

Notary Seal:

Notary: 
Print Name: Melanie A. Rambeau
My Commission Expires: 08/14/2025



Architectural/Engineering Services Master Agreement

THIS ARCHITECTURAL/ENGINEERING MASTER SERVICES AGREEMENT (“Agreement”) is entered into as of the Effective Date (hereinafter defined) by and between the City of Kissimmee, a Municipal Corporation of the State of Florida, by and through its Commission, 101 Church Street, Kissimmee, Florida 34741 (hereinafter referred to as the “CITY”), and **OHLSON LAVOIE CORP.** 2295 S. Hiawasse Road, Suite 310, Orlando, Florida 32835, whose Federal Identification Number is: 84-0674977 (hereinafter referred to as the “CONSULTANT”).

WITNESSETH:

WHEREAS, the CITY requires certain architectural and/or engineering services to be performed in the City of Kissimmee; and,

WHEREAS, the CITY has solicited for these professional services via RFQ2023-006, an advertised request for qualifications (the “RFQ”), and has received numerous responsive bids thereto; and

WHEREAS, the CONSULTANT remains agreeable to providing the CITY the professional services and represents that it is capable and prepared to do so;

NOW, THEREFORE, in consideration of the promises contained herein, the CITY and the CONSULTANT (collectively, the “Parties”) hereby agree, as follows:

1.0 **Term**

1.1 This Agreement shall take effect on the date of its execution by the Mayor, The City of Kissimmee Commission (the “Effective Date”).

1.2 The term of this Agreement shall be for a five (5) year period, commencing upon the Effective Date, unless otherwise terminated as provided herein.

2.0 **CONSULTANT –SERVICES -- GENERAL**

2.1 The CONSULTANT shall provide the CITY complete architectural and engineering services necessary to provide construction documents and administration for various projects (individually a “Project” and collectively, the “Projects”) throughout the Term, as may be further specifically designated and authorized by the CITY in writing. Such authorization shall be in the form of either a Consultant Services Authorization (“CSA”) or a Contract Purchase Order (“CPO”), and all provisions of this Agreement shall apply to the CSA or CPO with full force and effect as if appearing in full within each CSA or CPO. Each CSA or CPO will set forth a specific Scope of Services, maximum limit of compensation, schedule, liquidated damages, and completion date, and shall become effective upon the due execution. When the CONSULTANT and the CITY enter into a CSA or CPO where the term

thereof expires on a date that is later than the date of this Agreement, the CONSULTANT and the CITY agree that the terms of this Agreement and any amendments, attachments, or provisions thereof are automatically extended until the expiration or full completion of the requirements of the CSA or CPO, as applicable, have been performed. Cancellation by the CITY of any remaining service prior to the full completion of the requirements of the CSA/CPO shall cause the terms of this Agreement to terminate at the same time. This provision only applies when the expiration of the CSA/CPO extends beyond the expiration of this Agreement. It does not apply when a CSA/CPO expires or is cancelled prior to the expiration of this Agreement.

2.2 The CONSULTANT is not authorized to undertake any Project without a duly executed CSA or CPO, which shall specify the work to be performed. The CONSULTANT recognizes that the CITY may employ several different CONSULTANTS and engineers to perform the services described herein and that the CONSULTANT has not been employed as the exclusive agent to perform any such services.

2.3 In addition to the services described in this Section 2.0, the RFQ, the Consultant's responsive proposal thereto, and otherwise set forth and described in the body of this Agreement, the CONSULTANT may also be authorized to perform, via a duly executed CSA or CPO, any or all of those services set forth and further described in **Exhibit "B"**, attached hereto and incorporated herein (collectively, the "Services").

3.0 **Project Administration Services**

3.1 The CONSULTANT shall manage the CONSULTANT'S services and administer the Project. The CONSULTANT shall consult with the CITY, research applicable design criteria, attend Project meetings, and communicate with members of the Project team and issue progress reports. The CONSULTANT shall coordinate the services provided by the CONSULTANT and the CONSULTANT'S sub-consultants with those services provided by the CITY and the CITY'S consultants.

3.2 When Project requirements have been sufficiently identified, the CONSULTANT may be required to prepare, and periodically update, a Project schedule that shall identify milestone dates for decisions required of the CITY, design services furnished by the CONSULTANT, completion of documentation provided by the CONSULTANT, commencement of construction and Substantial Completion of the Work.

3.3 The CONSULTANT shall consider the value of alternative materials, building systems and equipment, together with other considerations based on program, budget and aesthetics in developing the design for the Project.

3.4 Upon request of the CITY, the CONSULTANT shall make a presentation to explain the design of the Project to representatives of the CITY.

3.5 The CONSULTANT shall submit design documents to the CITY at intervals appropriate to the design process for purposes of evaluation and approval by the CITY. The CONSULTANT shall be entitled to rely on approvals received from the CITY in the further development of the design.

3.6 The CONSULTANT shall assist the CITY in connection with the CITY'S responsibility for filing documents required for the approval of governmental authorities having jurisdiction over the Project.

3.7 EVALUATION OF BUDGET AND COST OF THE WORK.

3.7.1 When the Project requirements have been sufficiently identified, the CONSULTANT shall prepare a preliminary estimate of the Cost of the Work. This estimate may be based on current area, volume or similar conceptual estimating techniques. The CONSULTANT shall advise the CITY of any adjustments to previous estimates of the Cost of the Work indicated by changes in Project requirements or general market conditions. If at any time the estimate of the Cost of the Work exceeds the CITY'S budget, the CONSULTANT shall make appropriate recommendations to the CITY to adjust the Project's size, quality or budget, and the CITY shall cooperate with the CONSULTANT in making such adjustments.

3.7.2 Evaluations of the CITY'S budget for the Project, the preliminary estimate of the Cost of the Work, and updated estimates of the Cost of the Work represent the CONSULTANT'S judgment as a design professional familiar with the construction industry. It is recognized, however, that neither the CONSULTANT nor the CITY has control over the cost of labor, materials or equipment, over the CONSULTANT'S methods of determining bid prices, or over competitive bidding, market or negotiating conditions. Accordingly, the CONSULTANT cannot and does not warrant or represent that bids or negotiated prices will not vary from the CITY'S budget for the Project or from any estimate of the Cost of the Work or evaluation prepared or agreed to by the CONSULTANT.

3.7.3 In preparing estimates of the Cost of the Work, the CONSULTANT shall be permitted to include contingencies and allowances for design, bidding and price escalation; to determine what materials, equipment, component systems and types of construction are to be included in the Contract Documents; to make reasonable adjustments in the scope of the Project and to include in the Contract Documents alternate bids as may be necessary to adjust the estimated Cost of the Work to meet the CITY'S budget for the Cost of the Work.

3.7.4 If bidding or negotiation has not commenced within 90 days after the CONSULTANT submits the Construction Documents to the CITY, the

budget for the Cost of the Work shall be adjusted to reflect changes in the general level of prices in the construction industry.

- 3.7.5** If the budget for the Cost of the Work is exceeded by the lowest bona fide bid or negotiated proposal, and the CITY elects to revise the Project scope to reduce the Cost of the Work, then the CONSULTANT, without additional charge, shall modify the Contract Documents as necessary to comply with the fixed limit as a condition of this Agreement.

4.0 Evaluation and Planning Services

- 4.1** The CITY may furnish a program setting forth the CITY's objectives, schedule, constraints and criteria, including space requirements and relationships, special equipment, systems and site requirements. The CONSULTANT shall provide a preliminary evaluation of the information furnished by the CITY under this Agreement, including the CITY'S program and schedule requirements and budget for the Cost of the Work, each in terms of the other. The CONSULTANT shall review such information to ascertain that it is consistent with the requirements of the Project and shall notify the CITY of any other information or consultant services that may be reasonably needed for the Project.
- 4.2** The CONSULTANT shall provide a preliminary evaluation of the CITY's site for the Project based on the information provided by the CITY of site conditions, and the CITY'S program, schedule and budget for the Cost of the Work.

5.0 Design Services

5.1 SCHEMATIC DESIGN DOCUMENTS

5.1.1 The CONSULTANT shall provide Schematic Design Documents based on the mutually agreed-upon program, schedule, and budget for the Cost of the Work. The documents shall establish the conceptual design of the Project illustrating the scale and relationship of the Project components. The Schematic Design Documents shall include a conceptual site plan, if appropriate, and preliminary building plans, sections and elevations. At the CONSULTANT's option, the Schematic Design Documents may include study models, perspective sketches, electronic modeling or combinations of these media. Preliminary selections of major building systems and construction materials shall be noted on the drawings or described in writing.

5.2 DESIGN DEVELOPMENT DOCUMENTS

5.2.1 The CONSULTANT shall provide Design Development Documents based on the approved Schematic Design Documents and updated budget for the Cost of the Work. The Design Development Documents shall illustrate and describe the refinement of the design of the Project, establishing the scope, relationships, forms, size and appearance of the Project by means of

plans, sections and elevations, typical construction details, and equipment layouts. The Design Development Documents shall include specifications that identify major materials and systems and establish in general their quality levels.

5.3 CONSTRUCTION DOCUMENTS

5.3.1 The CONSULTANT shall provide Construction Documents based on the approved Design Development Documents and updated budget for the Cost of the Work. The Construction Documents shall set forth in detail the requirements for construction of the Project. The Construction Documents shall include Drawings and Specifications that establish in detail the quality levels of materials and systems required for the Project.

5.3.2 During the development of the Construction Documents, the CONSULTANT shall assist the CITY in the development and preparation of: (1) bidding and procurement information which describes the time, place and conditions of bidding; bidding or proposal forms; and the form of agreement between the CITY and the CONSULTANT; and (2) the Conditions of the Contract for Construction (General, Supplementary and other Conditions). The CONSULTANT also shall compile the Project Manual that includes the Conditions of the Contract for Construction and Specifications and may include bidding requirements and sample forms.

5.3.3 Progress submittals of design documents shall be delivered to the CITY for review and approval, at the 50% Construction Document Phase, the 100% Construction Document to be submitted for permit, and the 100% Construction Documents, approved for construction for each subproject. Such submittals shall be reissued as necessary to secure approval. CITY comments shall be incorporated into the next phase of the work. CONSULTANT is entitled to rely upon CITY'S approval that the design conforms to the program at each stage. The CITY and the CONSULTANT agree that they shall not proceed to the next phase, including the Construction Phase, until they have mutually agreed that the project is feasible in accordance with the budget approved by the CITY.

6.0 Contract Administration Services

6.1 GENERAL ADMINISTRATION

6.1.1 The CONSULTANT shall provide administration of the Contract between the CITY and the Contractor as set forth in the CITY'S Agreement with their Contractor.

6.1.2 The CONSULTANT'S responsibility to provide the Contract Administration Services under this Agreement commences with the Notice to Proceed to the

Contractor and terminates at the issuance to the CITY of the final Certificate for Payment. However, the CONSULTANT may be entitled to a Change in Services in accordance with Section 47.2 if Contract Administration Services extend 60 days after the date of Final Completion of the Work.

- 6.1.3** The CONSULTANT shall be a representative of, and shall advise and consult with, the CITY during the provision of the Contract Administration Services. The CONSULTANT shall have authority to act on behalf of the CITY only to the extent provided in this Agreement unless otherwise modified by written amendment.
- 6.1.4** Duties, responsibilities and limitations of authority of the CONSULTANT under this Section 6.0 shall not be restricted, modified or extended without written agreement of the CITY and CONSULTANT.
- 6.1.5** The CONSULTANT shall review properly prepared, timely requests by the Contractor for additional information about the Contract Documents. A properly prepared request for additional information about the Contract Documents shall be in a form prepared or approved by the CONSULTANT and shall include a detailed written statement that indicates the specific Drawings or Specifications in need of clarification and the nature of the clarification requested.
- 6.1.6** If deemed appropriate by the CONSULTANT, the CONSULTANT shall on the CITY'S behalf prepare, reproduce and distribute supplemental Drawings and Specifications in response to requests for information by the Contractor.
- 6.1.7** The CONSULTANT shall interpret and decide matters concerning performance of the CITY and Contractor under, and requirements of, the Contract Documents on written request of either the CITY or Contractor. The CONSULTANT'S response to such requests shall be made in writing within any time limits agreed upon or otherwise with reasonable promptness.
- 6.1.8** Interpretations and decisions of the CONSULTANT shall be consistent with the intent of and reasonably inferable from the Contract Documents and shall be in writing or in the form of drawings. When making such interpretations and initial decisions, the CONSULTANT shall endeavor to secure faithful performance by both CITY and Contractor, shall not show partiality to either, and shall not be liable for the results of interpretations or decisions so rendered in good faith.
- 6.1.9** The CONSULTANT shall render initial decisions on claims, disputes or other matters in question between the CITY and CONSULTANT as provided in the Contract Documents. However, the CITY'S decisions on matters relating to aesthetic effect shall be final if consistent with the intent expressed in the Contract Documents.

6.2 EVALUATIONS OF THE WORK

6.2.1 The CONSULTANT, as a representative of the CITY, shall visit the site at intervals appropriate to the stage of the Contractor's operations, or as otherwise agreed by the CITY and the CONSULTANT, (1) to become generally familiar with and to keep the CITY informed in writing about the progress and quality of the portion of the Work completed, (2) to endeavor to guard the CITY against defects and deficiencies in the Work, and (3) to determine in general if the Work is being performed in a manner indicating that the Work, when fully completed, will be in accordance with the Contract Documents. However, the CONSULTANT shall not be required to make exhaustive or continuous on-site inspections to check the quality or quantity of the Work. The CONSULTANT shall neither have control over or charge of, nor be responsible for, the construction means, methods, techniques, sequences or procedures, or for safety precautions and programs in connection with the Work, since these are solely the Contractor's rights and responsibilities under the Contract Documents.

6.2.2 The CONSULTANT shall report to the CITY known deviations from the Contract Documents and from the most recent construction schedule submitted by the Contractor. However, the CONSULTANT shall not be responsible for the Contractor's failure to perform the Work in accordance with the requirements of the Contract Documents. The CONSULTANT shall be responsible for the CONSULTANT'S negligent acts or omissions, but shall not have control over or charge of and shall not be responsible for acts or omissions of the Contractor, Sub-contractors, or their agents or employees, or of any other persons or entities performing portions of the Work.

6.2.3 The CONSULTANT shall at all times have access to the Work wherever it is in preparation or progress.

6.2.4 Except as may otherwise be provided in the Contract Documents or when direct communications have been specially authorized in writing, the CONSULTANT and Contractor shall communicate through the CITY. Communications by and with the CONSULTANT'S sub-consultants shall be through the CONSULTANT. The CONSULTANT shall respond to the CITY with the CONSULTANT'S written responses or correspondence within a reasonable length of time.

6.2.5 The CONSULTANT shall have authority to reject Work that does not conform to the Contract Documents. Whenever the CONSULTANT considers it necessary or advisable, the CONSULTANT, with the CITY'S approval, will have authority to require inspection or testing of the Work in accordance with the provisions of the Contract Documents, whether or not such Work is fabricated, installed or completed. However, neither this

authority of the CONSULTANT nor a decision made in good faith, either to exercise or not to exercise such authority, shall give rise to a duty or responsibility of the CONSULTANT to the Contractor, Sub-contractor, material and equipment suppliers, their agents or employees or other persons or entities performing portions of the Work. If the CONSULTANT requires inspection or testing of the Work without the CITY'S prior approval, the Work is deemed acceptable, the CONSULTANT will be responsible for any compensation due the Contractor.

6.3 CERTIFICATION OF PAYMENTS TO CONTRACTOR

6.3.1 The CONSULTANT shall review and certify the amounts due the Contractor and shall issue Certificates for Payment in such amounts. The CONSULTANT'S certification for payment shall constitute a representation to the CITY, based on the CONSULTANT'S evaluation of the Work as provided in Paragraph 6.2 and on the data comprising the Contractor's Application for Payment, that the Work has progressed to the point indicated and that, to the best of the CONSULTANT'S knowledge, information and belief, the quality of the Work is in accordance with the Contract Documents. The foregoing representations are subject (1) to an evaluation of the Work for conformance with the Contract Documents upon Substantial Completion, (2) to results of subsequent tests and inspections, (3) to correction of minor deviations from the Contract Documents prior to completion, and (4) to specific qualifications expressed by the CONSULTANT.

6.3.2 The issuance of a Certificate for Payment shall not be a representation that the CONSULTANT has (1) made exhaustive or continuous on-site inspections to check the quality or quantity of the Work, (2) reviewed construction means, methods, techniques, sequences or procedures, (3) reviewed copies of requisitions received from Sub-contractors and material suppliers and other data requested by the CITY to substantiate the Contractor's right to payment, or (4) ascertained how or for what purpose the Contractor has used money previously paid on account of the Contract Sum.

6.3.3 The CONSULTANT shall maintain a record of the Contractor's Applications for Payment.

6.4 SUBMITTALS

6.4.1 The CONSULTANT shall review and approve or take other appropriate action upon the Contractor's submittals such as Shop Drawings, Product Data and Samples, but only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. The CONSULTANT'S action shall be taken with such reasonable promptness as to cause no delay in the Work or in the activities of the CITY, Contractor or separate contractor. Review of such submittals is

not conducted for the purpose of determining the accuracy and completeness of other details such as dimensions and quantities, or for substantiating instructions for installation or performance of equipment or systems, all of which remain the responsibility of the Contractor as required by the Contract Documents. The CONSULTANT'S review shall not constitute approval of safety precautions or, unless otherwise specifically stated by the CONSULTANT, of any construction means, methods, techniques, sequences or procedures. The CONSULTANT'S approval of a specific item shall not indicate approval of an assembly of which the item is a component.

6.4.2 The CONSULTANT shall maintain a record of submittals and copies of submittals supplied by the Contractor in accordance with the requirements of the Contract Documents.

6.4.3 If professional design services or certifications by a design professional related to systems, materials or equipment are specifically required of the Contractor by the Contract Documents, the CONSULTANT shall specify appropriate performance and design criteria that such services must satisfy. Shop Drawings and other submittals related to the Work designed or certified by the design professional retained by the Contractor shall bear such professional's written approval when submitted to the CONSULTANT. The CONSULTANT shall be entitled to rely upon the adequacy, accuracy and completeness of the services, certifications or approvals performed by such design professionals.

6.5 CHANGES IN THE WORK

6.5.1 The CONSULTANT shall prepare Construction Change Directives and assist the City with the preparation of change orders and allowance authorizations for the CITY'S approval and execution in accordance with the Contract Documents. The CONSULTANT may authorize minor changes in the Work not involving an adjustment in Contract Sum or an extension of the Contract Time, which are consistent with the intent of the Contract Documents. If necessary, the CONSULTANT shall prepare, reproduce and distribute Drawings and Specifications to describe Work to be added, deleted or modified.

6.5.2 The CONSULTANT shall review properly prepared, timely requests by the CITY or Contractor for changes in the Work, including adjustments to the Contract Sum or Contract Time. A properly prepared request for a change in the Work shall be accompanied by sufficient supporting data and information to permit the CONSULTANT to make a reasonable determination without extensive investigation or preparation of additional drawings or specifications. If the CONSULTANT determines that requested changes in the Work are not materially different from the requirements of the

Contract Documents, the CONSULTANT may issue an order for a minor change in the Work or recommend to the CITY that the requested change be denied.

6.5.3 If the CONSULTANT determines that implementation of the requested changes would result in a material change to the Contract that may cause an adjustment in the Contract Time or Contract Sum, the CONSULTANT shall make a recommendation to the CITY, who may authorize further investigation of such change. Upon such authorization, and based upon information furnished by the Contractor, if any, the CONSULTANT shall estimate the additional cost and time that might result from such change, including any additional costs attributable to a Change in Services of the CONSULTANT. With the CITY'S approval, the CONSULTANT shall incorporate those estimates into a Change Order or other appropriate documentation for the CITY'S execution or negotiation with the Contractor.

6.5.4 The CONSULTANT shall maintain records relative to changes in the Work.

6.6 PROJECT COMPLETION

6.6.1 The CONSULTANT shall conduct inspections to determine the date or dates of Substantial Completion and the date of Final Completion, shall receive from the Contractor and forward to the CITY, for the CITY'S review and records, written warranties and related documents required by the Contract Documents and assembled by the Contractor, and shall issue a final Certificate for Payment based upon a final inspection indicating the Work complies with the requirements of the Contract Documents.

6.6.2 The CONSULTANT'S inspection shall be conducted with the CITY'S Designated Representative to check conformance of the Work with the requirements of the Contract Documents and to verify the accuracy and completeness of the list submitted by the CONSULTANT of Work to be completed or corrected.

6.6.3 When the Work is found to be substantially complete, the CONSULTANT shall inform the CITY about the balance of the Contract Sum remaining to be paid the Contractor, including any amounts needed to pay for final completion or correction of the Work.

6.6.4 The CONSULTANT shall receive from the Contractor and forward to the CITY: (1) consent of surety or sureties, if any, to reduction in or partial release of retainage or the making of final payment and (2) affidavits, receipts, releases and waivers of liens or bonds indemnifying the CITY against liens.

7.0 **Facility Operation Services**

7.1 The CONSULTANT shall meet with the CITY or the CITY'S Designated Representative promptly after Substantial Completion to review the need for facility operation services.

7.2 Upon request of the CITY, and prior to the expiration of one year from the date of Substantial Completion, the CONSULTANT shall conduct a meeting with the CITY and the CITY'S Designated Representative to review the facility operations and performance and to make appropriate recommendations to the CITY.

8.0 **Additional Services**

8.1 The CONSULTANT may be authorized, via a duly executed CSA or CPO, to perform any or all of the additional services as set forth and further described on **Exhibit "B"**.

8.2 The following minimum Design and Contract Administration Services shall be provided by the CONSULTANT without a Change in Services in accordance with Section 47.2:

8.2.1 A reasonable number of reviews of each Shop Drawing, Product Data item, sample and similar submittal of the CONSULTANT.

8.2.2 Up to two (2) inspections for any portion of the Work to determine whether such portion of the Work is substantially complete in accordance with the requirements of the Contract Documents.

8.2.3 Up to two (2) inspections for any portion of the Work to determine final completion.

8.3 The following Design and Contract Administration Services shall be provided by the CONSULTANT as a Change in Services in accordance with Section 47.2:

8.3.1 Change Orders and Construction Change Directives requiring evaluation of proposals, including the preparation or revision of Instruments of Services, with prior approval by CITY;

8.3.2 Providing consultation concerning replacement of Work resulting from fire or other cause during construction;

8.3.3 Evaluation of substitutions proposed by the CITY'S consultants or contractors and making subsequent revisions to the Instruments of Service, with prior approval by CITY.

8.3.4 Preparation of design and documentation for alternate bid or proposal requests proposed by the CITY after the Guaranteed Maximum Price is established.

8.3.5 Contract Administration Services provided 60 (sixty) days after the date of Final Completion of the Work, as may be requested by the CITY.

8.4 The CONSULTANT shall furnish or provide the following services only if specifically designated:

- 8.4.1 Programming
- 8.4.2 Land Survey Services
- 8.4.3 Geotechnical Services
- 8.4.4 Space Schematics/Flow Diagrams
- 8.4.5 Existing Facilities Surveys
- 8.4.6 Economic Feasibility Studies
- 8.4.7 Site Analysis
- 8.4.8 Environmental Studies and Reports
- 8.4.9 User-Supplied Data
- 8.4.10 Schedule Development and Monitoring
- 8.4.11 Civil Design
- 8.4.12 Landscape Design
- 8.4.13 Interior Design
- 8.4.14 Value Analysis
- 8.4.15 Cost Estimating
- 8.4.16 On-Site Project Representation
- 8.4.17 Construction Management
- 8.4.18 Start-up Assistance
- 8.4.19 Record Drawings
- 8.4.20 Post-Contract Evaluation
- 8.4.21 Tenant-Related Services
- 8.4.22 Underground Field Drainage

9.0 **Compensation**

- 9.1 In consideration of the Services provided by the CONSULTANT pursuant to this Agreement, the CITY shall pay CONSULTANT compensation which may be negotiated as either a not-to-exceed price or a lump sum amount, in the CITY's sole discretion.
- 9.2 In the event a not to exceed price is negotiated, compensation shall be billed and paid based on and in accordance with the Hourly Rate Schedule attached hereto and incorporated herein as **Exhibit "A"**. The Hourly Rate Schedule identifies all job

classifications which will perform billable services pursuant to this Agreement and the fee for each job classification. Performance of work by personnel in job classifications not listed on the fee schedule will result in nonpayment for such services.

- 9.3 All invoices must reference this Agreement number, using an invoice form approved by the CITY.
- 9.4 Each individual invoice shall be due and payable forty-five (45) days after receipt by the CITY of a correct, fully documented, invoice, in form and substance satisfactory to the CITY with all appropriate cost substantiations attached. All invoices shall be delivered to:

The City of Kissimmee

Public Works & Engineering

Attention: Facilities Management Director

101 Church Street

Kissimmee, FL 34741

- 9.5 In order for both parties herein to close their books and records for a particular Project, the CONSULTANT will clearly state "Final Invoice" on the CONSULTANT's final/last billing to the CITY for such Project. This certifies that all services have been properly performed and all charges and costs have been invoiced to the CITY. Since this account will thereupon be closed, any and other further charges if not properly included on this final invoice are waived by the CONSULTANT.
- 9.6 Payment of the final invoice for any particular Project shall not constitute evidence of the CITY's acceptance of the Work or Services.
- 9.7 Pursuant to Section 9.2, if a not to exceed fee is negotiated, invoices shall be accompanied by time and task records for all billable hours appearing on the invoice. Alternatively, if a lump sum amount is negotiated, invoices shall be made upon the completion of each phase of the work in proportion to the Services performed, as specifically set forth in the applicable CSA or CPO. Additional documentation may be requested by the CITY and, if so requested, shall be furnished by the CONSULTANT to the CITY Auditor's satisfaction.
- 9.8 A contract amendment/change order may be executed by both parties, after Substantial Completion, to incorporate any additional design fees due to the CONSULTANT. The amendment shall be based upon 7% of the additional cost of the work that has been added to the project where the CONSULTANT participated in the design process.
- 9.9 If the services of the CONSULTANT are changed as described in Section 47.2.1 or

47.2.2, the CONSULTANT'S compensation shall be adjusted. Such adjustment shall be computed as a fixed fee on a task-by-task basis, or, in the discretion of the CITY, in an otherwise equitable manner. Adjustments to the CONSULTANT'S compensation may be approved by the Facilities Management Director, providing the compensation adjustment does not exceed the amount specified in the applicable CSA or CPO.

- 9.10 Forty (40) calendar days shall be allowed for the CITY's inspection and approval of the goods and services for which any invoice has been submitted.
- 9.11 No deduction shall be made from the CONSULTANT's compensation on account of penalty, liquidated damages, or other sums withheld from payments to contractors.
- 9.12 If any work designed or specified by the CONSULTANT during any phase of service is abandoned or suspended in whole or in part, the CONSULTANT is to be paid for the service performed on account of it prior to receipt of written notice from the CITY of such abandonment or suspension, together with reimbursements then due and any terminal expense resulting from abandonment or suspension for more than three months.

10.0 **Reimbursable Expense**

10.1 All requests for payment of out-of-pocket expenses eligible for reimbursement under the terms of this Agreement shall include copies of paid receipts, invoices or other documentation acceptable to the CITY. Such documentation shall be sufficient to establish that the expense was actually incurred and necessary in the performance of the Scope of Work described in this Agreement.

10.2 Reimbursable Expenses are the actual, pre-approved, expenses incurred directly in connection with the applicable Consultant Services Authorization, and include:

- Overnight Deliveries
- Reproduction
- Sub-Consultant
- Long Distance Telephone Calls (excluding Florida cities located outside the boundaries of Osceola County)

10.3 Mileage shall be reimbursed in accordance with Section 112.061, Florida Statutes, for pre-approved out-of-county travel (excluding travel from home offices located outside of Osceola County to the Osceola County line).

10.4 Reimbursable Expenses, including sub-consultants, shall be reimbursed at cost.

10.5 Pre-approved travel costs shall be reimbursed in accordance with Section 112.061, Florida Statutes.

10.6 All assets, i.e. durable goods, purchased as reimbursable expenses become the property of the CITY upon completion of the work for which the asset was utilized. All such assets must be surrendered by delivery to the City of Kissimmee Public Works and Engineering Division offices upon demand termination of the Agreement or the conclusion of the project, whichever occurs first.

10.7 The CITY shall reimburse the CONSULTANT for any documents required over and above the number specified in this Agreement per the City's Reimbursable Schedule that is attached hereto as **Exhibit "C"**.

11.0 **Project Team**

11.1 The Project Team, including the CITY'S Designated Representative and the CONSULTANT'S Designated Representative, shall be as specified in the applicable CSA or CPO.

11.2 The Commission (the "Board") hereby authorizes the CITY'S Designated Representative to act as the Board's agent and execute documents associated with a particular project. Examples of these documents are Notices of Commencements, Certificates of Substantial and Final Completion and permits from applicable agencies.

11.3 The persons or entities, in addition to the CITY'S Designated Representative, who have rights to review the CONSULTANT'S submittals to the CITY, shall be as specified in the applicable CSA or CPO.

11.4 The CITY'S other consultants and the CONSULTANT'S sub-consultants or any other person or entity retained at the CONSULTANT'S expense shall be as specified in the applicable CSA or CPO.

12.0 **Consultant's Standard of Care**

12.1 The CONSULTANT'S services shall be performed as expeditiously as is consistent with professional skill and care and the orderly progress of the Project. The CONSULTANT shall submit for the CITY'S approval a schedule for the performance of the CONSULTANT'S services which initially shall be consistent with the time periods established in the applicable CSA or CPO and which shall be adjusted, if necessary, as the Project proceeds. This schedule shall include allowances for periods of time required for the CITY'S review, for the performance of the CITY'S consultants, and for approval of submissions by authorities having jurisdiction over the Project. The CONSULTANT or CITY shall not, except for reasonable cause, exceed time limits established by this schedule approved by the CITY.

12.2 The CONSULTANT'S Designated Representative, identified in the

applicable CSA or CPO, shall be authorized to act on the CONSULTANT'S behalf with Respect to the Project.

12.3 The CONSULTANT shall maintain the confidentiality of information specifically designated as confidential by the CITY, unless withholding such information would violate the law, create the risk of significant harm to the public or prevent the CONSULTANT from establishing a claim or defense in an adjudicatory proceeding. The CONSULTANT shall require of the CONSULTANT'S consultants similar agreements to maintain the confidentiality of information specifically designated as confidential by the CITY.

12.4 Except with the CITY'S knowledge and prior express written consent, the CONSULTANT shall not engage in any activity, or accept any employment, interest or contribution that would reasonably appear to compromise the CONSULTANT'S professional judgment with respect to the Project.

12.5 The CONSULTANT shall review laws, codes and regulations applicable to the CONSULTANT'S services. The CONSULTANT shall design the Project to conform to the requirements imposed by governmental authorities having jurisdiction over the Project.

12.6 The CONSULTANT shall be entitled to rely on the accuracy and completeness of services and information furnished by the CITY. The CONSULTANT shall provide prompt written notice to the CITY if the CONSULTANT becomes aware of any errors, omissions or inconsistencies in such services or information.

12.7 The CONSULTANT has represented to the CITY that it has the personnel and experience necessary to perform the work in a professional and workmanlike manner.

12.8 The CONSULTANT shall exercise the same degree of care, skill, and diligence in the performance of the Services as is provided by a professional of like experience, knowledge and resources, under similar circumstances.

12.9 The CONSULTANT shall, at no additional cost to CITY, re-perform services which fail to satisfy the foregoing standard of care or otherwise fail to meet the requirement of this Agreement.

12.10 The CONSULTANT shall use skilled and competent personnel to perform the services.

13.0 **Insurance**

13.1 **General Provisions**

13.1.1 The CONSULTANT shall maintain, at all times, the following minimum levels of insurance and shall, without in any way altering their liability, obtain, pay for and maintain insurance for the coverage and amounts of coverage not less than those set forth below and provide the CITY with a certified copy of each policy applicable to this Agreement followed thereafter by an annual Certificate of Insurance satisfactory to the CITY to evidence such coverage before any work commences. Such certificates will provide that there shall be no termination, non-renewal, modification or expiration of such coverage without thirty (30) days prior written notice to the CITY .

13.1.2 The CITY shall be named as an additional insured on all CONSULTANT policies related to the project, excluding professional liability and worker's compensation. The general liability and workers' compensation policies shall contain a waiver of subrogation in favor of the CITY. All insurance coverage shall be written with an insurer having an A.M. Best Rating of a least the "A" category and size category of VIII.

13.1.3 The CONSULTANT's self-insured retention or deductible per line of coverage shall not exceed \$25,000.00 without the permission of the CITY.

13.1.4 Any failure by the CONSULTANT to comply with the requirements of this section to provide insurance, the CITY may, at its option, on notice to the CONSULTANT, suspend the work for cause until there is full compliance;

13.1.5 The CITY may, at its sole discretion, purchase such insurance at CONSULTANT's expense provided that the CITY shall have no obligation to do so and if the CITY shall do so, it shall not relieve CONSULTANT of its obligation to obtain insurance.

13.1.6 The CONSULTANT shall not be relieved of or excused from the obligation to obtain and maintain such insurance amount and coverages.

13.1.7 All CONSULTANT's sub-consultants shall be required to include CITY and CONSULTANT as additional insured on their General Liability Insurance policies.

13.1.8 In the event that sub-consultants used by the CONSULTANT do not have insurance, or do not meet the insurance limits, CONSULTANT shall indemnify and hold harmless the CITY for any claim in excess of the sub-consultants' insurance coverage.

13.1.9 The CONSULTANT shall not commence work under this Agreement until all insurance required as stated herein has been obtained and such insurance has been approved by the CITY.

13.2 Comprehensive Automobile Liability Insurance. \$1,000,000.00 combined single limit of liability for bodily injuries, death and property damage resulting from any one occurrence, including all owned, hired, and non-owned vehicles.

13.3 Commercial General Liability. \$1,000,000.00 combined single limit of liability for bodily injuries, death and property damage, and personal injury resulting from any one occurrence, including the following coverages:

13.3.1 Premises and Operations:

Broad Form Commercial General Liability Endorsement to include Blanket Contractual liability (specifically covering, but not limited to, the contractual obligations assumed by the Firm); Personal Injury (with employment and contractual exclusions deleted); and Broad Form Property Damage coverage.

13.3.2 Independent Contractors:

Delete Exclusion relative to collapse, explosion and underground; Property Damage Hazards; Cross Liability Endorsement; and Contractual liability (specifically covering, but not limited to, the contractual obligations assumed by the Firm)

13.4 Professional Liability Insurance. \$2,000,000 for design errors and omissions, exclusive of defense costs. The CONSULTANT shall be required to provide continuing Professional Liability Insurance to cover each project for a period of two (2) years after the project is completed. Insurance requirements may vary depending on projects as determined by the CITY Director of Risk Management and Insurance. The CITY may require the CONSULTANT to provide a higher level of coverage for a specific Project and time frame.

13.5 Performance, Payment and Other Bonds. CONSULTANT shall furnish Performance and Payment Bonds specific to each Project if required and agreed to under the applicable CSA or CPO for the Project.

13.6 Worker's Compensation. CONSULTANT shall provide, pay for, and maintain worker's compensation insurance on all employees, its agents or subcontractors as required by Florida Statutes.

13.7 Employers' Liability. \$1,000,000.

14.0 **Indemnification**

14.1 General. Having considered the risks and potential liabilities that may exist during the performance of the Services and in consideration of the promises included herein, the CITY and the CONSULTANT agree to allocate such liabilities in accordance with this Section 14.0.

14.2 Indemnification.

14.2.1 The CONSULTANT, to the extent permitted by law, shall indemnify, defend (by counsel reasonably acceptable to the CITY) protect and hold the CITY, and its officers, employees and agents, free and harmless from and against any and all claims, actions, causes of action, liabilities (joint or several), penalties, forfeitures, damages, losses and expenses (including, without limitation, attorneys' fees and costs during negotiation, through litigation and all appeals therefrom), and including, without limitation, any liability or loss resulting from judgments or claims for personal injury, including death, or damage to any property whatsoever, which directly or indirectly result from or arise in connection with (i) the failure of the CONSULTANT to comply with applicable non-conflicting laws, rules or regulations, (ii) the breach by the CONSULTANT of its obligations under this Agreement, (iii) any claim for trademark, patent or copyright infringement arising out of the scope of the CONSULTANT's performance of this Agreement, or (iv) the negligent act, errors or omissions, or intentional or willful misconduct of the CONSULTANT, its sub-consultants, agents, employees and invitees; provided, however, that the CONSULTANT shall not be obligated to defend or indemnify the CITY with respect to any such claims or damages arising out of the CITY's sole negligence.

14.2.2 The CITY's review, comment and observation of the CONSULTANT's work and performance of this Agreement shall in no manner constitute a waiver of the indemnification provisions of this Agreement.

14.2.3 The CONSULTANT agrees that it bears sole legal responsibility for its work and work product, and the work and work product of sub-consultants and their employees, and/or for CONSULTANT's performance of this Agreement and its work product(s).

14.3 Survival. Upon completion of all Services, obligations and duties provided for in this Agreement, or in the event of termination of this Agreement for any reason, the terms and conditions of this Section 14.0 shall survive as if the Agreement were in full force and effect.

15.0 Independent Contractor

15.1 The CONSULTANT undertakes performance of the Services as an independent contractor and shall be wholly responsible for the methods of performance.

15.2 The CITY shall have no right to supervise the methods used, but the CITY shall have the right to observe such performance.

15.3 The CONSULTANT shall work closely with the CITY in performing Services under this Agreement.

15.4 The CONSULTANT shall not pledge the CITY's credit or make it a guarantor of payment or surety for any contract, debt, obligation, judgment, lien or any form of indebtedness and shall have no right to speak for or bind the CITY in any manner.

15.5 The CONSULTANT further warrants and represents that it has no obligation or indebtedness that would impair its ability to fulfill the terms of this Agreement.

16.0 **Authority to Practice**

16.1 The CONSULTANT hereby represents and warrants that it has and will continue to maintain all licenses and approvals required to conduct its business, and that it will at all times conduct its business activities in a reputable manner.

17.0 **Compliance with Laws**

17.1 In performance of the Services, the CONSULTANT will comply with applicable regulatory requirements including federal, state, special district, and local laws, rules, regulations, orders, codes, criteria and standards.

18.0 **Subcontracting**

18.1 The CITY reserves the right to accept the use of any proposed subcontractor or sub-consultant of the CONSULTANT (for purposes of this Section 18.0 referred to as a “subcontractor”), or to reject the selection of a particular subcontractor and to inspect all facilities of any subcontractor.

18.2 If a subcontractor fails to perform or make progress, as required by this Agreement, and it is necessary to replace the subcontractor to complete the work in a timely fashion, the CONSULTANT shall promptly do so, subject to acceptance of the new subcontractor by the CITY. Failure of a subcontractor to timely or properly perform its obligations shall not relieve CONSULTANT of its obligations hereunder.

19.0 **Federal and State Taxes**

19.1 The CITY is exempt from Federal Tax and State Sales and Use Taxes. Upon request, the CITY will provide an exemption certificate to the CONSULTANT. The CONSULTANT shall not be exempted from paying sales tax to its suppliers for materials to fulfill contractual obligations with the CITY, nor shall the CONSULTANT be authorized to use the CITY’s Tax Exemption Number in securing such materials.

20.0 **Public Entity Crimes**

20.1 The CONSULTANT understands and acknowledges that this Agreement with the CITY will be void, in the event the conditions under Section 287.133, Florida Statutes apply to the CONSULTANT, relating to conviction for a public entity crime.

21.0 **CITY’s Responsibilities**

21.1 The CITY shall be responsible for providing access to all CITY project sites, and providing information in the CITY’s possession that may reasonably be required by CONSULTANT, including existing reports, studies, financial information, and other required data that are available in the files of the CITY.

22.0 **Termination of Agreement**

22.1 This Agreement may be terminated by the CONSULTANT upon thirty (30) days prior written notice to the CITY in the event of substantial failure by the CITY to perform in accordance with the terms of the Agreement through no fault of the CONSULTANT.

22.2 This Agreement may be terminated by the CITY with or without cause immediately upon written notice to the CONSULTANT.

22.3 Unless the CONSULTANT is in breach of this Agreement, the

CONSULTANT shall be paid for services rendered to the CITY's satisfaction through the date of termination.

22.4 After receipt of written notice of termination of this Agreement, and except as otherwise directed by the CITY, the CONSULTANT shall:

22.4.1 Stop work on the date and to the extent specified.

22.4.2 Terminate and settle all orders and subcontracts relating to the performance of the terminated work.

22.4.3 Transfer all work in process, completed work, and other material related to the terminated work to the CITY.

22.4.4 Continue and complete all parts of the work that have not been terminated.

22.5 The CONSULTANT shall be paid for services actually rendered to the date of termination.

23.0 **Uncontrollable Forces (Force Majeure)**

23.1 Neither the CITY nor the CONSULTANT shall be considered to be in default of this Agreement if delays in or failure of performance shall be due to Uncontrollable Forces, the effect of which, by the exercise of reasonable diligence, the non-performing party could not avoid. The term "Uncontrollable Forces" shall mean any event which results in the prevention or delay of performance by a party of its obligations under this Agreement and which is beyond the reasonable control of the nonperforming party. It includes, but is not limited to fire, flood, earthquakes, storms, lightning, epidemic, war, riot, civil disturbance, sabotage, and governmental actions.

23.2 Neither Party shall, however, be excused from performance if nonperformance is due to forces which are preventable, removable, or remediable and which the nonperforming party could have, with the exercise of reasonable diligence, prevented, removed or remedied with reasonable dispatch.

23.3 The nonperforming party shall, within a reasonable time of being prevented or delayed from performance by an Uncontrollable Force, give written notice to the other party describing the circumstances and Uncontrollable Forces preventing continued performance of the obligations of this Agreement.

24.0 **Governing Law and Venue**

24.1 This Agreement shall be governed in all respects by the laws of the State of Florida and any litigation with respect thereto shall be brought only in the courts of Osceola County.

25.0 **Non-Discrimination**

25.1 The CONSULTANT warrants and represents that all of its employees are treated equally during employment without regard to race, color, religion, gender, age or national origin.

26.0 **Waiver**

26.1 A waiver by either the CITY or the CONSULTANT of any breach of this Agreement shall not be binding upon the waiving party unless such waiver is in writing. In the event of a written waiver, such a waiver shall not affect the waiving Party's rights with respect to any other or further breach. The making or acceptance of a payment by either party with knowledge of the existence of a default or breach shall not operate or be construed to operate as a waiver of any subsequent default or breach.

27.0 **Severability**

27.1 The invalidity, illegality, or unenforceability of any provision of this Agreement, or the occurrence of any event rendering any portion or provision of this Agreement void, shall in no way affect the validity or enforceability of any other portion or provision of the Agreement.

27.2 Any void provision shall be deemed severed from the Agreement and the balance of the Agreement shall be construed and enforced as if the Agreement did not contain the particular portion or provision held to be void.

27.3 The Parties further agree to reform the Agreement to replace any stricken provision with a valid provision that comes as close as possible to the intent of the stricken provision.

27.4 The provisions of this Section shall not prevent the entire Agreement from being void should a provision which is of the essence of the Agreement be determined to be void.

28.0 **Entirety of Agreement**

28.1 The CITY and the CONSULTANT agree that this Agreement sets forth the entire understanding between the Parties as to the subject matter contained herein, and that there are no promises or understandings between the parties other than those

stated herein.

28.2 This Agreement supersedes all prior agreements, contracts, proposals, representations, negotiations, letters or other communications between the CITY and the CONSULTANT pertaining to the Services, whether written or oral.

29.0 **Modification**

29.1 This Agreement may not be modified, added to, superseded or otherwise altered unless such modifications, additions or other alterations are evidenced in writing signed by both the CITY and the CONSULTANT. Such modifications shall be in the form of a written Amendment executed by both Parties.

30.0 **Successors and Assigns**

30.1 The CITY and the CONSULTANT each binds itself and its partners, successors, assigns, executors, administrators and legal representatives to the other Party to this Agreement and to their partners, successors, executors, administrators, assigns, and legal representatives.

30.2 The CONSULTANT shall not assign this Agreement without the express written approval of the CITY by executed amendment, which approval may be withheld in the CITY's sole and absolute discretion.

30.3 In the event of a merger, the surviving corporation shall be substituted for the contracting party to this Agreement and such substitution shall be affirmed by the City of Kissimmee Commission by executed amendment.

31.0 **Contingent Fees**

31.1 The CONSULTANT warrants that it has not employed or retained any company or person, other than a bona fide employee working solely for the CONSULTANT to solicit or secure this Agreement and that it has not paid or agreed to pay any person, company, corporation, individual or firm, other than bona fide employee working solely for the CONSULTANT, any fee, commission, percentage, gift or any other consideration contingent upon or resulting from the award or making of this Agreement.

32.0 **Truth-In-Negotiation Certificate**

32.1 Execution of this Agreement by the CONSULTANT shall act as the execution of a Truth-in-Negotiation certificate certifying that the wage rates and costs used to determine the compensation provided for in this Agreement are accurate, complete, and current as of the date of the Agreement.

32.2 The said rates and costs shall be adjusted to exclude any significant sums should the CITY determine that the rates and costs were increased due to inaccurate, incomplete or noncurrent wage rates or due to inaccurate representations of fees paid to outside consultants. The CITY shall exercise its rights under this Certificate within one (1) year following payment.

33.0 **Ownership of Documents**

33.1 The CONSULTANT shall be required to cooperate with other consultants relative to providing information requested in a timely manner and in the specified form. Any and all documents, records, disks, original drawings, or other information shall become the property of the CITY for its use and/or distribution as may be deemed appropriate by the CITY. The CONSULTANT is not liable for any damages, injury or costs associated with the CITY's use or distribution of these documents for purposes other than those originally intended by the CONSULTANT.

34.0 **Access and Audits**

34.1 The CONSULTANT shall maintain adequate records to justify all charges and costs incurred in performing the work for at least three (3) years after completion of this Agreement. The CITY shall have access to such books, records, and documents as required in this section for the purpose of inspection or audit during normal business hours at the CONSULTANT's place of business.

34.2 Misrepresentations of billable time or Reimbursable Expenses as determined by the City Auditor to the Commission shall result in the recovery of any resulting overpayments. The CITY's cost of recovery shall be the sole expense of the CONSULTANT, including accounting and legal fees, court costs and administrative expenses.

34.3 Intentional misrepresentations of billable hours and Reimbursable Expenses will be criminally prosecuted to the fullest extent of the law.

34.4 All invoices submitted are subject to audit and demand for refund of overpayment up to three (3) years following completion of all services related to this Agreement.

35.0 **Notice**

35.1 Any notice, demand, communication, or request required or permitted hereunder shall be in writing and delivered in person or sent by Federal-Express or by Certified Mail, postage prepaid as follows:

As to City:

City of Kissimmee

Public Works & Engineering Department
Facilities Management Division
101 Church Street
Kissimmee, FL 34741
Attn: Purchasing Director

As to Consultant:

35.2 Notices shall be effective when received at the addresses as specified above. Changes in the respective addresses to which such notice is to be directed may be made from time to time by either party by written notice to the other party. Facsimile transmission is acceptable notice effective when received, however, facsimile transmissions received (i.e.; printed) after 5:00 p.m., or on weekends or holidays, will be deemed received on the next business day. The original of the notice must additionally be mailed as required herein.

35.3 Nothing contained in this Article shall be construed to restrict the transmission of routine communications between representatives of the CONSULTANT and the CITY.

36.0 Service of Process

As to City:

City Attorney

City of Kissimmee
101 Church Street
Kissimmee, Florida 34741

As to Consultant:

OHLSON LAVOIE CORP.

37.0 Key Personnel

37.1 The CONSULTANT shall notify the CITY in the event of key personnel changes which might affect this Agreement. To the extent possible, notification shall be made within ten (10) days prior to any such changes. The CONSULTANT, at the CITY's request, shall remove without consequence to the CITY any subcontractor or employee of the CONSULTANT and replace him/her with another employee having the required skill and experience. The CITY has the right to reject proposed changes in key personnel.

The following personnel shall be considered key personnel:

Name:

Name:

38.0. **Annual Appropriations**

38.1 The CONSULTANT acknowledges that the CITY, during any fiscal year, shall not expend money, incur any liability, or enter into any agreement which, by its terms, involves the expenditure of money in excess of the amounts budgeted as available for expenditure during such fiscal year. Any agreement, verbal or written, made in violation of this subsection is null and void, and no money may be paid on such agreement. Nothing herein contained shall prevent the making of agreements for a period exceeding one year, but any agreement so made shall be executory only for the value of the services to be rendered or agreed to be paid for in succeeding fiscal years. Accordingly, the CITY's performance and obligation to pay under this agreement is contingent upon annual appropriation.

39.0 **Liquidated Damages**

39.1 The parties hereto agree that liquidated damages, in lieu of actual damages and in the amount stated in the applicable CSA or CPO, will be assessed against the CONSULTANT, as the CITY's remedy and not as a penalty, for CONSULTANT'S failure to meet the final deliverable date in the Performance Schedule in the Scope of Work, but only to the extent and in the proportion to CONSULTANT'S fault in causing the delay as compared to other causes, and to the extent the CONSULTANT is not delayed by reasons beyond CONSULTANT'S reasonable control. The parties agree that such assessment of liquidated damages is reasonable and appropriate, as it would be difficult or impossible to accurately determine the amount of actual damages the CITY would or may incur as a consequence of the CONSULTANT's failure described above.

40.0 **Unauthorized Alien(s)**

40.1 The CONSULTANT shall not employ or utilize unauthorized aliens in the performance of the Services. The CITY shall consider the employment or utilization of unauthorized aliens a violation of Section 274A(e) of the Immigration and Naturalization Act (8 U.S.C. 1324a). Such violation shall be cause for unilateral termination of this Agreement by the CITY. The Form "AFFIDAVIT CERTIFICATION IMMIGRATION LAWS" will be signed by the CONSULTANT and submitted as part of this Agreement.

40.2 To verify employee eligibility, the CONSULTANT may avail itself of a program by the U.S. Immigration and Customs Enforcement called E-Verify. E-Verify is an Internet-based system operated by U.S. Citizenship and Immigration Services (USCIS), part of the Department of Homeland Security (DHS), in partnership with the Social Security Administration (SSA). E-Verify is currently free to employers. E-Verify provides an automated link to Federal databases to help employers determine employment eligibility of new hires and the validity of their Social Security numbers.

41.0 Limitation of Liability

IN NO EVENT, SHALL EITHER PARTY BE LIABLE TO THE OTHER PARTY FOR INDIRECT, INCIDENTAL, CONSEQUENTIAL, SPECIAL, EXEMPLARY, OR PUNITIVE DAMAGES OF ANY KIND OR NATURE, INCLUDING LOSS OF PROFIT, WHETHER FORESEEABLE OR NOT, ARISING OUT OF OR RESULTING FROM THE NONPERFORMANCE OR BREACH OF THIS AGREEMENT BY A PARTY WHETHER BASED IN CONTRACT, COMMON LAW, WARRANTY, TORT, STRICT LIABILITY, CONTRIBUTION, INDEMNITY OR OTHERWISE.

42.0 Default and Remedy

42.1 If the CONSULTANT materially defaults in its obligations under this Agreement and fails to cure the same within fifteen (15) days after the date the CONSULTANT receives written notice of the default from the CITY, then the CITY shall have the right to (i) immediately terminate this Agreement by delivering written notice to the CONSULTANT, and (ii) pursue any and all remedies available in law, equity, and under this Agreement. If the CITY materially defaults in its obligations under this Agreement and fails to cure the same within fifteen (15) days after the date the CITY receives written notice of the default from the CONSULTANT, then the CONSULTANT shall have the right to immediately terminate this Agreement by delivering written notice to the CITY. Upon any such termination, the CITY shall pay the CONSULTANT the full amount due and owing for all Services performed through the date of Agreement termination.

43.0 Attorneys' Fees and Costs

43.1 Except as stated in Section 14.2.1, above, in connection with any dispute or any litigation arising out of, or relating to this Agreement, each party shall be responsible for its own legal and attorneys' fees, costs and expenses, including attorneys' fees, costs, and expenses incurred for any appellate or bankruptcy proceedings.

44.0 Public Records Law

44.1 CONSULTANT 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.

44.2 CONSULTANT shall keep and maintain public records required to perform the services contemplated by this Agreement, in accordance with Chapter 119, Florida Statutes "Public records" means all documents, papers, letters, maps, books, tapes, photographs, films, sound recordings, data processing software,

or other material, regardless of the physical form, characteristics, or means of transmission, made or received pursuant to law or ordinance or in connection with the transaction of official business by any agency.

44.3 CONSULTANT shall ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law for the duration of the contract term and following completion of the contract if the Construction Manager does not transfer the records to the CITY.

44.4 Questions regarding the application of Chapter 119, Florida Statutes, to the CONSULTANT's duty to provide public records relating to this Agreement, shall be directed to the CITY's Custodian of Public Records at 407-518-2308, cityclerkemail@kissimmee.org, and 101 Church Street, Kissimmee, Florida 34741.

45.0 **Americans with Disabilities Act**

45.1 The CONSULTANT shall conform its Drawings and Specifications to the requirements of the Americans with Disabilities Act Accessibility Guidelines ("ADAAG"), but CITY shall be responsible for compliance with the remaining provisions of the Americans with Disabilities Act ("ADA"). CITY and CONSULTANT further recognize that interpretations of ADA by governmental officials and/or courts of law may vary or change. Should such variance or change adopted after the date the 100% Design Development are completed, require the CONSULTANT to make the required modifications, such modifications shall be considered as Contingent Additional Services. Further, CITY acknowledges, that the ADA, including ADAAG, is a new law presenting numerous difficult interpretation issues. Accordingly, the CONSULTANT shall only be liable for gross negligence in connection with any allegation that its design does not properly comply with ADAAG.

46.0 **Additional Definitions**

46.1 **Contract Documents** means this Agreement, any CSA or CPO issued hereunder, the CITY'S contract with the Contractor, the Plans, Specifications, General Conditions and related Construction Documents or any other documents incorporated by reference.

46.2 **Cost of the Work** shall be the total cost or, to the extent the Project is not completed, the estimated cost to the CITY of all elements of the Project designed or specified by the CONSULTANT.

46.2.1 The Cost of the Work shall include the cost at current market rates of labor and materials furnished by the CITY and equipment designed,

specified, selected or specially provided for by the CONSULTANT, including the costs of management or supervision of construction or installation provided by a separate construction manager or CONSULTANT.

46.2.2 The Cost of the Work does not include the compensation of the CONSULTANT and the CONSULTANT'S sub-consultants, the costs of the land, rights-of-way and financing or other costs that are the responsibility of the CITY.

46.3 **Final Completion** means that the following items have been completed or satisfied:

46.3.1 Construction of the Project is completed, in accordance with the contract documents and certified as such by the CITY and CONSULTANT.

46.3.2 The Project is suitable for full use and occupancy as determined by the CITY and CONSULTANT.

46.3.3 All Punchlist items have been completed or otherwise disposed of or accounted for to the CITY'S satisfaction and approval.

46.3.4 A final Certificate of Occupancy and all other permits and approvals required have been legally and validly issued.

46.3.5 All required guarantees, affidavits, releases, bonds and waivers, manuals, record drawings, warranties and maintenance books including the Final Completion form have been delivered to the CITY.

46.4 **Punch list** means a list of items of work to be completed and deficiencies to be corrected, which items shall not affect the attainment of Substantial Completion. Such items shall be complete or otherwise disposed of prior to final acceptance.

46.5 **Schedule of Values** means the schedule to be used as a basis for progress payments to be made to the Contractor by the CITY during performance of the work, based on the then current percentage of progress of construction of the Project, subject to the approval of the CONSULTANT.

46.6 **Substantial Completion** means the Contractor has ascertained that the work or portions thereof is ready for the CITY and CONSULTANT substantial completion inspection. It is understood that the Construction Manager will provide a list of incomplete items to the CITY and CONSULTANT prior to this inspection. After the CITY'S and CONSULTANT'S inspection, the Contractor will prepare a schedule for a completion of the list, indicating completion dates for the CITY'S review. The CITY and CONSULTANT will issue a Certificate of Substantial Completion when the work on the Contractor's pre-substantial punch-list has been accomplished, to the best of the Contractor's ability.

46.7 **Substantial Completion Date** means the date, certified by the CONSULTANT, that the Project, or designated portion thereof, is sufficiently complete, in accordance with the Construction Documents and a Certificate of Occupancy issued, so that the CITY can reasonably occupy or utilize the Project, or designated portion thereof, for its intended use.

47.0 **Additional Terms and Conditions**

47.1 INSTRUMENTS OF SERVICE

47.1.1 Drawings, specifications and other documents, including those in electronic form, prepared by the CONSULTANT and the CONSULTANT'S sub-consultants are Instruments of Service for use solely with respect to this Project. The CONSULTANT and the CONSULTANT'S sub-consultants shall be deemed the authors and owners of their respective Instruments of Service and shall retain all common law, statutory and other reserved rights, including copyrights.

47.1.2 Upon execution of this Agreement, the CONSULTANT grants to the CITY a nonexclusive license to reproduce the CONSULTANT'S Instrument of Service and thereafter use the same solely for purposes of constructing, using and maintaining, repairing and making additions and modifications to the Project, provided that the CITY shall comply with all obligations, including prompt payment of all sums when due, under the Agreement. The CONSULTANT shall obtain similar nonexclusive licenses from the CONSULTANT'S sub-consultants consistent with this Agreement. Any termination of this Agreement prior to completion of the Project shall terminate the license. Upon such termination, the CITY shall refrain from making further reproductions of Instrument of Service. If and upon the date the CONSULTANT is adjudged in default of this Agreement, the foregoing license shall be deemed terminated and replaced by a second, nonexclusive license permitting the CITY to authorize other similarly credentialed design professionals to reproduce and, where permitted by law, to make changes, corrections or additions to the Instruments of Service solely for purposes of completing, using and maintaining the Project.

47.1.3 Except for the licenses granted in Section 47.1.2, no other license or right shall be deemed granted or implied under this Agreement. The CITY shall not assign, delegate, sublicense, pledge or otherwise transfer any license granted herein to another party without the prior written agreement of the CONSULTANT. However, the CITY shall be permitted to authorize the Contractor, Subcontractors, and sub-subcontractors and material or equipment suppliers to reproduce applicable portions of the Instruments of Service to and for use in their execution of the Work by license granted in Section 47.1.2. Submission or distribution of Instruments of Service to meet

official regulatory requirements or for similar purposes in connection with the Project is not to be construed as publication in derogation of the reserved rights of the CONSULTANT and the CONSULTANT'S sub-consultants. The CITY agrees to pay the CONSULTANT a reasonable, mutually agreed upon amount for any reuse of the designs, drawings or specifications beyond this Agreement. The CITY shall not be responsible to pay the CONSULTANT for the use of the designs, drawings or specifications when used for reference purposes only.

- 47.1.4 If the CONSULTANT is required to deliver any services hereunder in the form of electronic encoded media, the printed representation of such media furnished by the CONSULTANT shall be the official records of the CONSULTANT'S service provided upon completion of the services and payment in full. The CITY shall have a right to rely on such printed representation in connection with any subsequent modification of such electronic media and agrees to hold the CONSULTANT harmless from all cost and expense, including attorney's fees, from claims which arise out of modification or re-use of such electronic media or printed representation by or on behalf of the CITY without the CONSULTANT'S consent. Under no circumstances shall transfer of drawings and other instruments of service on electronic media for use by the CITY, be deemed a sale by the CONSULTANT, and the CONSULTANT makes no warranties of merchantability or fitness for a particular purpose.

47.2 CHANGE IN SERVICES

- 47.2.1 Change in Services of the CONSULTANT, including services required of the CONSULTANT'S sub-consultants may be accomplished after execution of this Agreement, without invalidating the Agreement, if mutually agreed in writing, if required by circumstances beyond the CONSULTANT'S control, or if the CONSULTANT'S services are affected as described in Section 47.2B-2. In the absence of mutual agreement in writing, the CONSULTANT shall notify the CITY prior to providing such services. If the CITY deems that all or part of such Change in Services is not required, the CITY shall give prompt written notice to the CONSULTANT, and the CONSULTANT shall have no obligation to provide those services. Except for a change due to fault of the CONSULTANT, Change in Services of the CONSULTANT shall entitle the CONSULTANT to an adjustment in compensation pursuant to Section 9.8, and to any Reimbursable Expenses described in Section 10.0.
- 47.2.2 If any of the following circumstances affect the CONSULTANT'S services for the Project, the CONSULTANT shall be entitled to an appropriate adjustment in the CONSULTANT'S schedule and compensation:
- 47.2.2.1 Change in the instructions or approvals given by the CITY that constitute material changes to the Project parameters set forth above

and which necessitate revisions in Instruments of Service;

47.2.2.2 Enactment or revision of codes, laws or regulations or official interpretations, which necessitate changes to previously prepared Instruments of Service;

47.2.2.3 Significant change in the Project including, but not limited to, size, quality, complexity, the CITY'S schedule or budget, or procurement method;

47.2.2.4 Preparation for and attendance at a public hearing, a dispute resolution proceeding or a legal proceeding except where the CONSULTANT is party thereto.

47.3 ACCELERATED COMPLETION OF DESIGN PACKAGES. In order to minimize construction problems and change orders, the CONSULTANT's standard practice requires the completion of detailed working drawings, submission for review and comment by reviewing agencies and incorporation of those comments and/or changes prior to bidding and entering into firm construction contracts. However, CITY may choose to accelerate the completion of the Project so that it may be completed in a shorter time period than would normally be required. Should the CITY choose to make this selection, it shall not be considered Fast Track, or in any way relieve the CONSULTANT of its responsibilities and obligations set forth herein.

(THE REMAINDER OF THIS PAGE IS INTENTIONALLY LEFT BLANK; THE AGREEMENT CONTINUES ON THE FOLLOWING PAGE WITH THE PARTIES' SIGNATURES.)

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement as of the Effective Date.

Attest:

Linda Hansell
CITY CLERK

CITY OF KISSIMMEE,
a Municipal Corporation of the
State of Florida

By: _____
City Clerk

By: _____
Mayor
City of Kissimmee Commission

Date Approved by Commission: _____

Reviewed as to form and legal sufficiency:

City Attorney's Office Date

CONSULTANT

Attest:


Corporate Secretary

By: Donaldo H Visani

Title: Secretary of the Corporation

STATE OF FLORIDA
COUNTY OF Orange

The foregoing instrument was acknowledged before me this 27 day of November, 2023, by means of ☐ physical presence or ☐ online notarization, by (name of person) Donaldo Visani as (type of authority) for (name of party on behalf of whom instrument was executed) Corporate Secretary, a Florida corporation, who is personally known to me or has produced identification. Ohlson Lavoie Corporation

Notary Seal:

Notary: Victoria Greiner
Print Name: Victoria Greiner
My Commission Expires: 2/15/2026



EXHIBIT “A”

HOURLY RATE SCHEDULE

EXHIBIT “B”

SCOPE OF SERVICES

In accordance with Sections 2.3 and 8.1 of the Agreement, in addition to any other Services described in the Agreement, the RFQ, and the CONSULTANT’s responsive proposal thereto, the CONSULTANT may also be authorized to perform any or all of those services set forth and further described below. In the event the CITY requests the CONSULTANT to furnish and perform any of the services listed and described in this Exhibit “B”, those services shall be listed and incorporated in the applicable CSA or CPO issued for a particular Project.

ALL PHASES:

1. PROJECT ADMINISTRATION AND MANAGEMENT SERVICES

1.1. Project Administration services consisting of administrative functions including:

- 1.1.1. Project Decision Structure
- 1.1.2. Project Directory
- 1.1.3. Consultation
- 1.1.4. Research
- 1.1.5. Communications; Meeting Minutes, Meeting Agendas (For meetings called by CONSULTANT during the Design phases of the project)
- 1.1.6. Direction of the work of architectural, engineering and other consultant personnel

1.2. Disciplines Coordination/Document Checking consisting of:

- 1.2.1. Coordination between the architectural work and the work of engineering and their disciplines involved in the Project.
- 1.2.2. Review and checking of documents prepared for the Project by the CONSULTANT and the CONSULTANT’s Consultants.

1.3. Agency Consulting/Review/Approval services, including:

- 1.3.1. Agency consultants
 - 1.3.1.1. City agencies
 - 1.3.1.2. Regional agencies
 - 1.3.1.3. State agencies
- 1.3.2. Research of critical applicable regulations.
- 1.3.3. Preparation of written and graphic explanatory materials.

1.4. Owner Coordination, including:

- 1.4.1. Review and coordination of data furnished for the Project as a responsibility of the Owner.

1.5. Schedule Development/Monitoring Services, including:

- 1.5.1. Participate in establishment and updating of design schedule in conjunction with CM for the performance of the CONSULTANT's services throughout the design of the project. Key decision-making points will be identified on this schedule.

1.6. Presentation services consisting of presentations and recommendations by the CONSULTANT to the following client representatives:

- 1.6.1. City of Kissimmee Commission
- 1.6.2. Executive Task Force
- 1.6.3. User group(s)
- 1.6.4. Construction Manager

PHASE I PROGRAMMING & MASTER PLANNING

2. NEEDS ASSESSMENT/DATA COLLECTION

2.1. Space Needs Assessments

- 2.1.1. Macro Level Space Requirements Analysis
- 2.1.2. Macro Level Adjacency Requirements
- 2.1.3. Parking Analysis

2.2. Analysis of the site and its surroundings to include the following:

- 2.2.1. Land Utilization
- 2.2.2. Building locations
- 2.2.3. Utility Systems
- 2.2.4. Surface and subsurface conditions (By Owner)
- 2.2.5. Vegetation (By Owner)
- 2.2.6. Survey (By Owner)
- 2.2.7. Land Use Restrictions
- 2.2.8. Historical analysis
- 2.2.9. Stormwater retention/detention areas

3. FUNCTIONAL PROGRAMMING

3.1. Prepare a detailed architectural program based on the scope established in Phase I to include the following services:

- 3.1.1. Functional Requirements Analysis
- 3.1.2. Interior Development Guidelines
- 3.1.3. Space Standards

- 3.1.4. Preliminary Program Space Estimates
- 3.1.5. Space and Equipment Program
- 3.1.6. Special Building System Requirements
- 3.1.7. Micro-Adjacency Requirements
- 3.1.8. Prepare Final Draft Program
- 3.1.9. Prepare Final Program Report

4. MASTER PLANNING

- 4.1** Prepare three different conceptual approaches for housing the space and parking requirements validated in the Needs Assessment. Include the following information, at a minimum:
 - 4.1.1 Existing facility renovation recommendations
 - 4.1.2 Site development planning issues (land utilization, pedestrian and vehicular circulation, parking, areas for expansion, stormwater retention/detention and landscape forms)
 - 4.1.3 Architectural concepts. The architectural concepts will include blocking and stacking diagrams, massing studies and character sketches.

PHASE II: DESIGN/ BIDDING/CONSTRUCTION ADMINISTRATION SERVICES

5. DESIGN SERVICES

5.1. Architectural Design/Documentation:

- 5.1.1. During the Schematic Design Phase, responding to program requirements and preparing:
 - 5.1.1.1. Conceptual Planning/Massing Options
 - 5.1.1.2. Final Conceptual Site and Building Plans
 - 5.1.1.3. Preliminary Sections and Elevations
 - 5.1.1.4. Preliminary Selection of Building Systems and Materials
 - 5.1.1.5. Development of Approximate Dimensions, Areas and Volumes
 - 5.1.1.6. Perspective sketch – eye level
 - 5.1.1.7. Study model
- 5.1.2. During the Design Development Phase consisting of continued development and expansion of architectural Schematic Design Documents to establish the final scope, relationships, forms, size and appearance of the Project through:
 - 5.1.2.1. Plans, sections and elevations
 - 5.1.2.2. Typical construction details
 - 5.1.2.3. Three-dimensional sketch
 - 5.1.2.4. Study model
 - 5.1.2.5. Final materials selection
 - 5.1.2.6. Equipment layouts

- 5.1.3. During the Contract Documents phase consisting of preparation of Drawings and Specifications based on approved Design Development documents setting forth in detail the architectural construction requirements for the Project.

5.2. Structural Design/Documentation:

- 5.2.1. During the Schematic Design Phase consisting of recommendations regarding basic structural materials and systems, analyses, and development of conceptual design solutions for:
 - 5.2.1.1. A structural system
 - 5.2.1.2. Alternate structural systems, if required
- 5.2.2. During the Design Development phase consisting of continued development of the specific structural system and Schematic Design documents in sufficient detail to establish:
 - 5.2.2.1. Basic structural system and dimensions
 - 5.2.2.2. Final structural design criteria
 - 5.2.2.3. Foundation design criteria
 - 5.2.2.4. Preliminary sizing of major structural components
 - 5.2.2.5. Critical coordination clearances
- 5.2.3. During the Contract Documents phase consisting of preparation of final structural engineering calculations, Drawings and Specifications based on approved Design Development documents, setting forth in detail the structural construction requirements for the Project.

5.3. Mechanical Design/Documentation:

- 5.3.1. During the Schematic Design phase, prepare a narrative, consisting of consideration of alternate materials, systems and equipment, and development of conceptual design solutions for:
 - 5.3.1.1. Energy source(s)
 - 5.3.1.2. Energy conservation and controls system concepts
 - 5.3.1.3. Heating and ventilating (systems selections and conceptual sizing and configuration analysis.)
 - 5.3.1.4. Air conditioning (systems selections and conceptual sizing and configuration analysis.)
 - 5.3.1.5. Plumbing
 - 5.3.1.6. Fire protection
 - 5.3.1.7. General space requirements
- 5.3.2. During the Design Development phase consisting of continued development and expansion of mechanical Schematic Design documents and development of outline Specifications or materials lists to establish:
 - 5.3.2.1. Approximate equipment sizes and capacities

- 5.3.2.2. Preliminary equipment layouts
- 5.3.2.3. Required space for equipment
- 5.3.2.4. Required chases and clearances
- 5.3.2.5. Acoustical and vibration control
- 5.3.2.6. Visual impacts
- 5.3.2.7. Energy conservation measures

- 5.3.3. During the Contract Documents phase consisting of preparation of final mechanical engineering calculations, Drawings and Specifications based on approved Design Development documents, setting forth in detail the mechanical construction requirements for the Project.

5.4. Electrical Design/Documentation

- 5.4.1. During the Schematic Design Phase, prepare a narrative, consisting of consideration of alternate systems, recommendations regarding basic electrical materials, systems and equipment, analyses, and development of conceptual solutions for:
 - 5.4.1.1. Power service and distribution
 - 5.4.1.2. Lighting
 - 5.4.1.3. Communication and data outlet location systems
 - 5.4.1.4. Fire detection and alarms
 - 5.4.1.5. General space requirements
 - 5.4.1.6. Audio/Visual systems
- 5.4.2. During the Design Development phase consisting of continued development and expansion of electrical Schematic Design documents and development of outline Specifications or materials lists to establish:
 - 5.4.2.1. Criteria for lighting, electrical and communications systems
 - 5.4.2.2. Approximate sizes and capacities of major components
 - 5.4.2.3. Preliminary equipment layouts
 - 5.4.2.4. Required space for equipment
 - 5.4.2.5. Required chases and clearances
- 5.4.3. During the Contract Documents phase, consisting of preparation of final electrical engineering calculations, Drawings and Specifications based on approved Design Development documents, setting forth in detail the electrical requirements for the Project.

5.5. Civil Design/Documentation:

- 5.5.1. During the Schematic Design phase consisting of consideration of alternate materials and systems and development of conceptual design solutions for:
 - 5.5.1.1. On-site utility systems
 - 5.5.1.2. Fire protection systems
 - 5.5.1.3. Drainage systems

5.5.1.4. Paving

- 5.5.2. During the Design Development phase consisting of continued development and expansion of civil Schematic Design documents and development of outline Specifications or materials lists to establish the final scope of and preliminary details for on-site civil engineering work.
- 5.5.3. During the Contract Documents phase, consisting of preparation of final civil engineering calculations, Drawings and Specifications based on approved Design Development documents, setting forth in detail the civil construction requirements for the Project.
- 5.5.4. Permit applications required for Water Distribution, Sewage Collection and Stormwater/Environment Management (Local, State, and Federal) shall be prepared for execution by the Owner. Permit applications to be paid by Owner. All necessary reports and drawings will be prepared to accompany the permit applications. Two meetings per agency as required to secure permits is included in services. City shall designate individual who has authority to sign permit applications.

5.6. Landscape Design/Documentation:

- 5.6.1. During the Schematic Design phase, prepare narrative conceptual design solutions, which will be developed for land forms, hardscape, lawns and plantings based on program requirements, physical site characteristics, design objectives and environmental determinants.
- 5.6.2. During the Design Development phase, Schematic Design documents will be further developed including outline Specifications and materials lists to establish final scope and preliminary details for landscape work.
- 5.6.3. During the Contract Documents phase, the Drawings and Specifications based on approved Design Development documents, setting forth in detail the landscape and hardscape construction requirements for the Project will be prepared.

5.7. Interior Design/Documentation:

- 5.7.1. During the Schematic Design phase consisting of space allocation and departmental utilization plans based on functional relationships:
 - 5.7.1.1. Types and qualities of finishes and materials for furniture, furnishings, and equipment.
- 5.7.2. During the Design Development phase consisting of continued development and expansion of interior Schematic Design documents and development of

outline Specifications or materials lists to establish final scope and preliminary details relative to:

5.7.2.1. Interior construction of the Project

5.7.2.2. Special interior design features

5.7.2.3.Space planning

5.7.2.4. Materials, finishes and colors

5.7.2.5. Furniture and equipment layouts

5.7.3. During the Contract Documents phase consisting of preparation of Drawings, Specifications and other documents based on approved Design Development documents, setting forth in detail the requirements for interior construction and furniture, furnishings and equipment for the Project.

5.8. Environmental Graphic Design Services: The scope shall include interior and exterior sign types and graphic elements to provide a comprehensive and cohesive signage and wayfinding system for users of the facility.

5.8.1. Design Development:

5.8.1.1.Consider design approaches; determine elements needed for identity, information and wayfinding.

5.8.1.2. Begin development of sign prototypes.

5.8.1.3. Develop preliminary location plans.

5.8.2. Construction document preparation.

5.8.3. Construction observation and submittal review.

5.8.4. Interior sign types to include:

5.8.4.1. Primary room ID (changeable name inserts in some locations).

5.8.4.2. Restroom ID.

5.8.4.3. Stairway ID and stairway level ID.

5.8.4.4. Building Code required ID.

5.8.4.5. Fire exit plan.

5.8.4.6. Building directories.

5.8.5. Exterior sign types include:

5.8.5.1. Main entrance identification.

5.8.5.2. Vehicular directional.

5.8.5.3. Regulatory / Warning identification.

5.8.5.4.Parking areas; handicap parking, authorized vehicles, visitor parking, etc.

5.8.6. Donor Recognition / Dedication Plaques – Prepare conceptual designs illustrating a graphic solution to recognize a significant donor for the facility.

5.9. Materials Research/Specifications:

5.9.1. During the Schematic Design phase consisting of:

5.9.1.1.Identification of potential materials, systems and equipment and their criteria and quality standards consistent with the conceptual design.

- 5.9.1.2. Investigation of availability and suitability of alternative materials, systems and equipment.
- 5.9.2. During the Design Development phase consisting of activities by in-house personnel in:
 - 5.9.2.1. Development of architectural and engineering project specific draft Specifications or itemized lists and brief form identification of significant architectural materials, systems and equipment, including their criteria and quality standards.
 - 5.9.2.2. Coordination of similar activities of other disciplines.
 - 5.9.2.3. Production of design manual including design criteria and outline specifications or material lists.
- 5.9.3. During the Contract Documents phase consisting of activities of in-house architectural personnel in:
 - 5.9.3.1. Review of the development and preparation of bidding and procurement information prepared by the Construction Manager.
 - 5.9.3.2. Assistance to the Owner and their agents in review of the Conditions of the Contract (General, Supplementary and other Conditions).
 - 5.9.3.3. Development and preparation of architectural Specifications describing materials, systems and equipment, workmanship, quality and performance criteria required for the construction of the Project.
 - 5.9.3.4. Coordination of the development of Specifications by other disciplines.
 - 5.9.3.5. Compilation of Project Manual including Conditions of the Contract, bidding and procurement information and Specifications.
- 5.10. At the conclusion of each Design Phase (Schematic Design, Design Development and Construction Document) the Architect/Engineer shall provide the Owner with two (2) sets of drawings and specifications. At the conclusion of Construction Documents one set of reproducible will also be made available to the City for printing of Bid Documents by the City or the Construction Manager.

6. BIDDING OR NEGOTIATION SERVICES

- 6.1. **Bidding Materials services** consisting of organizing and handling Bidding Documents for:
 - 6.1.1. Coordination
 - 6.1.2. Reproduction by Owner
 - 6.1.3. Completeness review
- 6.2. **Addenda services** consisting of preparation and distribution of Addenda as may be required during bidding or negotiation and including supplementary Drawings,

Specifications, instructions and notice(s) of changes in the bidding schedule and procedures.

6.3. Bidding/Negotiation services consisting of:

6.3.1. Responses to questions from Bidders and clarifications or interpretations of the Bidding Documents.

6.4. Analysis of Alternates/Substitutions consisting of consideration, analyses, comparisons, and recommendations relative to alternates or substitutions proposed by Bidders or proposers either prior to or subsequent to receipt of Bids or proposals.

7. CONSTRUCTION ADMINISTRATION

7.1. Submittal Services consisting of:

7.1.1. Processing of submittals, including receipt, review of, and appropriate action on Shop Drawings, Product Data, Samples and other submittals required by the Contract Documents.

7.1.2. Distribution of submittals to Construction Manager.

7.1.3. Related communications.

7.2. Observation services consisting of periodic visits by the Project Manager or Project CONSULTANT to the site at intervals appropriate to the state of the work or as otherwise agreed by the Owner and CONSULTANT in writing to become generally familiar with the progress and quality of the Work completed and to determine in general if the Work when completed will be in accordance with Contract Documents; preparing related reports and communications, and attendance at progress review meetings at the site.

7.2.1. Periodic site visits by other staff to observe the progress of the project.

7.3. Responses to Requests for Information (RFI)

7.3.1. Responding to requests for clarifications or additional information related to the Contract Documents.

7.4. Supplemental Documentation services consisting of:

7.4.1. Preparation, reproduction and distribution of supplemental Drawings, Specifications and interpretations in response to requests for clarification by Construction Manager or the Owner.

7.4.2. Providing guidance to the Construction Manager in conjunction with the Owner -relative to changed requirements and schedule revisions.

7.5. Quotation Requests/Change Orders consisting of:

- 7.5.1. Preparation, reproduction and distribution of Drawings and Specifications to describe Work to be added, deleted or modified. Changes shall be clearly defined.
- 7.5.2. Review of proposals from Construction Manager for reasonableness of quantities and costs of labor and materials.
- 7.5.3. Review and recommendations relative to changes in time for Substantial Completion.
- 7.5.4. Review on Owner's behalf relative to costs of Work proposed to be added, deleted or modified.
- 7.5.5. Assisting in the preparation of appropriate Modifications of the Contract(s) for Construction.
- 7.5.6. Coordination of communications, approvals, notifications and record-keeping relative to changes in the Work.

7.6. Contract Cost Accounting services consisting of:

- 7.6.1. Review of records of payments on account of the Contract Sum and all changes thereto.
- 7.6.2. Evaluation of Applications for Payment and certification thereof.
- 7.6.3. Review and evaluation of expense data submitted by the Construction Manager for Work under cost-plus-fee arrangements.

7.7. Interpretations and Decisions consisting of:

- 7.7.1. Review of claims, disputes, or other matters between the Owner and Construction Manager relating to the execution or progress of the Work as provided in the Contract Documents.
- 7.7.2. Rendering written decisions.

7.8. Project Closeout services initiated upon notice from the Construction Manager that the Work, or a designated portion thereof which is acceptable to the Owner, is sufficiently complete in accordance with the Contract Documents to verify the list submitted by the Construction Manager of items to be completed or corrected.

- 7.8.1. Review with the Owner's representative for conformity of the Work to the Contract Documents to verify the list submitted by the Construction Manager of items to be completed or corrected.
- 7.8.2. Recommendation of the amounts to be withheld until final completion.
- 7.8.3. Securing and receipt of consent of surety or sureties, if any, to reduction in or partial release of retainage or the making of final payment(s).
- 7.8.4. Issuance of Certificate(s) of Substantial Completion.
- 7.8.5. Inspection(s) upon notice by the Construction Manager that the Work is ready for final inspection and acceptance.
- 7.8.6. Final inspection with the Owner's representative to verify final completion of the Work.

- 7.8.7. Securing and receipt of consent of surety or sureties, if any, to the making of final payment(s).
- 7.8.8. Issuance of final Certificate(s) for Payment.
- 7.8.9. Final inspection of Water Distribution, Sewage Collection and Stormwater/ Environmental Management Facilities. Preparation of certifications to agencies along with record documents prepared based upon record information supplied by the Construction Manager. Services include one final inspection for each certification.

8. POST-CONSTRUCTION SERVICES

8.1. Record Drawing services consisting of:

- 8.1.1. Making arrangements for obtaining from Construction Manager information in the form of marked-up prints, drawings and other data certified by them on changes made during performance of the Work, including Change Directives, RFI's, ASI's, etc.
- 8.1.2. Review of general accuracy of information submitted and certified by the Construction Manager.
- 8.1.3. Preparation of record drawings electronically based on certified information furnished by the Construction Manager.
- 8.1.4. Transmittal one set of full-size reproducible record drawings and general data, appropriately identified, to the Owner and others as directed. Two copies of all electronic data including CADD drawings on CD.

8.2. Warranty Review consisting of:

- 8.2.1. Consultation with and recommendation to the Owner during the duration of warranties in connection with inadequate performance of materials, systems and equipment under warranty.
- 8.2.2. Inspection(s) prior to expiration of the warranty period(s) to ascertain adequacy of performance of materials, systems and equipment.
- 8.2.3. Documenting defects or deficiencies and assisting the Owner in preparing instructions to the Construction Manager for correction of noted defects.

9. ADDITIONAL SERVICES/EXPENSES (not included in the base fee):

9.1. Owner-Provided Services:

- 9.1.1. Environmental assessment of site, if necessary.
- 9.1.2. Environmental assessment of existing facilities to be renovated and/or demolished, and the removal of any hazardous material, if necessary.
- 9.1.3. Printing of all Contract Documents issued for bidding and construction.
- 9.1.4. Distribution of Contract Documents to Construction Manager for estimating and bidding purposes.

- 9.2. Mock-Up Services** relating to any space for study during the design phases and consisting of:
- 9.2.1. Design and documentation for the required mock-up.
 - 9.2.2. Construction administration of mock-up construction activities.
 - 9.2.3. Arrangements for testing performance of mock-up.
 - 9.2.4. Review, analysis and reporting of results.
- 9.3. Prepare an Inventory** of existing furniture and equipment that will be placed in the new facilities.
- 9.4. Value Engineering** – Value engineering is the detailed, systematic review of the design concepts, construction techniques, materials and building types associated with a project solely in terms of life cycle costs in an attempt to obtain optimum value for every dollar spent. If Owner chooses to engage in value engineering, Owner shall either retain the services of an independent Value Engineer (“VE”) to perform the above review services to be complete at a stage no later than the completion of schematic design, or may pay a mutually negotiated sum “at the time the services are requested” to CONSULTANT to perform the above review services at a stage later than the completion of schematic design, Owner acknowledges that schedule and cost impacts may occur.
- 9.4.1. If Owner chooses to retain an independent VE, all recommendations of the VE shall be given to CONSULTANT for its review and adequate time will be provided for CONSULTANT to respond to these recommendations. CONSULTANT may be compensated as an additional service for time spent to review the recommendations of the VE and to incorporate those accepted by both Owner and CONSULTANT. Objections to any recommendations made by the VE shall be stated in writing. Owner agrees that CONSULTANT shall not be responsible for any damage, cost or liability which arises in connection with or as a result of the incorporation of such design changes.
- 9.5. Commissioning** – The performance of a functional and operational check of all systems and equipment to verify the installation is performing to the design criteria. CONSULTANT would prepare this service in conjunction with an independent contractor experienced in such activities.
- 9.6. Structural Blast Resistance** - Analysis of building structural systems to resist loads imposed by blast forces on exterior of facility. This would require an additional blast consultant to be obtained.
- 9.7. Security Systems:** The Security portion of the project will include the design and documentation of Electronic Security System from Schematic Design through Construction Administration Services. The Electronic Security System will include intrusion detection, access control, electronic door control and monitoring,

operational intercom, fixed duress alarms, monitoring and control panels, CCVE systems, control room layouts, rough-ins for x-ray screening/magnetometer at entry lobby, and parcel screening. As part of the overall security plan CONSULTANT will provide a site analysis to determine passive security measures to be incorporated for the facility. Deliverables for the above scope for each task are as listed below.

- 9.7.1. **Schematic Design (SDs):** CONSULTANT will provide a written security narrative describing the Electronic Security System, reflecting the design approach based on program requirements. In addition, CONSULTANT will provide two people for a one day on site Security Workshop to validate the security program and establish the design intent.
- 9.7.2. **Design Development (DDs):** CONSULTANT will provide job specific draft specifications of the Electronic Security System including plans indicating device locations, and outline specifications, and equipment selections reflecting design approach. CONSULTANT will provide one person for 1 day to attend an on-site design review with the Owner and Design Team members to review the Electronic Security System Design Development documents.
- 9.7.3. **Construction Documents (CDs):** Upon completion of this review, CONSULTANT will provide completed biddable documents including plans, details, schedules, riser diagrams, and specifications required to fully document the Electronic Security System. In addition, CONSULTANT will provide, at the completion of the Construction Documents phase, two (2) copies of a Design Information Manual (DIM) outlining major equipment selections utilized as the basis of design for the Electronic Security Systems. CONSULTANT will conduct mid-point design review with Owner and Design Team members to review the Electronic Security Construction Documents.
- 9.7.4. **Bidding:** CONSULTANT will review all questions related to the Electronic Security System submitted, and provide answers in written addendum as required.
- 9.7.5. **Construction Administration (CA):** CONSULTANT will provide one person for four, one day intermediate site visits during construction. In addition, upon written notification of substantial completion CONSULTANT will provide two persons for one day (16 hours total) to review and test the Electronic Security System.
 - 9.7.5.1. Included in this phase of work is the review of security shop drawing submittals and written responses to security RFI from the contractor.
 - 9.7.5.2. Deliverable for this phase of work will include a written field report for the intermediate site visits, and a final report and punch list of the site visit made following written notice of substantial completion.

9.7.6. **Expanded Security System Design** - The following systems and services can be provided in addition to the Electronic Security Design defined in previous sections:

9.7.6.1. Assistance Stations

9.7.6.2. Parking Area Equipment (cameras, card access control)

9.7.6.3. Wireless Duress

9.7.6.4. Hydraulic Barriers

9.7.6.5. Biometrics

9.7.6.6. Perimeter protection systems

9.7.6.7. Post Construction Services: CONSULTANT will provide two people for one day (16 hours total) to conduct a pre-warranty expiration review of the electronic security system. The review will focus on inspection of equipment, operational functions, defects or deficiencies within the system and will be documented in report form and issued to the owner.



EXHIBIT C

SCHEDULE OF REIMBURSABLES

1. Reproduction Cost			
A.....	Regular Copying	Single Side	Double
Sided			
8 ½ x 11 (black & white).....	\$ 0.15/page	\$ 0.25/sheet	
8 ½ x 11 (color)	\$ 0.30/page	\$ 0.40/sheet	
8 ½ x 14 (black & white).....	\$ 0.15/page	\$ 0.25/sheet	
8 ½ x 14 (color)	\$ 0.30/page	\$ 0.40/sheet	
11 x 17 (black & white).....	\$ 0.25/page	\$ 0.35/sheet	
11 x 17 (color)	\$ 0.40/page	\$ 0.50/sheet	
9 ½ x 24 Single Side Only.....	\$ 1.00/page		
17 x 22 Single Side Only.....	\$ 2.00/page		
18 x 24 Single Side Only.....	\$ 2.00/page		
24 x 36 Single Side Only.....	\$ 3.00/page		
30 x 30 Single Side Only.....	\$ 5.00/page		
32 x 34 Single Side Only.....	\$ 5.00/page		
Other sizes-per square inch	\$ 0.03/page		
Compact Digital Disk.....	\$ 6.00/disk		
B. Blueprint Copy.....		\$10.00/page	
2. Subcontractor Services		Actual Costs	
3. Special Consultants		Actual costs	
4. Telecommunications			
A. Local		Non-reimbursable	
B. Non-Local		Actual Costs	
5. Computer Services		Non-reimbursable	
6. Travel Expenses	In accordance with Chapter 112.061, F.S.; and further defined in the City of Kissimmee Employee Handbook		
7. Postage, Fed Express, UPS		Actual Costs	
8. Pre-approved Equipment (includes purchase and rental of equipment used in project)	Actual Costs		

EXHIBIT D

AFFIDAVIT CERTIFICATION
IMMIGRATION LAWS

SOLICITATION NO.: RFP2023-006 PROJECT NAME: Architectural and Engineering Services

THE CITY OF KISSIMMEE, a MUNICIPAL CORPORATION OF THE STATE OF FLORIDA (CITY), WILL NOT INTENTIONALLY AWARD CITY CONTRACTS TO ANY CONTRACTOR WHO KNOWINGLY EMPLOYS UNAUTHORIZED ALIEN WORKERS, CONSTITUTING A VIOLATION OF THE EMPLOYMENT PROVISIONS CONTAINED IN 8 U.S.C. SECTION 1324 a(e) {SECTION 274A(e) OF THE IMMIGRATION AND NATIONALITY ACT ("INA").

THE CITY MAY CONSIDER THE EMPLOYMENT BY ANY CONTRACTOR OF UNAUTHORIZED ALIENS A VIOLATION OF SECTION 274A(e) OF THE INA. **SUCH VIOLATION BY THE RECIPIENT OF THE EMPLOYMENT PROVISIONS CONTAINED IN SECTION 274A(e) OF THE INA SHALL BE GROUNDS FOR UNILATERAL CANCELLATION OF THE CONTRACT BY THE CITY.**

BIDDER ATTESTS THAT THEY ARE FULLY COMPLIANT WITH ALL APPLICABLE IMMIGRATION LAWS (SPECIFICALLY TO THE 1986 IMMIGRATION ACT AND SUBSEQUENT AMENDMENTS).

Attest:

CONSULTANT


Corporate Secretary

By: Donaldo H Visani

Title: Secretary of the Corporation

STATE OF FLORIDA
COUNTY OF Orange

The foregoing instrument was acknowledged before me this 27th day of November, 2023, by means of ☐ physical presence or ☐ online notarization, by (name of person) Donaldo Visani as (type) Corporate Secretary of authority) for (name of party on behalf of whom instrument was executed), a Florida corporation, who is personally known to me or has produced identification. Ohlson Lavoie Corporation

Notary Seal:

Notary: Victoria Greiner
Print Name: Victoria Greiner
My Commission Expires: 2/15/2026



ITEM 7.G

Ministerial Approval - Police Pension Board Appointment

Request

Request Commission ministerial approval of the appointment of Ian Downing as the fifth member of the Police Pension Board of Trustees.

Explanation

The City Code requires that two (2) trustees shall be residents appointed by the City Commission and two (2) trustees shall be members of the pension system who shall be elected by the majority of the Police Officers in the pension system. The fifth trustee shall be chosen for a two-year term in even-number years by the majority of the previous four (4) trustees. The fifth member's name shall be submitted to the City Commission for approval as a ministerial duty. The fifth trustee has the same rights as each of the other four (4) who are appointed or elected and shall serve a two-year term unless he or she vacates the office sooner. The fifth member selected to fill the vacancy of Camille Alicea is Ian Downing. If approved, his term will expire September 30, 2024.

Recommendation

Staff and the Police Pension Board recommend approval.

REQUESTED CITY COMMISSION ACTION:

Approve

Department: City Manager

Presenter:

Attachment(s):

None

ITEM 7.H

Disposal of City Assets

Request

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

Explanation

The Charter states that the City Manager “shall not dispose of property belonging to the City, except on authority of the City Commission.” Therefore, staff is requesting approval to dispose of the items included on the attached list.

The items included on the attached list are slated to be auctioned or junked and have not previously been approved for disposition by the City Commission. These items will be placed up for auction via George Gideon Auctioneers, Inc. live auction or George Gideon Auctioneers, Inc. online auction.

Recommendation

Approval to remove these items from the City’s equipment inventory listing and to send those items to the auction for disposition.

REQUESTED CITY COMMISSION ACTION:

Approve

Department: Finance

Presenter:

Attachment(s):

1. December 2023 Asset Disposal

City of Kissimmee
Surplus Property Auction List
Dec-23 GIDEON AUCTIONEERS

AUCT#	ITEM & DESCRIPTION	MODEL	SERIAL #	CITY #
PR269	2003 BLUE BIRD ALL AMERICAN SCHOOL BUS (PR269)		1BABNBXA93F211231	23309
PR273	2004 BLUE BIRD ALL AMERICAN SCHOOL BUS (PR273)		1BABNBXAX4F2Z8075	23362
FIRE	ELOPTICAL CYBEX		MM300G0400899	25613
HR	GRAY DESK			N/A
HR	CONFERENCE ROOM CHAIRS (5)			N/A
PW ENG	KITCHEN REFRIGERATOR			N/A

City of Kissimmee
Surplus Property Auction List
Dec-23 JUNKED

AUCT#	ITEM & DESCRIPTION	MODEL	SERIAL #	CITY #
CITY MANAGER	SILVER MAIL CART			N/A
CITY MANAGER	CREAM COLOR METAL DRAWER DESK			N/A
FIRE	HONDA GENERATOR		EG5000-XA	15232
IT	CHRISTMAS TREE			N/A
POLICE	3M RAPID FINGERPRINT		00052586	22741
POLICE	3M RAPID FINGERPRINT		63125	23995
POLICE	SHOEI TRAFFIC MOTORS HELMET		42219	N/A
PW-ENG	BLACK OFFICE CHAIR			N/A
PW-FACILITIES	LAKESHORE AUTOMATIC TRANSFER SWITCH			N/A

City of Kissimmee
Surplus Property Auction List
Dec-23 TRADE IN FOR CREDIT

AUCT#	ITEM & DESCRIPTION	MODEL	SERIAL #	CITY #
FD121	2016 FREIGHTLINER AMBULANCE	FD121		23570
FIRE	PHYSIO LIFEPAK 12		31080299	18169

City of Kissimmee
Surplus Property Auction List
Dec-23 SCRAP

AUCT#	ITEM & DESCRIPTION	MODEL	SERIAL #	CITY #
PARKS	PLAYGROUNDS AT LAKEFRT PARK		2-5 & 6-12 YEAR OLD	N/A
PARKS	GENERATORS (2)			N/A
PARKS	TOOL BOX			N/A
PARKS	FLOOR SCRUBBER			N/A
PARKS	VACUUM			N/A

ITEM 7.I

Memorandum of Understanding with Toho Water Authority for Lancaster Ranch Park

Request

Approve the Memorandum of Understanding with Toho Water Authority in reference to future perpetual, non-exclusive utility easement at Lancaster Ranch Park, contract #20240144.

Explanation

The City of Kissimmee has agreed to grant Toho Water Authority (TOHO) a temporary construction easement for the purpose of constructing and installing an underground reuse main within Lancaster Ranch Park.

TOHO desires a perpetual, non-exclusive easement for accessing the City's property in the future to operate and maintain this reuse main. At this time, both parties seek to memorialize the City's commitment to grant TOHO a perpetual, non-exclusive easement through this Memorandum of Understanding.

Recommendation

Approve the Memorandum of Understanding with Toho Water Authority for a future perpetual, non-exclusive utility easement at Lancaster Ranch Park.

REQUESTED CITY COMMISSION ACTION:

Approve

Department: Parks & Recreation

Presenter:

Attachment(s):

1. (S) MOU Agreement with TOHO Lancaster Ranch Final

MEMORANDUM OF UNDERSTANDING
between
CITY OF KISSIMMEE
and
TOHOPEKALIGA WATER AUTHORITY

THIS MEMORANDUM OF UNDERSTANDING (the “**Agreement**”) made by and between the **CITY OF KISSIMMEE**, a municipal corporation pursuant to the laws of the State of Florida, 101 North Church Street, Kissimmee, Florida 34741 (the “**City**”), and **TOHOPEKALIGA WATER AUTHORITY**, an independent special district, established and created pursuant to Chapter 189, Florida Statutes, by special act of the Florida Legislature, 951 Martin Luther King Blvd., Kissimmee, Florida 34741 (“**TOHO**”). The City and TOHO may be referred to individually as the “**Party**” and collectively referred to as the “**Parties**”.

WHEREAS, City is the owner of certain real property more particularly described in **Attachment A** attached hereto and incorporated herein by reference (“**Lancaster Park**”); and

WHEREAS, City has agreed to grant TOHO a Temporary Construction Easement for purposes of constructing and installing an underground reuse main within Lancaster Park (the “**Reuse Main**”); and

WHEREAS, TOHO desires a perpetual, non-exclusive easement for purposes of accessing City’s property in order to operate, maintain, repair, reconfigure, and reconstruct the Reuse Main; and

WHEREAS, the Parties seek to memorialize the City’s commitment to grant TOHO a perpetual, non-exclusive easement (“**Perpetual Easement**”) for such purposes following substantial completion of construction and installation of the Reuse Main; and

NOW THEREFORE, in consideration of the mutual covenants and promises between the Parties to this Agreement and the mutual benefit that inures to both the Parties and the public, the Parties agree as follows:

Section 1. Recitals. The recitals in the “WHEREAS” clauses are hereby incorporated as a material part of this Agreement.

Section 2. Purpose. The purpose of this Agreement is to facilitate TOHO’s construction and installation of the Reuse Main within Lancaster Park and, once the Reuse Main is installed, to guarantee TOHO’s continuing right to ingress and egress over, across, and under the portion of Lancaster Park necessary to operate, maintain, repair, reconfigure, or reconstruct the Reuse Main.

Section 3. Responsibilities of the Parties

- A.** The City shall grant the access required under the Temporary Construction Easement and allow TOHO to utilize the real property as granted by the Temporary Construction Easement.
- B.** After construction and installation of the Reuse Main is substantially complete, TOHO shall notify the City of such completion and provide written confirmation that the Reuse Main, as constructed, is fully located within the easement area as more specifically described in **Attachment B** attached hereto and incorporated herein by reference.
- C.** Within thirty (30) calendar days of receiving such notice and written confirmation from TOHO, the City shall grant and record in the public records of Osceola County, Florida, a Perpetual Easement benefitting TOHO in substantially the same form attached as **Attachment C** attached hereto and incorporated herein by reference, and regarding the property more specifically described in **Attachment B**.
- D.** TOHO shall abide by the terms of the Temporary Construction Easement, the irrevocable license, and, once granted and recorded, the Perpetual Easement.
- E.** Should, for some reason, TOHO be unable to provide written confirmation that the Reuse Main, as constructed, is fully located within the easement area as more specifically described in **Attachment B**, then TOHO must provide the City with a revised legal sketch and description of the Perpetual Easement centered on the Reuse Main for the City's approval, which shall not be unreasonably withheld, conditioned, or delayed, so long as such revisions do not interfere with the then or proposed use of the area in which it was installed.

Section 4. Irrevocable License. The City hereby agrees that, beginning on the date that TOHO notifies the City of its substantial completion of the construction and installation of the Reuse Main, TOHO shall have an irrevocable license to ingress, egress, and use Lancaster Park in accordance with the provisions of the form easement found in **Attachment C** as necessary for TOHO's operation, repair, and maintenance of the Reuse Main. Such irrevocable license shall remain in place until the City grants and records the Perpetual Easement, at which point such license will terminate without further action of the Parties.

Section 5. Notices. All notices under this Agreement shall be delivered by U.S. Mail or hand delivered to the following offices:

For City:

Office of the City Manager
101 N. Church Street
Kissimmee, Florida 34741

With copy to:

Office of the City Attorney
101 N. Church Street
Kissimmee, Florida 34741

For TOHO:

Toho Water Authority
Attn: Chief Executive Officer
951 Martin Luther King Boulevard
Kissimmee, Florida 34741

With copy to:

Toho Water Authority
Attn: General Counsel
951 Martin Luther King Boulevard
Kissimmee, Florida 34741

Section 6. Effective Date. The effective date of this Agreement shall be the date upon which the last of the Parties hereto executes this agreement.

Section 7. Sovereign Immunity. The Parties expressly retain 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 by the Florida Legislature or may be adopted by the Florida Legislature, and the cap on the amount and liability of the Parties for damages, attorney fees, and costs, regardless of the number or nature of claims in tort, equity or contract, shall not exceed the dollar amount set by the Florida Legislature for tort. Nothing in this Agreement shall inure to the benefit of any third party for the purpose of allowing any claim against either Party which would otherwise be barred under the Doctrine of Sovereign Immunity or operation of law.

Section 8. Entire Agreement. This Agreement is the entire Agreement between the parties and no other agreements, oral or written, have been entered into with respect to the subject matter of this Agreement. Any modifications to this Agreement must be in writing and signed by all parties.

Section 9. Governing Law and Venue. The validity, interpretation and performance of this Agreement shall be governed by and construed in accordance with the laws of the State of Florida. In the event it is necessary for either party to initiate legal action regarding this Agreement, venue shall lie in Osceola County, Florida. The Parties hereby waive their right to a jury trial in any action, proceeding, or claim, arising out of this Agreement.

Section 10. Counterparts. This Agreement may be executed in two counterpart copies, each of which shall be deemed to be an original document, but all such counterparts taken together shall constitute one and the same instrument. Facsimile or electronic signatures shall be deemed to be originals for all purposes of this Agreement.

[Signatures on Following Page]

IN WITNESS WHEREOF, by signing this Agreement, the Parties agree to the provisions contained herein and represent that they are duly authorized to execute this Agreement.

THE TOHOPEKALIGA WATER AUTHORITY

By: _____
Todd Swingle, Chief Executive Officer

Date: _____

Attest: _____
Alison Smith, Executive Assistant

Date: _____

THE CITY OF KISSIMMEE

By: _____
Olga Gonzalez, Mayor

Date: _____

Attest: _____
Linda Hansell, City Clerk

Date: _____

Approved as to form and legality.

By: _____
Olga Sanchez de Fuentes, City Attorney

Date: _____

**Attachment A
Lancaster Park Development**

1881 Jack Calhoun Dr., Kissimmee FL 34741

Parcel: 32-25-29-0000-0050-0000

Legal Description

E 1/2 OF W 1/2 LYING S OF ACL RR & E OF PLEASANT HILL RD & N OF CREEK & W 1/8 OF NE 1/4 & W 1/8 OF SE 1/4 N OF CREEK LESS PLAT OF CHEROKEE OAKS & LESS N 1192.05 FT THEREOF & LESS R/W PLEASANT HILL RD LESS BEG AT NW COR OF CHEROKEE OAKS PB 1 PG 324, N 12 DEG W 564.32 FT TO POC, CONC WLY, RAD 719.81 FT (CH BEARING S 17 DEG E) CENT ANG 41 DEG, SELY ALONG CURVE 510.51 FT, S 3 DEG W 70.53 FT TO N/L OF CHEROKEE OAKS (& N/L OF KNOWLES RD), S 81 DEG W 27.49 FT TO POB (R/W) AND LESS FROM NE COR OF W 1/8 OF NE 1/4, S 1,192.05 FT, W 1,528.40 FT TO POB; CONT W 92.31 FT TO PT ON E R/W OF PLEASANT HILL RD, S 223.31 FT TO POC, CONC E, RAD 1870.08 FT, CENT ANG 12 DEG, SLY ALONG CURVE 384.09 FT (CH BEARING S 5 DEG E 383.41 FT), N 79 DEG E 10 FT, S 11 DEG E 254.35 FT TO POC, CONC SW, RAD 719.81 FT, CENT ANG 4 DEG (CH BEARING S 34 DEG E 57.14 FT) SELY ALONG CURVE 57.15 FT, N 13 DEG W 235.59 FT, N 10 DEG W 243.49 FT, N 2 DEG W 175.15 FT, N 11 DEG E 170.90 FT, N 33 DEG E 64.33 FT, N 10 DEG E 36.05 FT TO POB & LESS COM AT NW COR LOT 1, CHEROKEE OAKS PB 1 PG 324, N 82 DEG E 26.30 FT, N 07 DEG W 64 FT TO POB; N 04 DEG E 70.71 FT TO NON-TAN CURVE, CONC W, RAD 719.81 FT, CENT ANG 12 DEG, (CH BEARING N 02 DEG W 153.48 FT), NLY ALONG CURVE 153.77 FT, N 82 DEG E 336.23 FT TO POC, CONC N, RAD 128 FT, CENT ANG 13 DEG, ELY ALONG CURVE 28.22 FT, N 70 DEG E 180.98 FT TO POC, CONC SW, RAD 77 FT, CENT ANG 90 DEG, SELY ALONG CURVE 120.95 FT, S 20 DEG E 45 FT TO POC, CONC NW, RAD 77 DEG, CENT ANG 90 DEG, SWLY ALONG CURVE 120.95 FT, S 70 DEG W 180.98 FT, S 14 DEG W 52.63 FT TO PT ON NLY R/W LINE OF KNOWLES CT & NON-TAN CURVE, CONC S, RAD 263.84 FT, CENT ANG 21 DEG, (CH BEARING N 87 DEG W 97.75 FT), WLY ALONG CURVE 98.32 FT, S 82 DEG W 321.70 FT TO POB

SKETCH OF DESCRIPTION

LEGAL DESCRIPTION

A parcel of land being a portion of Section 32, Township 25 South, Range 29 East, Osceola County, Florida, and being more particularly described as follows:

Commence at the intersection of the East Right of Way line of Jack Calhoun Drive with the South line of the Pleasant Hill Elementary School property as recorded in Official Records Book 819, Page 354 of the Public Records of Osceola County, Florida; thence run N89°27'38"E along said South line, a distance of 82.33 feet to a point on said East Right of Way line; thence along said East Right of Way line the following two (2) courses and distances; thence run S10°26'58"W, a distance of 36.11 feet; thence run S33°15'53"W, a distance of 27.61 feet to the Point of Beginning; thence continue S33°15'53"W along said East Right of Way line, a distance of 36.73 feet; thence departing said East Right of Way line, run S07°47'18"W, a distance of 169.63 feet; thence run S02°17'14"E, a distance of 173.69 feet; thence run S09°59'42"E, a distance of 242.54 feet; thence run S13°06'20"E, a distance of 218.34 feet to a Point on a non-tangent curve, concave to the West, having a Radius of 734.81 feet and a Central Angle of 24°51'01"; thence run Southerly, along the Arc of said curve, a distance of 318.70 feet (Chord Bearing = S20°28'44"E, Chord = 316.21 feet) to a point on the North line of an Osceola County Pond Tract as recorded in Official Records Book 5057, Page 2863; thence run N82°29'33"E along said North line, a distance of 25.00 feet to a Point on a non-tangent curve, concave to the West, having a Radius of 759.81 feet and a Central Angle of 24°32'12"; thence departing said North line, run Northerly, along the Arc of said curve, a distance of 325.38 feet (Chord Bearing = N20°18'15"W, Chord = 322.90 feet) to a point; thence run N13°06'20"W, a distance of 213.33 feet; thence run N09°59'42"W, a distance of 240.18 feet; thence run N02°17'14"W, a distance of 169.80 feet; thence run N07°47'18"E, a distance of 171.90 feet; thence run N10°00'10"W, a distance of 30.12 feet to the Point of Beginning.

Containing 28,423 square feet or 0.652 acres, more or less.

NOTES

BEARINGS AS SHOWN HEREON ARE BASED ON THE FLORIDA STATE PLANE COORDINATE SYSTEM, EAST ZONE, (NAD 83, 1990 ADJUSTMENT). THIS SURVEYOR HAS NOT MADE A SEARCH OF THE PUBLIC RECORDS FOR EASEMENTS, RESTRICTIONS, RESERVATIONS AND/OR RIGHT OF WAYS. THIS SKETCH IS NOT INTENDED TO REPRESENT A BOUNDARY SURVEY. NO CORNERS WERE SET AS A PART OF THIS SKETCH.

REQUESTED BY: **BLACK & VEATCH CORP.**

DATE OF SKETCH	03/20/2023	REVISIONS
SCALE	1" = 100'	
F.B.	PAGE	
SECTION	32	
TWP.	25 S., RNG. 29 E.	
JOB NO.	22-507	SHEET 1 OF 3

JOHNSTON'S
SURVEYING INC.
900 Cross Prairie Parkway, Kissimmee, Florida 34744
Tel. (407) 847-2179 Fax (407) 847-6140

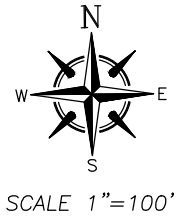
Barry W.

3/24/2023

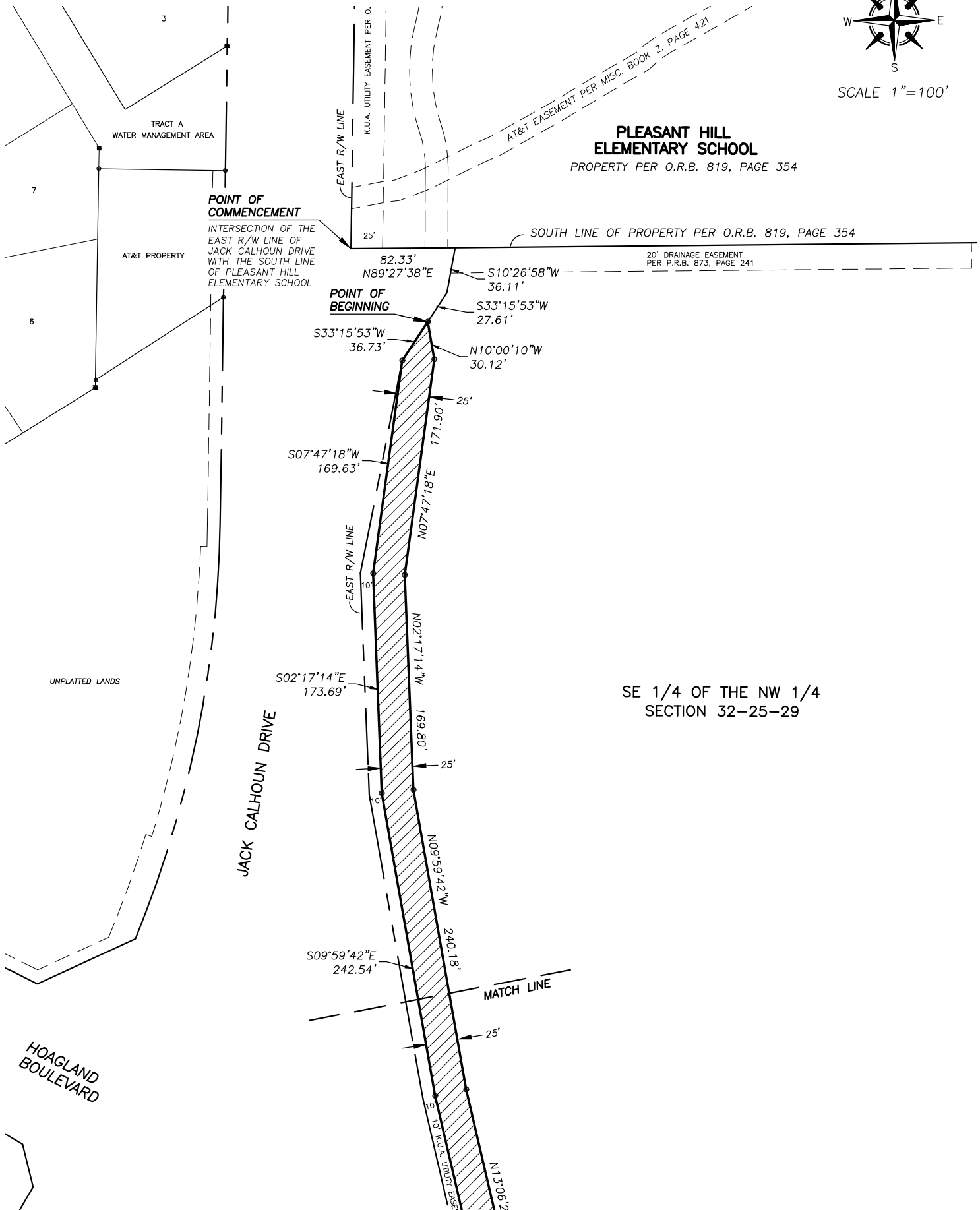
BARRY W. PREWITT, P.S.M. #5267 (DATE)

NOTE: NOT VALID WITHOUT RAISED SURVEYOR'S SEAL.

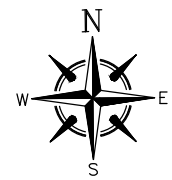
SKETCH OF DESCRIPTION



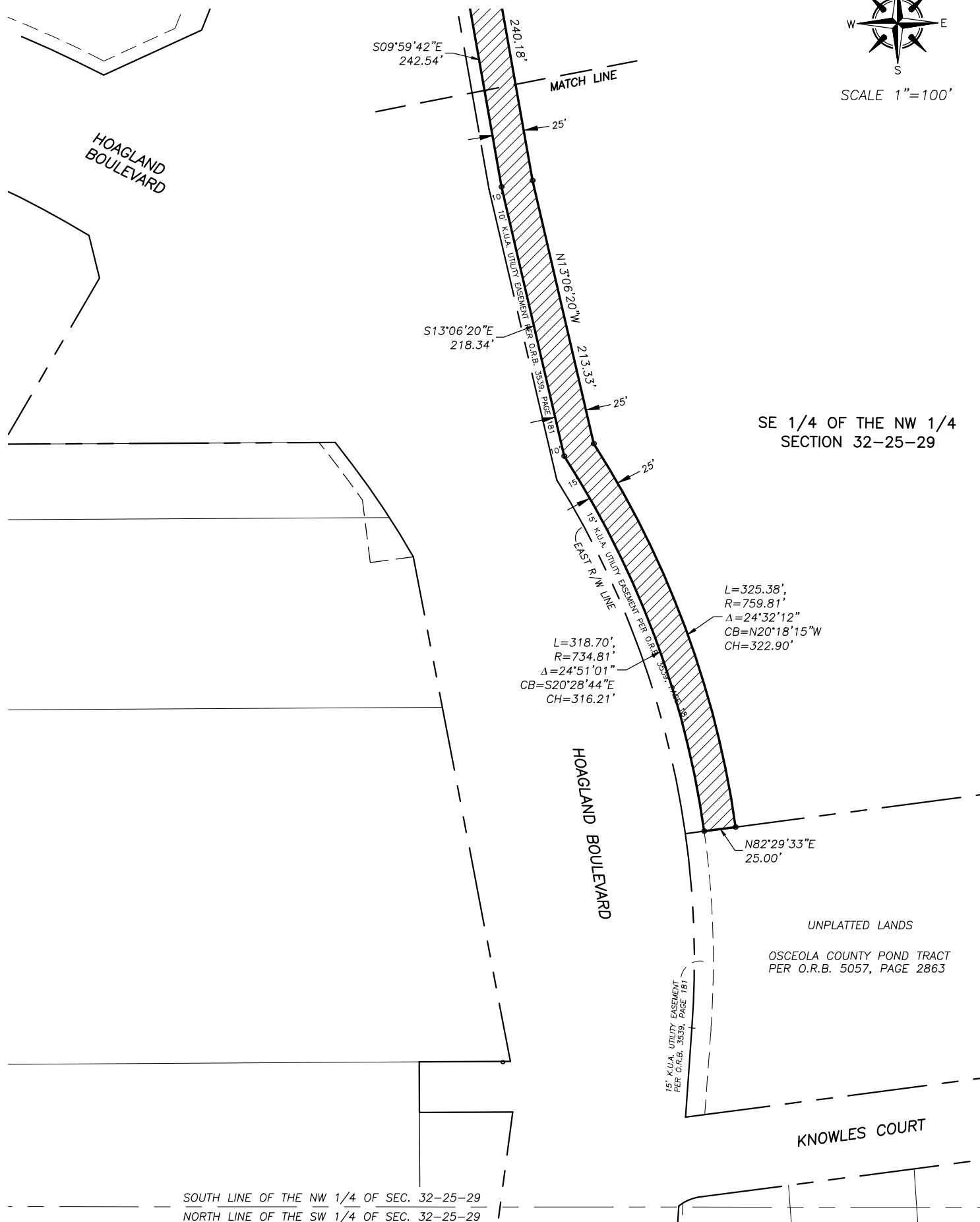
**PLEASANT HILL
ELEMENTARY SCHOOL**
PROPERTY PER O.R.B. 819, PAGE 354



SKETCH OF DESCRIPTION



SCALE 1"=100'



SHEET 3 OF 3

Attachment C
Perpetual Easement Form

Prepared by and after recording return to:
Office of the General Counsel
Tohopekaliga Water Authority
951 Martin Luther King Blvd.
Kissimmee, Florida 34741

Parcel ID No.: [Enter Parcel ID here](#)

----- (Space above this line for recording data) -----

EASEMENT

THIS EASEMENT is made and granted this _____ day of _____ 202__, by [Enter Grantor Entity Name](#) (the “**Grantor**”), [Enter Entity Type](#), having its principal place of business located at [Enter Grantor Principal Place of Business](#), to the **TOHOPEKALIGA WATER AUTHORITY** (“**TOHO**”), an independent special district, established and created pursuant to Chapter 189, Florida Statutes, by special act of the Florida Legislature, having its principal place of business located at 951 Martin Luther King Blvd., Kissimmee, Florida 34741.

Grantor, for and in consideration of the sum of Ten Dollars (\$10.00) and other good and valuable consideration receipt and sufficiency of which is hereby acknowledged, does hereby authorize the use of and hereby grants to TOHO, its successors and assigns, a perpetual non-exclusive utility easement across a parcel of real property in [Click to Select a County](#) County, Florida, as more particularly described in attached **Exhibit A** (the “**Easement Area**”), for the purpose of: **(a)** installing, maintaining, operating, repairing, refiguring, or reconstructing water and wastewater utilities and associated facilities within the Easement Area (collectively, the “**Facilities**”); **(b)** all other rights and privileges reasonably necessary, in TOHO’s sole discretion, for the safe, reliable, and efficient installation, operation, repair, and maintenance of the Facilities; and **(c)** ingress and egress to the Easement Area for the above-stated purposes.

Grantor may continue to use the surface of the Easement Area for any lawful purposes that do not unreasonably interfere with the easement rights granted to TOHO in this instrument, which may include, upon receipt of prior written approval from TOHO – which shall not be unreasonably withheld, the following improvements being made to the Easement Area: parking, paving, sidewalks, lighting, landscaping, green spaces, recreational areas, and drive aisles for motor-vehicles.

Grantor shall not place any permanent structures or improvements such as buildings or foundations on, over, or across the Easement Area. TOHO shall have the right to remove any such permanent structures or improvements placed on, over, or across the Easement Area at the expense of Grantor. TOHO shall have the right to clear the Easement Area of trees, limbs, vegetation, or other physical objects which endanger or interfere with the safe or efficient installation, operation, maintenance, repair, or replacement of facilities existing within the Easement Area.

TOHO will, at its sole cost and expense, restore the surface of any disturbed portion of the Easement Area to its original condition as near as is reasonably practicable, the damage or disturbance to which shall have been caused by the installation, maintenance, operation, repair, inspection, replacement, or removal of the Facilities or other exercise by the TOHO of its rights under this instrument.

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

The terms "Grantor" and "TOHO" shall include any and all respective heirs, successors, and assigns of the Grantor and TOHO. Any failure by TOHO to exercise or continue to exercise or enforce any of the rights granted in this instrument shall not be construed as a waiver or abandonment of the right to at any time, or from time to time, exercise any and all such rights.

[Signatures on Following Page]

IN WITNESS WHEREOF, the Grantor has authorized and caused the execution of this instrument as of the date first above written. Grantor warrants that it is the record owner of the lands to be encumbered by this instrument, that it has the full right and authority to convey to TOHO this perpetual Easement, and that TOHO shall have quiet and peaceful possession, use, and enjoyment of the same.

GRANTOR:

Enter Grantor Name, Enter Entity Type

By: _____

Printed Name: _____

Title: _____

WITNESS #1

Print Name: _____

Address: _____

WITNESS #2

Print Name: _____

Address: _____

STATE OF _____

COUNTY OF _____

The foregoing instrument was acknowledged before me by means of ☐ physical presence or ☐ online notarization, this _____ day of _____, 20____, by Enter Grantor's Signatory Name, as Enter Signatory's Title of Enter Grantor's Name, a Enter Grantor Entity Type authorized to do business in the State of Florida on behalf of the company/corporation. They ☐ are personally known to me or ☐ have produced _____ as identification.

(Seal)

Signature of Notary Public

Name of Notary Typed, Printed or Stamped

EXHIBIT A
[Sketch and Legal]

ITEM 7.J

Satisfaction of Mortgage and Security Agreement and Promissory Note for 924 Determination Way

Request

Approval of the Satisfaction of Mortgage and Note for property located at 924 Determination Way, Kissimmee, Florida 34741.

Explanation

H.O.M.E., Inc. and the City entered into a Hurricane Housing Recovery Program (HHRP) Developers Agreement to fund improvements to the property located at 924 Determination Way, Kissimmee, Florida 34741. On November 15, 2007, H.O.M.E. also executed a Mortgage and Security Agreement and Promissory Note for the benefit of the City for the principal sum of \$417,732.00, and a Declaration of covenants and Restrictions requiring the property to remain as affordable housing for the affordability period of fifteen (15) years, which were recorded in the public record. Aspire Health Partners, Inc., which has since assumed ownership of the property, has continued to maintain the units as affordable housing, consistent with the HHRP Agreement and the Declaration of Covenants and Restrictions since 2007. Therefore, the affordability period has been met, and as such, Aspire has requested that the City of Kissimmee release the Property from the lien and operation of the Mortgage and Note.

Recommendation

Approval of the Satisfaction of Mortgage and Note.

REQUESTED CITY COMMISSION ACTION:

Approve

Department: City Attorney

Presenter:

Attachment(s):

1. (S) H.O.M.E Satisfaction of Mortgage Note

PREPARED BY AND RETURN TO:

Olga Sanchez de Fuentes, Esq
City Attorney's Office
City of Kissimmee
101 Church Street
Kissimmee, FL 34741-5054

[For Recording Purposes Only]

SATISFACTION OF MORTGAGE AND SECURITY AGREEMENT AND PROMISSORY NOTE

WHEREAS, HELPING OTHERS MAKE THE EFFORT, Inc., (H.O.M.E or Borrower) a Florida not for profit corporation, executed a Promissory Note (the "Note") for the benefit of the CITY OF KISSIMMEE, a municipal corporation of the State of Florida (Lender) dated November 15, 2007, for the principal sum of Four Hundred Seventeen Thousand Seven Hundred Thirty -Two Dollars and No Cents (\$417,732.00), which Note was secured by the Mortgage and Security Agreement, of even date, and all financing instruments were recorded together in the Official Records Book 03597, Pages 0166 through and including page 187, of the Public Records of Osceola County Florida.

WHEREAS, the Mortgage encumbers that certain parcel of real property located at 924 Determination Way, Kissimmee, Florida 34741, the legal description and parcel identification number for which are as follows:

LOT 1 OF KISSIMMEE H.O.M.E PLAT, AS RECORDED IN PLAT BOOK 17 AT PAGE 155 OF THE
PUBLIC RECORDS OF OSCEOLA COUNTY, FLORIDA.

Parcel Identification No. 28-25-29-1071-0001-0010

WHEREAS, H.O.M.E and CITY entered into a Hurricane Housing Recovery Program (HHRP) Developers Agreement wherein state HHRP funds were provided for improvements to the Property and pursuant to State of Florida Regulations at HHRP Rule 67ZER05-1 through 67ER05-7 Florida Administrative Code, SHIP Rule 67-37, F.A.C, and Section 420.907, Florida Statutes, and pursuant to same, certain affordability requirements must be met for a period of no less than fifteen (15) years, regardless of any subsequent changes in ownership of the property.

WHEREAS the HHRP Agreement ensures, among other things, the construction of and rental of 11 units to Extremely Low and Very Low-Income persons or households, for a period of 15 years from completion of the project. Payment on the mortgage and note would be deferred until March 31, 2023, and forgiven if Borrower, and any successors in interest complied with the HHRP program requirements, and

WHEREAS, H.O.M.E transferred the property and improvements thereon to the Center For Drug Free Living, Inc., a Florida non-profit corporation (hereinafter "CDFL") by execution of that certain Warranty Deed dated January 7, 2011, and recorded in Official Records Book 04084, Page 1167 through and including 1170;

WHEREAS, CFDFL merged with Lakeside Alternatives and Seminole Behavioral Health Inc. to become Aspire Health Partners, Inc., pursuant to Articles of Merger filed with the State of Florida in June 2014. The Articles of Merger state that all debts, duties and liabilities of the merging corporations shall become the debts duties and liabilities of the surviving corporation, Aspire Health Partners, Inc., (ASPIRE);

WHEREAS, the City of Kissimmee did not transfer, assign, pledge, or otherwise encumber any interest it obtained pursuant to the Mortgage and Note;

WHEREAS ASPIRE continued to maintain the units as affordable housing, consistent with the HHRP Agreement and the Declaration of Covenants and Restrictions executed on November 15, 2007, and recorded in Official Records Book 03597, Page 0188 through and including 192 of the Osceola County Public Records.

WHEREAS, ASPIRE has requested that the City of Kissimmee release the Property from the lien and operation of the Mortgage and Note, as the affordability period has been met.

NOW THEREFORE, in consideration of the terms of the HHRP Developers Agreement being met, pursuant to the terms of the Mortgage and the Note, the City of Kissimmee does hereby acknowledge satisfaction of said Mortgage and Note. Aspire, their heirs, and assigns are forever freed, discharged, and released from the lien of the Mortgage and Note and every part thereof.

IN WITNESS WHEREOF, the City of Kissimmee has caused these presents to be executed in its name, this _____ day of _____, 2023.

CITY OF KISSIMMEE

Olga Gonzalez, Mayor- Commissioner

Attest:

City Clerk

Approved as to form and legality.

City Attorney

ITEM 7.K

2023 Affordable Housing Advisory Committee (AHAC) Incentives Strategies Report

Request

Accept the 2023 AHAC Incentive Strategies Report.

Explanation

Pursuant to Chapter 420.9076 F.S. and Rule 67-37.010, all communities that participate in the State Housing Initiatives Partnership (SHIP) program are required to review the established policies and procedures, ordinances, land development regulations, and local government comprehensive plans and recommend initiatives to encourage or facilitate affordable housing while protecting the ability of the property to appreciate in value. This review is carried out by the Affordable Housing Advisory Committee (AHAC). The Committee meets throughout the year and, at the end, completes an AHAC Incentive Strategies Report. This report is the culmination of a year's worth of review, consideration, evaluation, and recommendations. The next step after acceptance of the report by the City Commission is for staff and the AHAC to continue developing the recommendations contained in this report and develop policies/programs, if necessary. These policies/programs will be adopted and/or implemented internally by staff accordingly, depending on further direction by the City Commission.

Recommendation

Approval to accept the 2023 AHAC Incentive Strategies Report.

REQUESTED CITY COMMISSION ACTION:

Approve

Department: Development Services

Presenter:

Attachment(s):

1. AHAC Report _2023
2. Report - table

**AFFORDABLE HOUSING ADVISORY COMMITTEE REPORT TO
CITY OF KISSIMMEE CITY COMMISSION
STATE HOUSING INITIATIVES PARTNERSHIP
AFFORDABLE HOUSING INCENTIVE STRATEGIES**

December 18, 2023

BACKGROUND

As a recipient of State Housing Initiative Partnership (SHIP) funds, City of Kissimmee established an Affordable Housing Advisory Committee (AHAC) on December 1, 2020, as required by Florida Statutes, Sec. 420.9076. The AHAC is responsible for reviewing and evaluating local plans, policies, procedures, land development regulations, the Comprehensive Plan, and other aspects of the City of Kissimmee housing activities that impact the production of affordable housing. Further, the AHAC is specifically directed by the SHIP Statute to consider and evaluate the implementation of the incentives set out in Florida Statutes, Sec. 420.9076 (4)(a)-(k). Based on the AHAC evaluation, it may recommend to local government that it make modifications of, exceptions to, or creation of new plans, policies, procedures, and other governing vehicles which would encourage production of affordable housing.

As approved by the City of Kissimmee City Commission (City Commission), the recommendations are used to amend the Local Housing Assistance Plan, Land Development Code, and the local Comprehensive Plan.

COMMITTEE COMPOSITION

The City of Kissimmee City Commission appointed or re-appointed members to the Committee on December 1, 2020. Florida Statutes, Sec. 420.9076(2), lists the categories from which committee members must be selected. Each AHAC must have a locally elected official from the county or municipality participating in the SHIP program. The locally elected official must be a City or County Commissioner. The elected official counts as a member of the AHAC for purposes of meeting the number of member's requirements. There must be at least eight committee members with representation from at least six of the following categories:

- (a) A citizen who is actively engaged in the residential home building industry in connection with affordable housing.
- (b) A citizen who is actively engaged in the banking or mortgage banking industry in connection with affordable housing.
- (c) A citizen who is a representative of those areas of labor actively engaged in home building in connection with affordable housing.
- (d) A citizen who is actively engaged as an advocate for low-income persons in connection with affordable housing.
- (e) A citizen who is actively engaged as a for-profit provider of affordable housing.
- (f) A citizen who is actively engaged as a not-for-profit provider of affordable housing.
- (g) A citizen who is actively engaged as a real estate professional in connection with affordable housing.
- (h) A citizen who actively serves on the local planning agency pursuant to s. 163.3174. If the local planning agency is comprised of the governing board of the county or

municipality, the governing board may appoint a designee who is knowledgeable in the local planning process.

(i) A citizen who resides within the jurisdiction of the local governing body making the appointments.

(j) A citizen who represents employers within the jurisdiction.

(k) A citizen who represents essential services personnel, as defined in the local housing assistance plan.

The appointed AHAC Committee members are included here, along with their category affiliation:

Name	Category Represented
1 Robert A. Bussiere (Chair)	Planning Agency Member
2 Lucie Ghioto (Vice-Chair)	Residential Home Building Industry
3 Olga Gonzalez	Elected Official
4 Nilisa I Council	Citizen
5 Will Cooper	Advocate for Low Income
6 Scott Culp	For-Profit Provider of Affordable Housing
7 Wendy Ford	Non Profit Affordable Housing Provider
8 Linda Goodwin	Real Estate Professional
9 Jackie Espinosa	Banking/Mtg. Affordable Housing
10 Sue Ring	Representative of Employers

RECOMMENDATIONS

The AHAC throughout the year has reviewed segments of local government plans, policies, and procedures; ordinances; regulations; statutes; and the comprehensive plan, among other documents applicable to affordable housing, for evaluation of their impacts on affordable housing. Further, the AHAC has specifically considered and evaluated the strategies set out in Florida Statutes, Sec. 420.9076 (4)(a)-(k).

As provided in SHIP Statute in Florida Statutes, Sec. 420.9076 (4), these are the incentives that were reviewed, considered, and evaluated throughout the year:

- (a) The processing of approvals of development orders or permit, as defined in Florida Statutes, Sec. 163.3164(7), (8), for affordable housing projects is expedited to a greater degree than other projects.
- (b) The modification of impact-fee requirements, including reduction or waiver of fees and alternative methods of fee payment for affordable housing.
- (c) The allowance of flexibility in densities for affordable housing.
- (d) The reservation of infrastructure capacity for housing for very low-income persons, low-income persons, and moderate-income persons.
- (e) The allowance of affordable accessory residential units in residential zoning districts.
- (f) The reduction of parking and setback requirements for affordable housing.

- (g) The allowance of flexible lot configurations, including zero-lot-line configurations for affordable housing.
- (h) The modification of street requirements for affordable housing.
- (i) The establishment of a process by which a local government considers, before adoption, policies, procedures, ordinances, regulations, or plan provisions that increase the cost of housing.
- (j) The preparation of a printed inventory of locally owned public lands suitable for affordable housing.
- (k) The support of development near transportation hubs and major employment centers and mixed-use developments.

Based on the review and evaluation during the calendar year 2023, the AHAC makes the following recommendations:

1. Expedited Permitting

Meeting Synopsis:

The AHAC met and discussed this incentive on October 19, 2023.

Existing Strategy:

A policy and a process are in place in order to process permits for affordable housing developments in an expedited manner to the greatest extent possible.

AHAC Recommendation:

No recommended changes to this incentive at this time.

Schedule for Implementation:

Not applicable.

2. Process of Ongoing Review

Meeting Synopsis:

The AHAC met on November 30, 2023 to review into this incentive.

Existing Strategy:

The City of Kissimmee has an established process to determine the impact of regulatory changes on affordable housing. Based on the prior year recommendation, staff from the initiating department/division shall meet with the Housing staff to discuss the impact of the policy on the cost of affordable housing. During the review of the proposed policy or regulation, the housing staff shall perform research on the impacts of that policy or regulation on housing cost and provide the results in the form of an impact analysis (Housing Impact Statement) to the AHAC at an upcoming meeting.

AHAC Recommendation:

No recommended changes to this incentive at this time.

Next Steps:

Not applicable

3. Support of Development Near Transportation Hubs

Meeting Synopsis:

The AHAC met and discussed this incentive on October 19, 2023.

Existing Strategy:

In 2021, the AHAC recommended the City to encourage housing developments that meet the definition of either affordable housing or workforce housing and are located near transportation, employment centers, and/or mixed used development through available funding sources and/or regulatory incentives. This recommendation was adopted in the Local Housing Assistance Plan by giving preference to projects located near transportation, employment centers, and/or mixed used developments during the selection process under the City's infill housing and rental strategies.

AHAC Recommendation:

No additional recommendations.

Next Steps:

Not applicable.

4. Definition of Affordable and Workforce Housing Developments

Meeting Synopsis:

The AHAC met and discussed this incentive on October 19, 2023.

Existing Strategy:

Based on their discussion, the AHAC recommended changes to the definition of affordable housing. Those changes were incorporated in the City's Land Development Code and adopted by the City Commission on November 15, 2022. According to the new definition, affordable housing developments must have at least twenty percent (20%) of the units set aside and meet the definition of affordable housing as defined in Chapter 420 of the Florida Statutes.

AHAC Recommendation:

No additional recommendations.

Next Steps:

Not applicable.

pdate:

5. Flexible Densities

Meeting Synopsis:

The AHAC met and discussed this incentive on October 19, 2023.

Existing Strategy:

Based on their discussion, the AHAC recommended that in order for a project to receive an affordable housing bonus at least twenty percent (20%) of the dwelling units must be substantially subsidized by government subsidies in a manner which provides long term benefits to very low, low, and moderate income households. Those changes were incorporated in the City's Land Development Code and adopted by the City Commission on November 15, 2022. The use of this bonus requires a letter of confirmation from the City of Kissimmee Housing and Community Development Manager or designee.

AHAC Recommendation:

No additional recommendations.

Next Steps:

Not applicable.

6. Reservation of Infrastructure Capacity

Meeting Synopsis:

The AHAC met and discussed this incentive on October 19, 2023.

Update:

Existing Strategy:

Most developers pay for the impact/mobility fees when they receive a building permit.

AHAC Recommendation:

No recommended changes to this incentive at this time.

Next Steps:

Not applicable.

7. Parking and Setback Requirements

Meeting Synopsis:

The AHAC met and discussed this incentive on October 19, 2023.

Existing Strategy:

The Kissimmee City Code already addresses minimum parking and setback requirements.

AHAC Recommendation:

No recommended changes to this incentive at this time.

Next Steps:

Not applicable.

8. Flexible Lot Configurations

Meeting Synopsis:

The AHAC met and discussed this incentive on October 19, 2023.

Existing Strategy:

The Land Development Code already includes flexible lot configurations, including zero lot line development.

AHAC Recommendation:

No recommended changes to this incentive at this time.

Next Steps:

Not applicable.

9. Modification of Street Requirements

Meeting Synopsis:

The AHAC met and discussed this incentive on October 19, 2023.

Existing Strategy:

The Kissimmee City Code already addresses modification of street requirements in the city code.

AHAC Recommendation:

No recommended changes to this incentive at this time.

Next Steps:

Not applicable.

Other Incentives:

10. Public Land Inventory

Meeting Synopsis:

The AHAC met and discussed this incentive on August 8, 2023.

Existing Strategy:

The inventory has to be updated every three years. However, this year, as part of the Live Local ACT, there were some changes made to the current list. Staff has developed internal guidelines for the City of Kissimmee Surplus Land for Affordable Housing Program.

AHAC Recommendation:

No recommendations were made; however the AHAC accepted the list presented by staff:

- 1) 1007 Palmway Street (Subdivision: Poinsettia Park); Parcel 22-25-29-1990-0019-0110
- 2) Poinciana Circle (Subdivision: Delwood Park); Parcel 15-25-29-1290-000A-0190
- 3) 504 Canterbury Lane (Subdivision: Canterbury Terrace); Parcel 28-25-29-1170-000A0180
- 4) 219 N Randolph Avenue (Subdivision: Mathews ADD); Parcel 21-25-29-1690-000T-0029
- 5) Pleasant Street (Subdivision: Toho Square); Parcel 22-25-29-2257-0001-0020
- 6) Pleasant Street (Subdivision: Toho Square); Parcel 22-25-29-2257-0001-00D0

Next Steps:

Staff will present the list of municipally owned property that is appropriate for use as affordable housing to the City Commission at the meeting on September 26, 2023.

11. Modification of Impact Fees

Meeting Synopsis:

The AHAC met and discussed this incentive on April 20, 2023.

Existing Strategy:

The City of Kissimmee does not have an impact fee reduction or reimbursement policy or program. In lieu of an impact fee reduction or reimbursement, the City of Kissimmee has included in its Local Housing Assistance Plan a strategy that gives developers a financial incentive in the amount of \$20,000 as a contribution to affordable housing projects if they are participating in the Florida Housing Finance Corporation's funding process. In years when SHIP funding was not available, the City Commission has waived building permit fees in the amount of \$20,000 as a local government contribution for the construction of affordable housing. However, this is not a standing policy. In 2021, the AHAC recommended staff to develop a policy to offer reimbursement of mobility fees and park and recreation impact fees for affordable housing developments based on a sliding scale related to the level of affordability and subject to availability of funding.

AHAC Recommendation:

In 2021, the AHAC recommended staff to develop a policy to offer reimbursement of mobility fees and park and recreation impact fees for affordable housing developments based on a sliding scale related to the level of affordability and subject to availability of funding.

Next Steps:

Staff drafted the guidelines of the Affordable Housing Fee Reduction Program which makes available benefits to eligible affordable housing developments. However, the program has to undergo review and evaluation.

12. Affordable Accessory Residential Units

Meeting Synopsis:

The AHAC met and discussed this incentive on November 16, 2023. Staff presented the reasons why removing the owner occupancy requirement is not a viable solution.

Existing Strategy:

Accessory dwelling units are permitted in most zoning districts provided they meet the requirements of the Land Development Code. The Code requires that the principal structure be owner occupied.

AHAC Recommendation:

In 2021, AHAC recommended that the owner occupant requirement be removed. This year, the AHAC upheld their recommendation.

Next Steps:

None. Staff does not support AHAC's recommendation to remove the owner occupancy requirement for the development of accessory residential units. The concept was taken to upper

management for discussion. It was discussed that removal of the requirement for the principle structure to be owner-occupied would establish a precedent that staff does not want to set. Per the census, there is a 45+/-% homeownership (meaning 55% of the community are rentals) rate and staff does not want to remove requirements that could potentially further that percentage. This standard was put in place to allow housing diversity while maintaining the owner-occupied structures in the City. With current housing trends (developer owned rental communities, small/large private investment companies buying housing stock for rentals), staff felt the removal of this standard would set a negative precedent and would open the door for private companies to take advantage of a “loophole” in the Code.

IV. Other Incentives – Additional Review Needed Next Year

13. Process of Ongoing Review

14. Community Land Trust

15. Inclusionary Zoning

16. Hotel Conversion to Apartments

17. Live Local Act

CLOSING REMARKS

This report is the culmination of a year’s worth of review, consideration, evaluation, and recommendations by the AHAC. The next steps will be for staff and the AHAC to continue developing the recommendations contained in this report and develop policies/programs, if necessary. These policies/programs will be adopted and/or implemented internally by staff accordingly depending on further direction by the City Commission.

CITY OF KISSIMMEE

Incentives for Annual AHAC Report (2023)

Reviewed with no recommendations:

Incentive	Current status	Recommendations - 2022
Expedited Permitting	A policy and a process are in place in order to handle permits for affordable housing developments in an expedited manner to the greatest extent possible.	No recommended changes to this incentive at this time.
Support of Development Near Transportation Hubs	The Local Housing Assistance Plan gives preference to projects located near transportation, employment centers, and/or mixed used developments during the selection process under the City's infill housing and rental strategies.	No recommended changes to this incentive at this time.
Definition of Affordable and Workforce Housing Developments	Definition: Affordable housing developments must have at least twenty percent (20%) of the units set aside and meet the definition of affordable housing as defined in Chapter 420 of the Florida Statutes. the City's Land Development Code and adopted by the City Commission on November 15, 2022.	No recommended changes to this incentive at this time.
Flexible Densities	In order for a project to receive an affordable housing bonus at least twenty percent (20%) of the dwelling units must be substantially subsidized by government subsidies in a manner which provides long term benefits to very low, low, and moderate income households. Those changes were incorporated in the City's Land Development Code and adopted by the City Commission on November 15, 2022. The use of this bonus requires an affordable housing certification letter of confirmation from the City of Kissimmee Housing and Community Development Manager or designee.	No additional recommendations
Reservation of Infrastructure Capacity	Most developers pay for the impact/mobility fees when they receive a building permit.	No recommended changes to this incentive at this time.

Parking and Setback Requirements	The Kissimmee City Code already addresses minimum parking and setback requirements	No recommended changes to this incentive at this time.
Flexible Lot Configurations	The Land Development Code already includes flexible lot configurations, including zero lot line development.	No recommended changes to this incentive at this time.
Modification of Street Requirements	The Kissimmee City Code already addresses modification of street requirements in the city code	No recommended changes to this incentive at this time

Reviewed with recommendations:

Incentive	Current status	Recommendations - 2023
Affordable Accessory Residential Units	Accessory dwelling units are permitted in most zoning districts provided they meet the requirements of the Land Development Code.	In Calendar Year 2021, the AHAC recommended the City should not include attached Accessory Dwelling Units (ADU) in the density calculations for any of the zoning districts; however, the attached ADU should be included in the calculation for infrastructure for the purpose of calculating mobility fees, impact fees and connection fees. In addition, it was recommended the City should remove the requirement that the principal structure be owner occupied. After discussion of this recommendation with City management, City staff does not support removing the owner occupancy requirement for the principal structure.
Public Land Inventory	The inventory has to be updated every three years. However, this year, as part of the Live Local ACT, there were some changes made to the current list. Staff has developed internal guidelines for the City of Kissimmee Surplus Land for Affordable Housing Program.	No AHAC recommendations were made; however the list was presented to the AHAC for informational purposes. The following lots are listed: 1)1007 Palmway Street (Subdivision: Poinsettia Park); Parcel 22-25-29-1990-0019-0110

		2)Poinciana Circle (Subdivision: Delwood Park); Parcel 15-25-29-1290-000A-0190 3)504 Canterbury Lane (Subdivision: Canterbury Terrace); Parcel 28-25-29-1170-000A0180 4)219 N Randolph Avenue (Subdivision: Mathews ADD); Parcel 21-25-29-1690-000T-0029 5) Pleasant Street (Subdivision: Toho Square); Parcel 22-25-29-2257-0001-0020 6) Pleasant Street (Subdivision: Toho Square); Parcel 22-25-29-2257-0001-00D0 As required by Statute, staff presented the list to the City Commission at the meeting on September 26, 2023.
Modification of Impact Fees	Staff drafted the guidelines of the Affordable Housing Fee Reduction Program which makes available benefits to eligible affordable housing developments. These benefits will be offered in the form of reimbursements, waivers, and/or deferrals to cover mobility fees, park and recreation impact fees, and development review fees depending on the project financial needs and funding availability.	The AHAC recommends that City staff continue to develop the Affordable Housing Fee Reduction Program Guidelines, make changes as necessary and begin discussions on implementation.

Topics to consider next year for discussion and further recommendations:

Process of Ongoing Review	The City of Kissimmee has an established process to determine the impact of regulatory changes on affordable housing. Based on the prior year recommendation, staff from the initiating department/division shall meet with the Housing staff to discuss the impact of the policy on the cost of affordable housing. During the review of the proposed policy or regulation, the housing staff shall perform research on the impacts of that policy or regulation on housing cost and provide the results in the form of an impact analysis (Housing Impact Statement) to the AHAC at an upcoming meeting. After further consideration by City staff, the implementation process as stated in the is a very broad. The recommendation shall be revisited to amend the implementation of this incentive.
Inclusionary Zoning	It was decided that before the AHAC makes a recommendation on this incentive, additional research is needed.
Community Land Trust	The Community Land Trust model shall be evaluated as a potential program for affordable housing in the City of Kissimmee. The City shall consider working with Osceola County for implementation.
Hotel Conversion to Apartments	Consider including this recommendation if the City proceeds to develop a policy/program to address hotel conversions to apartments: Recommendation #1: Prioritize community organizations that have a proven track record in offering supportive services to the lower income residents in our community when providing funding for conversion of hotels/motels to affordable housing.
Live Local Act	Take an in depth look into how the Live Local Act impacts development in Kissimmee and make recommendations.

ITEM 7.L

Letter of Agreement with Cirrus at Kissimmee Gateway Airport

Request

Approve Letter of Agreement (LOA), Contract # 20240145 with Cirrus Aircraft to exercise the Option Agreement for Ground Lease at the Kissimmee Gateway Airport.

Explanation

Cirrus Design Corp. d/b/a Cirrus Aircraft entered a hangar ground lease with the Kissimmee Gateway Airport in 2021 with the option to expand facility operations on an additional eight acres. The company has exceeded operational expectations and has the immediate need for more space. Therefore, Cirrus has requested through a Letter of Agreement to exercise the option to expand facilities.

Recommendation

Approve Letter of Agreement to exercise the Option Agreement for Ground Lease at the Kissimmee Gateway Airport.

REQUESTED CITY COMMISSION ACTION:

Approve

Department: Airport

Presenter:

Attachment(s):

1. (S) Letter of Agreement Cirrus-KISM
2. CIRRUS MEMO OF OPTION
3. CIRRUS LEASE OPTION

November 16 2023

Mike Steigerwald
City Manager
City of Kissimmee
101 Church St, Kissimmee, FL 34741

Re: Option Agreement for Ground Lease with Cirrus Design Corp. d/b/a Cirrus Aircraft and dated Sept. 14, 2021.

Dear Mike:

This Letter of Agreement ("LOA") summarizes the principal terms for proposed agreements resulting from the above-referenced Option Agreement for Ground Lease ("Option Agreement") as previously discussed in a meeting on September 7, 2023, between Shaun Germolus, you, me and other members of Cirrus Aircraft. Based on said discussions and other information shared to date, the proposed agreements resulting from the exercise of the Option Agreement would be in accordance with the terms set forth below:

1. Ground Lease. Cirrus Aircraft would agree to lease the land set forth in the Option Agreement and as primarily represented in Exhibit C of the same. The more significant terms being:
 - a. Term of Lease shall be for initial period of 40 years, and it shall reset with each additional capital improvement of \$2M or more by Cirrus Aircraft or the City.
 - b. Cirrus Aircraft shall have an exclusive first option to renew for additional 10 years.
 - c. Rent shall be \$0.27 per square foot initially and shall escalate based on CPI starting on the third annual anniversary of the ground lease. However, the escalation shall not exceed 10 % during any 10-year period.
2. Building and Improvements Lease. Additionally, the following amendments will be made in the ground lease in Section 1 above or, if appropriate, reflected in a separate agreement.
 - a. City shall build and own building and improvements (collectively, the "Building") as designed by Cirrus Aircraft and approved by the City.
 - b. Presently, the estimated construction budget for cost of the Building is \$14M. Should the estimated budget increase by 10% or more before or during construction, the parties agree to confer and agree on updated construction budget. Rent shall be equal to the cost of capital to the City for the construction of the Building plus subsequent improvements. Additionally, Cirrus Aircraft shall be responsible for all maintenance and repair costs to the Building as well as all utility costs.
 - c. Part V of the agreement will be updated to include painting under category "F".
 - d. Should laws and regulations change or be interpreted such that Cirrus Aircraft can own the Building, Cirrus Aircraft shall have exclusive first option to purchase at actual cost to build plus subsequent improvements and minus rental payments made to that date.
3. Definitive Agreement. The objective of this LOA is to document the intention of the parties to seek to negotiate and execute one or more definitive written agreement(s) reflecting the terms in this LOA (the "Definitive Agreement"). Each party expressly reserves the right of final approval or disapproval of the Definitive Agreement.

4. Entire Agreement. The Option Agreement and this LOA constitute the entire agreement between the parties, and supersede all prior oral or written agreements, understandings, courses of conduct and dealings between the parties relating to the subject matter hereof.
5. Confidentiality. The information contained herein is of a confidential and private nature between the City and Cirrus Aircraft, both with the understanding that they shall not be disclosed to others who are not a party to this transaction. Accordingly, the City and Cirrus Aircraft hereby agree not to disseminate or disclose any material provisions of the LOA as contained herein, nor permit others to make any such dissemination or disclosures, to any third parties who are not a party to this transaction.
6. Governing Law. This LOA will be governed by and construed under the laws of the State of Florida without regard to conflicts of laws principles. Any action or proceeding seeking to enforce any provision of, or based on any right arising out of, this LOA may be brought against any of the parties in the state or federal courts located in the State of Florida, and each of the parties consents to the jurisdiction of such courts (and of the appropriate appellate courts) in any such action or proceeding and waives any objection to venue laid therein.

Sincerely,

CIRRUS DESIGN CORP. d/b/a CIRRUS AIRCRAFT

By:

Ravi Dharnidharka Nov 16, 2023

Ravi Dharnidharka

Accepted and agreed to by:

CITY of KISSIMMEE

By:

Date

THIS DOCUMENT PREPARED BY:

Allen Wheeler

Faegre Drinker Biddle & Reath LLP

90 South 7th Street, Suite 2200

Minneapolis, MN 55402

RETURN TO:

Allen Wheeler

Faegre Drinker Biddle & Reath LLP

90 South 7th Street, Suite 2200

Minneapolis, MN 55402

Tax Parcel/ID Number: _____

MEMORANDUM OF OPTION

This Agreement, made and entered into as of the 14th day of September, 2021, by and between CITY OF KISSIMMEE, a municipal corporation located within Osceola County, Florida ("**Landlord**") and CIRRUS DESIGN CORPORATION D/B/A CIRRUS AIRCRAFT, a Wisconsin corporation ("**Tenant**").

A. Landlord is the owner of or controls certain real property located on or about the Kissimmee Gateway Airport, a municipal airport located within the boundaries of the City of Kissimmee, Florida (the "**Airport**") that consists of approximately eight (8) undeveloped acres and is more particularly described on the attached Exhibit A and depicted on the attached Exhibit B (the "**Option Property**").

B. Tenant desires to secure the exclusive option to lease the Option Property, and Landlord desires to grant such option to Tenant, pursuant to the terms and conditions hereinafter set forth.

Accordingly, for and in consideration of that certain Option Agreement for Ground Lease dated September 14, 2021 (the "**Option Agreement**"), Landlord and Tenant agree as follows:

1. Grant of Option. Landlord hereby grants to Tenant, and Tenant hereby accepts, the exclusive option to lease the Option Property through December 31, 2023 (the such period

being the “**Option Term**”), upon the terms and conditions set forth in the Option Agreement; provided, however, the Option Term may be extended pursuant to the terms of the Option Agreement.

2. Incorporation. The Option Agreement contains other terms, conditions, provisions, covenants, representations and warranties, all of which are hereby incorporated in this Agreement by reference as though fully set forth herein, and both the Option Agreement and this Agreement shall be deemed to constitute a single instrument. This Memorandum of Option is executed and is to be recorded and/or registered for the purpose of giving notice of the Option Agreement and is in no way intended to supersede or vary the terms or conditions of the Option Agreement. Nothing contained herein shall be construed to amend, modify, change, alter, amplify, interpret or supersede any of the terms and provisions of the Option Agreement, which shall in all things control.

4. Counterparts. This Agreement may be executed in counterparts, each of which shall constitute an original and all of which together shall constitute one and the same instrument.

5. Binding Effect. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns.

[Signature Pages Follow]

SIGNATURE PAGE
MEMORANDUM OF OPTION
BETWEEN
CITY OF KISSIMMEE
AND

CIRRUS DESIGN CORPORATION D/B/A CIRRUS AIRCRAFT

IN WITNESS WHEREOF, Landlord has caused this Agreement to be executed and delivered as of the date first above written.

LANDLORD:

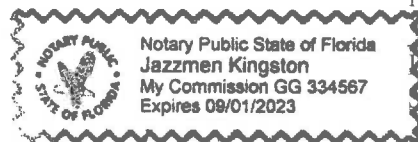
CITY OF KISSIMMEE, FLORIDA

Olga Gonzalez
Olga Gonzalez
Mayor-Commissioner
Date: 9/14/2021

STATE OF FLORIDA)
) SS:
COUNTY OF)

The foregoing instrument was acknowledged before me this 14th day of September, 2021, by Olga Gonzalez, the Mayor-Commissioner of City of Kissimmee, Florida, a municipal corporation located within Osceola County, Florida, on behalf of the municipal corporation. He/She is personally known to me or has produced _____ as identification.

NOTARY PUBLIC:



Jazzmen Kingston
Print: Jazzmen Kingston
State of Florida at Large (Seal)
My Commission Expires: 9/1/2023

ATTEST

Dinda S. Hanseel
City Clerk

Approved as to form and legality

Olga Sanchez
City Attorney

SIGNATURE PAGE
MEMORANDUM OF OPTION
BETWEEN
CITY OF KISSIMMEE

AND
CIRRUS DESIGN CORPORATION D/B/A CIRRUS AIRCRAFT

IN WITNESS WHEREOF, Tenant has caused this Agreement to be executed and delivered as of the date first above written.

TENANT:

CIRRUS DESIGN CORPORATION D/B/A
CIRRUS AIRCRAFT, a Wisconsin corporation

By: [Signature]
Name: Ravi Dharmidharka
Its: Senior Vice President

TENNESSEE
STATE OF ~~MINNESOTA~~)
COUNTY OF BLOUNT) ss.

The foregoing instrument was acknowledged before me this 9th day of September 2021, by Ravi Dharmidharka SVP Cirrus of Cirrus Design Corporation d/b/a Cirrus Aircraft, a Wisconsin corporation, on behalf of such corporation.

Angela L. Toftey
Notary Public

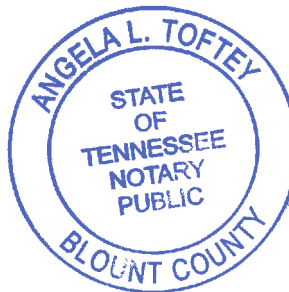


EXHIBIT A

Legal Description of the Option Property

LEGAL DESCRIPTION:

(AS PREPARED BY SURVEYOR)

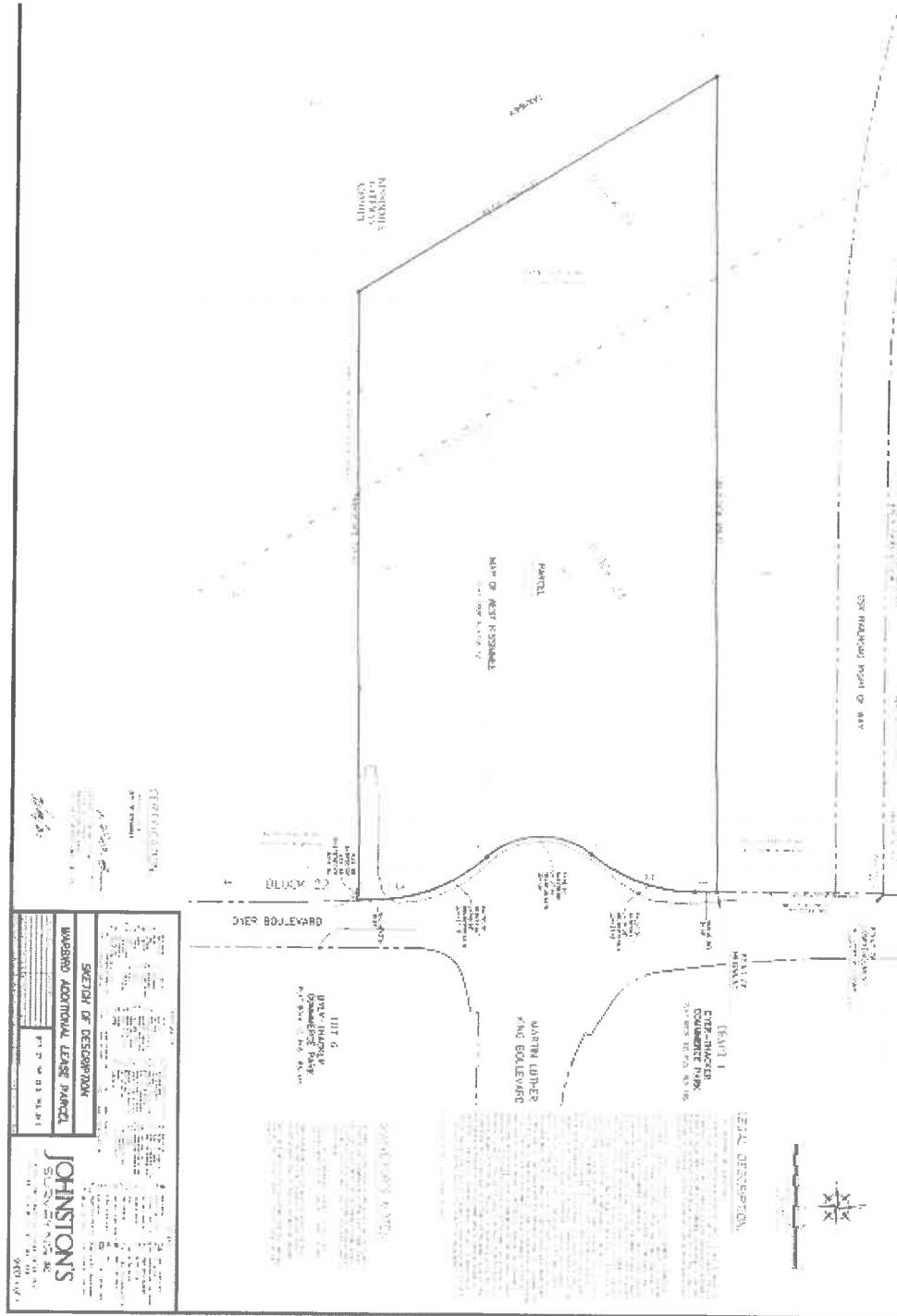
A parcel of land being a portion of Lots 1, 2 and 3, Block 22, and a portion of Lots 1 and 3 and all of Lot 2, Block 23 and a portion of Lots 1 and 2, Block 24 and portions of platted Right of Ways, MAP OF WEST KISSIMMEE, according to the plat thereof, as recorded in Plat Book A, Page 12 of the Public Records of Osceola County, Florida and being more particularly described as follows:

- Commence at the Southeast corner of KISSIMMEE COMMERCE / INDUSTRIAL CENTER, according to the plat thereof, as recorded in Plat Book 5, Pages 107 and 108 of the Public Records of Osceola County, Florida; thence run N89°47'27"W along the South line of said KISSIMMEE COMMERCE / INDUSTRIAL CENTER, a distance of 1.44 feet to a point on the West Right of Way line of Dyer Boulevard as shown on the Plat of DYER-THACKER COMMERCE PARK, as recorded in Plat Book 22, Pages 183 to 185 of the Public Records of Osceola County, Florida; thence S00°02'35"W, along said West Right of Way line, a distance of 202.00 feet to the POINT OF BEGINNING; thence run S89°26'09"W, a distance of 986.31 feet; thence run S31°27'51"E, a distance of 504.88 feet to a point on the North line of Aviator College Leasehold; thence run N89°26'09"E, along said North line, a distance of 725.00 feet to a point on a non-tangent curve, concave to the South, having a Radius of 21.96 feet and a Central Angle of 30°05'59"; thence run Easterly along the arc of said curve, a distance of 11.53 feet (Chord Bearing = S72°06'09"E, Chord = 11.40 feet) to a point on aforesaid West Right of Way line; thence along said West Right of Way line of Dyer Boulevard the following five (5) courses: run N02°16'47"W, a distance of 30.97 feet to the Point of Curvature of a curve concave to the West, having a Radius of 200.00 feet and a Central Angle of 40°18'02"; thence run Northerly along the arc of said curve, a distance of 140.68 feet (Chord Bearing = N22°25'48"W, Chord = 137.79 feet) to a Point of Reverse Curve to the right having a Radius of 96.50 feet and a Central Angle of 81°36'09"; thence run Northerly along the arc, a distance of 137.44 feet to a Point of Reverse Curve to the left having a Radius of 200.00 feet and a Central Angle of 38°58'41"; thence run Northerly along the arc, a distance of 136.06 feet to the Point of Tangency; thence run N00°02'39"E, a distance of 26.59 feet to the POINT OF BEGINNING.

Containing 8.28 acres, more or less

EXHIBIT B

Depiction of the Option Property



US.134358274.02

OPTION AGREEMENT FOR GROUND LEASE

THIS OPTION AGREEMENT FOR GROUND LEASE (this "**Agreement**") is entered into as of the last date of the signatures hereto (the "**Effective Date**"), by and between CITY OF KISSIMMEE, a municipal corporation located within Osceola County, Florida ("**Landlord**") and CIRRUS DESIGN CORPORATION D/B/A CIRRUS AIRCRAFT, a Wisconsin corporation ("**Tenant**").

RECITALS

A. Landlord is the owner of or controls certain real property located on or about the Kissimmee Gateway Airport, a municipal airport located within the boundaries of the City of Kissimmee, Florida (the "**Airport**") that consists of approximately eight (8) undeveloped acres and is more particularly described on the attached Exhibit A and depicted on the attached Exhibit B (the "**Option Property**").

B. Tenant and Landlord wish to investigate the feasibility of entering into a long-term ground lease, whereby Tenant would ground lease from Landlord all or a portion of the Option Property from Landlord.

C. Tenant is also exploring the feasibility of constructing an aircraft storage and maintenance hangar with related facilities including surface parking and aircraft parking apron (collectively, the "**Project**") upon the Option Property.

D. To permit Tenant to conduct such investigations, the parties have elected to enter into this Agreement.

AGREEMENT

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

1. Grant of Option. Subject to the terms and conditions of this Agreement, Landlord hereby grants to Tenant, and Tenant hereby accepts from Landlord, the option to lease all or any portion of the Option Property during the Option Term (the "**Option**"). The Option granted to Tenant herein is a rolling option permitting Tenant to lease, through the exercise of the Option granted herein one or more times during the Option Term, all or a portion of the Option Property (as defined below). For clarity, the Option granted to Tenant herein may be exercised one or more times for any then-remaining unleased portion of the Option Property so long as Tenant exercises its option(s) pursuant to the terms of this Agreement before the end of the Option Term, as it may be extended as provided herein.

2. Term of Option. The Option shall commence on the Effective Date and terminate on the second anniversary of the Effective Date (the "**Option Term**"), unless earlier terminated or extended pursuant to this Agreement. Notwithstanding the foregoing, (i) if Tenant is actively engaged in planning and seeking permitting or third party approvals (including from Landlord) for the construction of improvements or operation of Tenant's business on the Option Property, then the Option Term shall automatically be extended for an additional two (2) years without any further Landlord consents or approvals, and (ii) if, on each Closing Date of Tenant's exercise of the Option under this Agreement (acknowledging that there could be multiple Closing Dates under this Agreement) (a) a portion of the Option Property remains unleased to Tenant, and (b) Tenant is actively engaged in planning and seeking permitting or third party approvals (including from Landlord) for the construction of improvements or operation of Tenant's business on the Option Property, the Option Term shall automatically be extended for an additional two (2) years from such Closing Date without any further consents or approvals from

Landlord. For clarity, Tenant's Option on any remaining unleased portion of the Subject Property lasts for the entire Option Term or until the last portion of the Option Property is leased by Tenant. The Option granted to Tenant herein may be terminated at any time by Tenant in its sole discretion. After the end of the Option Term, Tenant shall have no further right to exercise the Option granted to Tenant herein, but the foregoing shall not preclude any Closings pending (i.e., Options duly exercised but not yet closed) at the end of such Option Term from occurring.

3. Option Fee. For each year of the Option Term, Tenant shall pay Landlord Five Hundred Dollars (\$500) per acre of the remaining unleased portion of the Option Property, prorated for any partial years and partial reductions in the Option Property (the "**Option Fee**"). The Option Fee for the first year of the Option Term is Four Thousand Dollars (\$4,000) (based on 8 acres) and shall be paid within five (5) business days after the Effective Date. Thereafter, the Option Fee shall be paid annually in advance not later than each anniversary of the Effective Date for the remaining Option Term. As an example, if Tenant's first exercise of the Option is for four (4) acres, then for each year thereafter during the Option Term before any remaining portion of the Option Property is leased by Tenant, the Option Fee shall be reduced to \$2,000 (\$500/acre x 4 acres).

4. Ground Lease. On the Closing of Tenant's initial exercise of the Option, if at all, Landlord and Tenant shall execute the ground lease attached hereto as Exhibit C (the "**Ground Lease**"). Upon each subsequent exercise of Tenant's Option, if at all, the Ground Lease shall be amended to include the additional portions of the Option Property as part of the premises leased under the Ground Lease on the same terms and conditions as are set forth in the Ground Lease.

5. Documents and Materials. Within five (5) days after the Effective Date, Landlord shall provide true and complete copies to Tenant of all documents and reports pertaining to the Option Property in Landlord's possession or control (collectively, the "Landlord Documents") including but not limited to: (a) all agreements and contracts affecting the Option Property, including agreements with governmental and quasi-governmental authorities that are binding upon the owner of the Option Property; (b) all environmental assessments pertaining to the Option Property; (c) soils investigations and reports; and (d) title work and surveys of the Option Property.

6. Inspection. Upon at least 24 hours advance written notice to Landlord, Tenant and its agents, employees, contractors and representatives shall be entitled to enter upon the Option Property at any reasonable time during the Option Term to undertake such studies and examinations of the Option Property as Tenant sees fit to determine whether the Option Property is suitable for Tenant's intended purposes. Tenant's inspection shall include, but not be limited to, the physical and environmental conditions of the Option Property, zoning status, signage regulations, Airport regulations, and any other inspections, studies, examinations, and pursuit of entitlements which Tenant deems necessary in its sole and absolute discretion. Landlord shall provide access to and cooperate with Tenant's efforts to examine the Option Property. Landlord reserves the right to have a representative present during any such inspections. Subject matters beyond Tenant's reasonable control, Tenant shall repair any damage to the Option Property to the extent caused by Tenant's (or its permittee's) entry onto the Option Property within thirty (30) days after such damage occurs.

7. Title to the Option Property. During the Option Term, Tenant may at its sole cost and expense obtain a title commitment from a title company selected by Tenant (the "**Title Company**") and a survey of the Option Property using a surveyor selected by Tenant.

8. Conditions Precedent.

a. Conditions in Favor of Tenant. The obligations of Tenant to Close on the exercise of any Option under this Agreement are contingent upon each of the following being true and correct on the applicable Closing Date:

i. The Title Company shall be irrevocably committed to issue to Tenant a leasehold owner's policy of title insurance to Tenant in form and substance acceptable to Tenant.

ii. Each of the representations and warranties of Landlord in Section 11 shall be true and correct as if the same were made on the applicable Closing Date.

iii. Landlord shall not be in default of its obligations under this Agreement or, if the Ground Lease has already been executed, the Ground Lease.

If any conditions in this Section 8.a have not been satisfied on or before the applicable Closing Date, then Tenant may terminate this Agreement by notice to Landlord or elect to rescind its election to exercise its Option with respect to the applicable portion of the Subject Property. To the extent that any of the conditions in this Section 8.a require the satisfaction of Tenant, such satisfaction shall be determined by Tenant in its sole and absolute discretion. The conditions in this Section 8.a are specifically stated and for the sole benefit of Tenant. Tenant in its discretion may unilaterally waive (conditionally or absolutely) the fulfillment of any one or more of the conditions, or any part thereof, by notice to Landlord.

b. Conditions in Favor of Landlord. The obligations of Landlord to Close under this Agreement are contingent upon each of the following being true and correct on the applicable Closing Date:

i. Each of the representations and warranties of Tenant in Section 10 shall be true and correct as if the same were made on the Closing Date.

iii. Tenant shall not be in default of its obligations under this Agreement or, if the Ground Lease has already been executed, the Ground Lease.

If any of the conditions in this Section 8.b have not been satisfied on or before the applicable date set forth in this Section 8.b with respect to each condition, then Landlord may elect not to consummate the applicable Closing. The conditions in this Section 8.b are specifically stated and for the sole benefit of Landlord. Landlord in its discretion may unilaterally waive any one or more of the conditions, or any part thereof, by notice to Tenant.

9. Exercise of Option; Closing. Tenant may exercise the Option by delivering one or more written notices to Landlord of such exercise during the Option Term, which notice shall include (i) Tenant's selected date of the closing of Landlord's conveyance of the ground leasehold estate for the portion of the Option Property to be leased by Tenant, and (ii) the portion of the Option Property to be leased by Tenant. Each consummation of Tenant's exercise of the Option shall be referred to herein as a "**Closing**" and the date on which such Closing actually occurs shall be referred to herein as the "**Closing Date**". Each Closing shall occur no sooner than ninety (90) after the date that Tenant delivers written notice exercising the Option granted herein. At Tenant's election, each Closing shall be an escrow closing held at 12:00 p.m. EST on the date specified for such Closing at the offices of the Title Company, or at such other place as Landlord and Tenant may mutually agree. The Closing shall be consummated in accordance with the following procedures:

a. All documents to be recorded and funds to be delivered hereunder shall be delivered to the Title Company to hold, deliver, record and disburse in accordance with closing instructions approved by Tenant and Landlord;

b. For the first Closing, the following shall occur:

i. Landlord and Tenant shall each deliver to Title Company:

1. four (4) original signed counterparts of the Ground Lease;
 2. One (1) original signed and notarized counterpart of a Memorandum of Lease in form and substance reasonably acceptable to Landlord and Tenant (the "**Lease Memorandum**");
 3. Bringdown certificates regarding the representations and warranties set forth in Sections 11 and 10, respectively; and
 4. Copies or originals (as reasonably requested by the Title Company) or any other document customarily required in connection with closings similar to the Closing;
- ii. Title Company shall assemble the counterparts of the Ground Lease and deliver two (2) original fully-executed Ground Leases to Landlord and two (2) original fully-executed Ground Leases to Tenant;
- iii. Title Company shall assemble the counterparts of the Lease Memorandum, record the Lease Memorandum in the appropriate real property records, and provide a copy of the recorded Lease Memorandum to Landlord and Tenant promptly after recording;
- iv. Tenant shall pay, in good funds, the initial rental payments due under the Ground Lease to Landlord, if any;
- v. Title Company shall cause Tenant's leasehold title insurance policy as described in Section 7.b to be issued and effective; and
- vi. Landlord shall deliver to Tenant possession of the portion of the Option Property leased to Tenant pursuant to the applicable Closing.

c. For each subsequent Closing, if any, the following shall occur:

i. Landlord and Tenant shall each deliver to Title Company:

1. four (4) original signed counterparts of an amendment to the Ground Lease adding the applicable portion of the Option Property to the premises leased under the Ground Lease;
2. One (1) original signed and notarized counterpart of an amendment to the Memorandum of Lease adding the applicable portion of the Option Property to the premises leased under the Ground Lease;
3. Bringdown certificates regarding the representations and warranties set forth in Sections 11 and 10, respectively; and
4. Copies or originals (as reasonably requested by the Title Company) or any other document customarily required in connection with closings similar to the Closing;

ii. Title Company shall assemble the counterparts of the Ground Lease Amendment and deliver two (2) original fully-executed Ground Lease Amendment to Landlord and two (2) original fully-executed Ground Lease Amendment to Tenant;

iii. Title Company shall assemble the counterparts of the Lease Memorandum Amendment, record the Lease Memorandum Amendment in the appropriate real property records, and provide a copy of the recorded Lease Memorandum Amendment to Landlord and Tenant promptly after recording;

iv. Title Company shall cause Tenant's leasehold title insurance policy as described in Section 7.b to be dated down and effective; and

vi. Landlord shall deliver to Tenant possession of the portion of the Option Property leased to Tenant pursuant to the applicable Closing.

In each Closing, Landlord shall bear the cost of Landlord's attorneys' fees. Tenant shall bear the cost of Tenant's leasehold (and mortgage if applicable) title insurance policy, any title insurance endorsements requested by Tenant or Tenant's leasehold mortgagee and Tenant's attorneys' fees. Escrow fees, recording fees and closing fees shall be split equally between Landlord and Tenant.

10. Tenant's Representations. Tenant hereby makes the following representations and warranties, each of which is true in all respects as of the date of mutual execution of this Agreement, and shall survive the expiration or earlier termination of this Agreement:

a. Tenant is a duly organized corporation, validly existing and in good standing under the laws of the State of Wisconsin, and is qualified to do business in the state in which the Option Property is located, and the persons executing this Agreement on behalf of Tenant have the full right and authority to execute this Agreement on behalf of Tenant and to bind Tenant without the consent or approval of any other person or entity that has not already been obtained. Tenant has full power, capacity, authority and legal right to execute and deliver this Agreement and to perform all of its obligations hereunder. This Agreement is a legal, valid and binding obligation of Tenant, enforceable in accordance with its terms.

b. Tenant has not (i) made a general assignment for the benefit of creditors, (ii) filed any voluntary petition in bankruptcy or suffered the filing of an involuntary petition by any creditors, (iii) suffered the appointment of a receiver to take possession of all or substantially all of its assets, (iv) suffered the attachment or other judicial seizure of all or substantially all of its assets, (v) admitted in writing its inability to pay its debts as they come due, or (vi) made an offer of settlement, extension or composition to its creditors generally.

11. Landlord's Representations. Landlord hereby makes the following representations and warranties (collectively, the "Landlord's Representations"), each of which is true in all respects as of the date of mutual execution of this Agreement and shall survive the expiration of this Agreement:

a. Landlord is a duly organized municipal corporation, validly existing and in good standing under the laws of the State of Florida and the persons executing this Agreement on behalf of Landlord have the full right and authority to execute this Agreement on behalf of Landlord and to bind Landlord without the consent or approval of any other person or entity that has not already been obtained. Landlord has full power, capacity, authority and legal right to execute and deliver this Agreement and to perform all of its obligations hereunder. This Agreement is a legal, valid and binding obligation of Landlord, enforceable in accordance with its terms.

b. Landlord has not (i) made a general assignment for the benefit of creditors, (ii) filed any voluntary petition in bankruptcy or suffered the filing of an involuntary petition by any creditors, (iii) suffered the appointment of a receiver to take possession of all or substantially all of its assets, (iv) suffered the attachment or other judicial seizure of all or substantially all of its assets, (v) admitted in writing its inability to pay its debts as they come due, or (vi) made an offer of settlement, extension or composition to its creditors generally.

c. There is no existing or pending or threatened litigation, suit, action, or proceeding before any court or administrative agency regarding the Option Property.

d. At Closing, the premises leased to Tenant under the Ground Lease shall be vacant and free of leases, licenses, or other occupancy agreements of any kind and there are no additional parties in possession of such leased premises. Landlord has entered into no right or option for sale or lease of all or any part of the Option Property.

e. Except for this Agreement, Landlord has not entered into any other currently effective agreements, options, rights of first refusal, conditional sales agreements or other similar agreements or arrangements, whether oral or written, regarding the lease, purchase and sale of the Option Property, or any portion thereof.

f. Landlord has delivered or, within the time frame provided in Section 5, shall deliver to Tenant true, correct and complete copies of the Landlord Documents in Landlord's custody and control. Landlord does not warrant and shall not be responsible for the accuracy or completeness of any Landlord Document not prepared by Landlord or their conclusions or recommendations unless Landlord or any affiliate has knowledge that the same are inaccurate, incomplete or misleading in any material respect.

12. Landlord's Covenants.

a. Landlord shall not enter into any lease, license, contract or other occupancy agreement that would affect the applicable portion of the Option Property after the applicable Closing Date, without the written approval of Tenant, which approval may be withheld in the sole discretion of Tenant.

b. Landlord shall, at the request of Tenant, cooperate and work together with Tenant and shall use commercially reasonable efforts to (i) assist Tenant in obtaining any all approvals and consents necessary for Tenant to construct the Project and operate its business on the Option Property, including being designated an FBO or limited FBO at the Airport, acquiring and operating aircraft fueling equipment to conduct fuel concession operations, and obtaining an exemption from any requirement to pay ad valorem taxes in the State of Florida, and (ii) obtain a waiver to the Airport minimum standards (if it finds that the waiver is in the best interest of Landlord and does not create any unjust discrimination) permitting Cirrus to operate for all of the following uses on the Option Property:

- a. Category "A" – Aviation Fuel Sales
- b. Category "B" – Flight Instruction and Aircraft Rental
- c. Category "D" – Airframe and Power Plant Repair
- d. Category "E" – Avionics, Instrument and/or Propeller Repair Service
- e. Category "F" – Other Aeronautical Services

13. Tenant's Covenants.

a. Compliance with Laws. Tenant shall comply with and abide by all laws, ordinances, statutes, covenants, rules and regulations, permits, association documents and other recorded instruments (as they are from time to time amended or changed) which regulate any activities relating to Tenant's entry on the Option Property.

b. As Is. Tenant acknowledges and agrees that it is contemplating a ground lease of the Option Property based upon Tenant's own inspection and examination thereof, in an "AS IS" physical condition and in an "AS IS" state of repair, and, except as expressly contained in the Ground Lease, other documents delivered by Landlord at Closing, and Landlord's Representations.

14. Assignment. Tenant may not assign this Agreement or any of its rights hereunder without Landlord's prior written consent, which consent may be granted or withheld in Landlord's sole discretion; provided, however, Tenant may assign this Agreement to an entity that is controlled by or under common control with Tenant, without the prior written consent of Landlord. The rights and obligations of Landlord and Tenant hereunder shall run with the land.

15. Survival. All covenants and agreements of either party which are intended to be performed in whole or in part after the termination of this Agreement, and all representations, warranties and indemnities by either party to the other under this Agreement shall survive termination of this Agreement and shall be binding upon and inure to the benefit of the parties hereto and their respective successors and permitted assigns.

16. Brokers. Each party does hereby represent that it has not engaged any broker, finder, or real estate agent in connection with the transaction contemplated by this Agreement.

17. Default and Remedies. Time is of the essence hereof. If any payment due hereunder is not paid, honored or tendered when the same is due and payable, or if any covenant, agreement, obligation or condition hereunder is not performed or waived as herein provided within five (5) business days (or such longer period as required under this Agreement) after the party failing to perform the same has received written notice of such failure, or if any non-monetary or failure-to-close default is not capable of being cured within such five (5) business day period (or such longer period as required under this Agreement), the defaulting party has not commenced and diligently pursued such cure within such five (5) business day period (or such longer period as required under this Agreement) and completed the same no later than thirty (30) days after the initial default notice, there shall be the following remedies:

a. Tenant's Default. If Tenant is in default in any respect under this Agreement, Landlord may terminate this Agreement, in which event, as Landlord's sole remedy, all Option Fees shall be forfeited and retained by Landlord as liquidated damages and both parties shall, except as hereafter provided, thereafter be released from all obligations hereunder. In no event shall Tenant be liable to Landlord for any special, punitive, consequential or other indirect damages. Landlord and Tenant agree that such amount is a reasonable amount of liquidated damages and that it would be impractical and extremely difficult to determine actual damages.

b. Landlord's Default. If Landlord is in default in any respect under this Agreement, then Tenant shall be entitled to (i) terminate this Agreement (in which event the parties shall have no further obligations hereunder except those obligations that expressly survive termination), and immediately receive a refund of the Deposit, in which case Landlord shall reimburse Tenant for all of its out of pocket costs and expenses incurred in connection with this Agreement, including without limitation due diligence, inspection, environmental, title, surveying, contracting, engineering, architectural, legal, accounting, State, county, and municipal fees and costs; (ii) pursue specific performance; or (iii) pursue any other remedies at law or equity. Tenant may pursue its remedies individually or cumulatively in any order.

18. General Provisions. The parties hereto further agree as follows:

a. Time of the Essence. Time is of the essence under this Agreement. In computing any period of time under this Agreement, the date of the act or event from which the designated period of time begins to run shall not be included. The last day of the period so computed shall be included unless it is a Saturday, Sunday, or federal or State of Florida legal holiday, in which event the period shall run until the end of the next day which is not a Saturday, Sunday, or federal or State of Florida legal holiday.

b. Governing Law. This Agreement shall be governed by and construed in accordance with the internal laws of the State of Florida, without regard to any conflict of laws principles.

c. Severability. Should any provisions of this Agreement or the application thereof, to any extent, be held invalid or unenforceable, the remainder of this Agreement and the application thereof, other than those provisions which shall have been held invalid or unenforceable, shall not be affected thereby and shall continue in full force and effect and shall be enforceable to the fullest extent permitted at law or in equity.

d. Entire Agreement. This Agreement embodies the entire agreement between the parties hereto concerning the subject matter hereof and supersedes all prior conversations, proposals, negotiations, understandings and agreements, whether written or oral.

e. Negotiated Provisions. This Agreement shall not be construed more strictly against one party than against the other merely by virtue of the fact that it may have been prepared by counsel for one of the parties, it being recognized that both Landlord and Tenant have contributed substantially and materially to the preparation of this Agreement.

f. Further Acts. Each of the parties hereto covenants and agrees with the other, upon reasonable written request from the other, from time to time, to execute and deliver such additional documents and instruments and to take such other actions as may be reasonably necessary to give effect to the provisions of this Agreement.

g. Compliance. The performance by the parties of their respective obligations provided for in this Agreement shall be in material compliance with all applicable laws and the rules and regulations of all governmental agencies, municipal, county, state and federal, having jurisdiction in the premises.

h. Amendment. This Agreement shall not be amended, altered, changed, modified, supplemented or rescinded in any manner except by a written agreement executed by all of the parties.

i. Notices. Any and all notices or demands provided for herein shall be in writing and shall be deemed effectively given or made (i) immediately when served personally upon the party to be notified, (ii) immediately upon confirmation of an electronic transmission (email) if on a business day and received by the receiving party before 5:00 p.m. local time in the time zone of the recipient, (iii) within three (3) business days after sent by United States registered or certified mail, return receipt requested, postage prepaid, or (iv) upon deposit with a reputable overnight courier, prepaid, receipt acknowledged, all of the foregoing (i) though (iv) to the mailing address or email address, as applicable, of such party set forth below or to such other address as such party may last have designated by notice hereunder:

If intended for the Landlord:

Director of Aviation

Kissimmee Gateway Airport
401 Dyer Boulevard
Kissimmee, FL 324741-4613
Email: airport@kissimmee.gov

If intended for the Tenant:

Cirrus Design Corporation
4515 Taylor Circle
Duluth, MN 55811
Attn: Legal Department
Email: rdharnidharka@cirrusaircraft.com and clandherr@cirrusaircraft.com

Rejection or refusal to accept delivery or the inability to deliver because of changed address of which no notice was given shall be deemed to be receipt of notice as of the date such notice was deposited in the mail or delivered to the courier. When used in this Agreement, a "business day" shall mean a weekday which is not a federal or State of Florida holiday.

j. Counterparts. For the convenience of the parties, any number of counterparts of this Agreement may be executed by Tenant or Landlord hereto and each such executed counterpart shall be, and shall be deemed to be, an original instrument. Electronic signatures such as DocuSign, PDF., and facsimile signatures shall be accepted as originals.

k. Captions; Interpretation. The Section captions and headings used in this Agreement are inserted herein for convenience of reference only and shall not be deemed to define, limit or construe the provisions hereof. Tenant and Landlord each acknowledges having been advised, and having had the opportunity, to consult legal counsel in connection with this Agreement and the transactions contemplated by this Agreement.

l. Waiver. Any waiver under this Agreement must be in writing, signed by the waiving party. Any one or more waivers of any covenant or condition by a party hereto shall not be construed as a waiver of a subsequent breach of the same covenant or condition nor a consent to or approval of any act requiring consent to or approval of any subsequent similar act.

m. Successors and Assigns. Subject to the restrictions on assignment contained herein, this Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and permitted assigns.

n. Recordation. Tenant may record a memorandum of this Agreement in the form attached hereto as Exhibit D. Upon expiration or earlier termination of this Agreement, the parties shall execute and record a release of the memorandum of Agreement. The provisions of this Section shall survive expiration or the earlier termination of this Agreement.

**SIGNATURE PAGE
TO
OPTION AGREEMENT FOR GROUND LEASE**

IN WITNESS WHEREOF, Tenant and Landlord have executed this Agreement effective as of the day and year first above written.

LANDLORD:

CITY OF KISSIMMEE, FLORIDA


Olga Gonzalez
Olga Gonzalez
Mayor-Commissioner
Date: 9/14/2021

ATTEST:

Ride Hansell
City Clerk

Approved as to form and legality

Olga Sanchez-Fructu
City Attorney

TENANT:

**CIRRUS DESIGN CORPORATION D/B/A CIRRUS
AIRCRAFT, a Wisconsin corporation**

By: [Signature]
Name: Ravi Dharmidharka
Title: Senior Vice President
Date: Sept 9, 2021

EXHIBIT A

LEGAL DESCRIPTION OF THE OPTION PROPERTY

LEGAL DESCRIPTION:

(AS PREPARED BY SURVEYOR)

A parcel of land being a portion of Lots 1, 2 and 3, Block 22, and a portion of Lots 1 and 3 and all of Lot 2, Block 23 and a portion of Lots 1 and 2, Block 24 and portions of platted Right of Ways, MAP OF WEST KISSIMMEE, according to the plat thereof, as recorded in Plat Book A, Page 12 of the Public Records of Osceola County, Florida and being more particularly described as follows:

Commence at the Southeast corner of KISSIMMEE COMMERCE / INDUSTRIAL CENTER, according to the plat thereof, as recorded in Plat Book 5, Pages 107 and 108 of the Public Records of Osceola County, Florida; thence run N89°47'27"W along the South line of said KISSIMMEE COMMERCE / INDUSTRIAL CENTER, a distance of 1.44 feet to a point on the West Right of Way line of Dyer Boulevard as shown on the Plat of DYER-THACKER COMMERCE PARK, as recorded in Plat Book 22, Pages 183 to 185 of the Public Records of Osceola County, Florida; thence S00°02'35"W, along said West Right of Way line, a distance of 202.00 feet to the POINT OF BEGINNING; thence run S89°26'09"W, a distance of 986.31 feet; thence run S31°27'51"E, a distance of 504.88 feet to a point on the North line of Aviator College Leasehold; thence run N89°26'09"E, along said North line, a distance of 725.00 feet to a point on a non-tangent curve, concave to the South, having a Radius of 21.96 feet and a Central Angle of 30°05'59"; thence run Easterly along the arc of said curve, a distance of 11.53 feet (Chord Bearing = S72°06'09"E, Chord = 11.40 feet) to a point on aforesaid West Right of Way line; thence along said West Right of Way line of Dyer Boulevard the following five (5) courses: run N02°16'47"W, a distance of 30.97 feet to the Point of Curvature of a curve concave to the West, having a Radius of 200.00 feet and a Central Angle of 40°18'02"; thence run Northerly along the arc of said curve, a distance of 140.68 feet (Chord Bearing = N22°25'48"W, Chord = 137.79 feet) to a Point of Reverse Curve to the right having a Radius of 98.50 feet and a Central Angle of 81°36'09"; thence run Northerly along the arc, a distance of 137.44 feet to a Point of Reverse Curve to the left having a Radius of 200.00 feet and a Central Angle of 38°58'41"; thence run Northerly along the arc, a distance of 136.06 feet to the Point of Tangency; thence run N00°02'39"E, a distance of 26.59 feet to the POINT OF BEGINNING.

Containing 8.28 acres, more or less

DEPICTION OF OPTION PROPERTY

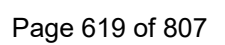


EXHIBIT C
GROUND LEASE

[See attached]

Exhibit "A"
Leased Premises Exhibit

EXHIBIT A

Legal Description of the Option Property

LEGAL DESCRIPTION:

(AS PREPARED BY SURVEYOR)

A parcel of land being a portion of Lots 1, 2 and 3, Block 22, and a portion of Lots 1 and 3 and all of Lot 2, Block 23 and a portion of Lots 1 and 2, Block 24 and portions of platted Right of Ways, MAP OF WEST KISSIMMEE, according to the plat thereof, as recorded in Plat Book A, Page 12 of the Public Records of Osceola County, Florida and being more particularly described as follows:

Commence at the Southeast corner of KISSIMMEE COMMERCE / INDUSTRIAL CENTER, according to the plat thereof, as recorded in Plat Book 5, Pages 107 and 108 of the Public Records of Osceola County, Florida; thence run N89°47'27"W along the South line of said KISSIMMEE COMMERCE / INDUSTRIAL CENTER, a distance of 1.44 feet to a point on the West Right of Way line of Dyer Boulevard as shown on the Plat of DYER-THACKER COMMERCE PARK, as recorded in Plat Book 22, Pages 183 to 185 of the Public Records of Osceola County, Florida; thence S00°02'35"W, along said West Right of Way line, a distance of 202.00 feet to the POINT OF BEGINNING; thence run S89°26'09"W, a distance of 986.31 feet; thence run S31°27'51"E, a distance of 504.88 feet to a point on the North line of Aviator College Leasehold; thence run N89°26'09"E, along said North line, a distance of 725.00 feet to a point on a non tangent curve, concave to the South, having a Radius of 21.96 feet and a Central Angle of 30°05'59"; thence run Easterly along the arc of said curve, a distance of 11.53 feet (Chord Bearing = S72°06'09"E, Chord = 11.40 feet) to a point on aforesaid West Right of Way line; thence along said West Right of Way line of Dyer Boulevard the following five (5) courses: run N02°16'47"W, a distance of 30.97 feet to the Point of Curvature of a curve concave to the West, having a Radius of 200.00 feet and a Central Angle of 40°18'02"; thence run Northerly along the arc of said curve, a distance of 140.68 feet (Chord Bearing = N22°25'48"W, Chord = 137.79 feet) to a Point of Reverse Curve to the right having a Radius of 96.50 feet and a Central Angle of 81°36'09"; thence run Northerly along the arc, a distance of 137.44 feet to a Point of Reverse Curve to the left having a Radius of 200.00 feet and a Central Angle of 38°58'41"; thence run Northerly along the arc, a distance of 136.06 feet to the Point of Tangency; thence run N00°02'39"E, a distance of 26.59 feet to the POINT OF BEGINNING.

Containing 8.28 acres, more or less

EXHIBIT B

Depiction of the Option Property

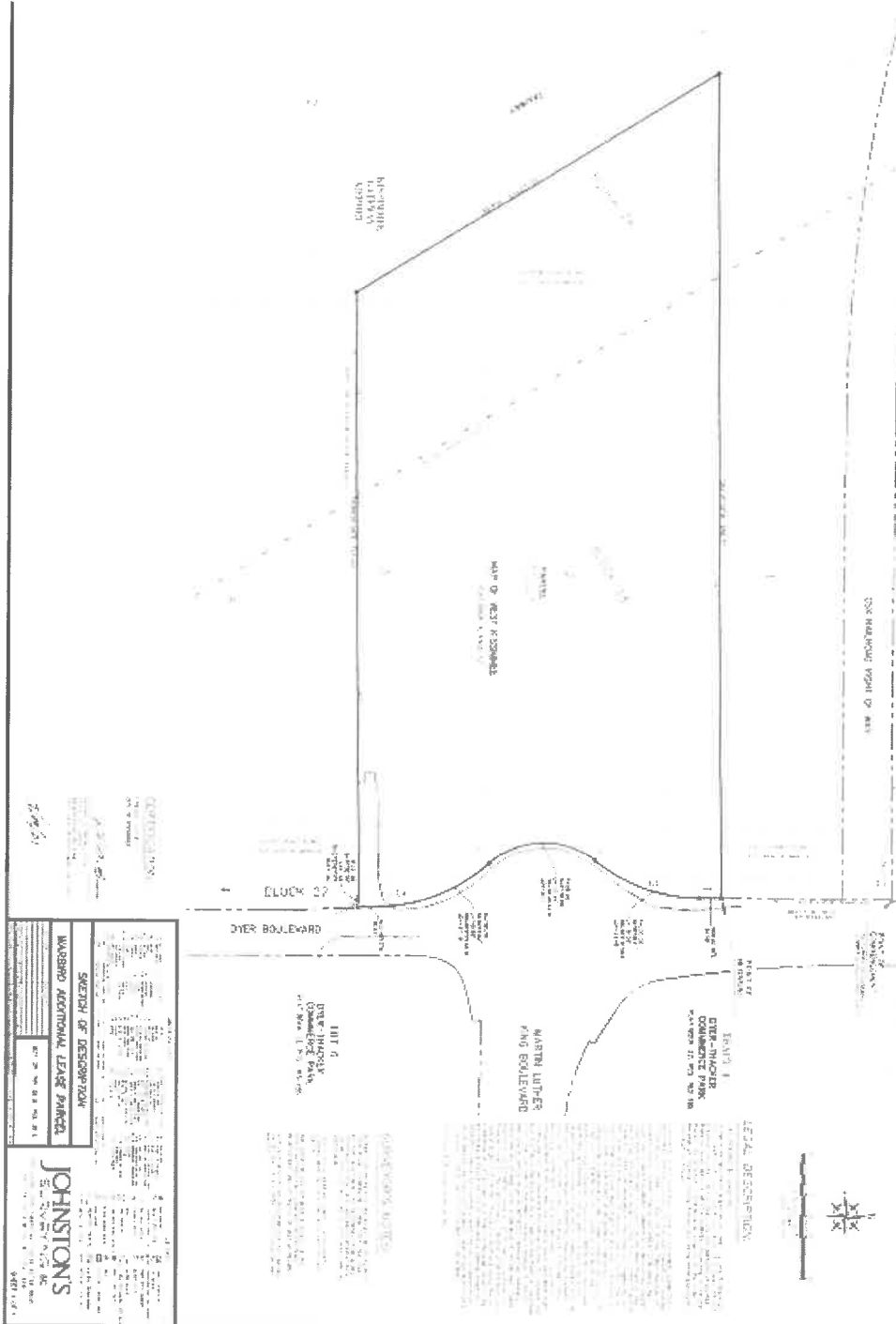


EXHIBIT
(NOT Signed)

KESSIMMEE GATEWAY AIRPORT
GROUND LEASE AGREEMENT
AIRPORT TENANT

THIS LEASE AGREEMENT (the "AGREEMENT" or "LEASE") is made this ____ day of ____, 202__ between the CITY OF KISSIMMEE, a municipal corporation of the State of Florida, hereinafter referred to as "Lessor" or "City" and CIRRUS DESIGN CORPORATION, D/B/A CIRRUS AIRCRAFT, a Wisconsin corporation, hereinafter referred to as "Lessee." City and Lessee are sometimes referred to in this Agreement individually as a "Party" and collectively as the "Parties".

WITNESSETH:

WHEREAS, City is the owner of certain real property located on the Kissimmee Gateway Airport, a municipal airport located within the boundaries of the City of Kissimmee, Florida (the "Airport").

WHEREAS, the City desires to enter into a ground lease to Lessee, and the Lessee is desirous, willing and able to enter into a ground lease from Lessor for a portion of the real property located at the Airport and having an address of ____, Kissimmee Gateway Airport, to operate a fixed base operation maintenance facility at the Airport, pursuant to the terms of this Agreement.

NOW, THEREFORE, in consideration of the premises and of the mutual covenants contained herein and for other able consideration, the Parties hereto agree as follows:

PART ONE
DESCRIPTION OF LEASED PREMISES

- A. LEASED PREMISES. Lessor leases to Lessee that certain real property located at the Airport, as more specifically described and depicted on **Exhibit A** attached hereto and incorporated herein, which consists of approximately ____ square feet of real property (____ acres) (the "Leased Premises"), together with all improvements located thereon and appurtenances thereto (any such improvements now or hereafter constructed on the Leased Premises, being the "Improvements"). Lessor shall deliver exclusive possession of the Leased Premises to Lessee on the Commencement Date.
- B. CONDITION OF LEASED PREMISES. Lessee accepts the Leased Premises and the Improvement "As Is, Where Is" and in their present condition.
- C. RE-ADJUSTMENT OF LEASED PREMISES. This Lease shall be subject to all restrictions of record affecting the Airport and the use thereof, all federal, state, county and city laws and regulations affecting the same, and shall be subject and subordinate to the provisions of any and all existing agreements between the City and the United States of America, the State of Florida, or the County of Osceola, or their agencies, and to any future agreements between or among the foregoing relative to the operation or maintenance of the Airport, the execution of which may be required as a condition precedent to the expenditure

of federal, state, county or City funds for the development of the Airport, or any part thereof. All provisions hereof shall be subordinate to the right of the United States to occupy or use the Airport, or any part thereof, during time of war or national emergency; provided that if Lessee is precluded from using the Leased Premises during any such period, all of Lessee's obligations under this Lease, including its obligation to pay Annual Rent shall be abated during such period and, if such interruption continues for more than ninety (90) days, Lessee shall have the option to extend the Term for the period of such interruption or to terminate this Agreement pursuant to Section 9.B.2 of this Lease. Lessor represents and warrants that none of the foregoing restrictions preclude Lessee from using the Leased Premises for the permitted uses described herein, except as expressly provided in the previous sentence.

In the event the Federal Aviation Administration or its successors require modifications or changes in this Lease as a condition precedent to the granting of its approval or to the obtaining of funds for the improvement of the Airport, Lessee hereby consents to any and all such modifications and changes as may be reasonably required to the extent that such modifications and changes do not materially increase Lessee's obligations under this Lease (including the payment of Annual Rent) or unreasonably impede the intended use and benefit of and to Lessee of the Leased Premises and of this Lease.

PART TWO TERM OF LEASE

- A. PRIMARY TERM. The term of this Lease shall be for a forty (40) year period, commencing on the date hereof (the "**Commencement Date**"), and ending at 11:59 p.m. on the last day of the calendar month in which the fortieth (40th) anniversary of the Commencement Date occurs, unless otherwise extended or earlier terminated as provided in this Lease (as extended or earlier terminated, such period being the "**Term**"). Notwithstanding the foregoing, if Lessee expands the Leased Premises to include any additional portions of the Option Property (as that term is defined in that certain Option Agreement between Lessor and Lessee dated _____, 2021), on the date that this Lease is amended to include such additional portion of the Option Property (each such date of amendment being, an "**Amendment Date**"), the Term shall automatically be amended to mean the period between the Commencement Date and 11:59 p.m. on the last day of the calendar month in which the fortieth (40th) anniversary of the latest Amendment Date, unless otherwise extended or earlier terminated as provided in this Lease. Additionally, after Lessee's completion of the Initial Improvements (as defined below), for every Two Million Dollars (\$2,000,000) of subsequent combined capital repairs, replacements or additions made to the Leased Premises by Lessee during Term (the "**Extension Improvement Threshold**"), on each date that the Extension Improvement Threshold is exceeded (each such date being an "**Extension Improvement Date**"), the Term shall automatically be amended to mean the period between the Commencement Date and 11:59 p.m. on the last day of the calendar month in which the fortieth (40th) anniversary of the latest Extension Improvement Date occurs, unless otherwise extended or earlier terminated as provided in this Lease. Notwithstanding anything to the contrary in this Part II, in no event shall the Term exceed fifty (50) years.

- B. RENEWAL OPTION. Provided Lessee is not in default of the Agreement at the time of the exercise of the option past any applicable notice and cure period, Lessee is hereby granted an exclusive first option to renew this Agreement upon all the existing terms and conditions of this Lease for one (1) additional term of ten (10) years (the “**Renewal Period**”). This option shall be exercised by written notice to the City not less than one hundred twenty (120) days prior to expiration of the existing Term.
- C. HOLDING OVER. In the event Lessee shall continue to occupy the Leased Premises beyond the term of this Agreement after Lessor gives written notice to vacate, such holding over shall not constitute a renewal of this Agreement but shall be a tenancy of sufferance only. The amount of rent to be paid by Lessee during this hold over period shall equal one hundred twenty-five (125%) times the Monthly Rent, prorated for any partial months.

PART THREE RENT

- A. RENT. The initial net rent under this Lease for the Leased Premises shall be equal to the then current Annual Rent and Monthly Rent payable by Lessee under that certain Ground Lease Agreement between Lessor and Lessee for leased premises located at 4134 Aviation Drive, Kissimmee Gateway Airport, dated _____, 2021 (the “**Hangar Lease**”). Such amounts, together with any sales tax and other applicable tax including property tax shall be referred to herein as the “**Annual Rent**” and “**Monthly Rent**”, respectively. Payment of Monthly Rent will commence on the date that Lessee receives a certificate of occupancy related to completion of its Initial Improvements (the “**Rent Commencement Date**”).

From and after the Rent Commencement Date, Monthly Rent will be due on the first day of every month (“**Due Date**”) and shall be deemed delinquent if not received by the Lessor on or before the tenth day of every month. The Annual Rent and Monthly Rent shall be subject to adjustment as enumerated in Part Three of this Lease.

- B. RENT ADJUSTMENTS. Lessor and Lessee recognize and agree that the purchasing power of the United States Dollar is evidenced by the Consumer Price Index – Urban Wage Earners and Clerical Workers (“**Price Index**”) as published by the United States Department of Labor’s Bureau of Labor Statistics. Lessor and Lessee also recognize that local market trends in the Central Florida and the Kissimmee area evolve over time and greatly influence the current market values of leaseholds located at the Kissimmee Gateway Airport.

CPI Adjustment. The parties agree that commencing on the first day of the thirty-seventh (37th) month following the Rent Commencement Date and on the first day of each thirty-sixth (36th) month thereafter for the remainder of the Term (and any Renewal Period) (each such date being an “**CPI Adjustment Date**”), the parties hereto will compare the Price Index as of the CPI Adjustment Date to the Price Index that existed on the same date three (3) years earlier to establish the percentage increase in the Price Index for such three (3) year period (such percentage increase being, the “**CPI Adjustment Percentage**”). After

the Adjustment Percentage is determined, the Annual Rent (and corresponding Monthly Rent) shall be modified retroactive to the applicable CPI Adjustment Date as follows:

(i) If the CPI Adjustment Percentage is one tenth of one percent (0.1%) to five percent (5.0%): Annual Rent (and corresponding Monthly Rent) shall increase by the same value as the CPI Adjustment Percentage up to five percent (5%);

(ii) If the CPI Adjustment Percentage is greater than five and one tenth of one percent (5.1%): Annual Rent (and corresponding Monthly Rent) shall increase by five percent (5%), plus one-half of the CPI Adjustment Percentage in excess of 5%, but in no event more than ten percent (10%). By way of example, if the CPI Adjustment Percentage increases by 8%, the Annual Rent (and corresponding Monthly Rent) increase shall be 6.5% (5% plus one-half of the difference between 5% and 8%).

Fair Market Value Adjustment. In addition to the Price Index Adjustment described above, commencing on the first day following the fifth anniversary of the Rent Commencement Date and on each fifth anniversary thereafter for the remainder of the Term (and any Renewal Term) (each such date being an “**Appraisal Adjustment Date**”), the City may obtain an appraisal of ground lease property at the Airport from a MAI certified appraiser that is mutually acceptable to Lessor and Lessee to establish the then Fair Market Rent (as defined below) for the land constituting the Leased Premises, excluding all improvements constructed thereon. If the City deems an appraisal is appropriate due to market conditions, the City shall notify the Lessee of its intention to invoke the right of obtaining an appraisal, sixty (60) days prior to seeking the appraisal and identify in such notice a disinterested MAI appraiser having at least 10 years’ experience appraising airport ground rental values in Florida and not having represented Lessor in the previous five (5) year period. Lessee may approve the appraiser in its reasonable discretion. Such determination to complete an appraisal shall be at the sole discretion and expense of the City. The selected appraiser shall be directed to provide a range of values (from Minimum to Maximum) that constitute the then Fair Market Rent for ground leased premises at the Airport as of the applicable Appraisal Adjustment Date. If the lowest value in the range of Fair Market Rent on the Appraisal Adjustment Date is higher than existing Annual Rent, the Annual Rent (and corresponding Monthly Rent) shall be increased (retroactive to the applicable Appraisal Adjustment Date) to lowest value in the range of Fair Market Rent on the Appraisal Adjustment Date, not to exceed a five percent (5%) increase over the then current Annual Rent. In addition, if the Annual Rent is adjusted as provided in this paragraph, the definition of the CPI Adjustment Date shall be amended to mean the thirty-seventh (37th) month following the Appraisal Adjustment Date used to adjust the Annual Rent as provided in this paragraph and third (3rd) anniversary thereafter for the remainder of the Term (and any Renewal Period). As used herein, the term “Fair Market Rent” shall mean the ground rent that an arms’ length third party ground tenant would pay (on a per square foot basis) to the airport authority for unimproved premises at the Airport, not being under any obligation to do so, taking into account all relevant factors.

The City shall pay the fees and expenses of each appraiser appointed by such party. Any appraiser designated to serve in accordance with the provisions of this Lease shall be

designated as an “MAI” appraiser by the American Institute of Real Estate Appraisers or shall be comparably qualified to appraise commercial real estate, shall be disinterested.

- C. RENT CAPS. Notwithstanding anything to the contrary in this Lease, in no event shall the Annual Rent (and corresponding Monthly Rent) increase under this Article 3 by more than ten percent (10%) during any ten (10) year period during the Term.
- D. PAYMENT OF SALES TAX. Unless otherwise exempt, Lessee shall be liable at its sole cost and expense, and the City shall have no liability for, any sales, use or similar taxes with respect to all rent and other payments made by Lessee in accordance with the provisions of this Agreement. Lessee shall indemnify, defend, and hold City completely harmless from and against any liability, including any interest and penalties, which might arise in connection with any such taxes.

PART FOUR PAYMENTS

- A. TIME AND PLACE OF PAYMENT. All payments of rents, fee, taxes, and other charges are to be made at the Kissimmee Gateway Airport, City of Kissimmee, 401 Dyer Blvd, Kissimmee, FL 34741, or such other place Lessor may direct Lessee in writing.
- B. DELINQUENT PAYMENT OF RENT AND FEES. If rent or fees are not timely paid, then the Lessee shall pay to Lessor a penalty of 5% of the amount due commencing sixteen (16) days after the DUE DATE. Lessor shall charge no penalty upon that portion of any debt that, in good faith, is in dispute or charge a penalty that exceeds the then amount permitted under Florida law. All late fees are to be paid to Lessor within 30 days of the initial date of accrual.

PART FIVE PRIVILEGES

- A. USE. The Leased Premises shall be used solely for the following Fixed Base Operator Activities as defined in the Minimum Aeronautical Service Standards for Aeronautical Tenants at the Kissimmee Gateway Airport, as amended from time to time, and incorporated by reference into this Lease (the “**Service Standards**”), a copy of which is attached as **Exhibit C**:

Category “A” – Aviation Fuel Sales

Category “B” – Flight Instruction and Aircraft Rental

Category “D” – Airframe and Power Plant Repair

Category “E” – Avionics, Instrument and/or Propeller Repair Service

Category “F” – Other Aeronautical Services

Lessor shall permit or seek any necessary third-party approvals allowing Lessee to be designated as an FBO or Limited FBO at the Airport, as defined in the Service Standards, to (i) operate as a fuel concession; (ii) acquire and operate aircraft fueling equipment to

conduct fuel concession operations; and (iii) be exempt from any requirement to pay ad valorem taxes. In the event such approvals are not obtained or are obtained and then lost for whatever reason, Lessee may terminate this Lease upon not less than thirty (30) days' prior written notice to Lessor.

The Leased Premises may be used for private/special events, offices, storage and used ancillary to Lessee's business provided they are not disruptive to airport operations. The Leased Premises may not be used for any other purposes unless approved in writing by the Lessor.

- B. PROHIBITED USES. The Lessee shall not use or permit the use of the Leased Premises or any part thereof for any purpose or purposes other than those set forth in this Lease, unless approved in writing by the Lessor such approval not to be unreasonably withheld, conditioned or delayed. Lessee shall not commit or suffer to be committed any waste in or upon the Leased Premises or maintain any public or private nuisance, nor, without limiting the generality of the foregoing, shall the Lessee use or permit the use of the Leased Premises for any illegal, improper, immoral, or unlawful purposes.
- C. INGRESS AND EGRESS. Lessee shall have at all times the full and free right of ingress and egress over, across and through the Leased Premises and the Airport. Such right also extends to persons or organizations supplying materials or furnishing services to Lessee, as well as employees, customers, guest, and other invitees, who include vehicles, machinery, and equipment reasonably required by such persons or organizations. Lessor shall work with Lessee to increase current parking availability to thirty to forty parking spaces on the Leased Premises.
- D. INITIAL IMPROVEMENTS. Subject to receipt of all required third party approvals and permits (including those from Lessor) and Unavoidable Delay, Lessee shall, at its sole cost and expense, use commercially reasonable efforts to diligently pursue the construction of Lessee's initial desired improvements on the Leased Premises (the "**Initial Improvements**") such that Lessee obtains a certificate of occupancy related thereto within forty-eight (48) months following the Commencement Date. Lessor's consent to the Initial Improvements shall not be unreasonably withheld, conditioned or delayed. During the Term, Lessee plans to invest not less than Five Million Dollars (\$5,000,000) in all components of Lessee's project on the Leased Premises, though the Initial Improvements are not required to cost such amount.

PART SIX OBLIGATIONS OF AGREEMENT

- A. NET LEASE. The use and occupancy of the Leased Premises by Lessee shall be without cost or expense to Lessor. This Agreement shall be without cost to the City except for the City's obligations set forth or specifically provided elsewhere herein. The Lessee accepts the Leased Premises in its "As Is, Where Is" condition except with regards to items or duties which are expressly agreed to and set forth in writing by Lessor. Lessee shall keep and maintain the Leased Premises as set forth in PART SIX (B), pay all taxes in accordance with PART THREE, pay all casualty, liability and other insurance premiums as set forth

in PART SIX (J), and satisfy all of its other obligations under this Agreement.

B. MAINTENANCE BY LESSEE. Lessee shall be responsible for the following maintenance and repair to the Leased Premises:

1. All upkeep, repair, and maintenance of the Leased Premises including but not limited to interior walls, doors, locks, windows, flooring, fixtures, ceilings, roofs, lighting, electrical and plumbing systems, all heating, air conditioning and heating systems.
2. Lessee's responsibilities under this section shall also include all other internal, external, and supporting structures and equipment;
3. Upon occupation of the Leased Premises, maintain current landscaping in the area of the Leased Premises.
4. Lessee will not store or dispose of any debris or waste materials on Airport property, except by means of waste receptacles or containers authorized by Lessor;
5. Lessee shall comply with all federal, state, and local fire codes and regulations. Lessee shall also provide and maintain hand-operated fire extinguishers for the interior of the building in accordance with applicable safety codes;
6. Lessee will comply in all aspects with the City of Kissimmee Code including all planning, zoning, and building codes, regulations, and ordinances. Lessor warrants that the intended use is compliant as to the City's land use and zoning codes.
7. If such reasonable maintenance is not completed within a reasonable time period, the Lessor shall have the right to perform such reasonable maintenance upon written notice to Lessee, and Lessee shall reimburse Lessor for the cost of such reasonable maintenance upon presentation of an invoice of costs occurred by Lessor. Lessee shall pay this amount within 30 days after receipt from Lessor in accordance with PART FOUR above.
8. Except for the Initial Improvements, Lessee may alter, remodel or demolish any Improvements without any consents or approvals from Lessor. Maintenance of such owned improvements will thereafter be at Lessee's discretion but in compliance with applicable federal, state, and local fire codes and regulations.
9. If Lessee does not complete any required maintenance or repairs pursuant to the terms of this Lease and Lessee is not taking commercially reasonable efforts to cure such condition within thirty (30) days after Lessor delivers written notice of such failure to Lessee, Lessor shall have the right to perform such reasonable maintenance, and Lessee shall reimburse Lessor for the reasonable cost of such maintenance upon presentation of an invoice of costs occurred by Lessor. Lessee shall pay this amount within 30 days after receipt from Lessor in accordance with

PART FOUR above.

10. Lessee agrees that upon the expiration of the term of this Agreement or sooner termination thereof, the Leased Premises shall be delivered to Lessor in its then existing condition (but subject to Lessee's maintenance obligations herein). Lessor reserves the right upon not less than 48 hours prior notice to Lessee to enter and make periodic inspections of the Leased Premises and improvements thereon during normal business hours. Lessor reserves the reasonable right to enter the Leased Premises during such times as necessitated by an emergency or in order to prevent the occurrence of waste to the Leased Premises and its fixtures, upon reasonable prior written notice to Lessee, unless in the event of an emergency.

C. CONSTRUCTION, ALTERATIONS, REPAIRS.

1. Except for the Initial Improvements, Lessee may alter, remodel or demolish any Lessee owned Improvements without any consents or approvals from Lessor.
2. Development and construction will only be permitted in accordance with the guidelines presented in the approved Airport Master Plan. Before commencement of the Initial Improvements, Lessee shall submit a written construction application to the Director of Aviation ("**Director**"), and if the Director requests, the construction application shall be in the form as set forth below. The plans for the proposed improvements or modifications to the Leased Premises shall completely describe the function and design and shall also contain the following: upon request,
 - a. A graphic presentation of the improvements showing exact locations of access and egress to and from the Leased Premises, facilities included and interior layouts and plans.
 - b. A basic illustration of the décor of the Leased Premises including construction, furnishings and equipment.
 - c. Request for approval of above, to the extent Lessor's consent is required hereunder.
 - d. A schedule for completion of each phase of the improvements.
 - e. proof reasonably acceptable to Lessor that Lessee has complied with Florida Statute, Section 255.05, which requires payment and performance bonds to be in place for work that is occurring on public lands in excess of \$200,000.00.
3. Lessor shall attempt to make a timely disposition of each Lessee Construction Application and, to the extent permitted to approve such work as provided herein, will not arbitrarily or capriciously withhold or condition approval of the same.
4. Upon approval, if such Lessor approval is expressly required herein, the Lessee

shall proceed with the construction, with reasonable diligence and at its sole cost and expense.

5. Where such alterations or construction has been made, Lessee shall, within (30) days following completion of the alterations, present to Lessor a complete set of "as-built" drawings including, without limitation, plumbing and electrical systems.
- D. UTILITIES. Lessee shall be solely responsible for and pay all charges for utilities for the Leased Premises, including but not limited to all charges pertaining to providing water, sewer, gas, electricity, telephone and internet service. Lessee shall pay utility charges within thirty (30) days of receiving the invoice for said utilities. Lessee will pay all costs of Storm Water fees associated with the paved aircraft parking area. Lessee will pay a proportional cost of any reasonable future fees enacted to cover the cost of utility services.
- E. TRASH AND GARBAGE REMOVAL. Lessee shall maintain the Leased Premises, improvements, and fixtures at all times in a safe, neat, and aesthetically pleasing condition. Lessee shall not permit the accumulation of any trash, ashes, or debris on the Leased Premises and shall remove such debris to a disposal site off the Airport property. Lessee shall provide a complete and proper arrangement for the adequate sanitary handling and disposal, away from the Airport, of all trash, garbage, and other refuse caused from its operation. Lessee shall provide and use suitable – covered metal receptacles in an area acknowledged by Lessor for all such garbage, trash, and other refuse. Piling of boxes, cartons, barrels, or other similar items in an unsightly or unsafe manner on or about the Leased Premises shall not be permitted.
- F. SIGNS. No signs, billboards, flyers shall be erected or maintained by Lessee off the Leased Premises except according to the Lessor's requirements for location and use of signs on Airport property. Lessee may place signs, billboards, flyers on the Leased Premises as determined by Lessee without Lessor's prior written consent. Any required approvals by Lessor pursuant to this Section shall not be unreasonably withheld, delayed or conditioned. Before erection of any sign, billboard or flyer on city property, Lessee must obtain any applicable permits required by the City.
- G. NONDISCRIMINATION. **Exhibit B**, relating to FAA required non-discrimination provisions, is attached hereto and incorporated herein by this reference.
- H. HANDLING AND STORAGE OF PETROLEUM PRODUCTS AND OTHER MATERIAL BY LESSEE. Lessee shall handle, use, store, and dispose of hazardous materials, fuel petroleum products, and all other materials, whether hazardous or not, owned or used by Lessee, its agents, contractors, assigns, guests, invitees, or any other person or firm in privity with Lessee on the Airport in accordance with all applicable federal, state, local laws which include but are not limited to Lessor's regulations, rules, and ordinances. No waste or disposable materials shall be released on the ground or in the storm sewer. Should such materials be spilled or escape from storage or in any way contaminate the Airport or property adjacent to the Airport through activities of the Lessee, the Lessee shall be responsible for the clean-up, containment and otherwise

abatement of such contamination at Lessee's sole cost and expense. Further, Lessee shall notify the Lessor and all other appropriate government agencies of such an occurrence immediately after said incidence. Should the Lessee fail to comply with any term contained in this section and Lessee is not taking commercially reasonable efforts to cure such condition within thirty (30) days after Lessor delivers written notice of such failure to Lessee, the Lessor may take any reasonable and appropriate action in the place of Lessee. The Lessee shall promptly pay the full reasonable cost of such remedial action incurred by the Lessor due to noncompliance under this section. Notwithstanding anything to the contrary in this Lease, (i) in no event shall Lessee be responsible for any hazardous materials, fuel petroleum products, or other materials, whether hazardous or not, that exist on the Leased Premises on the Commencement Date, and (ii) Lessee's obligations under this Lease with respect to hazardous materials shall apply only in connection with, and to the extent of, hazardous materials and substances brought onto the Leased Premises by Lessee or Lessee's employees, agents or contractors during the Term.

I. NO LIENS.

1. Except as otherwise provided herein, Lessee shall keep the Leased Premises free from all liens, including, but not limited to, mechanics liens arising from any alteration or construction work performed or labor or materials supplied to the Leased Premises. Any construction work on the Leased Premises authorized by the Lessee shall be performed pursuant to a "no-lien" contract and Lessee shall make certain that the Florida Statutes relating to the "no-lien" contracts are complied with in every particular detail.
2. If, at any time, Lessee shall cause any mechanic's, laborers, or material man's lien to be filed against the Leased Premises or any part thereof, Lessee shall cause the same to be discharged either by record, by payment, deposit, bond, order of a court of competent jurisdiction, or otherwise. If Lessee fails to cause such liens to be discharged by payment or through appropriate bond within thirty (30) days from the date Lessee's receives notice of said lien, then such failure should be deemed a default in the performance of this Agreement.
3. Nothing in this Agreement shall be deemed or construed in any way as constituting the consent or request of the Lessor, express or implied by inference or otherwise, to any contractor, subcontractor, laborer, or material man for any specific improvement, alteration to or repair of the Leased Premises, or any part of the Leased Premises.

J. INDEMNITY AND INSURANCE BY LESSEE.

1. Indemnification. Lessee further covenants and agrees to indemnify and hold the City, its members, officers, employees, and agents of each (collectively, "**City Indemnified Parties**"), forever harmless from and against all liabilities, claims, judgments, costs, damages, fines, penalties, and expenses, including those which arise as the result of

administrative action, which may accrue against, be charged to, or recovered from the foregoing by reason or on account of damages to or destruction of the property of the City, or the property of, injury to, or death of any person, resulting or arising from Lessee' use, occupancy, operation, or maintenance of the Leased Premises, including the work, acts, or omissions of Lessee' officers, agents, employees, contractors, subcontractors, operators, except when proximately caused by the negligence or willful misconduct of any of the City Indemnified Parties. The City will refer to Lessee promptly upon notice thereof, any claim made or suit instituted against the City which, in any way, affects Lessee or its insurer, and Lessee or its insurer shall have the right to compromise and defend the same to the extent of its interest. Lessee shall pay all reasonable attorneys' fees and costs incurred by the City in its defense of any such action and in the recovery of all amounts owed by Lessee to the City under this Agreement. Any non-appealable final judgment rendered against the City for any cause for which Lessee is liable hereunder shall be conclusive against Lessee as to a liability and amount. In addition to and without limiting the generality of any other provisions of this Agreement but subject to the limitations in Part Six, Section H above, Lessee shall and hereby does indemnify and hold the City harmless from and against any and all losses, damages, expenses, fees, claims, demands causes of action, judgments, costs, fines, penalties, and liabilities, including, but not limited to, attorneys' fees and costs of litigation, and costs and expenses of response, remedial and corrective work, and other cleanup activities, arising out of or in any manner connected with (i) the "release" or "threatened release" (as those terms are defined in Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), as from time to time amended and the rules and regulations promulgated thereunder) by Lessee or its employees or contractors.

Lessor covenants and agrees to indemnify and hold Lessee, its members, officers, employees, and agents of each (collectively, the "**Lessee Indemnified Parties**"), forever harmless from and against all liabilities, claims, judgments, costs, damages, fines, penalties, and expenses, including those which arise as the result of action which may accrue against, be charged to, or recovered from the foregoing by reason or on account of damages to or destruction of the property of the Lessee, or the property of, injury to, or death of any person, resulting or arising from (i) the negligence or willful misconduct of any of the City Indemnified Parties, and (ii) Lessor's use, occupancy, operation, or maintenance of the Airport, including the work, acts, or omissions of Lessee' officers, agents, employees, contractors, subcontractors, operators, except when proximately caused by the negligence or willful misconduct of the Lessee Indemnified Parties. Lessee will refer to Lessor promptly upon notice thereof, any claim made or suit instituted against Lessee which, in any way, affects Lessor or its insurer, and Lessor or its insurer shall have the right to compromise and defend the same to the extent of its interest. Lessor shall pay all reasonable attorneys' fees and costs incurred by Lessee in its defense of any such action and in the recovery of all amounts owed by Lessor to Lessee under this Agreement. Any final non-appealable judgment rendered against Lessee for any cause for which Lessor is liable hereunder shall be conclusive against Lessor as to a liability and amount. In addition to and without limiting the generality of any other provisions of this Agreement, Lessor shall and hereby does indemnify and hold Lessee harmless from and against any and all losses, damages, expenses, fees, claims, demands causes of action, judgments, costs, fines,

penalties, and liabilities, including, but not limited to, attorneys' fees and costs of litigation, and costs and expenses of response, remedial and corrective work, and other cleanup activities, arising out of or in any manner connected with (i) the "release" or "threatened release"(as those terms are defined in Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) and the rules and regulations promulgated thereunder, as from time to time amended) at the Leased Premises before the Commencement Date and on the Airport generally.

2. Lessee Insurance. Lessee shall procure and maintain in effect, at its own expense during the term of this Agreement (i) an "all risk-special form causes of loss" property policy covering the full replacement cost (less applicable deductibles) of the Improvements and Lessee's personal property on the Leased Premises, (ii) Workers Compensation Insurance as required by Florida Statutes, or adequate Employee's Liability Insurance; Public Liability Insurance; and Property Damage Insurance covering all of Lessee's activities and the Leased Premises at the Airport, and (iii) general liability insurance coverage of \$1,000,000 for each occurrence and over \$2,000,000 general aggregate, as well as the Auto insurance required in the Minimum Standards.

The Lessee shall maintain such insurance underwriters authorized to do business in the State of Florida reasonably satisfactory to the Lessor. Coverage is to be written on the broadest liability form including but not limited to products liability, blanket contractual, and independent contractors. All liability policies shall include the City of Kissimmee as an additional insured. Lessee shall furnish Lessor with a Certificate of Insurance from the Lessee's carrier indicating that there is such insurance coverage as hereinbefore provided, and, in the event of a legal dispute and upon request from Lessor, Lessee shall submit to the Lessor, a true copy of the above insurance coverage. Lessee shall provide not less than five (5) days written notice to Lessor before Lessee's policy or policies of insurance are canceled or materially modified.

3. Waiver of Claims and Subrogation. Notwithstanding anything to the contrary in this Lease, Lessee and Lessor hereby release each other and their respective representatives, agents, employees, and partners from any claims for damage and/or injury to the Leased Premises and/or the Airport or the trade fixtures, personal property, improvements, and alterations in or on or about the Leased Premises or the Airport that are caused by or result from risks that can be insured against under comprehensive "all risk-special form causes of loss" property insurance policies regardless of whether such policies are actually carried.

K. COMPLIANCE WITH LAW, RULES AND REGULATIONS. Lessee and Lessor shall each, at its sole expense, observe and comply with the ordinances, statutes, rules, and regulations of all governmental authorities which are applicable to the conduct of each party's business and in addition, with respect to Lessee, those rules, and regulations of the Lessor not inconsistent with the provisions of this Agreement. Any penalties and costs levied as a result of such party's breach of any terms or covenants contained within this Agreement shall be borne by the breaching party. Lessee will ensure the integrity of the Airport perimeter security with respect to the Leased Premises at all times. This includes ensuring all gates to the Leased Premises, to include pedestrian gates, remain locked at all

times unless monitored by an employee of the Lessee. Personnel vehicles of Lessee's employees, customers or contractors will not be parked on the airside.

L. RENOVATIONS.

1. All proposed renovation, refurbishing, alterations, remodeling, and construction that requires Lessor's consent hereunder shall be in accordance with Part Six of this Agreement, and reviewed and approved by the Director and may also have to be reviewed and approved by the City Building Official, to include obtaining a Building Permit from the City.
2. All renovations, refurbishments, improvements, additions, fixtures, and alterations made to Leased Premises by Lessee during the Term shall belong to Lessee and any such items then located on the Leased Premises shall become the property of Lessor on the date that this Lease expires or terminates.
3. Lessee expressly assumes full responsibility for all damages and injuries that may result to any person or persons or to adjoining property by reason of the excavation for, and the erection, construction, alteration, renovation, refurbishment, improvement, or maintenance of any building on the Leased Premises by Lessee, pursuant to or under this Agreement, and shall indemnify Lessor against any and all claims arising from such actions, except to the extent of the negligence or willful misconduct of any of the City Indemnified Parties.

**PART SEVEN
OBLIGATIONS OF LESSOR**

- A. OPERATION AS A PUBLIC AIRPORT. Lessor covenants and agrees that at all times it will operate and maintain the Airport as a public airport consistent with and pursuant to the Sponsor's Assurances given by Lessor to the United States Government under the Federal Airport Act.
- B. ENTRY AND INSPECTION. Lessor shall have the right to enter upon and inspect the Leased Premises at any reasonable time, with twenty-four (24) hours' notice during the Term for any purpose necessary, incidental to or connected with the performance of its obligations hereunder or in the exercise of its governmental functions and, upon reasonable notice to Lessee. The Lessor shall not, during the course of any such inspection, unreasonably interfere with the Lessee's use and enjoyment of or access to the Leased Premises.

**PART EIGHT
DAMAGE OR DESTRUCTION OF LEASED PREMISES**

- A. CASUALTY. If the Improvements on the Leased Premises are totally or partially destroyed, rendering the Leased Premises totally or partially inaccessible or unusable, Lessee in its sole discretion may elect to (i) use commercially reasonable efforts to

promptly restore the Leased Premises to a condition substantially similar to that which existed immediately prior to such damage or destruction, in accordance with applicable laws (“**Restoration**”), (ii) raze the damaged Improvements and clear the affected portion of the Leased Premises and seed such area with grass, (iii) construct new improvements in a configuration determined by Lessee and approved by Lessor in its reasonable discretion, or (iv) if the estimated period to complete the Restoration exceeds 120 days, terminate this Lease; provided that if Lessee elects such termination, Lessee shall either Restore pursuant to clause (i) or raze the damaged Improvements pursuant to clause (ii) prior to the date of such termination. If Lessee elects to proceed under clauses (i), (ii) or (iii), Lessee shall use commercially reasonable efforts to promptly commence and use diligent efforts to complete such action.

- B. EFFECT OF TERMINATION. If this Lease is terminated following a casualty pursuant to this Section 8.A, (i) Lessor shall be entitled to receive and retain all the insurance proceeds relating to insurance policies insuring Lessor resulting from or attributable to such casualty, except for those proceeds payable under policies obtained by and insuring Lessee, and (ii) Lessee shall be entitled to receive and retain all the insurance proceeds relating to insurance policies insuring Lessee resulting from or attributable to such casualty, except for those proceeds payable under policies obtained by and insuring Lessor.
- C. ABATEMENT OF BASE RENT. During any period when Lessee cannot reasonably use all or any portion of the Leased Premises for the conduct of Lessee’s business by reason of a casualty, Annual Rent shall, to the extent Lessee is using commercially reasonable efforts Restore or otherwise construct new improvements on the Leased Premises, be equitably abated in proportion to the degree of such interference. Such abatement shall commence upon the date of the casualty and shall end upon the date the Leased Premises is Restored or other replacement improvements have been completed (or termination of this Agreement as provided herein). If Lessee elects to raze the damaged Improvements pursuant to Section 8.A above, Annual Rent shall be abated as provided herein until such election is made by Lessee. Lessee shall not be entitled to any compensation or damages from Lessor for loss of the use of the Leased Premises, Lessee’s personal property, alterations or other damage or any inconvenience occasioned by a casualty or by the repair or restoration of the Leased Premises thereafter.

PART NINE TERMINATION OF AGREEMENT, ASSIGNMENT, AND TRANSFERS

- A. TERMINATION. This Agreement shall terminate without action by either party at the end of the Term.
- B. TERMINATION BY LESSEE. Lessee may terminate this Agreement after:
1. Material default by Lessor in the performance of a covenant or agreement herein required to be performed by Lessor and the failure of Lessor to remedy such default for a period of sixty (60) days after receipt of written notice of default from Lessee. Unless Lessor is diligently attempting to remedy such default in which

case Lessor shall be allowed such reasonable time as may be required.

2. Upon Lessee giving ninety (90) days written notice to the Lessor pursuant to PART ELEVEN (G) of this Agreement and immediately upon or after the occurrence of any of the following events:

- a. The failure or refusal of the Federal Aviation Administration (FAA) to permit the Lessee to operate into, from, or through the Kissimmee Gateway Airport during which time rent will abate;
- b. The duly enactment and implementation of a City, State, or Federal law, order, rule or regulation which is directly binding on the Leased Premises and the operation of the Lessee which directly results in (i) the inability of the Lessee to use or access the Leased Premises in a manner substantially similar to that which existed prior to such interference, or (ii) loss of any of the use classifications in Section 5.A., in either case, for a period longer than one hundred eighty days (180) days during which time rent will abate; and
- c. If Lessee does not obtain a certificate of occupancy for the Initial Improvements.

C. EXERCISING LESSEE'S RIGHTS OF TERMINATION. Lessee may exercise such right of termination by written notice to Lessor at any time after the occurrence of any such events and the Agreement shall terminate as of the date notice is received by the Lessor.

D. TERMINATION BY LESSOR. Lessor may terminate this Agreement in the event Lessee shall:

1. Be in arrears in the payment of the whole or any part of the rent or other fees, payments, or sums due under this Lease for a period of sixty (60) days after written notice and the time such payments become due;
2. Make a general assignment for the benefit of creditors;
3. File a voluntary or involuntary petition in bankruptcy;
4. Abandon the Leased Premises;
5. Default in the performance of any of the covenants, agreements and conditions required herein to be kept and performed by Lessee, and such default continues for a period of thirty (30) days after receipt of written notice from Lessor of said default, unless Lessee is diligently attempting to remedy such default in which case Lessee shall be allowed such reasonable time as may be required;
6. Appoint or to cause the appointment of a receiver for Lessee; or

7. Violate local, state, federal, or Lessor's laws, statutes, ordinances, rules, and regulations not inconsistent with the provisions of this Agreement and such default continues for a period of sixty (60) days after receipt of written notice from Lessor of said default, unless Lessee is diligently attempting to remedy such default in which case Lessee shall be allowed such reasonable time as may be required.

E. WAIVER OF STATUTORY NOTICE TO QUIT. In the event Lessor exercises its option to terminate this Agreement upon the happening of any of the events set forth in Section D of this Article, Termination by Lessor, a notice of termination shall be sufficient to terminate this agreement. Upon such termination, Lessee agrees that it will forthwith surrender possession of the Leased Premises to Lessor. Lessee will be given access to Leased Premises to remove its property following termination.

F. SUBLETTING AND ASSIGNMENT. Lessee may not rent or sublease the Leased Premises without the prior written consent of the Lessor, which shall not be unreasonably withheld, conditioned or delayed. Notwithstanding the foregoing, Lessor may not withhold consent if the proposed assignment or sublease otherwise satisfies any minimum requirements contained in the Service Standards or other similar standards applicable at the Airport. Lessee may, with the prior written consent of Lessor, assign this Agreement; in such event, Lessee shall remain liable to Lessor for the remainder of the term of the Agreement to pay to Lessor any portion of the rental and fees not paid by the assignee when due. The assignee shall not assign the Agreement except with the prior written consent of the Lessor, and any assignment by the Lessee shall contain a provision to this effect. Further, any assignee of the lease shall be bound by the terms and conditions of this Agreement.

Notwithstanding anything to the contrary in Section 9.F, Lessee shall have the right without obtaining Lessor's consent, to assign the Lease, to sublet the Leased Premises or otherwise transfer Lessee's interest under the Lease to: (i) any parent, affiliate or subsidiary entity of Lessee, (ii) any entity resulting from a merger, consolidation, spin off or split up involving Lessee or its parent entity, if any, (iii) any person or entity acquiring substantially all of the assets or stock of Lessee, (iv) in connection with an initial public offering, or (v) to any third party acquiring the Improvements. Any such transfer shall not be subject to the foregoing provisions of Section 9.F, be prohibited or require Lessor's consent; provided, however, in no such event shall any such transfer affect the continuing primary liability of the assigning party (which, following assignment, shall be joint and several with the assignee(s)), or relieve assigning party of any of its obligations under this Lease). Promptly following a permitted transfer, Lessee shall deliver to Lessor a copy of the agreement by which a transferee (other than Lessee) agrees to assume all liabilities of the Lessee under this Lease arising and relating to periods after such transfer.

G. MORTGAGES. Lessee shall at all times and from time to time have the right to encumber by mortgage, deed of trust, or security agreement (the "**Mortgage**") Lessee's leasehold estate in the Leased Premises, together with Lessee's rights and interests in the Improvements, including all rents, issues, profits, revenues, and other income to be derived by Lessee therefrom, to secure such loans from time to time made to Lessee; provided,

however, that such Mortgage shall in no event encumber Lessor's fee title or leasehold interest (as applicable) in the Leased Premises or Lessor's interest under this Lease.

PART TEN RIGHTS UPON TERMINATION

- A. LEASED PREMISES. It is the intent of this Agreement that the Leased Premises shall be and remain the property of Lessor during the entire term of this Agreement and thereafter.
- B. REMOVAL OF PERSONAL PROPERTY. Upon the expiration or termination of this Agreement, all buildings, improvements, and fixtures constructed or placed upon Leased Premises shall revert, free and clear of any mortgage or lien, to Lessor. Lessee shall at all times have the right to remove any of its office supplies, goods, furniture, machinery, equipment, signs and any other personal property installed on the Leased Premises by Lessee, but shall repair at its own expense all damage caused by such removal. Any such personal property not removed by Lessee within such time shall become the property of the Lessor.

PART ELEVEN GENERAL PROVISIONS

- A. LESSOR'S RESERVED RIGHTS.
 - 1. City reserves the right: (i) to further develop, improve, repair and alter the Airport and all roadways, parking areas, terminal facilities, landing areas and taxiways as it may reasonably see fit, and provided that City shall use reasonable efforts to preserve Lessee's rights hereunder, City shall be free from any and all liability to Lessee for loss of business or damages of any nature whatsoever to Lessee occasioned by the making of such improvements, repairs, alterations and additions, unless such loss or damages are caused by the negligence or willful misconduct of the City, (ii) to establish such fees and charges for the use of the Airport by Lessee (excluding any additional charge for the use of the Leased Premises) and all others similarly situated from time to time as City may deem advisable, and (iii) for itself and others to utilize and maintain any utility and drainage easements located on the Leased Premises, and (iv) to run water, sewer, electrical, telephone, gas, drainage and other lines under or through the Leased Premises and to grant necessary utility easements therefore, provided that in the exercise of any of the foregoing rights, Lessee's use of and access to the Leased Premises and any Improvements shall not be unreasonably impaired and any damage to the Leased Premises or any Improvements caused by City as a result thereof shall be repaired without cost to Lessee.
 - 2. This Agreement shall be subordinate to the provisions of any existing or future agreement between Lessor and the United States, relative to the operation or maintenance of the Airport, the terms relative to the operation or maintenance of the Airport, the terms and execution of which have been or may be reimbursement

to Lessor for federal funds for the development of the Airport.

- B. NON-INTERFERENCE WITH OPERATION OF AIRPORT. Lessee by accepting this Agreement expressly agrees for itself and its successors and assigns that it will not make use of the Leased Premises in any manner which might interfere with the landing and taking off of aircraft at the Airport or otherwise constitute a hazard. In the event this covenant is breached, the Lessor reserves the right to enter upon the Leased Premises and cause the abatement of such interference at the reasonable expense of Lessee.

Lessor shall maintain and keep in repair the landing area of the Airport and shall have the right to direct and control all activities of the Lessee in this regard.

- C. NONEXCLUSIVE RIGHT.

The Lessee expressly agrees, on behalf of itself and its successors and assigns that to the extent it has any rights under this Agreement to conduct any activity on the Airport property, such rights are nonexclusive and City has reserved the right to grant similar rights to others at the Airport. The provisions of this subsection shall not confer any rights on Lessee which have not been expressly granted to Lessee elsewhere in this Agreement.

- D. WAIVER OF JURY TRIAL, VENUE. It is mutually agreed by and between Lessee and Lessor that each of the parties do hereby waive trial by jury in any action, proceeding, or claim which may be brought by either of the parties hereto against the other on any matters concerning or arising out of this Agreement. Venue of all actions shall be Osceola County, Florida.

- E. TAXES, LICENSES, AND PERMITS. Unless otherwise exempt, Lessee shall pay all personal property taxes which may be assessed against merchandise, or other personal property belonging to the Lessee located on the Leased Premises, or other permitted portions of the Airport. In the event any real estate taxes are assessed against the land or improvements on the Leased Premises during the term of this Agreement, such taxes shall be paid by Lessee. Lessee shall obtain and pay for all license, permits, fees, or other authorization or charges as required under federal, state, or local laws and regulations insofar as they are necessary to comply with the requirements of this Agreement and the privileges extended hereunder.

- F. PARAGRAPH HEADINGS. The paragraph headings are for convenience in reference and are not intended to define or limit the scope of any provision of this Agreement.

- G. NOTICE. Whenever any notice is required by this Agreement to be made, given, or transmitted, such notice shall be served by Certified or Registered Mail with return receipt or by nationally recognized overnight carrier, addressed to the Lessor in following manner:

Director of Aviation
Kissimmee Gateway Airport
401 Dyer Boulevard

Kissimmee, FL 324741-4613

and notices, consents and approvals to addressed to Lessee in the following manner:

Cirrus Design Corporation
4515 Taylor Circle
Duluth, MN 55811
Attn: Legal Department

or such other addresses as the parties may designate to each other in writing.

- H. FLORIDA LAW. This Agreement shall be interpreted in accordance with the laws of the State of Florida.
- I. SUCCESSORS AND ASSIGNS. All of the terms, covenants, and agreements herein contained shall be binding upon and shall inure to the benefit of the successors and assigns of the parties.
- J. ATTORNEY FEE PROVISION. In the event that any proceeding at law or in equity arises hereunder or in connection herewith (including any appellate proceeding or bankruptcy proceeding) the prevailing party shall be awarded costs, reasonable expert fees and reasonable attorney's fees incurred in connection therewith.
- K. RADON GAS NOTICE. Radon is a naturally occurring radioactive gas that, when it has accumulated in a building in sufficient quantities, may present health risks to persons who are exposed to it over time. Levels of radon that exceed federal and state guidelines have been found in buildings in Florida. Additional information regarding radon and radon testing may be obtained from your county public health unit.
- L. PUBLIC ENTITIES CRIME NOTICE. The Lessee acknowledges the following notice:

A person or affiliate who has been placed on the convicted vendor list following a conviction for a public entity crime may not submit a bid on a contract to provide any goods or services to a public entity, may not submit a bid on a contract with a public entity for the construction or repair of a public building or public work, may not submit bids on leases of real property to a public entity, may not be awarded or perform work as a contractor, supplier, subcontractor, or consultant under a contract with any public entity, and may not transact business with any public entity in excess of \$35,000 for a period of 36 months from the date of being placed on the convicted vendor list.
- M. BROKER LANGUAGE. City and Lessee represent and warrant to each other that they have dealt with no broker in connection with this Agreement and the transactions contemplated hereby, and each agrees to indemnify and hold the other harmless in the event its representation and warranty contained herein is not true.
- N. ESTOPPEL PROVISION. At the request of either party, the other shall with reasonable

promptness deliver to the requesting party a written and acknowledged statement that this Agreement is unmodified and in full force and effect (or if there have been modifications, that the same is in full force and effect as modified and stating the modifications), that to the best of the responding party's knowledge, the requesting party is not in default under this Agreement (or if the responding party has knowledge that the requesting party is in default, identifying the default), and providing such other information with respect to the Agreement and the relationship between City and Lessee as may reasonably be requested. In addition, at the City's request, Lessee shall promptly execute and return to City a short form memorandum of this Agreement which may be recorded in the public records of Osceola County, Florida in City's sole discretion.

- O. ENGINE RUNUPS. Except to the extent that noise restrictions of any governmental City having jurisdiction thereover may preclude or limit the same, Lessee shall have the right to conduct engine runups at the Leased Premises, and/or the nonexclusive right in common with others, to conduct engine runups on the Airport at such location or locations as City may designate from time to time for such purposes, in reasonable proximity to the Leased Premises on the Airport, and subject to the reasonable rules and regulations of City.
- P. EFFECTIVE DATE. The Effective Date shall mean the date that the last party fully executes this Agreement.
- Q. UNAVOIDABLE DELAY. Delays due to act of God, fire, earthquake, flood, explosion, war, invasion, insurrection, riot, mob violence, epidemic, quarantine, pandemic, sabotage, vandalism, inability to procure or general shortage of or delay in delivering labor, equipment, facilities, materials or supplies in the open market, failure of transportation, strikes, lockouts, litigation, casualty, lawsuits, moratoriums, injunctions, inclement weather, unforeseen soil or site conditions, condemnation, requisition, actions, inactions or restrictions of governmental authorities, including inability or delay in governmental consents or permits, laws or orders of governmental, civil, military or naval authorities, or any other cause, whether similar or dissimilar to the foregoing, not within the performing party's reasonable control, provided that Lessee's inability to pay rent shall not be deemed to be an Unavoidable Delay.

PART TWELVE ENVIRONMENTAL MATTERS

- A. STORAGE TANKS.
 - 1. Lessor hereby represents and warrants that any above and underground storage tanks existing on the Leased Premises on the Commencement Date comply with all applicable federal, state, and local government regulations relating thereto. From and after the Commencement Date, Lessee shall (subject to Lessor's representation and warranty herein), agrees to comply with all applicable federal, state, and local government regulations regarding above and underground storage tanks existing on the Leased Premises on the Commencement Date and as hereafter may be enacted or amended. Specifically, Lessee agrees that all regulated above or underground storage tanks owned or operated by it and located on the Leased Premises or which

might discharge on or under the Leased Premises, shall be registered with the appropriated federal, stated, and local authorities; shall be constructed of approved materials; shall, if existing, be appropriately retrofitted pursuant to current federal, state, and local requirements; shall have an approved method of leak detection; and shall be made available for compliance inspection at all times during normal business hours. ("Approved" for purposes of this provision shall mean: "determined to meet applicable federal and state environmental regulatory requirements.") Further, Lessee agrees to properly record, maintain, and reconcile all inventory record required by appropriate federal, state, and local regulations and to make such records available for inspection at the Leased Premises during normal business hours upon not less than 48 hours prior notice from Lessor.

2. Lessee shall comply with the financial responsibility requirements set forth in 40 U.S.C. 280 by obtaining at least one million dollars (\$1,000,000.00) of third-party liability insurance and one million dollars (\$1,000,000.00) of restoration (cleanup) insurance as coverage for all petroleum storage tank activities conducted by Lessee on or adjacent to the Leased Premises. Such insurance must be maintained in effect during the entirety of the term of this Agreement and proof of such insurance must be provided to Lessor prior to the operation or installation of any regulated above or underground petroleum storage tanks on or about the Leased Premises. This insurance requirement may be satisfied by qualification for and compliance with the Florida Petroleum Liability Insurance and Restoration Program as established by Section 376.3072, Florida Statutes.

B. INDEMNIFICATION. Lessor agrees to indemnify and hold the Lessee Indemnified Parties harmless from and against all liabilities, claims, judgment, costs, damages, fines, penalties, and expenses, including those which arise as the result of administrative action, which may accrue against, be charged to or recovered from the foregoing by reason or on account of damages to or destruction of the property of the City, or the property of, injury to or death of any person, resulting or arising from any Hazardous Materials existing on the Leased Premises as of the Commencement Date or the failure of any above or underground storage tanks existing on the Leased Premises on the Commencement Date to comply with all applicable federal, state, and local government regulations relating thereto.

C. HAZARDOUS MATERIALS COVENANTS.

1. Lessee hereby represents and warrants to and for the benefit of Lessor that Lessee shall dispose of any Hazardous Materials (hereinafter defined) placed upon the Leased Premises or any portion thereof by Lessee during the Term in accordance with all applicable Laws (as defined below) so as to prevent Hazardous Materials Contamination. From purposes hereof the term "**Hazardous Materials**" shall mean and refer to (i) any "hazardous waste" as defined by the Resource Conservation and Recovery Act of 1976 (42 U.S.C. *6901 *et seq.*), as amended from time to time, and regulations promulgated thereunder, (ii) any "hazardous substance" as defined by the Comprehensive Environmental Response,

Compensation and Liability Act of 1980 (42 U.S.C. 24, *6901, et seq.) (“CERCLA”), as amended from time to time, and regulations promulgated thereunder; (iii) asbestos (iv) polychlorinated biphenyls; (v) urea formaldehyde; (vi) any substance the presence of which on the Leased Premises is prohibited by the City that the Leased Premises will not use or operated in any manner that will result in the storage use treatment, manufacture, or any applicable environmental laws or regulations (“**Laws**”) or by any other legal requirements affecting the Leased Premises; (viii) petroleum-based materials (with the exception of tires affixed to vehicles); and (viii) any other substance which is defined as hazardous, toxic, infectious, or radioactive by any laws or by any other legal requirements affecting the Leased Premises. The term “**Hazardous Materials Contamination**” shall mean and refer to the contamination of the Leased Premises, soil, surface water, ground water, air, or other elements on or off the buildings, facilities, soil, surface water, ground water, air, or other elements on, or of, any other property as a result of Hazardous Materials placed on the Leased Premises by Lessee during the Term emanating from the Leased Premises at any time.

2. In addition to and without limiting the generality of any other provisions of this Agreement, Lessee shall and hereby does indemnify and hold the City harmless from and against any damages, expenses, fees, claims, demands, causes of action, judgments, costs, fines, penalties, and liabilities, including, but not limited to, attorneys’ fees and costs of litigation, and costs and expenses of response, remedial, and corrective work and other cleanup activities, arising out of or in any manner connected with (i) the “release” or “threatened release” (as those term are defined in CERCLA and the rules and regulations promulgated thereunder, as from time to time amended) by Lessee or Lessee’s employees, agents, delegates, invitees, licensees, concessionaires, contractors, or representatives, of any Hazardous materials, or (ii) any occurrence of Hazardous Materials Contamination affecting the Leased Premises caused solely by Lessee. Notwithstanding anything to the contrary int his Lease, (1) in no event shall Lessee be responsible for any Hazardous Materials, fuel petroleum products, or other materials, whether hazardous or not, that exist on the Leased Premises on the Commencement Date, and (2) Lessee’s obligations under this Lease with respect to Hazardous Materials shall apply only in connection with, and to the extent of, hazardous materials and substances brought onto the Leased Premises by Lessee or Lessee’s employees, agents or contractors during the Term. The provisions of this Section shall survive any acquisition of the Leased Premises by the City, and such provisions shall remain in full force and effect as long as the possibility exists that the City may suffer or incur any such losses, damages, expenses, fees, claims, demands, causes of action, judgments, costs, liabilities, and all losses.
3. Lessor shall be responsible for any and all remedial action with respect to any Environmental Problem at the Leased Premises which exists prior to the Commencement Date. The Parties hereby acknowledge that City shall conduct a Phase I report of the Leased Premises, prior to October 1, 2021. The Lessee shall not be obligated to take possession of the Leased Premises, until completion of the

Phase I, and any remediation work identified by this report or a Phase II report has been completed by Lessor. The Phase I conducted shall act as the “Baseline” to establish the environmental condition of the Leased Premises at the time of the commencement of possession by Lessee. For the purpose of this Lease, “Environmental Problem” shall mean any (i) contamination of the Leased Premises, soil, surface water, ground water, air or improvements on the Leased Premises prior to the Commencement Date, (ii) any failure of the Leased Premises to comply with all applicable laws, including environmental Laws, and (iii) any recognized environmental condition identified in the Phase I to be conducted by Lessor as provided herein.

4. Within thirty (30) days of the expiration of this Agreement, Lessor shall prepare an environmental report equivalent to Phase I and, if the results of the Phase I reasonable demonstrate a need for one, a Phase II, to include borings to establish the environmental condition of the Leased Premises as of expiration of the Agreement. In the event it is determined that Lessee released pollutants onto the Leased Premises during Term (by comparison to the Baseline) in amounts which violate any applicable Federal, State or local governmental standards, Lessee shall be responsible for any and all action reasonably necessary to remediate such condition in accordance with applicable Laws.

PART THIRTEEN RIGHT OF FIRST OFFER

- A. OFFER NOTICE. Following Lessee’s completion of the Initial Improvements, if Lessee desires to sell the Improvements during the Term to a third party which is not affiliated with Lessee, Lessee shall first provide a written notice (the “**Offer Notice**”) to Lessor of Lessee’s intention to sell the Improvements. The Offer Notice must describe the proposed sales price for the Improvements, and any other material terms and conditions of the proposed sale. Lessor shall have right to purchase the Improvements at the price and upon the terms and conditions stated in the notice, which right may only be exercised by delivering written notice of exercise to Lessee within thirty (30) days after Lessee’s delivery of the Offer Notice. If Lessor does not timely exercise its right to purchase the Improvements, then Lessor’s right of first offer shall lapse and Lessee shall be free to (i) sell the Improvements to a third party for not less than 90% of the purchase price or on terms materially more favorable than offered to Lessor, and provided further that if Lessee does propose to sell the Improvements for less than 90% of the purchase price or upon materially more favorable terms, then Lessor’s right of first offer as to the Improvements hereunder shall automatically revive, and (ii) assign all of Lessee’s right, title and interest under this Lease to such purchaser without Lessor’s consent or approval.
- B. EXERCISE OF RIGHT. If Lessor timely and properly exercises its right to purchase the Improvements, Lessor and Lessee shall promptly negotiate in good faith and execute a purchase agreement containing the purchase price and other terms and conditions negotiated as set forth in subparagraph A above.

Signature page to follow

IN WITNESS THEREOF, the parties now sign, agree to, and enter into this Agreement on the day and year first above written.

CIRRUS DESIGN CORPORATION

By: _____
Name: _____
Its: _____

State of _____)
County of _____)

The foregoing instrument was acknowledged before me by means of ☐ physical presence or ☐ online notarization on this _____ day of _____, 202____, by _____, as _____ of Cirrus Design Corporation., a corporation organized under the laws of the State of _____, who is ☐ personally known to me or ☐ who has produced _____ as identification, and acknowledged before me that they executed the foregoing instrument as such officer in the name and on behalf of the corporation.

Seal:

Notary Public, State of Florida

CITY OF KISSIMMEE, FLORIDA

Olga Gonzalez
Mayor-Commissioner

ATTEST:

City Clerk

Approved as to form and legality

City Attorney

Exhibit "B"
FAA Required Contract Provisions
GENERAL CIVIL RIGHTS PROVISIONS

If and to the extent applicable as a matter of law, the Lessee agrees to comply with pertinent statutes, Executive Orders and such rules as are promulgated to ensure that no person shall, on the grounds of race, creed, color, national origin, sex, age, or disability be excluded from participating in any activity conducted with or benefiting from Federal assistance. If the Lessee transfers its obligation to another, the transferee shall be obligated in the same manner as the Lessee.

This provision obligates the Lessee for the period during which the property is owned, used or possessed by the Lessee and the airport remains obligated to the Federal Aviation Administration. This provision is in addition to that required by Title VI of the Civil Rights Act of 1964, if and to the extent applicable as a matter of law.

Compliance with Nondiscrimination Requirements:

During the performance of this contract, the Lessee, for itself, its assignees, and successors in interest (hereinafter referred to as the "Lessee"), agrees as follows, if and to the extent applicable as a matter of law:

Compliance with Regulations: The Lessee (hereinafter includes consultants) will comply with the Title VI List of Pertinent Nondiscrimination Acts and Authorities set forth herein, which are herein incorporated by reference and made a part of this contract.

Nondiscrimination: The Lessee, with regard to the work performed by it during the contract, will not discriminate on the grounds of race, color, or national origin in the selection and retention of sub-Lesseees, including procurements of materials and leases of equipment. The Lessee will not participate directly or indirectly in the discrimination prohibited by the Nondiscrimination Acts and Authorities, including employment practices when the contract covers any activity, project, or program set forth in Appendix B of 49 CFR part 21.

Solicitations for Subcontracts, including Procurements of Materials and Equipment:

In all solicitations, either by competitive bidding or negotiation made by the Lessee for work to be performed under a subcontract, including procurements of materials, or leases of equipment, each potential sub-Lessee or supplier will be notified by the Lessee of the Lessee's obligations under this contract and the Nondiscrimination Acts and Authorities on the grounds of race, color, or national origin.

Information and Reports: If and to the extent applicable as a matter of law, the Lessee will provide all information and reports required by the Acts, the Regulations, and directives issued pursuant thereto and will permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the sponsor or the Federal Aviation Administration to be pertinent to ascertain compliance with such Nondiscrimination Acts and Authorities and instructions. Where any information required of a Lessee is in the exclusive possession of another who fails or refuses to furnish the information, the Lessee will so certify to the sponsor or the Federal Aviation

Administration, as appropriate, and will set forth what efforts it has made to obtain the information.

Sanctions for Noncompliance: In the event of a Lessee's noncompliance with the non-discrimination provisions of this contract, the sponsor will impose such contract sanctions as it or the Federal Aviation Administration may determine to be appropriate, including, but not limited to:

- a. Withholding payments to the Lessee under the contract until the Lessee complies; and/or
- b. Cancelling, terminating, or suspending a contract, in whole or in part.

Incorporation of Provisions: The Lessee will include the provisions of paragraphs one through six in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Acts, the Regulations, and directives issued pursuant thereto. The Lessee will take action with respect to any subcontract or procurement as the sponsor or the Federal Aviation Administration may direct as a means of enforcing such provisions including sanctions for noncompliance. Provided, that if the Lessee becomes involved in, or is threatened with litigation by a sub-Lessee, or supplier because of such direction, the Lessee may request the sponsor to enter into any litigation to protect the interests of the sponsor. In addition, the Lessee may request the United States to enter into the litigation to protect the interests of the United States.

CLAUSES FOR TRANSFER OF REAL PROPERTY ACQUIRED OR IMPROVED UNDER THE AIRPORT IMPROVEMENT PROGRAM

1. The Lessee for itself, successors in interest, and assigns, as a part of the consideration hereof, does hereby covenant and agree that:
 - a. In the event facilities are constructed, maintained, or otherwise operated on the property described in this Agreement for a purpose for which a Federal Aviation Administration activity, facility, or program is extended or for another purpose involving the provision of similar services or benefits, the Lessee will maintain and operate such facilities and services in compliance with all requirements imposed by the Nondiscrimination Acts and Regulations listed herein if and to the extent applicable as a matter of law, such that no person on the grounds of race, color, or national origin, will be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of said facilities.
2. In the event of breach of any of the above Nondiscrimination covenants, the Aviation City will have the right to terminate the Agreement and to enter, re-enter, and repossess said lands and facilities thereon, and hold the same as if the Agreement had never been made or issued.

**CLAUSES FOR CONSTRUCTION/USE/ACCESS TO REAL PROPERTY ACQUIRED
UNDER THE ACTIVITY, FACILITY OR PROGRAM**

1. The Lessee for itself, successors in interest, and assigns, as a part of the consideration hereof, does hereby covenant and agree that (1) no person on the ground of race, color, or national origin, will be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of said facilities, (2) that in the construction of any improvements on, over, or under such land, and the furnishing of services thereon, no person on the ground of race, color, or national origin, will be excluded from participation in, denied the benefits of, or otherwise be subjected to discrimination, (3) that the Lessee will use the Leased Premises in compliance with all other requirements imposed by or pursuant to the Title VI List of Pertinent Nondiscrimination Acts and Authorities set forth herein if and to the extent applicable as a matter of law.
2. In the event of breach of any of the above nondiscrimination covenants, the Aviation City will have the right to terminate the Lease and to enter or re-enter and repossess said land and the facilities thereon, and hold the same as if said Lease had never been made or issued.

**TITLE VI LIST OF PERTINENT NONDISCRIMINATION ACTS
AND AUTHORITIES**

During the performance of this contract, the Lessee agrees to comply with the following non-discrimination statutes and authorities if and to the extent applicable as a matter of law, such may be amended from time to time upon thirty (30) days' advanced written notice to Lessee:

Title VI of the Civil Rights Act of 1964 (42 USC § 2000d *et seq.*, 78 stat. 252) (prohibits discrimination on the basis of race, color, national origin);

49 CFR part 21 (Non-discrimination in Federally-assisted programs of the Department of Transportation—Effectuation of Title VI of the Civil Rights Act of 1964);

The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, (42 USC § 4601) (prohibits unfair treatment of persons displaced or whose property has been acquired because of Federal or Federal-aid programs and projects);

Section 504 of the Rehabilitation Act of 1973 (29 USC § 794 *et seq.*), as amended (prohibits discrimination on the basis of disability); and 49 CFR part 27;

The Age Discrimination Act of 1975, as amended (42 USC § 6101 *et seq.*) (Prohibits discrimination on the basis of age);

Airport and Airway Improvement Act of 1982 (49 USC § 471, Section 47123), as amended (prohibits discrimination based on race, creed, color, national origin, or sex);

The Civil Rights Restoration Act of 1987 (PL 100-209) (broadened the scope, coverage and applicability of Title VI of the Civil Rights Act of 1964, the Age Discrimination Act of 1975 and Section 504 of the Rehabilitation Act of 1973, by expanding the definition of the terms “programs or activities” to include all of the programs or activities of the Federal-aid recipients, sub-recipients and contractors, whether such programs or activities are Federally funded or not);

Titles II and III of the Americans with Disabilities Act of 1990, which prohibit discrimination on the basis of disability in the operation of public entities, public and private transportation systems, places of public accommodation, and certain testing entities (42 USC §§ 12131 – 12189) as implemented by U.S. Department of Transportation regulations at 49 CFR parts 37 and 38;

The Federal Aviation Administration’s Nondiscrimination statute (49 USC § 47123) (prohibits discrimination on the basis of race, color, national origin, and sex);

Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, which ensures nondiscrimination against minority populations by discouraging programs, policies, and activities with disproportionately high and adverse human health or environmental effects on minority and low-income populations;

Executive Order 13166, Improving Access to Services for Persons with Limited English Proficiency, and resulting agency guidance, national origin discrimination includes discrimination because of limited English proficiency (LEP). To ensure compliance with Title VI, you must take reasonable steps to ensure that LEP persons have meaningful access to your programs (70 Fed. Reg. at 74087 to 74100);

Title IX of the Education Amendments of 1972, as amended, which prohibits you from discriminating because of sex in education programs or activities (20 USC 1681 et seq).

Exhibit “C”
Service Standards

This Exhibit references the Kissimmee Gateway Airport’s -
*Policy, Regulations and Minimum Aeronautical Service Standards for Aeronautical Tenants at
Kissimmee Gateway Airport, latest edition revised March 2014.*

EXHIBIT D

FORM OF MEMORANDUM OF OPTION AGREEMENT FOR GROUND LEASE

THIS DOCUMENT PREPARED BY:

Allen Wheeler
Faegre Drinker Biddle & Reath LLP
90 South 7th Street, Suite 2200
Minneapolis, MN 55402

RETURN TO:

Allen Wheeler
Faegre Drinker Biddle & Reath LLP
90 South 7th Street, Suite 2200
Minneapolis, MN 55402

Tax Parcel/ID Number: _____

MEMORANDUM OF OPTION

This Agreement, made and entered into as of the _____ day of _____, 2021, by and between CITY OF KISSIMMEE, a municipal corporation located within Osceola County, Florida (“**Landlord**”) and CIRRUS DESIGN CORPORATION D/B/A CIRRUS AIRCRAFT, a Wisconsin corporation (“**Tenant**”).

A. Landlord is the owner of or controls certain real property located on or about the Kissimmee Gateway Airport, a municipal airport located within the boundaries of the City of Kissimmee, Florida (the “**Airport**”) that consists of approximately eight (8) undeveloped acres and is more particularly described on the attached Exhibit A and depicted on the attached Exhibit B (the “**Option Property**”).

B. Tenant desires to secure the exclusive option to lease the Option Property, and Landlord desires to grant such option to Tenant, pursuant to the terms and conditions hereinafter set forth.

Accordingly, for and in consideration of that certain Option Agreement for Ground Lease dated _____, 2021 (the “**Option Agreement**”), Landlord and Tenant agree as follows:

1. Grant of Option. Landlord hereby grants to Tenant, and Tenant hereby accepts, the exclusive option to lease the Option Property through December 31, 2023 (the such period being the “**Option Term**”), upon the terms and conditions set forth in the Option Agreement; provided, however, the Option Term may be extended pursuant to the terms of the Option Agreement.

2. Incorporation. The Option Agreement contains other terms, conditions, provisions,

covenants, representations and warranties, all of which are hereby incorporated in this Agreement by reference as though fully set forth herein, and both the Option Agreement and this Agreement shall be deemed to constitute a single instrument. This Memorandum of Option is executed and is to be recorded and/or registered for the purpose of giving notice of the Option Agreement and is in no way intended to supersede or vary the terms or conditions of the Option Agreement. Nothing contained herein shall be construed to amend, modify, change, alter, amplify, interpret or supersede any of the terms and provisions of the Option Agreement, which shall in all things control.

4. Counterparts. This Agreement may be executed in counterparts, each of which shall constitute an original and all of which together shall constitute one and the same instrument.

5. Binding Effect. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns.

[Signature Pages Follow]

SIGNATURE PAGE
MEMORANDUM OF OPTION
BETWEEN
CITY OF KISSIMMEE
AND
CIRRUS DESIGN CORPORATION D/B/A CIRRUS AIRCRAFT

IN WITNESS WHEREOF, Landlord has caused this Agreement to be executed and delivered as of the date first above written.

LANDLORD:

CITY OF KISSIMMEE, FLORIDA

Olga Gonzalez
Mayor-Commissioner
Date: _____

STATE OF FLORIDA)
) SS:
COUNTY OF)

The foregoing instrument was acknowledged before me this ____ day of _____, 2021, by Olga Gonzalez, the Mayor-Commissioner of City of Kissimmee, Florida, a municipal corporation located within Osceola County, Florida, on behalf of the municipal corporation. He/She is personally known to me or has produced _____ as identification.

NOTARY PUBLIC:

Print: _____
State of _____ at Large (Seal)
My Commission Expires: _____

ATTEST:

City Clerk

Approved as to form and legality

City Attorney

SIGNATURE PAGE
MEMORANDUM OF OPTION
BETWEEN
CITY OF KISSIMMEE
AND
CIRRUS DESIGN CORPORATION D/B/A CIRRUS AIRCRAFT

IN WITNESS WHEREOF, Tenant has caused this Agreement to be executed and delivered as of the date first above written.

TENANT:

CIRRUS DESIGN CORPORATION D/B/A
CIRRUS AIRCRAFT, a Wisconsin corporation

By: _____
Name: _____
Its: _____

STATE OF MINNESOTA)
) ss.
COUNTY OF _____)

The foregoing instrument was acknowledged before me this _____ day of _____, 2021, by _____, the _____ of Cirrus Design Corporation d/b/a Cirrus Aircraft, a Wisconsin corporation, on behalf of such corporation.

Notary Public

ITEM 7.M

Justice Assistance Grant Award

Request

Approval to accept Justice Assistance Grant – Countywide (JAG-C) Program in the amount of \$43,864.16, and approval to amend the budget accordingly.

Explanation

The Kissimmee Police Department began the application process for the Countywide JAG-C grant in August 2023. The grant application specifically applied for the purchase of rear rifle plates for additional protection in bullet-proof vests.

On November 30, 2023, the City received the award agreement from the Florida Department of Law Enforcement which requires the signature of the City's chief official, identified as the Mayor of Kissimmee, per the grant application.

Financial Information

Account #	Project #	Increase / Decrease	Budget	Actual
11500331-331200	JAGC24PLTS	Increase	\$43,864	
11530306-506494	JAGC24PLTS	Increase	\$43,864	

Financial Summary:

This is a reimbursement grant. Upon completion, an invoice will be sent for reimbursement.

Recommendation

Approval for the City of Kissimmee Police Department to accept the Justice Assistance Grant – Countywide (JAG-C) allocation of \$43,864.

REQUESTED CITY COMMISSION ACTION:

Approve

Department: Police

Presenter:

Attachment(s):

1. (S) - JAG R7092 Federal Award Agreement

City of Kissimmee

**State of Florida
Office of Criminal Justice Grants
Florida Department of Law Enforcement
2331 Phillips Road
Tallahassee, FL 32308**

AWARD AGREEMENT

Recipient: City of Kissimmee

Recipient SAM UEI: DPHBBJP7RHY3

Award Number: R7092

Award Period: 10/01/2023 – 09/30/2024

Award Title: C-R7092: REAR RIFLE PLATES

Federal Funds: \$43,864.16

Matching Funds: \$0.00

Total Funds: \$43,864.16

CFDA: 16.738

Federal Award Number: 15PBJA-22-GG-00656-MUMU

Federal Program: Edward Byrne Memorial Justice Assistance Grant (JAG)

Federal Awarding Agency: U.S. Department of Justice (USDOJ)

Pass-through Entity: Florida Department of Law Enforcement (FDLE)

Research & Development: No

Indirect Cost: No

An award agreement is entered into by and between the Florida Department of Law Enforcement (herein referred to as “FDLE” or “Department”) and the City of Kissimmee (herein referred to as “Recipient”);

WHEREAS, the Department has the authority pursuant to Florida law and does hereby agree to provide federal financial assistance to the Recipient in accordance with the terms and conditions set forth in the award agreement, and

WHEREAS, the Department has available funds resulting from the federal award listed above, and

WHEREAS, the Recipient and the Department have each affirmed they have read and understood the agreement in its entirety and the Recipient has provided an executed agreement to the Department.

SCHEDULE OF APPENDICES

Appendix A – Scope of Work
Appendix B – Deliverables
Appendix C – Approved Budget
Appendix D – Award Contacts
Appendix E – Special Conditions
Appendix F – Standard Conditions

PERFORMANCE REPORTING

The Recipient shall provide **Quarterly Performance Reports** to the Department attesting to the progress towards deliverables. Performance Reports are due no later than 15 days after the end of each reporting period.

For example: If the monthly reporting period is July 1-31, the Performance Report is due August 15th; if the quarterly reporting period is January 1 – March 31, the Performance Report is due by April 15th.

The Recipient shall respond to the metrics in the electronic grant management system. Information provided by the Recipient will be used by the Department to compile reports on project progress and metrics to the U.S. Department of Justice.

Supporting documentation for performance must be maintained by Recipient and made available upon request for monitoring purposes. Examples of supporting documentation include but are not limited to timesheets, activity reports, meeting notices, delivery documents, public announcements, rosters, presentations, database statistics, etc.

Failure to submit performance reports by the deadline will result in a withholding of funds until performance reports are received.

FINANCIAL REPORTING

The State of Florida's performance and obligation to pay under this agreement is contingent upon an appropriation by the Legislature. The Department will administer and disburse funds under this agreement in accordance with ss. 215.97, 215.971, 215.981 and 215.985, F.S.

This is a cost reimbursement agreement. The Department will reimburse the Recipient for allowable expenditures included in the approved budget (**Appendix B**) incurred during each reporting period. The Recipient shall provide **Quarterly Payment Requests** to the Department attesting to expenditures made during the reporting period. These reports are due no later than 30 days after the end of each reporting period. For example: If the monthly reporting period is July 1-31, the Payment Request is due August 30th; if the quarterly reporting period is January 1 – March 31, the Payment Request is due by April 30th.

Using the electronic grant management system to record expenses, Payment Requests must clearly identify the dates of services, a description of the specific contract deliverables provided during the reporting period, the quantity provided, and the payment amount. All Payment Requests are reviewed and may be audited to the satisfaction of the Department. The Department's determination of acceptable expenditures shall be conclusive.

The final Payment Request shall be submitted to the Department no more than 60 days after the end date of the award. Any payment due under the terms of this agreement may be withheld until performance of services, all reports due are received, and necessary adjustments have been approved by the Department.

The Recipient must maintain original supporting documentation for all funds expended and received under this agreement in sufficient detail for proper pre- and post-audit and to verify work performed was in accordance with the deliverable(s). Payment shall be contingent upon the Department's grant manager receiving and accepting the invoice and the associated supporting documentation. Supporting documentation includes, but is not limited to: quotes, procurement documents, purchase orders, original receipts, invoices, canceled checks or EFT records, bank statements, etc. The state's Chief Financial Officer (CFO) reserves the right to require further documentation on an as needed basis.

Failure to comply with these provisions shall result in forfeiture of reimbursement.

Award Signatures

In witness whereof, the parties affirm they each have read and agree to the conditions set forth in **Appendix C and Appendix D** of this agreement, have read and understand the agreement in its entirety and have executed this agreement by their duly authorized officers on the date, month and year set out below.

Award ID: R7092
Award Title: C-R7092: REAR RIFLE PLATES
Award Period: 10/01/2023 – 09/30/2024

Florida Department of Law Enforcement Office of Criminal Justice Grants

Signature: _____

Typed Name and Title: Cody Menacof, Bureau Chief

Date: _____

Recipient City of Kissimmee

Signature: _____

Typed Name and Title: Mayor Olga Gonzalez, Mayor

Date: _____

***** If using a designee, sign in the “Chief Official Designee” section below. *****

Chief Official Designee (optional) City of Kissimmee

Signature: _____

Typed Name and Title: _____

Date: _____

THIS AWARD IS NOT VALID UNTIL SIGNED AND DATED BY ALL REQUIRED PARTIES

Appendix A - Scope of Work

Award Number:	R7092
Recipient:	City of Kissimmee
Award Title:	C-R7092: REAR RIFLE PLATES
Award Period:	10/01/2023 - 09/30/2024

Problem Identification

The City of Kissimmee Police Department is seeking additional ballistic protective equipment to improve overall officer safety, and response effectiveness, as well as to improve recruitment and retention efforts.

The City of Kissimmee has experienced an increase in active shooter situations since 2018, and this year alone, several officers have been shot in the line of duty. Currently, the officers are provided with a ballistic vest that has a front rifle plate, but they do not receive a rear rifle plate. Moreover, patrol officers are given an active shooter vest to use in an active assailant incident. However, the current active shooter vests are set to expire and they require an officer to retrieve it in a high-stress situation which may delay their response to the threat.

Scope of Work

The City of Kissimmee will be purchasing approximately 154 rear rifle plates to ensure the safety of their officers. The introduction of this equipment would not require any additional training for the officers. The selected plate for purchase is designed to fit the existing ballistic vest platform without any modifications, which would enable officers to perform their duties safely and without any delay in their response time.

Appendix B - Deliverables

Award Number: R7092
Recipient: City of Kissimmee
Award Title: C-R7092: REAR RIFLE PLATES
Award Period: 10/01/2023 - 09/30/2024

Total payments for all deliverables will not exceed the maximum grant award amount.

Deliverable 1	Recipient will use federal grant funds to procure rear rifle plates for law enforcement officers.
Minimum Performance Criteria:	Performance will be the procurement and receipt of goods/services purchased.
Financial Consequences:	This is a cost reimbursement deliverable. Only those items purchased and received will be eligible for payment.
Deliverable Price:	Total payments for this deliverable will be approximately \$43,864.16

Appendix C - Approved Budget

Award Number:	R7092		
Recipient:	City of Kissimmee		
Award Title:	C-R7092: REAR RIFLE PLATES		
Award Period:	10/01/2023-09/30/2024		
Award Amount:	\$43,864.16	\$0.00	\$43,864.16
	Grant Funded	Match	Total

Standard Budget Terms

All items, quantities, and/or prices below are estimates based on the information available at the time of application.

The item(s) listed below may include additional individually priced, operationally necessary accessories, components, and/or peripherals and may be categorized as a "kit", "bundle", "system" etc.

Award funds may be used to pay for any applicable shipping, freight, and/or installation costs.

Award funds will NOT be used to pay for extended warranties, service agreements, contracts, etc., covering any periods that extend beyond the award end date. Funds may be prorated for services within the award period.

Any costs that exceed the award allocation will be the responsibility of the Recipient.

D. Equipment				
Item Name	Description	Grant Funded	Match	Total
Rear Rifle Plates	154 rear rifle plates @ \$385.00 per plate = \$59,290.	\$43,864.16	\$0.00	\$43,864.16
	There are no expected shipping costs at this time.			
	Any amount over the allocated funding will be covered by the city of Kissimmee.			
D. Equipment Subtotal:				\$43,864.16

Appendix D: Award Contacts

Award Number: R7092
Recipient: City of Kissimmee
Award Title: C-R7092: REAR RIFLE PLATES
Award Period: 10/01/2023 - 09/30/2024

Recipient Grant Manager (GM)

Name: Ian Downing
Title: Captain
Address: 8 North Stewart Avenue
Kissimmee, FL 34741
Phone: 689-241-5735
Email: ian.downing@kissimmee.gov

Recipient Chief Official (CO)

Name: Mayor Olga Gonzalez
Title: Mayor
Address: 101 Church Street
Kissimmee, FL 34741
Phone: 407-847-0176
Email: olga.gonzalez@kissimmee.gov

Recipient Chief Financial Officer (CFO)

Name: Pamela Lynch
Title: Fiscal Specialist
Address: 8 North Stewart Avenue
Kissimmee, FL
Phone: 407-847-0176
Email: pamela.lynch@kissimmee.gov

Appendix E: Special Conditions

Award Number: R7092
Recipient: City of Kissimmee
Award Title: C-R7092: REAR RIFLE PLATES
Award Period: 10/01/2023 - 09/30/2024

In addition to the attached standard conditions, the above-referenced grant project is subject to the special conditions set forth below.

- W0001 WITHHOLDING OF FUNDS: Prior to the drawdown of funds, the Recipient must provide a management response in regards to findings noted on the Single Audit for the year ending September 30, 2022 to the Office of Criminal Justice Grants.
- S0002 A risk assessment completed at the time of application review determined this project is low-risk. As a result, backup documentation related to expenditures must be maintained and made available upon request. Documentation may include, but is not limited to: procurement records (including quotes, competitive solicitations/bids, etc.), purchase orders, packing slips, delivery/receivable documents, invoices, proof of payment, timesheets, paystubs, activity logs, client activity logs, participant sign in sheets, billing documentation, travel vouchers etc.

Appendix F – FY2022 Award Standard Conditions

The Florida Department of Law Enforcement (FDLE), Office of Criminal Justice Grants (OCJG) serves as the State Administering Agency (SAA) for various federal award programs awarded through the U.S. Department of Justice (DOJ), Office of Justice Programs (OJP). FDLE has been assigned as the certified Fiscal Agent for the 2021 Project Safe Neighborhoods awards by the U.S. Attorney. OCJG awards funds to eligible applicants, and requires compliance with the agreement and Standard Conditions upon signed acceptance of the award.

The Department will only reimburse recipients for authorized activities specified in the agreement. Failure to comply with provisions of this agreement, or failure to perform award activities as specified, will result in required corrective action including but not limited to financial consequences, project costs being disallowed, withholding of federal funds and/or termination of the project.

For NCHIP and NARIP Awards

Comprehensive Evaluation - In order to ensure that the National Criminal History Improvement Program (NCHIP) and the NICS Act Record Improvement Program (NARIP) are realizing the objectives in the most productive manner, the recipient agrees to participate in a comprehensive evaluation effort. It is anticipated that the evaluation will take place during the course of the program and will likely involve each participating agency. It is expected that the evaluation will have a minimal impact on an agency's program personnel and resources.

GENERAL REQUIREMENTS

All recipients must comply with the financial and administrative requirements set forth in the following:

Current edition of the U.S. Department of Justice (DOJ) Grants Financial Guide

https://oip.gov/financialguide/doj/pdfs/DOJ_FinancialGuide.pdf

Office of Management and Budget (OMB) Uniform Grant Guidance (2 CFR Part 200)

Subpart A, Definitions

Subparts B-D, Administrative Requirements

Subpart E, Cost Principles

Subpart F, Audit Requirements and all applicable Appendices

Code of Federal Regulations: www.gpo.gov/fdsys/

2 C.F.R. §175.15(b), Award Term for Trafficking in Persons

28 C.F.R. §38, Equal Treatment for Faith-Based Organizations

28 C.F.R. § 66, U.S. Department of Justice Common Rule for State and Local Governments

28 C.F.R. § 83, Government-Wide Requirements for Drug-Free Workplace

28 C.F.R. §§ 18, 22, 23, 30, 35, 42, 61, and 63

U.S. Code:

Title 34, U.S. Code, Crime Control and Law Enforcement

Title 41, U.S. Code § 4712, Enhancement of Contractor Protection from Reprisal for Disclosure of Certain Information

Title 34, U.S. Code, § 10101 et seq., "Omnibus Crime Control and Safe Streets Act of 1968"

State of Florida General Records Schedule GS1-SL for State and Local Government Agencies:

<https://fldoswebumbracoprod.blob.core.windows.net/media/703328/g1-sl-2020.pdf> and

<http://dos.myflorida.com/media/698314/g2-sl-2017-final.pdf>

State of Florida Statutes

Section 112.061, F.S., Per diem/travel expenses of public officers, employees, authorized persons

Chapter 119, F.S., Public Records

Section 215.34(2), F.S., State funds; non-collectible items; procedure

Section 215.97, F.S. Florida Single Audit Act

Section 215.971, F.S., Agreements funded with federal or state assistance

Section 215.985, F.S., Transparency in government spending

Section 216.181(6), F.S., Approved budgets for operations and fixed capital outlay

DEFINITIONS

Award agreement means a legal instrument of financial assistance between a Federal awarding agency or pass-through entity and a non-Federal entity that, consistent with 31 U.S.C. 6302, 6304, is used to enter into a relationship the principal purpose of which is to transfer anything of value from the Federal awarding agency or pass-through entity to the non-Federal entity to carry out a public purpose authorized by a law of the United States (see 31 U.S.C. 6101(3)); and not to acquire property or services for the Federal awarding agency or pass-through entity's direct benefit or use; and is distinguished from a cooperative agreement in that it does not provide for substantial involvement between the Federal awarding agency or pass-through entity and the non-Federal entity in carrying out the activity contemplated by the Federal award.

Disallowed costs means those charges to a Federal award that the Federal awarding agency or pass-through entity determines to be unallowable, in accordance with the applicable Federal statutes, regulations, or the terms and conditions of the Federal award.

Equipment means tangible personal property (including information technology systems) having a useful life of more than one year and a per-unit acquisition cost which equals or exceeds the lesser of the capitalization level established by the non-Federal entity for financial statement purposes, or \$5,000. *See also §§200.12 Capital assets, 200.20 Computing devices, 200.48 General purpose equipment, 200.58 Information technology systems, 200.89 Special purpose equipment, and 200.94 Supplies.*

Fiscal Agent refers to the agency responsible for the administration of the PSN award programs. FDLE has been assigned as the certified Fiscal Agent for PSN awards.

Improper payment means any payment that should not have been made or that was made in an incorrect amount (including overpayments and underpayments) under statutory, contractual, administrative, or other legally applicable requirements. Improper payment also includes any payment to an ineligible party, any payment for an ineligible good or service, any duplicate payment, any payment for a good or service not received (except for such payments where authorized by law), any payment that does not account for credit for applicable discounts, and any payment where insufficient or lack of documentation prevents a reviewer from discerning whether a payment was proper.

Micro-purchase means a purchase of supplies or services using simplified acquisition procedures, the aggregate amount of which does not exceed the micro-purchase threshold. The non-Federal entity uses such procedures in order to expedite the completion of its lowest-dollar small purchase transactions and minimize the associated administrative burden and cost. The micro-purchase threshold is set by the Federal Acquisition Regulation in 48 CFR Subpart 2.1 (Definitions). It is \$10,000 except as otherwise discussed in Subpart 2.1 of that regulation, but this threshold is periodically adjusted for inflation.

Modified Total Direct Cost (MTDC) means all direct salaries and wages, applicable fringe benefits, materials and supplies, services, travel, and up to the first \$25,000 of each award (regardless of the period of performance of the awards under the award). MTDC excludes equipment, capital expenditures, charges for patient care, rental costs, tuition remission, scholarships and fellowships, participant support costs and the portion of each award in excess of \$25,000. Other items may only be excluded when necessary to avoid a serious inequity in the distribution of indirect costs, and with the approval of the cognizant agency for indirect costs.

Non-Federal entity is a state, local government, Indian tribe, institution of higher education (IHE), or nonprofit organization that carries out a Federal award as a recipient or subrecipient.

Non-federal pass-through entity is a non-Federal entity that provides an award to a recipient to carry out part of a Federal program; the Florida Department of Law Enforcement (FDLE) is the non-federal pass-through entity for this agreement, also referred to as the State Administering Agency (SAA).

Performance goal means a target level of performance expressed as a tangible, measurable objective, against which actual achievement can be compared, including a goal expressed as a quantitative standard, value, or rate. In some instances (e.g., discretionary research awards), this may be limited to the requirement to submit technical performance reports (to be evaluated in accordance with agency policy).

Period of performance means the time during which the non-Federal entity may incur new obligations to carry out the work authorized under the Federal award. The Federal awarding agency or pass-through entity must include start and end dates of the period of performance in the Federal award (see §§200.211 Information contained in a Federal award paragraph (b)(5) and 200.332 Requirements for pass-through entities, paragraph (a)(1)(iv)).

Protected Personally Identifiable Information (PII) means an individual's first name or first initial and last name in combination with any one or more of types of information, including, but not limited to social security numbers; passport numbers; credit card numbers; clearances; bank numbers; biometrics; date and place of birth; mother's maiden name; criminal, medical, and financial records; and educational transcripts. This does not include PII that is required by law to be disclosed. (See also § 200.79 Personally Identifiable Information (PII)).

Questioned cost means a cost that is questioned by the auditor because of an audit finding 1) that resulted from a violation or possible violation of a statute, regulation, or the terms and conditions of a Federal award, including for funds used to match Federal funds; 2) where the costs, at the time of the audit, are not supported by adequate documentation; or 3) where the costs incurred appear unreasonable and do not reflect the actions a prudent person would take in the circumstances.

Simplified acquisition threshold means the dollar amount below which a non-Federal entity may purchase property or services using small purchase methods. Non-Federal entities adopt small purchase procedures in order to expedite the purchase of items costing less than the simplified acquisition threshold. The simplified acquisition threshold is set by the Federal Acquisition Regulation at 48 C.F.R. Subpart 2.1 (Definitions) and in accordance with 41 U.S.C. § 1908. As of the publication of this part, the simplified acquisition threshold is \$250,000, but this threshold is periodically adjusted for inflation. (Also see definition of Micro-purchase, 2 C.F.R. § 200.67).

Subaward is an award provided by a pass-through entity to a recipient for the recipient to carry out part of a Federal award received by the pass-through entity. It does not include payments to a contractor or payments to an individual who is a beneficiary of a Federal program. A subaward may be provided through any form of legal agreement, including an agreement that the pass-through entity considers a contract.

Recipient means a non-Federal entity that receives an award from a pass-through entity to carry out part of a Federal program; but does not include an individual that is a beneficiary of such program.

Supplies means all tangible personal property other than those described in §200.33 Equipment. A computing device is a supply if the acquisition cost is less than the lesser of the capitalization level established by the non-Federal entity for financial statement purposes or \$5,000, regardless of the length of its useful life. See also §§200.20 Computing devices and 200.33 Equipment.

For PSN: Task Forces are established by each USAO to collaborate with a PSN team of federal, state, local, and tribal (where applicable) law enforcement and other community members to implement a strategic plan for investigating, prosecuting, and preventing violent crime.

SECTION I: TERMS AND CONDITIONS

1.0 Payment Contingent on Appropriation and Available Funds - The State of Florida's obligation to pay under this agreement is contingent upon an annual appropriation by the Florida Legislature. Furthermore, the obligation of the State of Florida to reimburse recipients for incurred costs is subject to available federal funds.

2.0 Commencement of Project – If a project is not operational within 60 days of the original start date of the award period or the date of award activation (whichever is later), the recipient must report by letter to the

Department the steps taken to initiate the project, the reasons for delay, and the expected start date.

If a project is not operational within 90 days of the original start date of the award period or the date of award activation (whichever is later), the recipient must submit a second statement to the Department explaining the implementation delay.

Upon receipt of the ninety (90) day letter, the Department shall determine if the reason for delay is justified or shall, at its discretion, unilaterally terminate this agreement and re-obligate award funds to other Department approved projects. The Department, where warranted by extenuating circumstances, may extend the starting date of the project past the ninety (90) day period, but only by formal written adjustment to this agreement.

3.0 Supplanting - The recipient agrees that funds received under this award will not be used to supplant state or local funds, but will be used to increase the amounts of such funds that would, in the absence of federal funds, be made available for award activities.

4.0 Non-Procurement, Debarment and Suspension - The recipient agrees to comply with Executive Order 12549, Debarment and Suspension and 2 C.F.R. § 180, "OMB Guidelines To Agencies On Governmentwide Debarment And Suspension (Non-procurement)". These procedures require the recipient to certify it shall not enter into any lower tiered covered transaction with a person who is debarred, suspended, declared ineligible or is voluntarily excluded from participating in this covered transaction, unless authorized by the Department. If the award is \$100,000 or more, the sub recipient and implementing agency certify that they and their principals:

- 1) Are not presently debarred, suspended, proposed for debarment, declared ineligible, sentenced to a denial of federal benefits by a state or federal court, or voluntarily excluded from covered transactions by any federal department or agency;
- 2) Have not within a three-year period preceding this application been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (federal, state, or local) transaction or contract under a public transaction; violation of federal or state antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;
- 3) Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (federal, state, or local) with commission of any of the offenses enumerated in paragraph (a)(ii) of the "Lobbying, Debarment and Drug Free Workplace" certification; and
- 4) Have not within a three-year period preceding this application had one or more public transactions (federal, state, or local) terminated for cause or default.

5.0 Federal Restrictions on Lobbying - In general, as a matter of federal law, federal funds may not be used by any recipient or subrecipient at any tier, either directly or indirectly, to support or oppose the enactment, repeal, modification, or adoption of any law, regulation, or policy, at any level of government. See 18 U.S.C. § 1913.

Another federal law generally prohibits federal funds from being used by any recipient or subrecipient at any tier, to pay any person to influence (or attempt to influence) a federal agency, a Member of Congress, or Congress (or an official or employee of any of them) with respect to the awarding of a federal award or cooperative agreement, subaward, contract, subcontract, or loan, or with respect to actions such as renewing, extending, or modifying any such award. See 31 U.S.C. § 1352.

7.0 State Restrictions on Lobbying - In addition to the provisions contained above, the expenditure of funds for the purpose of lobbying the legislature or a state agency is prohibited under this agreement.

8.0 Additional Restrictions on Lobbying - The recipient understands and agrees that it cannot use any federal funds, either directly or indirectly, in support of the enactment, repeal, modification or adoption of

any law, regulation or policy, at any level of government, without the express prior written approval of the Office of Justice Programs.

- 9.0 “Pay-to-Stay”** - Funds from this award may not be used to operate a “pay-to-stay” program in any local jail. Furthermore, no funds may be given to local jails that operate “pay-to-stay” programs. “Local jail”, as referenced in this condition, means an adult facility or detention center owned and/or operated by city, county, or municipality. It does not include juvenile detention centers. “Pay-to-stay” programs as referenced in this condition, means a program by which extraordinary services, amenities and/or accommodations, not otherwise available to the general inmate population, may be provided, based upon an offender’s apparent ability to pay, such that disparate conditions of confinement are created for the same or similar offenders within a jurisdiction.
- 10.0 The Coastal Barrier Resources Act** - The recipient will comply and assure the compliance of all contractors with the provisions of the Coastal Barrier Resources Act (P.L. No. 97-348) dated October 18, 1982 (16 USC 3501 et seq.) which prohibits the expenditure of most new federal funds within the units of the Coastal Barrier Resources System.
- 11.0 Background Check** - Whenever a background screening for employment or a background security check is required by law for employment, unless otherwise provided by law, the provisions of § 435, F.S. shall apply. All employees in positions designated by law as positions of trust or responsibility shall be required to undergo security background investigations as a condition of employment and continued employment. For the purposes of the subsection, security background investigations shall include, but not be limited to, employment history checks, fingerprinting for all purposes and checks in this subsection, statewide criminal and juvenile records checks through the Florida Department of Law Enforcement, and federal criminal records checks through the Federal Bureau of Investigation, and may include local criminal records checks through local law enforcement agencies. Such background investigations shall be conducted at the expense of the employing agency or employee.
- 12.0 Confidentiality of Data** - The recipient (or subrecipient at any tier) must comply with all confidentiality requirements of 34 U.S.C. § 10231 and 28 C.F.R. Part 22 that are applicable to collection, use, and revelation of data or information. The recipient further agrees, as a condition of award approval, to submit a Privacy Certificate in accordance with the requirements of 28 C.F.R. Part 22 and, in particular, 28 C.F.R. 22.23. Privacy Certification forms must be signed by the recipient chief official or an individual with formal, written signature authority for the chief official.
- 13.0 Conferences and Inspection of Work** - Conferences may be held at the request of any party to this agreement. At any time, a representative of the Department, of the U.S. Department of Justice, or the Auditor General of the State of Florida, have the right of visiting the project site to monitor, inspect and assess work performed under this agreement.
- 14.0 Insurance for Real Property and Equipment** - The recipient must, at a minimum, provide the equivalent insurance coverage for real property and equipment acquired or improved with Federal funds as provided to property owned by the non-Federal entity.
- 15.0 Flood Disaster Protection Act** - The subrecipient will comply with Section 102(a) of the Flood Disaster Protection Act of 1973, Public Law 93-234, 87 Stat. 975, requiring that the purchase of flood insurance in communities where such insurance is available as a condition of the receipt of any federal financial assistance for construction or acquisition purposes for use in any area that has been identified as an area having special flood hazards.
- 16.0 General Appropriations Restrictions** – The recipient must comply with all applicable restrictions on the use of federal funds set out in federal appropriations statutes as set forth in the Consolidated Appropriations Act, 2018.
- 17.0 Immigration and Nationality Act** - No public funds will intentionally be awarded to any contractor who knowingly employs unauthorized alien workers, constituting a violation of the employment provisions contained in 8 U.S.C. Section 1324(a), Section 274(A) of the Immigration and Nationality Act (“INA”). The Department shall consider the employment by any contractor of unauthorized aliens a violation of

Section 274(A) of the INA. Such violation by the recipient of the employment provisions contained in Section 274(A) of the INA shall be grounds for unilateral cancellation of this contract by the Department.

18.0 For NCHIP & NARIP: Enhancement of Security - If funds are used for enhancing security, the recipient must:

- 1) Have an adequate process to assess the impact of any enhancement of a school security measure that is undertaken on the incidence of crime in the geographic area where the enhancement is undertaken.
- 2) Conduct such an assessment with respect to each such enhancement; and submit to the Department the aforementioned assessment in its Final Program Report.

19.0 Personally Identifiable Information Breaches – The recipient (or subrecipient at any tier) must have written procedures in place to respond in the event of actual or imminent “breach” (OMB M-17-12) if it: 1) creates, collects, uses, processes, stores, maintains, disseminates, discloses, or disposes of “personally identifiable information (PII)” within the scope of an OJP award-funded program or activity, or 2) uses or operates a “federal information system” (OMB Circular A-130). The recipient’s breach procedures must include a requirement to report actual or imminent breach of PII to FDLE’s Office of Criminal Justice Grants for subsequent reporting to the OJP Program Manager no later than 24 hours after an occurrence of an actual breach, or the detection of an imminent breach.

SECTION II: CIVIL RIGHTS REQUIREMENTS

1.0 Participant Notification of Non-discrimination - FDLE does not discriminate on the basis of race, color, religion, national origin, sex, disability or age in the delivery of services, benefits or in employment.

2.0 Title VI of the Civil Rights Act of 1964 - The recipient or subrecipient at any tier, must comply with all applicable requirements of 28 CFR § 42, specifically including any applicable requirements in Subpart E that relate to an equal employment opportunity program.

Equal Employment Opportunity Certification (EEOC) – The recipient must submit an EEO Certification annually within 120 days of award.

Equal Employment Opportunity Program (EEOP) – The recipient and/or implementing agency must comply with all applicable requirements in 28 C.F.R. §42, Subpart E.

Recipients are advised to use the Office for Civil Rights EEO Reporting Tool to satisfy this condition (<https://ojp.gov/about/ocr/eeop.htm>).

3.0 Title IX of the Education Amendments of 1972 - If the recipient operates an education program or activity, the recipient must comply with all applicable requirements of 28 C.F.R. § 54, “Nondiscrimination on the basis of sex in education programs or activities receiving federal financial assistance.”

4.0 Partnerships with Faith-Based and other Neighborhood Organizations - The recipient or subrecipient at any tier, must comply with all applicable requirements of 28 C.F.R. § 38, “Partnerships with Faith-Based and other Neighborhood Organizations”, specifically including the provision for written notice to current or prospective program beneficiaries.

5.0 Americans with Disabilities Act - Recipients must comply with the requirements of the Americans with Disabilities Act (ADA), Public Law 101-336, which prohibits discrimination on the basis of disability including provision to provide reasonable accommodations.

6.0 Section 504 of the Rehabilitation Act of 1973 (28 C.F.R. § 42, Subpart G) - Recipients must comply with all provisions prohibiting discrimination on the basis of disability in both employment and the delivery of services.

- 7.0 Age Discrimination Act of 1975** - Recipients must comply with all requirements in Subpart I of 28 C.F.R. §42 which prohibits discrimination based on age in federally assisted programs.
- 8.0 Limited English Proficiency (LEP)** - In accordance with Department of Justice Guidance pertaining to Title VI of the Civil Rights Act of 1964, 42 U.S.C. § 2000d, recipients of federal financial assistance must take reasonable steps to provide meaningful access to their programs and activities for persons with LEP. FDLE strongly advises recipients to have a written LEP Language Access Plan. For more information visit www.lep.gov.
- 9.0 Finding of Discrimination** - In the event a federal or state court or federal or state administrative agency makes, after a due process hearing, a finding of discrimination on the grounds of race, color, religion, national origin, sex, or disability against a recipient of funds, the recipient will forward a copy of the finding to FDLE and to the Office for Civil Rights, Office of Justice Programs.
- 10.0 Filing a Complaint** - If the recipient or any of its employees, contractors, vendors, or program beneficiaries has a discrimination complaint, they may file a complaint with the recipient, with FDLE, or with the Office for Civil Rights.

Discrimination complaints may be submitted to FDLE at Office of the Inspector General, Post Office Box 1489, Tallahassee, Florida 32302-1489, or online at info@fdle.state.fl.us. Any discrimination complaints filed with FDLE will be reviewed by FDLE's Inspector General and referred to the Office for Civil Rights, the Florida Commission on Human Relations, or the Equal Employment Opportunity Commission, based on the nature of the complaint.

Discrimination complaints may also be submitted to the Office for Civil Rights, Office of Justice Programs, U.S. Department of Justice, 810 7th Street, Northwest, Washington, D.C. 20531, or by phone at (202) 307-0690.

For additional information on procedures for filing discrimination complaints, please visit <https://www.fdle.state.fl.us/Grants/Contacts>.

- 11.0 Retaliation** - In accordance with federal civil rights laws, the recipient shall not retaliate against individuals for taking action or participating in action to secure rights protected by these laws.
- 12.0 Non-discrimination Contract Requirements** - Recipients must include comprehensive Civil Rights nondiscrimination provisions in all contracts funded by the recipient.
- 13.0 Pass-through Requirements** - Recipients are responsible for the compliance of contractors and other entities to whom they pass-through funds including compliance with all Civil Rights requirements. These additional tier subrecipients must be made aware that they may file a discrimination complaint with the recipient, with FDLE, or with the USDOJ Office for Civil Rights and provided the contact information.
- 14.0 Civil Rights Training Requirements** – In accordance with Office of Justice Programs (OJP) requirements, the grant manager of the recipient entity responsible for managing awards from FDLE Office of Criminal Justice Grants, will be required to complete a two part [Civil Rights Training](#) and maintain copies of the training certificates within their award files to be provided upon request at monitoring.

SECTION III: FINANCIAL REQUIREMENTS AND RESPONSIBILITY

- 1.0 Fiscal Control and Fund Accounting Procedures** - All expenditures and cost accounting of funds shall conform to the DOJ Grants Financial Guide, the 28 C.F.R. § 66, and 2 C.F.R. § 200 as applicable, in their entirety.

Recipients are required to establish and maintain adequate accounting systems and financial records and to accurately account for funds awarded to them. Financial management systems must be able to record and report on the receipt, obligation, and expenditure of award funds. Systems must also be able to accommodate a fund and account structure to separately track receipts, expenditures, assets, and liabilities for awards, programs, and additional tiered subrecipients. The awarded funds may or may not

be an interest-bearing account, but any earned interest must be accounted for as program income and used for program purposes before the federal award period end date. Any unexpended interest remaining at the end of the federal award period must be refunded to the Office of Criminal Justice Grants for transmittal to DOJ.

- 2.0 Match** - The value or amount of any "non-federal share," "match," or cost-sharing contribution incorporated into the approved budget is part of the "project cost" for purposes of the 2 C.F.R. § 200 Uniform Requirements, and is subject to audit. In general, the rules and restrictions that apply to award funds from federal sources also apply to funds in the approved budget that are provided as "match" or through "cost sharing."

SECTION IV: AWARD MANAGEMENT AND REPORTING REQUIREMENTS

- 1.0 Obligation of Funds** - Award funds shall not be obligated prior to the start date, or subsequent to the end date, of the award. Only project costs incurred on or after the effective date, and on or prior to the termination date of the recipient's project are eligible for reimbursement.
- 2.0 Use of Funds** – Federal funds may only be used for the purposes in the recipient's approved award agreement.
- 3.0 Advance Funding** - Advance funding may be provided to a recipient upon a written request to the Department.
- 4.0 Performance Reporting** - The recipient shall submit Monthly or Quarterly Project performance achievements and performance questionnaires to the Department, within fifteen (15) days after the end of the reporting period. Performance reporting must clearly articulate the activities that occurred within the reporting period, including descriptions of major accomplishments, milestones achieved, and/or barriers or delays encountered. Additional information may be required if necessary to comply with federal reporting requirements. Performance achievements and performance questionnaires that are not complete, accurate, and timely may result in sanctions, as specified in Section IV, Award Management and Reporting Requirements.
- 5.0 Financial Consequences for Failure to Perform** - In accordance with Section 215.971, Florida Statutes, payments for state and federal financial assistance must be directly related to the scope of work and meet the minimum level of performance for successful completion. If the recipient fails to meet the minimum level of service or performance identified in this agreement, the Department will apply financial consequences commensurate with the deficiency. Financial consequences may include but are not limited to withholding payments or reimbursement until the deficiency is resolved, tendering only partial payment/reimbursement, imposition of other financial consequences according to the Standard Conditions as applicable, and/or termination of contract and requisition of goods or services from an alternate source. Any payment made in reliance on recipient's evidence of performance, which evidence is subsequently determined to be erroneous, will be immediately due to the Department as a refund.
- 6.0 Award Amendments** - Recipients must submit an award amendment through the electronic grant management system for major substantive changes such as changes in project activities or scope of the project, target populations, service providers, implementation schedules, and designs or research plans set forth in the approved agreement and for any budget changes that affect a cost category that was not included in the original budget. Amendments are also required when there will be a transfer of 10% or more of the total budget between budget categories, or there is an indirect cost rate category change.

Recipients may transfer up to 10% of the total budget between current, approved budget categories without prior approval as long as the funds are transferred to an existing line item.

Under no circumstances can transfers of funds increase the total budgeted award.

Retroactive (after-the-fact) approval of project adjustments or items not currently in the approved award will only be considered under extenuating circumstances. Recipients who incur costs prior to approval of requested adjustments do so at the risk of the items being ineligible for reimbursement under the award.

All requests for changes, including requests for project period extensions, must be submitted in the electronic grant management system no later than thirty (30) days prior to award expiration date.

- 7.0 Financial Expenditures and Reporting** - The recipient shall close the expense reporting period either on a Monthly or Quarterly basis. For any reporting period the recipient is seeking reimbursement, a payment request must also be submitted in the grant management system. Closing of the reporting period and Payment Requests are due thirty (30) days after the end of the reporting period with the exception of the final reporting period.

All project expenditures for reimbursement of recipient costs shall be submitted on the Project Expenditure Report Forms prescribed and provided by the Office of Criminal Justice Grants (OCJG) through the electronic grant management system.

All Project Expenditure Reports shall be submitted in sufficient detail for proper pre-audit and post-audit.

All reports must relate financial data to performance accomplishments.

An expenditure report is not required when no reimbursement is being requested; however, recipients should close the associated reporting period in the electronic grant management system.

Before the "final" Payment Request will be processed, the recipient must submit to the Department all outstanding Performance Achievements and must have satisfied all withholding, special, and monitoring conditions. Failure to comply with the above provisions shall result in forfeiture of reimbursement.

- 8.0 Project Income (PGI)** - All income generated as a direct result of a project shall be deemed program income. Program income from asset seizures and forfeitures is considered earned when the property has been adjudicated to the benefit of the plaintiff (i.e., law enforcement entity).

The recipient shall submit a PGI Earnings and Expenditures form in the electronic grant management system as soon as PGI is earned or expended. Prior to expending funds, the recipient shall submit a PGI Spending Request form for OCJG approval. All PGI expenditures must directly relate to the project being funded and must be allowable under the federal award.

Additionally, any unexpended PGI remaining at the end of the federal award period must be submitted to OCJG for transmittal to the Bureau of Justice Assistance.

- 9.0 Recipient Integrity and Performance Matters** - Requirement to report information on certain civil, criminal, and administrative proceedings to OCJG, SAM and FAPIIS.

The recipient must comply with any and all applicable requirements regarding reporting of information on civil, criminal, and administrative proceedings connected with (or connected to the performance of) either this award or any other grant, cooperative agreement, or procurement contract from the federal government. Under certain circumstances, recipients of OJP awards are required to report information about such proceedings, through the federal System for Award Management ("SAM"), to the designated federal integrity and performance system ("FAPIIS").

SECTION V: MONITORING AND AUDITS

- 1.0 Access to Records** - The Florida Department of Law Enforcement, the Auditor General of the State of Florida, the U.S. Department of Justice, the U.S. Comptroller General or any of their duly authorized representatives, shall have access to books, documents, papers and records of the recipient and contractors for the purpose of audit and examination according to the Financial Guide and the 28 C.F.R. § 66. At any time, a representative of the Department, the U.S. Department of Justice, or the Auditor General of the State of Florida, have the right to visit the project site to monitor, inspect and assess work performed under this agreement.

The Department reserves the right to unilaterally terminate this agreement if the recipient or contractor

refuses to allow public access to all documents, papers, letters, or other materials subject to provisions of s. 119, F.S., unless specifically exempted and/or made confidential by operation of s. 119, F.S., and made or received by the recipient or its contractor in conjunction with this agreement.

The recipient will give the awarding agency or the General Accounting Office, through any authorized representative, access to and the right to examine all paper or electronic records related to the financial assistance.

- 2.0 Assessments and Evaluations** – The recipient agrees to participate in a data collection process measuring program outputs and outcomes as outline by the Office of Justice Programs. The recipient agrees to cooperate with any assessments, national evaluation efforts, and/or information or data collection requests related to activities under this award.
- 3.0 Monitoring** - The recipient agrees to comply with FDLE's award monitoring guidelines, protocols, and procedures; and to cooperate with FDLE on all award monitoring requests, including requests related to desk reviews, enhanced programmatic desk reviews, and/or site visits. The recipient agrees to provide FDLE all documentation necessary to complete monitoring of the award. Further, the recipient agrees to abide by reasonable deadlines set by FDLE for providing requested documents. Failure to cooperate with award monitoring activities may result in sanctions affecting the recipient's award, including, but not limited to: withholding and/or other restrictions on the recipient's access to funds, referral to the Office of the Inspector General for audit review, designation of the recipient as a FDLE High Risk grantee, or termination of award(s).
- 4.0 Property Management** - The recipient shall establish and administer a system to protect, preserve, use, maintain and dispose of any property furnished to it by the Department or purchased pursuant to this agreement according to federal property management standards set forth in the DOJ Grants Financial Guide, 28 C.F.R. § 66, 2 C.F.R. §200.313. This obligation continues as long as the recipient retains the property, notwithstanding expiration of this agreement.
- 5.0 Award Closeout** - Award Closeout will be initiated by the Department after the final payment request has been processed. The final payment request must be submitted within sixty (60) days of the end date of the award. All performance achievements and performance questionnaires must be completed before the award can be closed.
- 6.0 High Risk Recipients** - If a recipient is designated "high risk" by a federal award-making agency, currently or at any time during the course of the period of performance under this award, the recipient must disclose that fact and certain related information to FDLE's OCJG. For purposes of this disclosure, high risk includes any status under which a federal awarding agency provides additional oversight due to the recipient's past performance, or other programmatic or financial concerns with the recipient. The recipient's disclosure must include the following: 1. The federal awarding agency that currently designates the recipient high risk, 2. The date the recipient was designated high risk, 3. The high-risk point of contact at that federal awarding agency (name, phone number, and email address), and 4. The reasons for the high-risk status, as set out by the federal awarding agency.
- 7.0 Imposition of Additional Requirements** - The recipient agrees to comply with any additional requirements that may be imposed by OCJG during the period of performance for this award if the recipient is designated as "high risk" for purposes of the DOJ high-risk list.
- 8.0 Retention of Records** - The recipient shall maintain all records and documents for a minimum of five (5) years from the date of the final financial statement and be available for audit and public disclosure upon request of duly authorized persons. The recipient shall comply with State of Florida General Records Schedule GS1-SL for State and Local Government Agencies:
<https://fdoswebumbracoprod.blob.core.windows.net/media/703328/g1-sl-2020.pdf>.
- 9.0 Disputes and Appeals** - The Department shall make its decision in writing when responding to any disputes, disagreements, or questions of fact arising under this agreement and shall distribute its response to all concerned parties. The recipient shall proceed diligently with the performance of this agreement according to the Department's decision. If the recipient appeals the Department's decision,

the appeal also shall be made in writing within twenty-one (21) calendar days to the Department's clerk (agency clerk). The recipient's right to appeal the Department's decision is contained in § 120, F.S., and in procedures set forth in Rule 28-106.104, Florida Administrative Code. Failure to appeal within this time frame constitutes a waiver of proceedings under Chapter 120, F.S.

10.0 Failure to Address Audit Issues - The recipient understands and agrees that FDLE's OCJG may withhold award funds, or may impose award conditions or other related requirements, if (as determined by OCJG) the recipient does not satisfactorily and promptly address outstanding issues from audits required by the 2 C.F.R. § 200 Uniform Requirements (or by the terms of this award), or other outstanding issues that arise in connection with audits, investigations, or reviews.

11.0 Single Annual Audit - Recipients that expend \$750,000 or more in a year in total federal award funding shall have a single audit or program-specific audit conducted for that year. The audit shall be performed in accordance with the OMB 2 C.F.R. § 200 Subpart F – Audit Requirements and other applicable federal law. The contract for this agreement shall be identified in the Schedule of Federal Financial Assistance in the subject audit. The contract shall be identified as federal funds passed through the Florida Department of Law Enforcement and include the contract number, CFDA number, award amount, contract period, funds received and disbursed. When applicable, the recipient shall submit an annual financial audit that meets the requirements of 2 C.F.R. § 200 Subpart F, "Audit Requirements" s. 215.97, F.S., "Florida Single Audit Act" and Rules of the Auditor General, Chapter 10.550, and Chapter 10.650, "Local Governmental Entity Audits" and "Florida Single Audit Act Audits Nonprofit and For-Profit Organizations."

A complete audit report that covers any portion of the effective dates of this agreement must be performed and submitted to the Federal Audit Clearinghouse within the earlier of thirty (30) calendar days after receipt of the auditor's report(s), or nine (9) months after the end of the audit period. Submissions must include required elements described in Appendix X to 2 C.F.R. § 200 on the specified ass Form (Form SF-SAC).

Records shall be made available upon request for a period of five (5) years from the date the audit report is issued, unless extended in writing by the Department.

Recipients that expend less than \$750,000 in federal awards during a fiscal year are exempt from the Single Audit Act audit requirements for that fiscal year. In this case, written notification, in the form of the "Certification of Audit Exemption" form, shall be provided to the Department by the Chief Financial Officer, or designee, that the recipient is exempt. This notice shall be provided to the Department no later than March 1 following the end of the fiscal year.

SECTION VI: AWARD PROCUREMENT AND COST PRINCIPLES

1.0 Procurement Procedures - Recipients must have written procedures for procurement transactions. Procedures must conform to applicable Federal law and the standards in 2 C.F.R. §§ 200.318-326.

This condition applies to agreements that OCJG considers to be a procurement "contract", and not a second-tier award.

The details of the advance approval requirement to use a noncompetitive approach in a procurement contract under this award are posed on the OJP website at <https://ojp.gov/funding/Explore/NoncompetitiveProcurement.htm>.

Additional information on Federal purchasing guidelines can be found in the Guide to Procurements Under DOJ Grants and Cooperative agreements at <https://ojp.gov/funding/Implement/Resources/GuideToProcurementProcedures.pdf>.

2.0 Cost Analysis - A cost analysis must be performed by the recipient if the cost or price is at or above the \$35,000 acquisition threshold and the contract was awarded non-competitively in accordance with s. 216.3475, F.S. The recipient must maintain records to support the cost analysis, which includes a detailed

budget, documented review of individual cost elements for allowability, reasonableness, and necessity. See also: [Reference Guide for State Expenditures](#).

- 3.0 Allowable Costs** - Allowance for costs incurred under the award shall be determined according to the general principles and standards for selected cost items set forth in the DOJ Grants Financial Guide, 28 C.F.R. § 66, "Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments", and 2 CFR Subpart E, "Cost Principles".
- 4.0 Unallowable Costs** - Payments made for costs determined to be unallowable by either the Federal awarding agency, or the Department, either as direct or indirect costs, must be refunded (including interest) to FDLE and the Federal Government in accordance with instructions that determined the costs are unallowable unless state or Federal statute or regulation directs otherwise. See also 2 C.F.R. §§ 200.300-309.
- 5.0 Unmanned Aircraft Systems (UAS)** – The recipient agrees that no funds under this award (including via subcontract or subaward, at any tier) may be used for unmanned aircraft systems (UAS), which includes unmanned aircraft vehicles (UAV), or for any accompanying accessories to support UAS.
- 6.0 Facial Recognition Technology (FRT)** - In accepting this award, the recipient agrees that grant funds cannot be used for Facial Recognition Technology (FRT) unless the recipient has policies and procedures in place to ensure that the FRT will be utilized in an appropriate and responsible manner that promotes public safety, and protects privacy, civil rights, and civil liberties and complies with all applicable provisions of the U.S. Constitution, including the Fourth Amendment's protection against unreasonable searches and seizures and the First Amendment's freedom of association and speech, as well as other laws and regulations. Recipients utilizing funds for FRT must make such policies and procedures available to DOJ upon request.
- 7.0 Body Armor** - Ballistic-resistant and stab-resistant body armor purchased with award funds may be purchased at any threat level, make or model, from any distributor or manufacturer, as long as the body armor has been tested and found to comply with applicable National Institute of Justice ballistic or stab standards, and is listed on the NIJ Compliant Body Armor Model List. In addition, ballistic-resistant and stab-resistant body armor purchased must be made in the United States and must be uniquely fitted, as set forth in 34 U.S.C. 10202(c)(1)(A). The latest NIJ standard information and the NIJ Compliant Body Armor List may be found by following the links located on the NIJ Body Armor page: <https://nij.ojp.gov/topics/equipment-and-technology/body-armor>.
- 8.0 Indirect Cost Rate** - A recipient that is eligible to use the "de minimis" indirect cost rate described in 2 C.F.R. § 200.414(f), and elects to do so, must advise OCJG in writing of both its eligibility and its election, and must comply with all associated requirements in the 2 C.F.R. § 200 and Appendix VII.
- 9.0 Sole Source** - If the project requires a non-competitive purchase from a sole source, the recipient must complete the Sole Source Justification for Services and Equipment Form and submit to OCJG upon application for pre-approval. If the recipient is a state agency and the cost meets or exceeds \$250,000, the recipient must also receive approval from the Florida Department of Management Services (DMS) (s. 287.057(5), F.S.). Additional details on the sole source requirement can be found at 2 C.F.R. § 200 and the DOJ Grants Financial Guide.
- 10.0 Personnel Services** - Recipients may use award funds for eligible personnel services including salaries, wages, and fringe benefits, including overtime in accordance with the DOJ Grants Financial Guide Section 3.9 - Compensation for Personal Services, consistent with the principles set out in 2 C.F.R. § 200, Subpart E and those permitted in the federal program's authorizing legislation. Recipient employees should be compensated with overtime payments for work performed in excess of the established work week and in accordance with the recipient's written compensation and pay plan.

Documentation - Charges for salaries, wages, and fringe benefits must be supported by a system of internal controls providing reasonable assurance that charges are accurate, allowable, and properly allocated. Documentation supporting charges must be incorporated into the official records of the organization.

Charges made to the Personnel Budget Category must reasonably reflect the total time and activity for which the employee is compensated by the organization and cover both federally funded and all other activities. The records may include the use of subsidiary records as defined in the organization's written policies. Where award recipients work on multiple award programs or cost activities, documentation must support a reasonable allocation or distribution of costs among specific activities or cost objectives.

Federal funds may not be used to pay cash compensation (salary plus bonuses) to any employee of the award recipient at a rate that exceeds 110% of the maximum annual salary payable to a member of the federal government's Senior Executive Service (SES) at an agency with a Certified SES Performance Appraisal System for that year. An award recipient may compensate an employee at a higher rate, provided the amount in excess of the compensation limitation is not paid with federal funds.

- 11.0 Contractual Services** - The recipient must maintain written standards of conduct covering conflicts of interest and governing the actions of its employees engaged in the selection, award and administration of contracts as described in 2 C.F.R. § 200.318, General procurement.

Requirements for Contractors of Recipients - The recipient assures the compliance of all contractors with the applicable provisions of Title I of the Omnibus Crime Control and Safe Streets Act of 1968, as amended 34 U.S.C. § 10101 et seq.; the provisions of the current edition of the DOJ Grants FinancialGuide(https://ojp.gov/financialguide/doj/pdfs/DOJ_FinancialGuide.pdf); and all other applicable federal and state laws, orders, circulars, or regulations. The recipient must pass-through all requirements and conditions applicable to the federal award to any subcontract. The term "contractor" is used rather than the term "vendor" and means an entity that receives a contract as defined in 2 C.F.R. § 200.22, the nature of the contractual relationship determines the type of agreement.

Approval of Consultant Contracts - Compensation for individual consultant services must be reasonable and consistent with that paid for similar services in the marketplace. The Federal awarding agency and pass-through entity must review and approve in writing all consultant contracts prior to employment of a consultant when the individual compensation rate exceeds \$650 (excluding travel and subsistence costs) per eight-hour day, or \$81.25 per hour. A detailed justification must be submitted to and approved by FDLE, who will coordinate written approval of the Federal awarding agency, prior to recipient obligation or expenditures of such funds. Approval shall be based upon the contract's compliance with requirements found in the Financial Guide Section 3.6 Consultant Rates, 28 C.F.R. § 66, and applicable state statutes. The Department's approval of the recipient agreement does not constitute approval of individual consultant contracts or rates. If consultants are hired through a competitive bidding process (not sole source), the \$650 threshold does not apply.

- 12.0 FFATA Reporting Requirements** - Recipients that enter into awards of \$30,000 or more should review the Federal Funding Accountability and Transparency Act of 2006 (FFATA), website for additional reporting requirements at <https://ojp.gov/funding/Explore/FFATA.htm>.

- 13.0 Travel and Training** - The cost of all travel shall be reimbursed according to the recipient's written travel policy. If the recipient does not have a written travel policy, cost of all travel will be reimbursed according to State of Florida Travel Guidelines § 112.061, F.S. Any foreign travel must obtain prior written approval from the Federal awarding agency and pass-through entity.

- 14.0 Expenses Related to Conferences, Meetings, Trainings, and Other Events** - Award funds requested for meetings, retreats, seminars, symposia, events, and group training activities and related expenses must receive written pre-approval from the Federal awarding agency and pass-through entity and comply with all provisions in 2 C.F.R. § 200.432 and DOJ Grants Financial Guide Section 3.10; Conference Approval, Planning, and Reporting. Award applications requesting approval for meeting, training, conference, or other event costs must include a completed Conference & Events Submission Form for approval prior to obligating award funds for these purposes.

- 15.0 Training and Training Materials** – Any training or training materials that has been developed or delivered with award funding under this award must adhere to the OJP Training Guiding Principles for Grantees and Subgrantees, available at www.ojp.gov/funding/ojptrainingguidingprinciples.htm.

16.0 Publications, Media, Websites, and Patents Ownership of Data and Creative Material - Ownership of material, discoveries, inventions, and results developed, produced, or discovered subordinate to this agreement is governed by the terms of the DOJ Grants Financial Guide, 28 C.F.R. §§ 66, and 200.315.

Publication or Printing of Materials - Publication costs for electronic and print media, including distribution, promotion, and general handling are allowable. If these costs are not identifiable with a particular direct cost objective, it should be allocated as indirect costs. Publication includes writing, editing, and preparing the illustrated material (including videos and electronic mediums).

Recipients must request pre-approval in writing for page charges for professional journal publications. All publication materials must comply with provisions in 2 C.F.R. § 200.461 and DOJ Grants Financial Guide, Section 3.9; Allowable Costs – Publication.

Recipients must submit for review and approval one (1) copy of any written materials to be published, including web-based materials and website content, to be paid under this award at least thirty (30) days prior to the targeted dissemination date.

All electronic and print materials paid under this award must contain the following statements identifying the federal award:

"This project was supported by Award No. [Federal Award Number] awarded by the [Bureau of Justice Assistance/Bureau of Justice Statistics], Office of Justice programs. The opinions, findings, and conclusions or recommendations expressed in this publication/program/exhibition are those of the authors and do not necessarily reflect the views of the Department of Justice or grant-making component."

Websites - Any website funded in whole or in part under this award must include the same statement above on the home page, on all major entry pages (i.e., pages (exclusive of documents) whose primary purpose is to navigate the user to interior content), and on any pages from which a visitor may access or use a web-based service, including any pages that provide results or outputs from the service. The full text of the statement must be clearly visible on the home page. On other pages, the statement may be included through a link, entitled "Notice of Federal Funding and Federal Disclaimer," to the full text of the statement.

Patents - Recipients are subject to applicable regulations governing patents and inventions, including government wide regulations issued by the Department of Commerce (37 C.F.R. § 401 and 2 C.F.R. § 200.315(c)).

Recipients must promptly and fully report to FDLE and the Federal awarding agency if any program produces patentable items, patent rights, processes, or inventions, in the course of work sponsored under this award.

17.0 For NCHIP & NICS: Purchase of Automated Fingerprint Identification System (AFIS) - AFIS equipment purchased under this award must conform to the American National Standards Institute (ANSI) Standard, "Data Format for the Interchange of Fingerprint, Facial & Other Biometric Information" (ANSI/NIST-ITL 1-2007 PART 1) and any other applicable standards set forth by the Federal Bureau of Investigation (FBI).

18.0 Information Technology Projects

Criminal Intelligence Systems - The recipient agrees that any information technology system funded or supported by the Office of Justice Programs funds will comply with 28 C.F.R. § 23, Criminal Intelligence Systems Operating Policies, if the Office of Justice Programs determines this regulation to be applicable. Should the Office of Justice Programs determine 28 C.F.R. § 23 to be applicable, the Office of Justice Programs may, at its discretion, perform audits of the system, as per 28 C.F.R. § 23.20(g). Should any violation of 28 C.F.R. § 23 occur, the recipient may be fined as per 42 U.S.C. § 3789g(c)-(d). The recipient may not satisfy such a fine with federal funds.

The recipient understands and agrees that no awarded funds may be used to maintain or establish a computer network unless such network blocks the viewing, downloading, and exchanging of pornography. In doing so the recipient agrees that these restrictions will not limit the use of awarded funds necessary for any federal, state, tribal, or local law enforcement agency or any other entity carrying out criminal investigations, prosecutions, or adjudication activities.

State IT Point of Contact - The recipient must ensure that the State IT Point of Contact receives written notification regarding any information technology project funded by this award during the obligation and expenditures period. This is to facilitate communication among local and state governmental entities regarding various information technology projects being conducted with these award funds. In addition, the recipient must maintain an administrative file documenting the meeting of this requirement. For a list of State IT Points of Contact, go to <https://it.ojp.gov/technology-contacts>.

The State IT Point of Contact will ensure the recipient's project follows a statewide comprehensive strategy for information sharing systems that improve the functioning of the criminal justice system, with an emphasis on integration of all criminal justice components, law enforcement, courts, prosecution, corrections, and probation and parole.

Interstate Connectivity - To avoid duplicating existing networks or IT systems in any initiatives funded by the Bureau of Justice Assistance for law enforcement information sharing systems which involve interstate connectivity between jurisdictions, such systems shall employ, to the extent possible, existing networks as the communication backbone to achieve interstate connectivity, unless the recipient can demonstrate to the satisfaction of the Bureau of Justice Assistance that this requirement would not be cost effective or would impair the functionality of an existing or proposed IT system.

- 19.0 Interoperable Communications Guidance** - Recipients using funds to support emergency communications activities must comply with the current SAFECOM Guidance for Emergency Communication Grants, including provisions on technical standards that ensure and enhance interoperable communications. Emergency communications activities include the purchase of Interoperable Communications Equipment and technologies such as voice-over-internet protocol bridging or gateway devices, or equipment to support the build out of wireless broadband networks in the 700 MHz public safety band under the Federal Communications Commission (FCC) Waiver Order. SAFECOM guidance can be found at <https://www.dhs.gov/publication/funding-documents>.

Recipients interested in developing a public safety broadband network in the 700 MHz band in their jurisdictions must adhere to the technical standards set forth in the FCC Waiver Order, or any succeeding FCC orders, rules, or regulations pertaining to broadband operations in the 700 MHz public safety band. The recipient shall also ensure projects support the Statewide Communication Interoperability Plan (SCIP) and are fully coordinated with the full-time Statewide Interoperability Coordinator (SWIC). If any future regulatory requirement (from the FCC or other governmental entity) results in a material technical or financial change in the project, the recipient should submit associated documentation, and other material, as applicable, for review by the SWIC to ensure coordination. Recipients must provide a listing of all communications equipment purchased with award funding (plus the quantity purchased of each item) to FDLE once items are procured during any periodic programmatic progress reports.

- 20.0 Global Standards Package** - In order to promote information sharing and enable interoperability among disparate systems across the justice and public safety community, OJP requires the recipient to comply with DOJ's Global Justice Information Sharing Initiative (DOJ's Global) guidelines and recommendations for this particular award. Recipient shall conform to the Global Standards Package (GSP) and all constituent elements, where applicable, as described at <https://it.ojp.gov/gsp>. Recipient shall document planned approaches to information sharing and describe compliance to the GSP and appropriate privacy policy that protects shared information, or provide detailed justification for why an alternative approach is recommended.

- 21.0 Prohibition on Certain Telecommunications and Video Surveillance Services or Equipment** – In accordance with the requirements as set out in 2 C.F.R. § 200.216, recipients are prohibited from obligating or expending award funds to:

- 1) Procure or obtain;

- 2) Extend or renew a contract to procure or obtain;
- 3) Enter into a contract to procure or obtain equipment, services, or systems that use telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system, produced by Huawei Technologies Company or ZTE Corporation (or a subsidiary or affiliate of such entities).

22.0 Unreasonable Restrictions on Competition - This condition applies with respect to any procurement of property or services funded (in whole or in part) by this award, by the recipient (or subrecipient at any tier), and regardless of the dollar amount of the purchase or acquisition, the method of procurement, or the nature of any legal instrument used. The provisions of this condition must be among those included in any subaward (at any tier).

- 1) Consistent with the (DOJ) Part 200 Uniform Requirements -- including as set out at 2 C.F.R. 200.300 and 200.319(a) -- Recipient (or subrecipient at any tier) may (in any procurement transaction) discriminate against any person or entity on the basis of such person or entity's status as an "associate of the federal government" (or on the basis of such person or entity's status as a parent, affiliate, or subsidiary of such an associate), except as expressly set out in 2 C.F.R. 200.319(a) or as specifically authorized by USDOJ.
- 2) Monitoring of compliance with the requirements of this condition will be conducted by FDLE.
- 3) The term "associate of the federal government" means any person or entity engaged or employed (in the past or at present) by or on behalf of the federal government -- as an employee, contractor or subcontractor (at any tier), award recipient or -subrecipient (at any tier), agent, or otherwise -- in undertaking any work, project, or activity for or on behalf of (or in providing goods or services to or on behalf of) the federal government, and includes any applicant for such employment or engagement, and any person or entity committed by legal instrument to undertake any such work, project, or activity (or to provide such goods or services) in future.
- 4) Nothing in this condition shall be understood to authorize or require any recipient, any subrecipient at any tier, or any person or other entity, to violate any federal law, including any applicable civil rights or nondiscrimination law.

23.0 Non-Disclosure Agreements - No recipient or entity that receives a procurement contract or subcontract with any funds under this award, may require any employee or contractor to sign an internal confidentiality agreement or statement that prohibits or otherwise restricts, or purports to prohibit or restrict, the reporting of waste, fraud, or abuse to an investigative or law enforcement representative of a federal department or agency authorized to receive such information.

24.0 Confidential Funds and Confidential Funds Certificate - A signed certification that the Project Director or Implementing Agency Chief Official has read, understands, and agrees to abide by all conditions for confidential funds outlined in Section 3.12 of the [DOJ Grants Financial Guide](#) is required for all projects that involve confidential funds. The signed certification must be submitted at the time of award application. Confidential Funds certifications must be signed by the recipient Chief Official or an individual with formal, written signature authority for the Chief Official.

Prior to the reimbursement of expenditures for confidential funds, the recipient must compile and maintain a CI Funds Tracking Sheet to record all disbursements under the award. The completed form must be submitted with the payment request for OCJG review.

25.0 For JAG: Task Force Training Requirement - The recipient agrees that within 120 days of award, each current member of a law enforcement task force funded with these funds who is a task force commander, agency executive, task force officer, or other task force member of equivalent rank, will complete required online (internet-based) task force training. The training can be accessed <https://www.centf.org/CTFLI/>.

All current and new task force members are required to complete this training once during the life of the award, or once every four years if multiple awards include this requirement. This training addresses task force effectiveness as well as other key issues including privacy and civil liberties/rights, task force performance measurement, personnel selection, and task force oversight and accountability.

When FDLE awards funds to support a task force, the recipient must compile and maintain a task force personnel roster along with course completion certificates.

- 26.0 For NCHIP and NARIP: Protective Order Systems** - Any system developed with funds awarded under this cooperative agreement will be designed to permit interface with the National Protective Order file maintained by the FBI.
- 27.0 For PREA: PREA Audits** - Recipients using funds, in whole or in part, to conduct PREA audits must utilize a DOJ certified PREA auditor who must abide by all applicable requirements in the DOJ PREA Auditor Handbook.

SECTION VII: ADDITIONAL REQUIREMENTS

- 1.0 Environmental Protection Agency's (EPA) list of Violating Facilities** - The recipient assures that the facilities under its ownership, lease or supervision which shall be utilized in the accomplishment of the Program Purpose are not listed on the EPA's list of Violating Facilities and that it will notify the Department of the receipt of any communication from the Director of the EPA Office of Federal Activities indicating that a facility to be used in the project is under consideration for listing by the EPA.
- 2.0 National Environmental Policy Act (NEPA)** - The recipient agrees to assist FDLE in complying with the NEPA, the National Historic Preservation Act, and other related federal environmental impact analyses requirements in the use of award funds by the recipient. This applies to the following new activities whether or not they are being specifically funded with these award funds. That is, it applies as long as the activity is being conducted by the recipient or any third party and the activity needs to be undertaken in order to use these award funds. Accordingly, the recipient agrees to first determine if any of the following activities will be funded by the award, prior to obligating funds for any of these purposes.

If it is determined that any of the following activities will be funded by the award, the recipient agrees to contact FDLE OCJG.

- 1) New construction;
- 2) Any renovation or remodeling of a property located in an environmentally or historically sensitive area, including properties located within a 100-year flood plain; a wetland, or habitat for endangered species, or a property listed on or eligible for listing on the National Register of Historic Places;
- 3) A renovation, lease, or any other proposed use of a building or facility that will either (a) result in a change in its basic prior use or (b) significantly change its size;
- 4) Implementation of a new program involving the use of chemicals other than chemicals that are (a) purchased as an incidental component of a funded activity and (b) traditionally used, for example, in office, household, recreational, or educational environments; and
- 5) Implementation of a program relating to clandestine methamphetamine laboratory operations, including the identification, seizure, or closure of clandestine methamphetamine laboratories.

The recipient understands and agrees that complying with NEPA may require the preparation of an Environmental Assessment and/or an Environmental Impact Statement, as directed by the Bureau of Justice Assistance. The recipient further understands and agrees to the requirements for implementation of a Mitigation Plan, as detailed by the Department of Justice at <https://www.bja.gov/Funding/nepa.html>, for programs relating to methamphetamine laboratory operations.

- 3.0 National Historic Preservation Act** – The Act will assist the Department (if necessary) in assuring compliance with section 106 of the National Historic Preservation Act of 1966 (16 U.S.C. § 470), Ex. Order 11593 (identification and protection of historic properties), the Archeological and Historical Preservation Act of 1974 (16 U.S.C. § 469 a-1 et seq.), and the National Environmental Policy Act of 1969 (42 U.S.C. § 4321).
- 4.0 Human Research Subjects** – The recipient agrees to comply with the requirements of 28 C.F.R. part 46 and all Office of Justice Programs policies and procedures regarding the protection of human research

subjects, including obtainment of Institutional Review Board approval, if appropriate, and subject informed consent.

5.0 Disclosures

Conflict of Interest - The recipient and implementing agency will establish safeguards to prohibit employees from using their positions for a purpose that constitutes or presents the appearance of personal or organizational conflict of interest, or personal gain. Recipients must disclose in writing any potential conflict of interest to FDLE (the non-federal pass-through entity).

Violations of Criminal Law - The recipient must disclose all violations of state or federal criminal law involving fraud, bribery or gratuity violations potentially affecting the award.

6.0 Uniform Relocation Assistance and Real Property Acquisitions Act - The recipient will comply with the requirements of the Uniform Relocation Assistance and Real Property Acquisitions Act of 1970 (42 U.S.C. § 4601 et seq.), which govern the treatment of persons displaced as a result of federal and federally-assisted programs.

7.0 Limitations on Government Employees Financed by Federal Assistance - The recipient will comply with requirements of 5 U.S.C. §§ 1501-08 and §§ 7321-26, which limit certain political activities of State or local government employees whose principal employment is in connection with an activity financed in whole or in part by federal assistance.

8.0 Funds to Association of Community Organizations for Reform Now (ACORN) Unallowable - Recipient understands and agrees that it cannot use any federal funds, either directly or indirectly, in support of any contract or award to either the Association of Community Organizations for Reform Now (ACORN) or its subsidiaries, without the express prior written approval of OJP.

9.0 Text Messaging While Driving - Pursuant to Executive Order 13513, "Federal Leadership on Reducing Text Messaging While Driving," 74 Fed. Reg. 51225 (October 1, 2009), and §316.305, F.S., the recipient is encouraged to adopt and enforce policies banning employees from text messaging while driving any vehicle during the course of performing work funded by this award and to establish workplace safety policies and conduct education, awareness, and other outreach to decrease crashes caused by distracted drivers.

10.0 DNA Testing of Evidentiary Materials and Upload of DNA Profiles to a Database - If award funds are used for DNA testing of evidentiary materials, any resulting eligible DNA profiles must be uploaded to the Combined DNA Index System (CODIS), by a government DNA lab with access to CODIS. No profiles generated with award funding may be entered into any other non-governmental DNA database without prior express written approval from BJA. Award funds may not be used for the purchase of DNA equipment and supplies unless the resulting DNA profiles may be accepted for entry into CODIS. Booking agencies should work with their state CODIS agency to ensure all requirements are met for participation in Rapid DNA (see National Rapid DNA Booking Operational Procedures Manual).

11.0 Forensic Genealogy Testing – Recipients utilizing award funds for forensic genealogy testing must adhere to the United States Department of Justice Interim Policy Forensic Genealogical DNA Analysis and Searching and must collect and report the metrics identified in Section IX of the document to the Bureau of Justice Assistance. For more information, visit <https://www.justice.gov/olp/page/file/1204386/download>.

12.0 Environmental Requirements and Energy - For awards in excess of \$100,000, the recipient must comply with all applicable standards, orders, or requirements issued under section 306 of the Clean Air Act (42 U.S.C 85), section 508 of the Clean Water Act (33 U.S.C. 1368), Executive Order 11738, and Environmental Protection Agency regulations (40 CFR 1). The recipient must comply with 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 (Pub. L. 94-163, 89 Stat. 871), if any.

13.0 Other Federal Funds - The recipient agrees that if it currently has an open award of federal funds or if it receives an award of federal funds other than this award, and those awards have been, are being, or are to be used, in whole or in part, for one or more of the identical cost items for which funds are being provided under this award, the recipient will promptly notify, in writing the grant manager for this award, and, if so requested by OCJG seek a budget modification or change of project scope amendment to eliminate any inappropriate duplication of funding.

14.0 Trafficking in Persons - The recipient must comply with applicable requirements pertaining to prohibited conduct relating to the trafficking of persons, whether on the part of recipients, recipients or individuals defined as “employees” of the recipient. The details of the recipient and recipient obligations related to prohibited conduct related to trafficking in persons are incorporated by reference and posted at <https://ojp.gov/funding/Explore/ProhibitedConduct-Trafficking.htm>.

15.0 Requirement of the Award; Remedies for Non-Compliance or for Materially False Statements: Any materially false, fictitious, or fraudulent statement to the Department related to this award (or concealment or omission of a material fact) may be the subject of criminal prosecution (including under 18 U.S.C. §§ 1001, 1621, and/or 34 U.S.C. § 10272), and also may lead to imposition of civil penalties and administrative remedies for false claims or otherwise (including under 31 U.S.C. §§ 3729-3730 and 3801-3812).

Should any provision of a requirement of this award be held to be invalid or unenforceable by its terms, that provision shall first be applied with a limited construction so as to give it the maximum effect permitted by law. Should it be held, instead, that the provision is utterly invalid or unenforceable; such provision shall be deemed severable from this award.

16.0 Employment Eligibility Verification for Hiring Under This Award – The recipient must ensure that as part of the hiring process for any position that is or will be funded (in whole or in part) with award funds, the employment eligibility of the individual being hired is properly verified in accordance with the provisions of 8 U.S.C. 1324a(a)(1) and (2).

- 1) All persons who are or will be involved in activities under this award must be made aware of the requirement for verification of employment eligibility, and associated provisions of 8 U.S.C. 1324a(a)(1) and (2) that make it unlawful in the United States to hire (or recruit for employment) certain aliens.
- 2) The recipient must provide training (to the extent necessary) to those persons required by this condition to be notified of the requirement for employment eligibility verification and the associated provisions of 8 U.S.C. 1324a(a)(1) and (2).
- 3) As part of the recordkeeping requirements of this award, the recipient must maintain records of all employment eligibility verifications pertinent to compliance with this condition and in accordance with I-9 record retention requirements, as well as pertinent records of notifications and trainings.
- 4) Monitoring of compliance with the requirements of this condition will be conducted by FDLE.
- 5) Persons who are or will be involved in activities under this award includes any and all recipient officials or other staff who are or will be involved in the hiring process with respect to an award funded position under this award.
- 6) For the purposes of satisfying this condition, the recipient may choose to participate in, and use E-Verify (www.e-verify.gov), provided an appropriate person authorized to act on behalf of the recipient entity uses E-Verify to confirm employment eligibility for each position funded through this award.
- 7) Nothing in this condition shall be understood to authorize or require any recipient, or any person or other entity, to violate federal law, including any applicable civil rights or nondiscrimination law.
- 8) Nothing in this condition, including paragraph vi., shall be understood to relieve any recipient, or any person or other entity, of any obligation otherwise imposed by law, including 8 U.S.C. 1324a(a)(1) and (2).

17.0 Determination of Suitability to Interact with Minors – This condition applies if it is indicated in the application for award (at any tier) that a purpose of some or all of the activities to be carried out under the award is to benefit a set of individuals under 18 years of age.

The recipient (or subrecipient at any tier), must make determinations of suitability before certain individuals may interact with participating minors. The requirement applies regardless of an individual's employment status.

The details of this requirement are posted on the OJP website at <https://ojp.gov/funding/Explore/Interact-Minors.htm>.

- 18.0 Restrictions and Certifications Regarding Non-Disclosure Agreements and Related Matters** - No recipient under this award, or entity that receives a procurement contract with funds under this award, may require an employee to sign an internal confidentiality agreement that prohibits the reporting of waste, fraud, or abuse to an investigative or law enforcement representative authorized to receive such information.

The foregoing is not intended, to contravene requirements applicable to classified information. In accepting this award, the recipient:

- 1) Has not required internal confidentiality agreements or statements from employees or contractors that currently prohibit reporting waste, fraud, or abuse;
- 2) Certifies that, if it learns that it is or has been requiring its employees or contractors to execute agreements that prohibit reporting of waste, fraud, or abuse, it will immediately stop any further obligations of award funds, will provide prompt written notification to OCJG, and will resume such obligations only if expressly authorized to do so by OCJG.
- 3) Will comply with requirements of 5 U.S.C. §§ 1501-08 and 7321-26, which limit certain political activities of state or local government employees whose principal employment is in connection with an activity financed in whole or in part by federal assistance.

- 19.0 Safe Policing and Law Enforcement** – Recipients that are state, local, college or university law enforcement agencies must be in compliance with the safe policing certification requirement outlined in [Executive Order 13929](#). For detailed information on this certification requirement, see <https://cops.usdoj.gov/SafePolicingEO>.

- 20.0 For JAG: Extreme Risk Protection Programs** – Recipients using funds for Extreme Risk Protection programs must include, at a minimum: pre-deprivation and post-deprivation due process rights that prevent any violation or infringement of the Constitution of the United States, including but not limited to the Bill of Rights, and the substantive or procedural due process rights guaranteed under the Fifth and Fourteenth Amendments to the Constitution of the United States, as applied to the States, and as interpreted by State courts and United States courts (including the Supreme Court of the United States). Such programs must include, at the appropriate phase to prevent any violation of constitutional rights, at minimum, notice, the right to an in-person hearing, an unbiased adjudicator, the right to know opposing evidence, the right to present evidence, and the right to confront adverse witnesses; the right to be represented by counsel at no expense to the government; pre-deprivation and post-deprivation heightened evidentiary standards and proof which mean not less than the protections afforded to a similarly situated litigant in Federal court or promulgated by the State's evidentiary body, and sufficient to ensure the full protections of the Constitution of the United States, including but not limited to the Bill of Rights, and the substantive and procedural due process rights guaranteed under the Fifth and Fourteenth Amendments to the Constitution of the United States, as applied to the States, and as interpreted by State courts and United States courts (including the Supreme Court of the United States). The heightened evidentiary standards and proof under such programs must, at all appropriate phases to prevent any violation of any constitutional right, at minimum, prevent reliance upon evidence that is unsworn or unaffirmed, irrelevant, based on inadmissible hearsay, unreliable, vague, speculative, and lacking a foundation; and penalties for abuse of the program.

- 21.0 For RSAT: State Alcohol and Drug Abuse Agency** - The recipient will coordinate the design and implementation of treatment programs with the State alcohol and drug abuse agency or any appropriate local alcohol and drug abuse agency, especially when there is an opportunity to coordinate with initiatives funded through the Justice Assistance Grant (JAG) program.

- 22.0 For RSAT: Drug Testing** - The recipient will implement or continue to require urinalysis or other proven reliable forms of testing of individuals in correctional residential substance abuse treatment programs. Such testing shall include individuals released from residential substance abuse treatment programs who remain in the custody of the State.
- 21.0 For RSAT: Opioid Abuse and Reduction** - The recipient understands and agrees that, to the extent that substance abuse treatment and related services are funded by this award, they will include needed treatment and services to address opioid abuse and reduction.
- 22.0 For RSAT: Data Collection** - The recipient agrees that award funds may be used to pay for data collection, analysis, and report preparation only if that activity is associated with federal reporting requirements. Other data collection, analysis, and evaluation activities are not allowable uses of award funds.
- 23.0 For PSN: Coordination with U.S. Attorney and PSN Task Forces** - The recipient agrees to coordinate the project with the U.S. Attorney and Project Safe Neighborhoods Task Force(s) for the respective U.S. Attorney Districts covered by the award. The recipient also is encouraged to coordinate with other community justice initiatives and other ongoing, local gun prosecution and law enforcement strategies.
- 24.0 For PSN: Media-related Outreach** - The recipient agrees to submit to OCJG for review and approval by DOJ, any proposal or plan for PSN media-related outreach projects.
- 25.0 For NCHIP & NARIP: Coordination and Compatibility with Systems** - In accordance with federal award conditions, recipient agrees all activities supported under this award must:
- 1) Be coordinated with Federal, State, and local activities relating to homeland security and presale firearm checks.
 - 2) Ensure criminal justice information systems designed, implemented, or upgraded with NCHIP or NARIP funds are compatible, where applicable, with the National Incident-Based Reporting System (NIBRS), the National Crime Information Center system (NCIC 2000), the National Criminal Instant Background Check System (NICS), the Integrated Automated Fingerprint Identification System (IAFIS), and applicable national, statewide or regional criminal justice information sharing standards and plans.
 - 3) Intend to establish or continue a program that enters into the National Crime Information Center (NCIC) records of: (a) Protection orders for the protection of persons from stalking or domestic violence; (b) Warrants for the arrest of persons violating protection orders intended to protect victims from stalking or domestic violence; and (c) Arrests or convictions of persons violating protection orders intended to protect victims from stalking or domestic violence.

ITEM 7.N

Grant Application for Urban Areas Security Initiative

Request

The Police Department requests authorization to submit an application for the FY 2024 Homeland Security Grant through the Urban Areas Security Initiative Program (UASI).

Explanation

The Urban Areas Security Initiative (UASI) Program assists high-threat, high-density Urban Areas in efforts to build and sustain the capabilities necessary to prevent, protect against, mitigate, respond to, and recover from acts of terrorism. The UASI program is intended to provide financial assistance to address the unique multi-discipline planning, organization, equipment, training, and exercise needs of high-threat, high-density Urban Areas, and to assist these areas in building and sustaining capabilities to prevent, protect against, mitigate, respond to, and recover from threats or acts of terrorism using the Whole Community approach.

Recommendation

Approval of the Police Department to submit the required application for the FY 2024 Homeland Security Grant through the Urban Areas Security Initiative Program (UASI).

REQUESTED CITY COMMISSION ACTION:

Approve

Department: Police

Presenter:

Attachment(s):

1. FY 2024 UASI template

2024 Project Narrative Worksheet

Urban Area:

Orlando

Project Title:

2024 Regional License Plate Reader Program

FFY 2024 Funding Request Amount:

\$ 250,000

Amount dedicated for LETPA (if none, Enter 0):

\$ 250,000.00

Is the project shareable, deployable or both?

both

Are funds being requested through both UASI and SHSP for this project?

no

Provide a summary description of the project answering each of the questions below. *(spell out all acronyms and abbreviations)*

What is the scope of the problem (please define the nexus to a threat or act of terrorism)?

The Kissimmee Police Department would like to enhance their ability to identify, track, and locate vehicles associated with potential threats utilizing electronic surveillance techniques in the areas of the City which need improvements. Regional investigative and response efforts to acts of terrorism involving vehicles are

How will the grant funds address this issue?

The funding will allow the City of Kissimmee to expand the regional UASI License Plate Reader (LPR) program. This grant, UASI FY2024, will allow funds to enhance the surveillance footprint in Osceola County and Central Florida. The grant will allow the Kissimmee Police Department to share equipment and

What is the overall goal or objective of this project?

The primary goal of the project is to prepare, prevent, protect, mitigate, respond, or recover from terroristic acts of violence with the utilization of LPR's. The Kissimmee Police Department will continue to share data with other members in the region to enhance the safety of our communities. This is covered in Florida

Describe the capability gap(s) that this project will address (only complete this section for new projects; enter N/A if a sustainment project).

What is the identified gap?

N/A

Who is affected by the gap?

N/A

What are we paying for? Describe how this project will narrow or completely address the gap.

N/A

Describe the capability this project will sustain. (only complete this section if this is NOT a new project; for new projects enter N/A) If applicable, list any FEMA grants that have previously provided a role in sustaining the capability.

What is the current capability sustained by this project?

Currently there are six counties utilizing a uniform LPR platform. The new UASI FY2024 grant will allow for an expansion and greater coverage for those agencies. It will also allow for other agencies in those counties to implement LPR's in there areas of responsibility.

Who is affected by the capability or will be affected if the capability is lost?

All law enforcement agencies benefit from LPR technology. Agencies without the database can still reach out to partner agencies with the technology and receive live time results to further their investigations.

What has already been done to sustain this capability?

Agencies currently work together sharing information and intelligence. The agencies who have received grant funds in the past assist other agencies who may not have access. The inter-agency communication expands agencies capabilities.

Will this project sustain the capability at current levels or sustain it while also narrowing a gap?

The Kissimmee Police Department is committed to expanding their electronic footprint throughout the City. Therefore, the Kissimmee Police Department will invest from their operating funds to cover the annual reoccurring expenses related to the maintenance and expansion of the program.

Select the primary core capability the project will support	Intelligence & Information Sharing
--	------------------------------------

Does this project support one of the DHS/FEMA priorities? If so which one and how does the project address the priority?

The ability to “live time” track terrorist / WMD identified vehicles and share those notifications with the region's fusion center. This project fulfills the Information and Intelligence Sharing and Cooperation priorities listed on page 24 of the FY2021 HSGP NOFO. This program will support the purchase of fixed, portable, and mobile applications. This agreement will allow assets to be focused regional instead of

Describe how this project addresses gaps and/or sustainment in the THIRA and SPR for the primary core capability. If there are other relevant capabilities, describe how the project also addresses their gaps and/or sustainment. Page numbers must be provided.

This project addresses the functional area of Analysis of Intelligence and Information outlined in the 2020 Orlando-Orange UASI THIRA (pg. 15). The SPR identifies a gap in the planning area, “Intelligence explicitly and information sharing is essential for addressing and sharing information about potential and ongoing threats to the community. There is a need for better regional collaboration.” (2020 Orlando-Orange UASI SPR pg. 34). This project also enhances information and intelligence sharing and cooperation with

Florida's Domestic Security Strategic Plan

Select one primary and a secondary goal and objective that this project supports.
Primary: Prevent-Information/Intelligence Sharing
Secondary: Prevent-Interdiction of Threats

Project Impact Statements

Describe the criteria that should be evaluated to determine if this project was a success at the end of the grant performance period.

The database is able to produce a measurable product efficiency report, which any user can obtain.

How will the urban area's capabilities be enhanced by this project?

The law enforcement agencies will be better equipped to share intelligence and information regarding potential terrositic threats, improving investigations and response times.

What is the long-term plan to sustain the capability(ies) developed, enhanced or supported by this project?

The Kissimmee Poilice Department will rely on internal funding to maintain the LRP program.

Project Implementation and Management

Starting with FFY 2020 - If the project supports a previously funded project complete the below section, for the appropriate year. Provide the previous project's name, the start and end dates of previously funded project(s), and provide the last milestone completed and the appropriate life-cycle phase.

2020: Project Name: start/end date	Last Milestone: Life Cycle:
2021: Project Name: start/end date	Last Milestone: Life Cycle:
2022: Project Name: start/end date	Last Milestone: Life Cycle:
2023: Project Name: start/end date	Last Milestone: Life Cycle:

Provide up to 10 milestones including the start and end date which will be achieved within the 18 month period of performance. (No start date should begin before September 1, 2024)

Milestone	Start and End Dates
Purchase LPR system	10/1/24-10/31/24
Installation of LPR Cameras and share intelligence with	11/1/24-11/30/24
Receive verifiable LPR detections	11/30/2024 - 9/30/2025
25% increase of platform users in the region	10/1/2024 - 9/30/2025

Will the project require construction, renovation, retrofitting or modifications to an existing structure? (yes or no)	No

ITEM 7.O

Intake and Pump Station Easement with Toho Water Authority

Request

Approval of the Intake and Pump Station Easement Agreement between the City of Kissimmee and Tohopekalia Water Authority relating to the Toho Reservoir Intake Pump Station and Raw Water Main.

Explanation

The Tohopekalia Water Authority is looking to build two intake pump stations along two waterways on the City's right of way to draw water from them. One of the intake pumps will be located along the East City Ditch south of Oak Street near the City trash skimmer and the other one will be located along Mill Slough south of U.S. 192 and adjacent to the Neo City Development.

To accommodate these improvements, the City of Kissimmee and the Tohopekalia Water Authority will need to enter into an exclusive easement to access, utilize, operate, maintain, repair, replace, and restore an intake and pump station and remaining pipeline, together with the right of ingress, egress, and access to the easement area over Toho Reservoir Intake Pump Station and Raw Water Main.

Recommendation

Approval of the Intake and Pump Station Easement Agreement between the City of Kissimmee and Tohopekalia Water Authority relating to the Toho Reservoir Intake Pump Station and Raw Water Main

REQUESTED CITY COMMISSION ACTION:

Approve

Department: Public Works & Engineering

Presenter:

Attachment(s):

1. (S) Intake and Pump Station Easement with Toho Water Authority – East City Ditch
2. (S) Intake and Pump Station Easement with Toho Water Authority – Mill Slough

Prepared by and return to:
Paul S. Quinn, Jr., Esq.
GrayRobinson, P.A.
301 E. Pine Street, Suite 1400
Orlando, FL 32801

Property Appraiser's Parcel ID Numbers:
Portions of:
22-25-29-00U0-0025-0000
22-25-29-00U0-0029-0000
22-25-29-00U0-0014-0000
23-25-29-00U0-0080-0000

INTAKE AND PUMP STATION AND RAW WATER MAIN EASEMENT AGREEMENT

THIS INTAKE AND PUMP STATION AND RAW WATER MAIN EASEMENT AGREEMENT (the "**Agreement**") is made and entered into effective as of the ____ day of _____, 2023 (the "**Effective Date**"), by and between **CITY OF KISSIMMEE**, a political subdivision of the State of Florida, whose address is 101 Church Street, Kissimmee, Florida 34741 ("**Grantor**"), and **TOHOPEKALIGA WATER AUTHORITY**, an independent special district created and established pursuant to Chapter 189, Florida Statutes, by special act of the Florida Legislature, whose address is 951 Martin Luther King Boulevard, Kissimmee, Florida 34741 (hereinafter, "**Grantee**" or "**Toho**"). Grantor and Grantee are sometimes together referred to herein as the "**Parties**", and separately as the "**Party**."

WITNESSETH:

WHEREAS, Grantor is the owner in fee simple of that certain real property located in Osceola County, Florida, being more particularly described on **Exhibit "A"** attached hereto and incorporated herein (the "**Easement Area**"); and

WHEREAS, Grantor desires to grant to Grantee, and Grantee desires to accept from Grantor, a permanent, exclusive intake and pump station easement on, upon, over, under, across and through the Easement Area for the benefit of the Grantor's property and surrounding properties, subject to the provisions set forth herein (the "**Easement**"); and

NOW, THEREFORE, for and in consideration of Ten and No/100 Dollars (\$10.00) in hand paid by the Grantee to the Grantor, the mutual covenants and agreements herein set forth and other good and valuable consideration, the receipt, adequacy and sufficiency of which are hereby expressly acknowledged by the Parties, the Parties do hereby agree as follows:

1. **Recitals.** The foregoing recitals are true and correct and are incorporated herein by this reference.

2. **Grant of Easement.** Grantor does hereby grant, bargain, sell and convey to Grantee a permanent, perpetual, exclusive easement on, upon, over, under, across and through the Easement Area for the purposes of accessing, utilizing, operating, maintaining, repairing,

replacing, and restoring an intake and pump station and remaining pipeline (the “**Utilities**”), together with the right of ingress, egress and access to the Easement Area over Grantor’s land located adjacent thereto. Grantor shall retain the right to access to the Easement Area, in a manner that does not unreasonably interfere with Grantee’s use thereof, for purposes of operating, maintaining and repairing that certain City of Kissimmee’s Bike & Pedestrian Trail located on the Grantor’s property surrounding the Easement Area. Grantor agrees to provide to Grantee gate access to Grantor’s stormwater pond for the maintenance of the intake pump station on the East City Ditch. Grantee agrees to maintain the access road along Grantor’s stormwater pond.

3. **Repair and Maintenance.** Grantee, at Grantee’s expense, shall be responsible for the operation, maintenance, repair and restoration of all intake and pump station facilities lying within the Easement Area, together with related improvements necessary for the Utilities.

4. **Damage.** In the event that Grantee or Grantee’s agents, employees, consultants, representatives, and contractors (and their subcontractors, employees and materialmen) cause damage to the Easement Area (or any other real or personal property not owned by Grantee) Grantee, at Grantee’s cost and expense, agrees to promptly commence the restoration and repair of the same to as nearly as practical the original condition and grade and shall diligently pursue and cause the completion of the same within thirty (30) days after receiving written notice of any such damage.

5. **Assignment and Termination.** Grantee may assign its rights and obligations under this Agreement to any property owners’ association, municipality, district or other governmental authority (“**Permitted Assignee**”) that assumes all of Grantee’s obligations to maintain, repair and replace the Utilities under the same terms described herein. Following any such assignment and assumption, Grantee shall be released from all obligations and liabilities hereunder. If the Easement shall be abandoned by Grantee or terminated in any manner, all rights and privileges hereunder shall cease and the easement privileges and rights herein granted shall revert to Grantor.

6. **Insurance.** Grantee, or any contractors (and their subcontractors, employees and materialmen) performing work for Grantee in the Easement Area, shall at all times maintain general public liability insurance to afford protection against any and all claims for personal injury, death or property damage arising directly or indirectly out of the exercise of the rights and privileges granted.

7. **Indemnity.**

(a) Grantor agrees to defend, indemnify and hold Grantee, individually and collectively, harmless from and against any and all claims, suits, judgments, demands, costs and expenses, including attorney’s fees whether at trial, on appeal or in bankruptcy, of any kind or nature whatsoever related to this Agreement arising directly out of or caused by any act or omission of Grantor, its agents, employees, consultants, representatives, and contractors (and their subcontractors, employees and materialmen).

(b) Grantee agrees to defend, indemnify and hold harmless Grantor from and against any and all claims, suits, judgments, demands, cost and expenses, including attorney’s fees

whether at trial, on appeal or in bankruptcy, of any kind or nature whatsoever related to this Agreement arising directly out of or caused by any act or omission of any Grantee or any of Grantee's agents, employees, consultants, representatives, and contractors (and their subcontractors, employees and materialmen).

(c) Notwithstanding the foregoing and to the extent applicable, the Grantor's and Grantee's indemnification of the other Party hereunder shall not be construed or interpreted to alter or waive the entitlement of such Parties to the protection of sovereign immunity, or to the extend or to modify Parties' liability beyond the limits established by Florida law generally, and more specifically, Article X, Section 13 of the Florida Constitution and Section 768.28 Florida Statutes (2023) as from time to time amended.

8. **Obligations.** Any rights granted hereunder shall be exercised only in accordance and compliance with any and all applicable laws, ordinances, rules, regulations, permits and approvals, and any future modifications or amendments thereto. The Parties covenant and agree that neither Party shall discharge into or within the Easement Area, any hazardous or toxic materials or substances, any pollutants, or any other substances or materials prohibited or regulated under any federal, state or local law, ordinance, rule, regulations or permit, except in accordance with such laws, ordinances, rules, regulations and permits.

9. **Beneficiaries of Easement Rights/Binding Effect.** The Easement set forth in this Agreement shall be an easement appurtenant to the Property, for the benefit and use of Grantee and Grantee's successors and assigns, and their agents, employees, consultants, representatives, contractors (and their subcontractors, employees and materialmen), and shall be binding upon the Easement Area and shall be a covenant running with the title to the Easement Area. The Easement hereby created and granted includes the creation of all incidental rights reasonably necessary for the use and enjoyment of the Easement Area for its intended purpose.

10. **Limitation on Use.** Nothing contained in this Agreement shall create or shall be deemed to create any easements or use rights other than those expressly provided for herein.

11. **Liens.** No Party shall permit (and shall promptly satisfy or bond) any construction, mechanic's lien or encumbrance against the Easement Area or any other property not owned by such Party in connection with the exercise by such Party of its rights hereunder.

12. **Amendments and Waivers.** This Agreement may not be terminated or amended, modified, altered, or changed in any respect whatsoever, except by a further agreement in writing duly executed by the Parties and recorded in the Public Records of Osceola County, Florida. No delay or omission of any Party in the exercise of any right accruing upon any default of any Party shall impair such right or be construed to be a waiver thereof, and every such right may be exercised at any time during the continuance of such default. A waiver by any Party of a breach of, or a default in, any of the terms and conditions of this Agreement by any other Party shall not be construed to be a waiver of any subsequent breach of or default in the same or any other provision of this Agreement. No breach of the provisions of this Agreement shall entitle any Party to cancel, rescind or otherwise terminate this Agreement, but such limitation shall not affect, in any manner, any other rights or remedies which any Party may have by reason of any breach of the provisions of this Agreement.

13. **Notices.**

(a) All notices, certificates or other communications hereunder shall be sufficiently given and shall be deemed given on the date such notice is delivered by courier, or three days after the date mailed by registered or certified mail, postage prepaid, to the other party at the following addresses:

Grantor:

Kissimmee City Manager
101 Church Street
Kissimmee, Florida 34741

With a copy to

Kissimmee City Attorney
101 Church Street
Kissimmee, Florida 34741

Grantee:

Tohopekaliga Water Authority
Attention: Executive Director
951 Martin Luther King Blvd
Kissimmee, Florida 34741

With a copy to

Tohopekaliga Water Authority
Attention: General Counsel
951 Martin Luther King Blvd
Kissimmee, Florida 34741

(b) Whenever practicable, each party will endeavor to reply or respond sooner than the time periods provided for herein.

14. **Use of Easement Area.** It is acknowledged and agreed that the Easement granted under this Agreement is an exclusive easement and that Grantor shall have the right to use and enjoy the Easement Area in any manner not inconsistent with the easement rights created herein.

15. **Miscellaneous.** This Agreement contains the entire understanding of the Parties with respect to the matters set forth herein and no other agreement, oral or written, not set forth herein, nor any course of dealings of the Parties, shall be deemed to alter or affect the terms and conditions set forth herein. If any provision of this Agreement, or portion thereof, or the application thereof to any person or circumstances, shall, to the extent be held invalid, inoperative or unenforceable, the remainder of this Agreement, or the application of such provision or portion thereof to any other persons or circumstances, shall not be affected thereby; it shall not be deemed that any such invalid provision affects the consideration for this Agreement; and each provision of this Agreement shall be valid and enforceable to the fullest extent permitted by law. This Agreement shall be construed in accordance with the laws of the United States of America and the State of Florida. The section headings in this Agreement are for convenience only, shall in no way define or limit the scope or content of this Agreement, and shall not be considered in any construction or interpretation of this Agreement or any part hereof. Where the sense of this Agreement requires, any reference to a term in the singular shall be deemed to include the plural of said term, and any reference to a term in the plural shall be deemed to include the singular of said term. Nothing in this Agreement shall be construed to make the Parties hereto partners or joint ventures or render either of said Parties liable for the debts or obligations of the other. This Agreement may be executed in counterparts, each of which shall constitute an original, but all

taken together shall constitute one and the same Agreement. Time is of the essence of this Agreement. This Agreement shall be binding upon and inure to the benefit of Grantee, Grantor, and their respective successors and assigns.

16. Sovereign Immunity.

(a) The Parties hereto recognize, ratify, confirm and acknowledge they are governmental entities which enjoy sovereign immunity, and that nothing contained herein shall constitute a waiver by the Parties of any sovereign immunity or of the limitations as set forth in Florida Statutes Section 768.28, or its successor in function.

(b) Notwithstanding anything to the contrary herein, the Parties do not waive any sovereign immunity as a result of this or any other agreement resulting from the subject matter hereof; and, nothing herein shall be construed to usurp or contract away the duty or authority of the Parties to exercise any police powers as defined by law.

[SIGNATURES APPEAR ON THE FOLLOWING PAGES.]

IN WITNESS WHEREOF, Grantor and Grantee have caused this Agreement to be effective as of the Effective Date.

Signed, sealed and delivered
in the presence of:

“GRANTOR”

CITY OF KISSIMMEE, a political
subdivision of the State of Florida

Print Name: Mike Steigerwald
Address: 101 Church Street
Kissimmee, Florida 34741

By: _____
Name: Olga Gonzalez
Title: Mayor

Print Name: Olga Sanchez De Fuentes
Address: 101 Church Street
Kissimmee, Florida 34741

STATE OF FLORIDA
COUNTY OF OSCEOLA

The foregoing instrument was signed, delivered, and acknowledged before me by means of ☐ physical presence or ☐ online notarization this _____ day of _____, 2023, by _____, as _____ of **CITY OF KISSIMMEE**, a political subdivision of the State of Florida, on behalf thereof. He/she ☐ is personally known to me or ☐ produced _____ as identification.

(Signature of Notary Public)

(Linda S. Hansell)
Notary Public, State of Florida
Commission No.: _____
My Commission Expires: _____

Signed, sealed and delivered
in the presence of:

“GRANTEE”

TOHOPEKALIGA WATER

AUTHORITY, an independent special
district, established and created pursuant to
Chapter 189, Florida Statutes, by special act
of the Florida Legislature

Print Name: _____
Address: _____

By: _____
Name: _____
Title: _____

Print Name: _____
Address: _____

**STATE OF FLORIDA
COUNTY OF OSCEOLA**

The foregoing instrument was signed, delivered, and acknowledged before me by means
of ☐ physical presence or ☐ online notarization this _____ day of _____, 2023, by ____
_____, as _____ of **TOHOPEKALIGA WATER**
AUTHORITY, an independent special district, established and created pursuant to Chapter 189,
Florida Statutes, by special act of the Florida Legislature, on behalf thereof. He/she ☐ is personally
known to me or ☐ produced _____ as identification.

(Signature of Notary Public)

(Typed name of Notary Public)

Notary Public, State of Florida

Commission No.: _____

My Commission Expires: _____

EXHIBIT "A"

Easement Area

A parcel of land being a portion of Sections 22 & 23, Township 25 South, Range 29 East, Osceola County, Florida and being more particularly described as follows:

Commence at the Northwest corner of Section 23, Township 25 South, Range 29 East, Osceola County, Florida; thence S00°24'47"E, along the West line of said Section 23, a distance of 731.40 feet to the Point of Beginning; thence N82°20'04"W, a distance of 5.30 feet; thence S26°57'28"W, a distance of 46.93 feet; thence S32°11'50"E, a distance of 9.74 feet; thence S16°45'42"E, a distance of 8.65 feet; thence S05°03'11"E, a distance of 15.65 feet; thence S03°22'59"E, a distance of 23.68 feet; thence S03°27'59"E, a distance of 39.72 feet; thence S05°58'04"E, a distance of 20.16 feet; thence S11°44'01"E, a distance of 13.69 feet; thence S20°10'34"E, a distance of 20.89 feet; thence S28°18'46"E, a distance of 22.99 feet; thence S29°26'35"E, a distance of 15.40 feet; thence S24°21'02"E, a distance of 20.39 feet; thence S17°14'02"W, a distance of 4.90 feet; thence S59°15'06"W, a distance of 1,164.04 feet; thence N00°04'39"W, a distance of 120.88 feet; thence S81°48'23"W, a distance of 45.24 feet; thence S00°10'26"E, a distance of 130.98 feet; thence S36°19'38"W, a distance of 18.52 feet; thence S59°15'51"W, a distance of 219.31 feet; thence N74°48'14"W, a distance of 32.26 feet; thence N38°01'13"W, a distance of 26.10 feet; thence N00°22'28"E, a distance of 53.00 feet; thence N88°15'22"W, a distance of 91.73 feet; thence S00°32'03"W, a distance of 172.42 feet; thence N89°39'51"E, a distance of 54.35 feet; thence N59°12'16"E, a distance of 1,568.95 feet; thence S33°01'20"E, a distance of 254.59 feet; thence N83°44'57"E, a distance of 432.52 feet; thence S83°50'16"E, a distance of 8.55 feet; thence N45°19'05"E, a distance of 62.36 feet; thence S79°35'39"W, a distance of 76.04 feet; thence S88°06'45"W, a distance of 67.70 feet; thence N87°00'49"W, a distance of 84.09 feet; thence S81°58'55"W, a distance of 88.29 feet; thence S86°11'44"W, a distance of 67.31 feet; thence N80°46'10"W, a distance of 111.63 feet; thence N16°57'06"W, a distance of 41.66 feet; thence N04°32'45"W, a distance of 119.36 feet; thence N38°09'46"W, a distance of 39.54 feet; thence N60°52'14"W, a distance of 112.31 feet; thence N02°23'44"E, a distance of 50.69 feet; thence N13°35'27"E, a distance of 50.84 feet; thence N88°35'24"W, a distance of 10.65 feet; thence N00°28'14"W, a distance of 54.06 feet; thence N82°20'04"W, a distance of 30.79 feet to the Point of Beginning.

Containing 119,017 square feet or 2.732 acres, more or less.

The Easement Area is depicted on Exhibit "A-1" attached hereto.

EXHIBIT "A-1"

Sketch of Description of Easement Area

[ATTACH]

SKETCH OF DESCRIPTION

SEE SHEET 2 OF 8 FOR OVERALL
SEE SHEETS 3-8 OF 8 FOR SKETCH

LEGAL DESCRIPTION:

PERMANENT EASEMENT 1

(Parcel ID's: 22-25-29-00U0-0025-0000; 22-25-29-00U0-0029-0000;
22-25-29-00U0-0014-0000; 23-25-29-00U0-0080-0000)

A parcel of land being a portion of Sections 22 & 23, Township 25 South, Range 29 East, Osceola County, Florida and being more particularly described as follows:

Commence at the Northwest corner of Section 23, Township 25 South, Range 29 East, Osceola County, Florida; thence S00°24'47"E, along the West line of said Section 23, a distance of 731.40 feet to the Point of Beginning; thence N82°20'04"W, a distance of 5.30 feet; thence S26°57'28"W, a distance of 46.93 feet; thence S32°11'50"E, a distance of 9.74 feet; thence S16°45'42"E, a distance of 8.65 feet; thence S05°03'11"E, a distance of 15.65 feet; thence S03°22'59"E, a distance of 23.68 feet; thence S03°27'59"E, a distance of 39.72 feet; thence S05°58'04"E, a distance of 20.16 feet; thence S11°44'01"E, a distance of 13.69 feet; thence S20°10'34"E, a distance of 20.89 feet; thence S28°18'46"E, a distance of 22.99 feet; thence S29°26'35"E, a distance of 15.40 feet; thence S24°21'02"E, a distance of 20.39 feet; thence S17°14'02"W, a distance of 4.90 feet; thence S59°15'06"W, a distance of 1,164.04 feet; thence N00°04'39"W, a distance of 120.88 feet; thence S81°48'23"W, a distance of 45.24 feet; thence S00°10'26"E, a distance of 130.98 feet; thence S36°19'38"W, a distance of 18.52 feet; thence S59°15'51"W, a distance of 219.31 feet; thence N74°48'14"W, a distance of 32.26 feet; thence N38°01'13"W, a distance of 26.10 feet; thence N00°22'28"E, a distance of 53.00 feet; thence N88°15'22"W, a distance of 91.73 feet; thence S00°32'03"W, a distance of 172.42 feet; thence N89°39'51"E, a distance of 54.35 feet; thence N59°12'16"E, a distance of 1,568.95 feet; thence S33°01'20"E, a distance of 254.59 feet; thence N83°44'57"E, a distance of 432.52 feet; thence S83°50'16"E, a distance of 8.55 feet; thence N45°19'05"E, a distance of 62.36 feet; thence S79°35'39"W, a distance of 76.04 feet; thence S88°06'45"W, a distance of 67.70 feet; thence N87°00'49"W, a distance of 84.09 feet; thence S81°58'55"W, a distance of 88.29 feet; thence S86°11'44"W, a distance of 67.31 feet; thence N80°46'10"W, a distance of 111.63 feet; thence N16°57'06"W, a distance of 41.66 feet; thence N04°32'45"W, a distance of 119.36 feet; thence N38°09'46"W, a distance of 39.54 feet; thence N60°52'14"W, a distance of 112.31 feet; thence N02°23'44"E, a distance of 50.69 feet; thence N13°35'27"E, a distance of 50.84 feet; thence N88°35'24"W, a distance of 10.65 feet; thence N00°28'14"W, a distance of 54.06 feet; thence N82°20'04"W, a distance of 30.79 feet to the Point of Beginning.

Containing 119,017 square feet or 2.732 acres, more or less.

SURVEYOR'S NOTES:

1. BEARINGS AS SHOWN HEREON ARE BASED ON THE WEST LINE OF SECTION 23, TOWNSHIP 25 SOUTH, RANGE 29 EAST, OSCEOLA COUNTY, FLORIDA, ASSUMED BEARING OF S00°24'47"E.
2. THIS DRAWING REPRESENTS A SKETCH OF DESCRIPTION AND IS NOT A BOUNDARY SURVEY.
3. PROPERTY SHOWN HEREON IS BASED UPON
4. NO CORNERS WERE SET AS A PART OF THIS SKETCH.

REQUESTED BY: WSP USA, INC

SHEET 1 OF 8

DATE OF SURVEY	8/4/2022	REVISIONS
SCALE	1" = 60'	ADDED PARCEL ID NUMBERS 9/19/2022
F.B.	PAGE	
SECTIONS	22 & 23	
TWP.	25 S., RNG. 29 E.	
JOB NO.	18-271A	

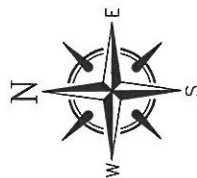
JOHNSTON'S
SURVEYING INC.

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

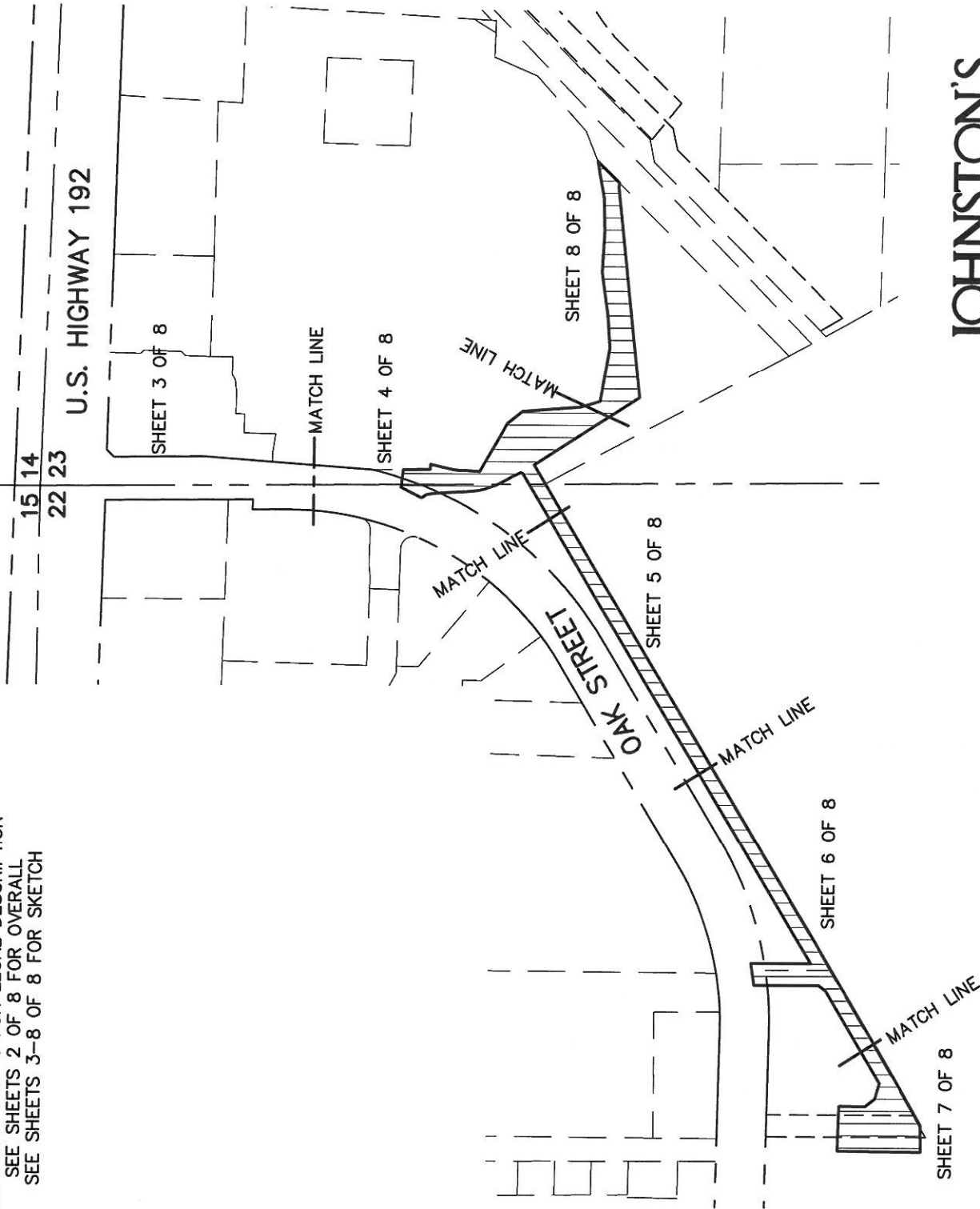
 9/20/2022
RICHARD D. BROWN, P.S.M. #5700 (DATE)
NOTE: NOT VALID WITHOUT RAISED SURVEYOR'S SEAL.

SKETCH OF DESCRIPTION

SEE SHEET 1 OF 8 FOR LEGAL DESCRIPTION
SEE SHEETS 2 OF 8 FOR OVERALL
SEE SHEETS 3-8 OF 8 FOR SKETCH



SCALE: 1" = 300'



LEGEND AND ABBREVIATIONS

TWP. = TOWNSHIP
RNG. = RANGE
NO. = NUMBER
LB. = LICENSED BUSINESS
R/W = RIGHT OF WAY
P.S.M. = PROFESSIONAL SURVEYOR AND MAPPER
TEL. = TELEPHONE
F.B. = FIELD BOOK
P.B. = PLAT BOOK
± = PLUS OR MINUS
& = AND

JOHNSTON'S
SURVEYING INC.
900 Cross Prairie Parkway, Kissimmee, Florida 34744
Tel. (407) 847-2179 Fax (407) 847-6140
SHEET 2 OF 8

SKETCH OF DESCRIPTION

SEE SHEET 1 OF 8 FOR LEGAL DESCRIPTION
SEE SHEETS 2 OF 8 FOR OVERALL
SEE SHEETS 3-8 OF 8 FOR SKETCH



SCALE: 1" = 60'

15 14
22 23

POINT OF
COMMENCEMENT
NORTHWEST CORNER
OF SECTION 23,
TOWNSHIP 25 SOUTH,
RANGE 29 EAST

U.S. HIGHWAY 192

UNPLATTED

OAK STREET
RIGHT OF WAY VARIES

LOT 1
MILL CREEK MALL
PLAT BOOK 11, PAGES 104-105
OSCEOLA COUNTY, FLORIDA

LOT 2
MILL CREEK MALL
PLAT BOOK 11,
PAGES 104-105
OSCEOLA COUNTY,
FLORIDA

LOT 1
SSA KISSIMMEE
PLAT BOOK 17,
PAGE 43
OSCEOLA COUNTY,
FLORIDA

S00°24'47"E 731.40' (BEARING BASIS)
WEST LINE OF SEC. 23-25-29

LOT 4A
MILL CREEK MALL LOT 4 REPLAT
PLAT BOOK 32, PAGES 65-66
OSCEOLA COUNTY, FLORIDA

LEGEND AND ABBREVIATIONS

TWP.	= TOWNSHIP
RNG.	= RANGE
NO.	= NUMBER
LB	= LICENSED BUSINESS
R/W	= RIGHT OF WAY
P.S.M.	= PROFESSIONAL SURVEYOR AND MAPPER
TEL.	= TELEPHONE
F.B.	= FIELD BOOK
P.B.	= PLAT BOOK
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&	= AND

MATCH LINE
SEE SHEET 4

JOHNSTON'S
SURVEYING INC.
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Tel. (407) 847-2179 Fax (407) 847-6140

SHEET 3 OF 8

MATCH LINE
SEE SHEET 3

SKETCH OF DESCRIPTION

SEE SHEET 1 OF 8 FOR LEGAL DESCRIPTION
SEE SHEETS 2 OF 8 FOR OVERALL
SEE SHEETS 3-8 OF 8 FOR SKETCH

POINT OF
BEGINNING

LOT 4A

MILL CREEK MALL LOT 4 REPLAT
PLAT BOOK 32, PAGES 65-66
OSCEOLA COUNTY, FLORIDA



SCALE: 1" = 60'

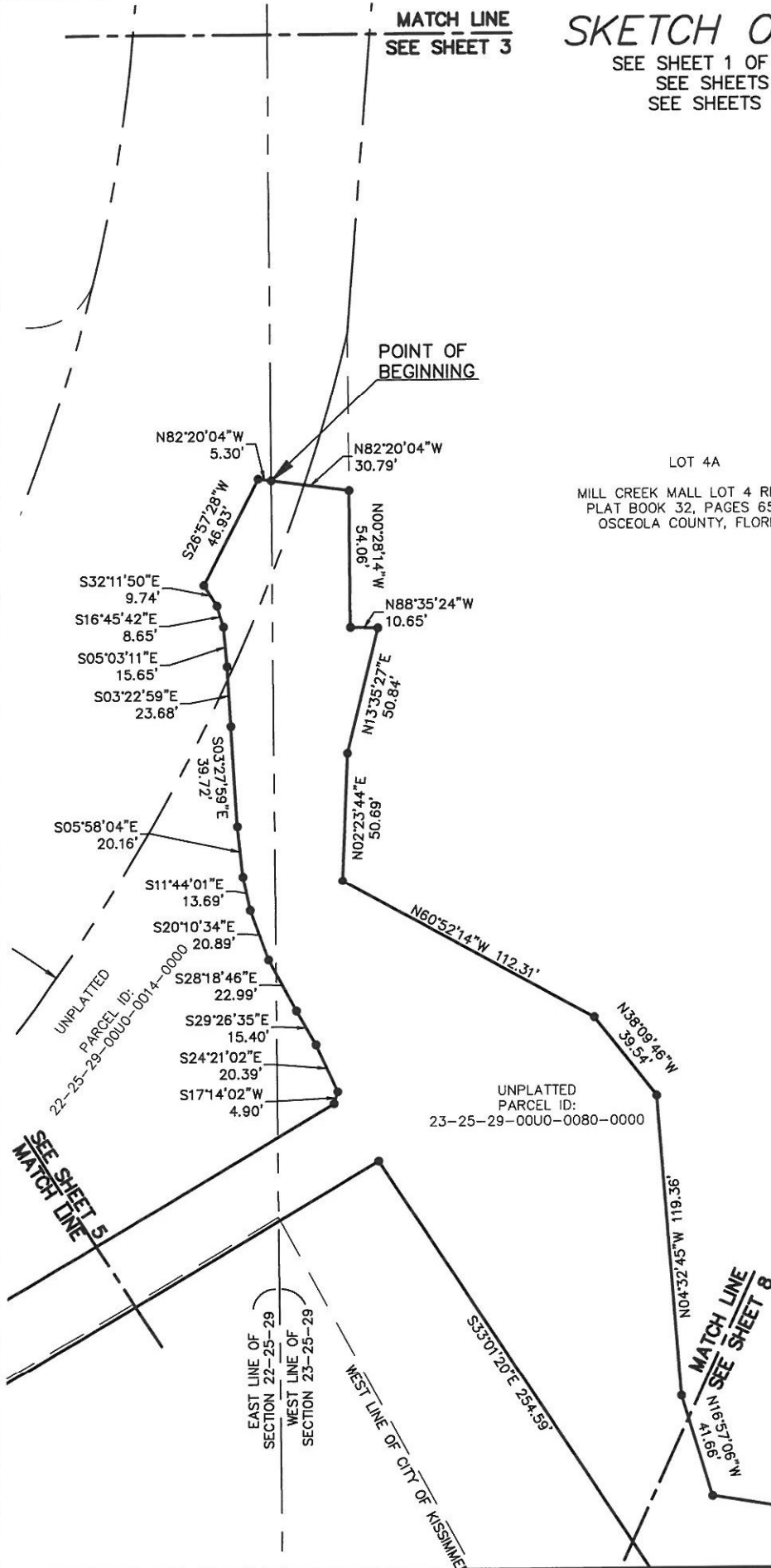
LEGEND AND ABBREVIATIONS

TWP.	= TOWNSHIP
RNG.	= RANGE
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SURVEYING INC.

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SHEET 4 OF 8



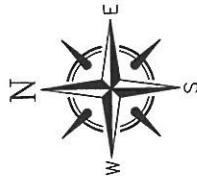
SKETCH OF DESCRIPTION

SEE SHEET 1 OF 8 FOR LEGAL DESCRIPTION
SEE SHEETS 2 OF 8 FOR OVERALL
SEE SHEETS 3-8 OF 8 FOR SKETCH

TRACT B
SSA, KISSIMMEE
PLAT BOOK 17, PAGE 43
OSCEOLA COUNTY, FLORIDA

UNPLATTED

MILL SLOUGH



SCALE: 1" = 60'

LEGEND AND ABBREVIATIONS

TWP.	=	TOWNSHIP
RNG.	=	RANGE
NO.	=	NUMBER
LB.	=	LICENSED BUSINESS
R/W	=	RIGHT OF WAY
P.S.M.	=	PROFESSIONAL SURVEYOR AND MAPPER
TEL.	=	TELEPHONE
F.B.	=	FIELD BOOK
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&	=	AND

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SURVEYING INC.

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SHEET 5 OF 8

OAK STREET
RIGHT OF WAY VARIES

UNPLATTED
CITY OF KISSIMMEE OWNERSHIP

SS915106 W 1164.04'

UNPLATTED

UNPLATTED

UNPLATTED

UNPLATTED

UNPLATTED

UNPLATTED

UNPLATTED

UNPLATTED

UNPLATTED

UNPLATTED

SEE SHEET 4
MATCH LINE

MATCH LINE
SEE SHEET 6

NS912116 E 1568.95'

SKETCH OF DESCRIPTION

SEE SHEET 1 OF 8 FOR LEGAL DESCRIPTION
SEE SHEETS 2 OF 8 FOR OVERALL
SEE SHEETS 3-8 OF 8 FOR SKETCH

NORTH RIGHT OF WAY LINE OF OAK ST.

OAK STREET
RIGHT OF WAY VARIES

SOUTH RIGHT OF WAY LINE OF OAK ST.

RETENTION
POND

UNPLATTED

PARCEL ID: 22-25-29-0000-0029-0000

S81°48'23"W
45.24'

S00°10'26"E 130.98'

N00°04'39"W 120.88'

S36°19'38"W
18.52'

S59°15'31"W 219.31'

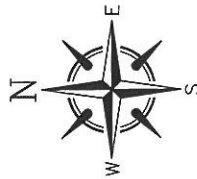
UNPLATTED
PARCEL ID: 22-25-29-0000-0014-0000

UNPLATTED
PARCEL ID: 22-25-29-0000-0014-0000

UNPLATTED
PARCEL ID: 22-25-29-0000-0014-0000

UNPLATTED
PARCEL ID: 22-25-29-0000-0014-0000

UNPLATTED



SCALE: 1" = 60'

LEGEND AND ABBREVIATIONS

- TWP. = TOWNSHIP
- RNG. = RANGE
- NO. = NUMBER
- LB. = LICENSED BUSINESS
- R/W = RIGHT OF WAY
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- & = AND

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SURVEYING INC.

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Tel. (407) 847-2179 Fax (407) 847-6140

SHEET 6 OF 8

SKETCH OF DESCRIPTION

SEE SHEET 1 OF 8 FOR LEGAL DESCRIPTION
SEE SHEETS 2 OF 8 FOR OVERALL
SEE SHEETS 3-8 OF 8 FOR SKETCH

NORTH RIGHT OF WAY LINE OF OAK ST.

OAK STREET
RIGHT OF WAY VARIES

SOUTH RIGHT OF WAY LINE OF OAK ST.

RETENTION
POND

UNPLATTED

PARCEL ID: 22-25-29-00U0-0029-0000

PORTION OF
GOVERNMENT LOT 2

MATCH LINE
SEE SHEET 6

PARCEL ID: 22-25-29-00U0-0025-0000
UNPLATTED

S00°32'03"W 172.42'

N88°15'22"W
91.73'

45.0' RIGHT OF WAY AGREEMENT
PER O.R.B. 883, PAGE 79

45.0' RIGHT OF WAY AGREEMENT
PER O.R.B. 883, PAGE 79

N89°39'51"E
54.35'

UNPLATTED

PARCEL ID: 22-25-29-00U0-0029-0000

UNPLATTED

UNPLATTED
PARCEL ID: 22-25-29-00U0-0029-0000

N38°01'13"W
26.10'

N74°48'14"W
32.26'

N00°22'28"E
53.00'

UNPLATTED
PARCEL ID: 22-25-29-00U0-0029-0000

S36°19'38"W
18.52'

S00°10'26"E 130.98'

S81°48'23"W
45.24'

UNPLATTED
PARCEL ID: 22-25-29-00U0-0014-0000

UNPLATTED
PARCEL ID: 22-25-29-00U0-0014-0000

UNPLATTED

UNPLATTED

UNPLATTED

LEGEND AND ABBREVIATIONS

- TWP. = TOWNSHIP
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- & = AND



SCALE: 1" = 60'

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SURVEYING INC.

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

SHEET 7 OF 8

SKETCH OF DESCRIPTION

SEE SHEET 1 OF 8 FOR LEGAL DESCRIPTION
SEE SHEETS 2 OF 8 FOR OVERALL
SEE SHEETS 3-8 OF 8 FOR SKETCH

RETENTION
POND

SCALE: 1" = 60'

LOT 4A

MILL CREEK MALL LOT 4 REPLAT
PLAT BOOK 32, PAGES 65-66
OSCEOLA COUNTY, FLORIDA

PARCEL ID:

23-25-29-1708-0001-004A

S79°35'39"W

76.04'

N45°19'05"E

62.36'

PERMANENT UTILITY
EASEMENT PER
ORB PG

50' DRAINAGE MAINTENANCE, AND
PATHWAY EASEMENT,
PER O.R.B. 1446, PGS. 1828-1829

PARCEL ID: 23-25-29-3640-000E-0030

PER O.R.B. 1446, PGS. 1828-1829

50' DRAINAGE MAINTENANCE, AND
PATHWAY EASEMENT,
PER O.R.B. 1446, PGS. 1828-1829

PARCEL ID: 23-25-29-00U0-0082-0000

PER O.R.B. 1446, PGS. 1828-1829

50' DRAINAGE MAINTENANCE, AND
PATHWAY EASEMENT,
PER O.R.B. 1446, PGS. 1828-1829

PARCEL ID: 23-25-29-00U0-0080-0000

PER O.R.B. 1446, PGS. 1828-1829

50' DRAINAGE MAINTENANCE, AND
PATHWAY EASEMENT,
PER O.R.B. 1446, PGS. 1828-1829

PARCEL ID: 23-25-29-00U0-0080-0000

PER O.R.B. 1446, PGS. 1828-1829

50' DRAINAGE MAINTENANCE, AND
PATHWAY EASEMENT,
PER O.R.B. 1446, PGS. 1828-1829

PARCEL ID: 23-25-29-00U0-0080-0000

PER O.R.B. 1446, PGS. 1828-1829

50' DRAINAGE MAINTENANCE, AND
PATHWAY EASEMENT,
PER O.R.B. 1446, PGS. 1828-1829

PARCEL ID: 23-25-29-00U0-0080-0000

PER O.R.B. 1446, PGS. 1828-1829

50' DRAINAGE MAINTENANCE, AND
PATHWAY EASEMENT,
PER O.R.B. 1446, PGS. 1828-1829

PARCEL ID: 23-25-29-00U0-0080-0000

PER O.R.B. 1446, PGS. 1828-1829

50' DRAINAGE MAINTENANCE, AND
PATHWAY EASEMENT,
PER O.R.B. 1446, PGS. 1828-1829

PARCEL ID: 23-25-29-00U0-0080-0000

PER O.R.B. 1446, PGS. 1828-1829

50' DRAINAGE MAINTENANCE, AND
PATHWAY EASEMENT,
PER O.R.B. 1446, PGS. 1828-1829

PARCEL ID: 23-25-29-00U0-0080-0000

PER O.R.B. 1446, PGS. 1828-1829

50' DRAINAGE MAINTENANCE, AND
PATHWAY EASEMENT,
PER O.R.B. 1446, PGS. 1828-1829

PARCEL ID: 23-25-29-00U0-0080-0000

PER O.R.B. 1446, PGS. 1828-1829

50' DRAINAGE MAINTENANCE, AND
PATHWAY EASEMENT,
PER O.R.B. 1446, PGS. 1828-1829

PARCEL ID: 23-25-29-00U0-0080-0000

PER O.R.B. 1446, PGS. 1828-1829

50' DRAINAGE MAINTENANCE, AND
PATHWAY EASEMENT,
PER O.R.B. 1446, PGS. 1828-1829

PARCEL ID: 23-25-29-00U0-0080-0000

PER O.R.B. 1446, PGS. 1828-1829

000

N04°32'45"W 119.36'

M.90°57'19"N 41.99'

SEE SHEET 4
MATCH LINE

N80°46'10"W 111.63'

S86°11'44"W 67.31'

S81°58'55"W 88.29'

S88°06'45"W 67.70'

S79°35'39"W 76.04'

N45°19'05"E 62.36'

PERMANENT UTILITY
EASEMENT PER
ORB PG

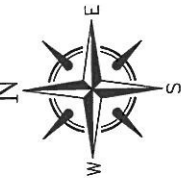
50' DRAINAGE MAINTENANCE, AND
PATHWAY EASEMENT,
PER O.R.B. 1446, PGS. 1828-1829

PARCEL ID: 23-25-29-00U0-0080-0000

PER O.R.B. 1446, PGS. 1828-1829

50' DRAINAGE MAINTENANCE, AND
PATHWAY EASEMENT,
PER O.R.B. 1446, PGS. 1828-1829

PARCEL ID: 23-25-29-00U0-0080-0000



LOT 2
BLOCK A

KISSIMMEE GARDENS
PLAT BOOK 1, PAGE 32
OSCEOLA COUNTY, FLORIDA

JOHNSTON'S
SURVEYING INC.

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

SHEET 8 OF 8

LEGEND AND ABBREVIATIONS

TWP. = TOWNSHIP
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SURVEYOR AND MAPPER
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± = PLUS OR MINUS
& = AND

UNPLATTED

PARCEL ID: 23-25-29-00U0-0080-0000

WEST LINE OF CITY OF KISSIMMEE OWNERSHIP

Prepared by and return to:
Paul S. Quinn, Jr., Esq.
GrayRobinson, P.A.
301 E. Pine Street, Suite 1400
Orlando, FL 32801

Property Appraiser's Parcel ID Numbers:
Portion of:
23-25-29-3640-000E-0030
23-25-29-00U0-0082-0000

INTAKE AND PUMP STATION EASEMENT AGREEMENT

THIS INTAKE AND PUMP STATION EASEMENT AGREEMENT (the "**Agreement**") is made and entered into effective as of the ____ day of _____, 2023 (the "**Effective Date**"), by and between **CITY OF KISSIMMEE**, a political subdivision of the State of Florida, whose address is 101 Church Street, Kissimmee, Florida 34741 ("**Grantor**"), and **TOHOPEKALIGA WATER AUTHORITY**, an independent special district created and established pursuant to Chapter 189, Florida Statutes, by special act of the Florida Legislature, whose address is 951 Martin Luther King Boulevard, Kissimmee, Florida 34741 (hereinafter, "**Grantee**" or "**Toho**"). Grantor and Grantee are sometimes together referred to herein as the "**Parties**", and separately as the "**Party**."

WITNESSETH:

WHEREAS, Grantor is the owner in fee simple of that certain real property located in Osceola County, Florida, being more particularly described on **Exhibit "A"** attached hereto and incorporated herein (the "**Easement Area**"); and

WHEREAS, Grantor desires to grant to Grantee, and Grantee desires to accept from Grantor, a permanent, exclusive intake and pump station easement on, upon, over, under, across and through the Easement Area for the benefit of the Grantor's property and surrounding properties, subject to the provisions set forth herein (the "**Easement**"); and

NOW, THEREFORE, for and in consideration of Ten and No/100 Dollars (\$10.00) in hand paid by the Grantee to the Grantor, the mutual covenants and agreements herein set forth and other good and valuable consideration, the receipt, adequacy and sufficiency of which are hereby expressly acknowledged by the Parties, the Parties do hereby agree as follows:

1. **Recitals.** The foregoing recitals are true and correct and are incorporated herein by this reference.
2. **Grant of Easement.** Grantor does hereby grant, bargain, sell and convey to Grantee a permanent, perpetual, exclusive easement on, upon, over, under, across and through the Easement Area for the purposes of accessing, utilizing, operating, maintaining, repairing, replacing, and restoring an intake and pump station (the "**Utilities**"), together with the right of

ingress, egress and access to the Easement Area over Grantor's land located adjacent thereto. Grantor shall retain the right to access to the Easement Area, in a manner that does not unreasonably interfere with Grantee's use thereof, for purposes of maintaining and mowing Grantor's property surrounding the Easement Area, and maintenance of that certain stormwater pond located on Grantor's property.

3. **Repair and Maintenance.** Grantee, at Grantee's expense, shall be responsible for the operation, maintenance, repair and restoration of all intake and pump station facilities lying within the Easement Area, together with related improvements necessary for the Utilities.

4. **Damage.** In the event that Grantee or Grantee's agents, employees, consultants, representatives, and contractors (and their subcontractors, employees and materialmen) cause damage to the Easement Area (or any other real or personal property not owned by Grantee) Grantee, at Grantee's cost and expense, agrees to promptly commence the restoration and repair of the same to as nearly as practical the original condition and grade and shall diligently pursue and cause the completion of the same within thirty (30) days after receiving written notice of any such damage.

5. **Assignment and Termination.** Grantee may assign its rights and obligations under this Agreement to any property owners' association, municipality, district or other governmental authority ("**Permitted Assignee**") that assumes all of Grantee's obligations to maintain, repair and replace the Utilities under the same terms described herein. Following any such assignment and assumption, Grantee shall be released from all obligations and liabilities hereunder. If the Easement shall be abandoned by Grantee or terminated in any manner, all rights and privileges hereunder shall cease and the easement privileges and rights herein granted shall revert to Grantor.

6. **Insurance.** Grantee, or any contractors (and their subcontractors, employees and materialmen) performing work for Grantee in the Easement Area, shall at all times maintain general public liability insurance to afford protection against any and all claims for personal injury, death or property damage arising directly or indirectly out of the exercise of the rights and privileges granted.

7. **Indemnity.**

(a) Grantor agrees to defend, indemnify and hold Grantee, individually and collectively, harmless from and against any and all claims, suits, judgments, demands, costs and expenses, including attorney's fees whether at trial, on appeal or in bankruptcy, of any kind or nature whatsoever related to this Agreement arising directly out of or caused by any act or omission of Grantor, its agents, employees, consultants, representatives, and contractors (and their subcontractors, employees and materialmen).

(b) Grantee agrees to defend, indemnify and hold harmless Grantor from and against any and all claims, suits, judgments, demands, cost and expenses, including attorney's fees whether at trial, on appeal or in bankruptcy, of any kind or nature whatsoever related to this Agreement arising directly out of or caused by any act or omission of any Grantee or any of

Grantee' agents, employees, consultants, representatives, and contractors (and their subcontractors, employees and materialmen).

(c) Notwithstanding the foregoing and to the extent applicable, the Grantor's and Grantee's indemnification of the other Party hereunder shall not be construed or interpreted to alter or waive the entitlement of such Parties to the protection of sovereign immunity, or to the extend or to modify Parties' liability beyond the limits established by Florida law generally, and more specifically, Article X, Section 13 of the Florida Constitution and Section 768.28 Florida Statutes (2023) as from time to time amended.

8. **Obligations.** Any rights granted hereunder shall be exercised only in accordance and compliance with any and all applicable laws, ordinances, rules, regulations, permits and approvals, and any future modifications or amendments thereto. The Parties covenant and agree that neither Party shall discharge into or within the Easement Area, any hazardous or toxic materials or substances, any pollutants, or any other substances or materials prohibited or regulated under any federal, state or local law, ordinance, rule, regulations or permit, except in accordance with such laws, ordinances, rules, regulations and permits.

9. **Beneficiaries of Easement Rights/Binding Effect.** The Easement set forth in this Agreement shall be an easement appurtenant to the Property, for the benefit and use of Grantee and Grantee's successors and assigns, and their agents, employees, consultants, representatives, contractors (and their subcontractors, employees and materialmen), and shall be binding upon the Easement Area and shall be a covenant running with the title to the Easement Area. The Easement hereby created and granted includes the creation of all incidental rights reasonably necessary for the use and enjoyment of the Easement Area for its intended purpose.

10. **Limitation on Use.** Nothing contained in this Agreement shall create or shall be deemed to create any easements or use rights other than those expressly provided for herein.

11. **Liens.** No Party shall permit (and shall promptly satisfy or bond) any construction, mechanic's lien or encumbrance against the Easement Area or any other property not owned by such Party in connection with the exercise by such Party of its rights hereunder.

12. **Amendments and Waivers.** This Agreement may not be terminated or amended, modified, altered, or changed in any respect whatsoever, except by a further agreement in writing duly executed by the Parties and recorded in the Public Records of Osceola County, Florida. No delay or omission of any Party in the exercise of any right accruing upon any default of any Party shall impair such right or be construed to be a waiver thereof, and every such right may be exercised at any time during the continuance of such default. A waiver by any Party of a breach of, or a default in, any of the terms and conditions of this Agreement by any other Party shall not be construed to be a waiver of any subsequent breach of or default in the same or any other provision of this Agreement. No breach of the provisions of this Agreement shall entitle any Party to cancel, rescind or otherwise terminate this Agreement, but such limitation shall not affect, in any manner, any other rights or remedies which any Party may have by reason of any breach of the provisions of this Agreement.

13. **Notices.**

(a) All notices, certificates or other communications hereunder shall be sufficiently given and shall be deemed given on the date such notice is delivered by courier, or three days after the date mailed by registered or certified mail, postage prepaid, to the other party at the following addresses:

Grantor:

Kissimmee City Manager
101 Church Street
Kissimmee, Florida 34741

With a copy to

Kissimmee City Attorney
101 Church Street
Kissimmee, Florida 34741

Grantee:

Tohopekaliga Water Authority
Attention: Executive Director
951 Martin Luther King Blvd
Kissimmee, Florida 34741

With a copy to

Tohopekaliga Water Authority
Attention: General Counsel
951 Martin Luther King Blvd
Kissimmee, Florida 34741

(b) Whenever practicable, each party will endeavor to reply or respond sooner than the time periods provided for herein.

14. **Use of Easement Area.** It is acknowledged and agreed that the Easement granted under this Agreement is an exclusive easement and that Grantor shall have the right to use and enjoy the Easement Area in any manner not inconsistent with the easement rights created herein.

15. **Miscellaneous.** This Agreement contains the entire understanding of the Parties with respect to the matters set forth herein and no other agreement, oral or written, not set forth herein, nor any course of dealings of the Parties, shall be deemed to alter or affect the terms and conditions set forth herein. If any provision of this Agreement, or portion thereof, or the application thereof to any person or circumstances, shall, to the extent be held invalid, inoperative or unenforceable, the remainder of this Agreement, or the application of such provision or portion thereof to any other persons or circumstances, shall not be affected thereby; it shall not be deemed that any such invalid provision affects the consideration for this Agreement; and each provision of this Agreement shall be valid and enforceable to the fullest extent permitted by law. This Agreement shall be construed in accordance with the laws of the United States of America and the State of Florida. The section headings in this Agreement are for convenience only, shall in no way define or limit the scope or content of this Agreement, and shall not be considered in any construction or interpretation of this Agreement or any part hereof. Where the sense of this Agreement requires, any reference to a term in the singular shall be deemed to include the plural of said term, and any reference to a term in the plural shall be deemed to include the singular of said term. Nothing in this Agreement shall be construed to make the Parties hereto partners or joint ventures or render either of said Parties liable for the debts or obligations of the other. This

Agreement may be executed in counterparts, each of which shall constitute an original, but all taken together shall constitute one and the same Agreement. Time is of the essence of this Agreement. This Agreement shall be binding upon and inure to the benefit of Grantee, Grantor, and their respective successors and assigns.

16. Sovereign Immunity.

(a) The Parties hereto recognize, ratify, confirm and acknowledge they are governmental entities which enjoy sovereign immunity, and that nothing contained herein shall constitute a waiver by the Parties of any sovereign immunity or of the limitations as set forth in Florida Statutes Section 768.28, or its successor in function.

(b) Notwithstanding anything to the contrary herein, the Parties do not waive any sovereign immunity as a result of this or any other agreement resulting from the subject matter hereof; and, nothing herein shall be construed to usurp or contract away the duty or authority of the Parties to exercise any police powers as defined by law.

[SIGNATURES APPEAR ON THE FOLLOWING PAGES.]

IN WITNESS WHEREOF, Grantor and Grantee have caused this Agreement to be effective as of the Effective Date.

Signed, sealed and delivered
in the presence of:

“GRANTOR”

CITY OF KISSIMMEE, a political
subdivision of the State of Florida

Print Name: Mike Steigerwald
Address: 101 Church Street
Kissimmee, Florida 34741

By: _____
Name: Olga Gonzalez
Title: Mayor

Print Name: Olga Sanchez De Fuentes
Address: 101 Church Street
Kissimmee, Florida 34741

STATE OF FLORIDA
COUNTY OF OSCEOLA

The foregoing instrument was signed, delivered, and acknowledged before me by means of ☐ physical presence or ☐ online notarization this _____ day of _____, 2023, by _____, as _____ of **CITY OF KISSIMMEE**, a political subdivision of the State of Florida, on behalf thereof. He/she ☐ is personally known to me or ☐ produced _____ as identification.

(Signature of Notary Public)

(Linda S. Hansell)
Notary Public, State of Florida
Commission No.: _____
My Commission Expires: _____

Signed, sealed and delivered
in the presence of:

“GRANTEE”

**TOHOPEKALIGA WATER
AUTHORITY**, an independent special
district, established and created pursuant to
Chapter 189, Florida Statutes, by special act
of the Florida Legislature

Print Name: _____
Address: _____

By: _____
Name: _____
Title: _____

Print Name: _____
Address: _____

**STATE OF FLORIDA
COUNTY OF OSCEOLA**

The foregoing instrument was signed, delivered, and acknowledged before me by means
of ☐ physical presence or ☐ online notarization this _____ day of _____, 2023, by ____
_____, as _____ of **TOHOPEKALIGA WATER
AUTHORITY**, an independent special district, established and created pursuant to Chapter 189,
Florida Statutes, by special act of the Florida Legislature, on behalf thereof. He/she ☐ is personally
known to me or ☐ produced _____ as identification.

(Signature of Notary Public)

(Typed name of Notary Public)
Notary Public, State of Florida
Commission No.: _____
My Commission Expires: _____

EXHIBIT "A"

Easement Area

A parcel of land being a portion of Section 23, Township 25 South, Range 29 East, Osceola County, Florida and being more particularly described as follows:

Commence at the Northwest corner of Section 23, Township 25 South, Range 29 East, Osceola County, Florida; thence S00°24'47"E, along the West line of said Section 23, a distance of 731.40 feet; thence S82°20'04"E, a distance of 30.79 feet; thence S00°28'14"E, a distance of 54.06 feet; thence S88°35'24"E, a distance of 10.65 feet; thence S13°35'27"W, a distance of 50.84 feet; thence S02°23'44"W, a distance of 50.69 feet; thence S60°52'14"E, a distance of 112.31 feet; thence S38°09'46"E, a distance of 39.54 feet; thence S04°32'45"E, a distance of 119.36 feet; thence S16°57'06"E, a distance of 41.66 feet; thence S80°46'10"E, a distance of 111.63 feet; thence N86°11'44"E, a distance of 67.31 feet; thence N81°58'55"E, a distance of 88.29 feet; thence S87°00'49"E, a distance of 84.09 feet; thence N88°06'45"E, a distance of 67.70 feet; thence S57°04'11"E, a distance of 103.97 feet; thence N45°54'32"E, a distance of 18.22 feet to the Point of Beginning; thence N45°54'32"E, a distance of 327.39 feet; thence S43°06'38"E, a distance of 47.46 feet; thence S45°45'50"W, a distance of 280.89 feet; thence N87°34'57"W, a distance of 66.38 feet to the Point of Beginning.

Containing 14,547 square feet or 0.334 acres, more or less.

The Easement Area is depicted on Exhibit "A-1" attached hereto.

EXHIBIT “A-1”

Sketch of Description of Easement Area

[ATTACH]

SKETCH OF DESCRIPTION

SEE SHEET 2 OF 6 FOR OVERALL
SEE SHEETS 3-6 OF 6 FOR SKETCH

LEGAL DESCRIPTION:

PERMANENT EASEMENT 3

(Parcel ID's: 23-25-29-00U0-0082-0000; 23-25-29-3640-000E-0030)

A parcel of land being a portion of Section 23, Township 25 South, Range 29 East, Osceola County, Florida and being more particularly described as follows:

Commence at the Northwest corner of Section 23, Township 25 South, Range 29 East, Osceola County, Florida; thence S00°24'47"E, along the West line of said Section 23, a distance of 731.40 feet; thence S82°20'04"E, a distance of 30.79 feet; thence S00°28'14"E, a distance of 54.06 feet; thence S88°35'24"E, a distance of 10.65 feet; thence S13°35'27"W, a distance of 50.84 feet; thence S02°23'44"W, a distance of 50.69 feet; thence S60°52'14"E, a distance of 112.31 feet; thence S38°09'46"E, a distance of 39.54 feet; thence S04°32'45"E, a distance of 119.36 feet; thence S16°57'06"E, a distance of 41.66 feet; thence S80°46'10"E, a distance of 111.63 feet; thence N86°11'44"E, a distance of 67.31 feet; thence N81°58'55"E, a distance of 88.29 feet; thence S87°00'49"E, a distance of 84.09 feet; thence N88°06'45"E, a distance of 67.70 feet; thence S57°04'11"E, a distance of 103.97 feet; thence N45°54'32"E, a distance of 18.22 feet to the Point of Beginning; thence N45°54'32"E, a distance of 327.39 feet; thence S43°06'38"E, a distance of 47.46 feet; thence S45°45'50"W, a distance of 280.89 feet; thence N87°34'57"W, a distance of 66.38 feet to the Point of Beginning.

Containing 14,547 square feet or 0.334 acres, more or less.

SURVEYOR'S NOTES:

1. BEARINGS AS SHOWN HEREON ARE BASED ON THE WEST LINE OF SECTION 23, TOWNSHIP 25 SOUTH, RANGE 29 EAST, OSCEOLA COUNTY, FLORIDA, ASSUMED BEARING OF S00°24'47"E.
2. THIS DRAWING REPRESENTS A SKETCH OF DESCRIPTION AND IS NOT A BOUNDARY SURVEY.
3. PROPERTY SHOWN HEREON IS BASED UPON
4. NO CORNERS WERE SET AS A PART OF THIS SKETCH.

REQUESTED BY: WSP USA, INC

SHEET 1 OF 6

DATE OF SURVEY	8/4/2022	REVISIONS
SCALE	1" = 60'	ADDED PARCEL ID NUMBERS 9/19/2022
F.B.	PAGE	
SECTIONS	23	
TWP. 25	S., RNG. 29	E.
JOB NO.	18-271A	

JOHNSTON'S
SURVEYING INC.

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

R.D.B.

9/20/2022

RICHARD D. BROWN, P.S.M. #5700 (DATE)

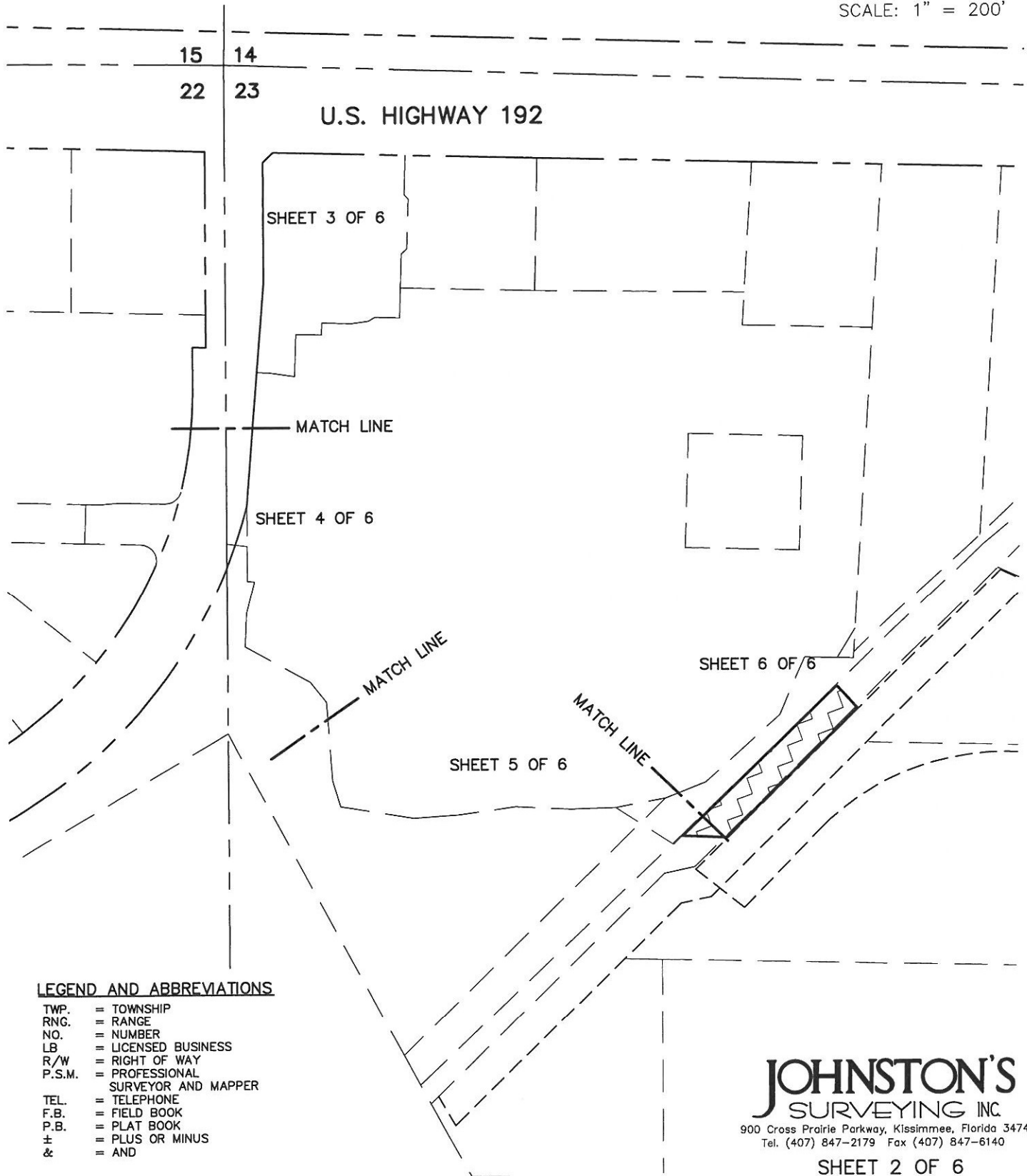
NOTE: NOT VALID WITHOUT RAISED SURVEYOR'S SEAL.

SKETCH OF DESCRIPTION

SEE SHEET 1 OF 6 FOR LEGAL DESCRIPTION
SEE SHEETS 2 OF 6 FOR OVERALL
SEE SHEETS 3-6 OF 6 FOR SKETCH



SCALE: 1" = 200'



LEGEND AND ABBREVIATIONS

TWP. = TOWNSHIP
RNG. = RANGE
NO. = NUMBER
LB. = LICENSED BUSINESS
R/W = RIGHT OF WAY
P.S.M. = PROFESSIONAL
SURVEYOR AND MAPPER
TEL. = TELEPHONE
F.B. = FIELD BOOK
P.B. = PLAT BOOK
± = PLUS OR MINUS
& = AND

JOHNSTON'S
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SHEET 2 OF 6

SKETCH OF DESCRIPTION

SEE SHEET 1 OF 6 FOR LEGAL DESCRIPTION
SEE SHEETS 2 OF 6 FOR OVERALL
SEE SHEETS 3-6 OF 6 FOR SKETCH



SCALE: 1" = 60'

15 14
22 23

POINT OF COMMENCEMENT
NORTHWEST CORNER
OF SECTION 23,
TOWNSHIP 25 SOUTH,
RANGE 29 EAST

U.S. HIGHWAY 192

UNPLATTED

OAK STREET
RIGHT OF WAY VARIES

S00°24'47"E 731.40' (BEARING BASIS)
WEST LINE OF SEC. 23-25-29

LOT 1
SSA KISSIMMEE
PLAT BOOK 17,
PAGE 43
OSCEOLA COUNTY,
FLORIDA

LOT 1
MILL CREEK MALL
PLAT BOOK 11, PAGES 104-105
OSCEOLA COUNTY, FLORIDA

LOT 2
MILL CREEK MALL
PLAT BOOK 11,
PAGES 104-105
OSCEOLA COUNTY,
FLORIDA

LOT 4A
MILL CREEK MALL LOT 4 REPLAT
PLAT BOOK 32, PAGES 65-66
OSCEOLA COUNTY, FLORIDA

LEGEND AND ABBREVIATIONS

TWP.	= TOWNSHIP
RNG.	= RANGE
NO.	= NUMBER
LB	= LICENSED BUSINESS
R/W	= RIGHT OF WAY
P.S.M.	= PROFESSIONAL SURVEYOR AND MAPPER
TEL.	= TELEPHONE
F.B.	= FIELD BOOK
P.B.	= PLAT BOOK
±	= PLUS OR MINUS
&	= AND

MATCH LINE
SEE SHEET 4

JOHNSTON'S
SURVEYING INC.

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

SHEET 3 OF 6

SKETCH OF DESCRIPTION

SEE SHEET 1 OF 6 FOR LEGAL DESCRIPTION
SEE SHEETS 2 OF 6 FOR OVERALL
SEE SHEETS 3-6 OF 6 FOR SKETCH



SCALE: 1" = 60'

MATCH LINE
SEE SHEET 3

LOT 1

SSA KISSIMMEE
PLAT BOOK 17,
PAGE 43
OSCEOLA COUNTY,
FLORIDA

TRACT A

SSA KISSIMMEE
PLAT BOOK 17,
PAGE 43
OSCEOLA COUNTY,
FLORIDA

OAK STREET
RIGHT OF WAY VARIES

LOT 4A

MILL CREEK MALL LOT 4 REPLAT
PLAT BOOK 32, PAGES 65-66
OSCEOLA COUNTY, FLORIDA

LEGEND AND ABBREVIATIONS

TWP.	= TOWNSHIP
RNG.	= RANGE
NO.	= NUMBER
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P.S.M.	= PROFESSIONAL SURVEYOR AND MAPPER
TEL.	= TELEPHONE
F.B.	= FIELD BOOK
P.B.	= PLAT BOOK
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&	= AND

MATCH LINE
SEE SHEET 5

JOHNSTON'S
SURVEYING INC.

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

SHEET 4 OF 6

EAST LINE OF
SECTION 22-25-29
WEST LINE OF
SECTION 23-25-29

UNPLATTED
PARCEL ID: 22-25-29-0000-0014-0000

100.0'

S82°20'04"E
30.79'

S00°28'14"E
54.06'

S88°35'24"E
10.65'

S13°35'27"W
50.84'

S02°23'44"W
50.69'

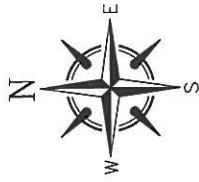
S60°52'14"E 112.31'

S38°09'46"E
39.54'

S04°32'45"E 119.36'

SKETCH OF DESCRIPTION

SEE SHEET 1 OF 6 FOR LEGAL DESCRIPTION
SEE SHEETS 2 OF 6 FOR OVERALL
SEE SHEETS 3-6 OF 6 FOR SKETCH



SCALE: 1" = 116.0'
PLAT. OSCEOLA

MATCH LINE
SEE SHEET 4

RETENTION
POND

LOT 4A

MILL CREEK MALL LOT 4 REPLAT
PLAT. BOOK 32, PAGES 65-66
OSCEOLA COUNTY, FLORIDA

MATCH LINE
SEE SHEET 6

N88°06'45"E
67.70'

S87°00'49"E
84.09'

N81°58'55"E
88.29'

N86°11'44"E
67.31'

S80°46'10"E
111.63'

S16°57'06"E
41.66'

S04°32'45"E 119.36'

PERMANENT UTILITY
EASEMENT PER
ORB

S57°04'11"E
103.97'

UNPLATTED
PARCEL ID: 23-25-29-0000-0080-0000

N87°34'57"W
66.38'

POINT OF
BEGINNING

N45°54'32"E
18.22'

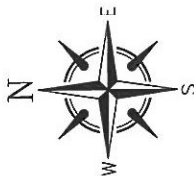
LEGEND AND ABBREVIATIONS

- TWP. = TOWNSHIP
- RNG. = RANGE
- NO. = NUMBER
- LB. = LICENSED BUSINESS
- R/W = RIGHT OF WAY
- P.S.M. = PROFESSIONAL SURVEYOR AND MAPPER
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- & = AND

JOHNSTON'S
SURVEYING INC.

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

SHEET 5 OF 6



SCALE: 1" = 60'

SKETCH OF DESCRIPTION

SEE SHEET 1 OF 6 FOR LEGAL DESCRIPTION
SEE SHEETS 2 OF 6 FOR OVERALL
SEE SHEETS 3-6 OF 6 FOR SKETCH

MILL CREEK MALL
PLAT BOOK 11, PAGES 104-105
OSCEOLA COUNTY, FLORIDA

LEGEND AND ABBREVIATIONS

TWP. = TOWNSHIP
RNG. = RANGE
NO. = NUMBER
LB. = LICENSED BUSINESS
R/W = RIGHT OF WAY
P.S.M. = PROFESSIONAL
SURVEYOR AND MAPPER
TEL. = TELEPHONE
F.B. = FIELD BOOK
P.B. = PLAT BOOK
± = PLUS OR MINUS
& = AND

LOT 4A

MILL CREEK MALL LOT 4 REPLAT
PLAT BOOK 32, PAGES 65-66
OSCEOLA COUNTY, FLORIDA

TEMPORARY CONSTRUCTION EASEMENT
PER ORB PG

50' DRAINAGE, MAINTENANCE, AND PATHWAY
EASEMENT, 1828-1829
PER O.R.B. 1446, PGS. 1828-1829

N88°06'45"E
67.70'

MATCH LINE
SEE SHEET 5

PERMANENT UTILITY
EASEMENT PER
ORB PG

S57°04'11"E
103.97'

N45°54'32"E
18.22'

N87°34'57"W
66.38'

POINT OF
BEGINNING

DRAINAGE & SEWER EASEMENT
PER ORB 3815, PG 986

LOT 2
BLOCK A

KISSIMMEE GARDENS
PLAT BOOK 1, PAGE 32
OSCEOLA COUNTY, FLORIDA

JOHNSTON'S
SURVEYING INC.

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

SHEET 6 OF 6

ITEM 7.P

Temporary Construction Easement with Toho Water Authority for the Toho Reservoir Intake and Pump Station Project

Request

Approval of the Temporary Construction Easement between the City of Kissimmee and Tohopekalia Water Authority relating to the Toho Reservoir Intake Pump Stations and Raw Water Main.

Explanation

Tohopekalia Water Authority is looking to build two intake pump stations along two waterways on the City's right of way to draw water from them. One of the intake pumps will be located along the East City Ditch south of Oak Street near the City trash skimmer and the other one will be located along the Mill Slough south of U.S. 192 adjacent to the Neo City Development.

Through this temporary easement, the City would grant Tohopekalia Water Authority the right of ingress and egress over and across the easement area required for the construction of the utilities on the City of Kissimmee's right of way.

Recommendation

Approval of the Temporary Construction Easement between the City of Kissimmee and Tohopekalia Water Authority relating to the Toho Reservoir Intake Pump Station and Raw Water Main.

REQUESTED CITY COMMISSION ACTION:

Approve

Department: Public Works & Engineering

Presenter:

Attachment(s):

1. (S) Temporary Construction Easement with Toho Water Authority – East City Ditch
2. (S) Temporary Construction Easement with Toho Water Authority – Mill Slough

This instrument prepared by and
return to:
Paul S. Quinn, Jr., Esq.
GrayRobinson, P.A.
301 E. Pine Street, Suite 1400
Orlando, FL 32801

Property Appraiser's Parcel ID Numbers:
Portion of:
22-25-29-00U0-0025-0000
22-25-29-00U0-0029-0000
22-25-29-00U0-0014-0000
23-25-29-00U0-0080-0000

TEMPORARY CONSTRUCTION EASEMENT

THIS TEMPORARY CONSTRUCTION EASEMENT (the "**Easement**") is made and entered into effective as of the ____ day of _____, 2023 (the "**Effective Date**"), by and between **CITY OF KISSIMMEE**, a political subdivision of the State of Florida, whose address is 101 Church Street, Kissimmee, Florida 34741 ("**Grantor**"), and **TOHOPEKALIGA WATER AUTHORITY**, an independent special district created and established pursuant to Chapter 189, Florida Statutes, by special act of the Florida Legislature, whose address is 951 Martin Luther King Boulevard, Kissimmee, Florida 34741 (hereinafter, "**Grantee**" or "**Toho**"). Grantor and Grantee are sometimes together referred to herein as the "**Parties**", and separately as the "**Party**."

WITNESSETH:

For and in consideration of the sum of Ten Dollars (\$10.00), and other good and valuable consideration, receipt of which is hereby acknowledged, the Grantor does hereby authorize the use of and hereby grants and conveys to Toho, its successors and assigns, a temporary construction easement across those certain parcels of real property located in Osceola County, Florida, as more particularly described in **Exhibit "A"** attached hereto and incorporated herein (collectively, the "**Easement Area**") for the purposes of constructing an intake and pump station, remaining pipeline, and facilities related thereto (the "**Utilities**") to provide utility services to Grantor's property and surrounding properties. Grantor also agrees to provide to Toho access to the gate at the Grantor's stormwater pond during construction of the intake pump station along the East City Ditch.

This Easement is granted solely to provide temporary ingress and egress by Grantee over and across the Easement Area, and to perform all such necessary acts for the construction of the Utilities serving the surrounding properties. This Easement shall have an initial term of five (5) years (the "**Initial Easement Term**"). Grantor shall provide Grantee the option to extend the term of this Easement an additional two (2) years upon at least thirty (30) days written notice to the Grantor.

The Grantee shall have all other rights and benefits necessary or convenient for the full enjoyment or use of the rights herein granted, including, but without limiting the same to, the right of ingress and egress over and across the Easement Area.

Grantee shall obtain from Grantor and any other governmental entity having jurisdiction over the construction of the Utilities, all permits and approvals required to construct the Utilities. Grantee shall restore the surface of the Easement Area, as nearly as practicable and permissible, to its prior condition and contour following any disturbance occasioned by the construction of the Utilities.

The use of the Easement granted herein does not run to the public and no rights hereunder are granted or approved except for the purposes and use by Toho, its agents, successors and assigns, for the uses and purposes stated herein provided such uses and purposes shall be subject to the terms and conditions of this Easement.

It is agreed that this Easement covers all the agreements between the Parties and no representations or statements, verbal or written, have been made, modifying, adding to, or changing the terms of this agreement.

The Parties hereto recognize, ratify, confirm and acknowledge they are governmental entities which enjoy sovereign immunity, and that nothing contained herein shall constitute a waiver by the Parties of any sovereign immunity or of the limitations as set forth in Florida Statutes Section 768.28, or its successor in function.

Notwithstanding anything to the contrary herein, the Parties do not waive any sovereign immunity as a result of this or any other agreement resulting from the subject matter hereof; and, nothing herein shall be construed to usurp or contract away the duty or authority of the Parties to exercise any police powers as defined by law.

[SIGNATURE PAGES FOLLOW NEXT]

IN WITNESS WHEREOF, the Parties have caused this Easement to be duly executed under seal and delivered as of the Effective Date.

Signed, sealed and delivered
in the presence of:

“GRANTOR”

CITY OF KISSIMMEE, a political
subdivision of the State of Florida

Print Name: Mike Steigerwald
Address: 101 Church Street
Kissimmee, Florida 34741

By: _____
Name: Olga Gonzalez
Title: Mayor

Print Name: Olga Sanchez De Fuentes
Address: 101 Church Street
Kissimmee, Florida 34741

STATE OF FLORIDA
COUNTY OF OSCEOLA

The foregoing instrument was acknowledged before me by means of [] physical presence or []
online notarization, this ____ day of _____, 2023, by _____, as
_____ of the City of Kissimmee, a political subdivision of the State of Florida, who
(check one): _____ is personally known to me, or _____ produced
_____ as identification.

[AFFIX NOTARY SEAL]

Notary Public Signature
Print Notary Name: Linda S. Hansell
My commission expires: _____

Signed, sealed and delivered
in the presence of:

GRANTEE:

TOHOPEKALIGA WATER AUTHORITY

Print name: _____
Address: _____

By: _____
Name: _____
Its: _____

Print name: _____
Address: _____

STATE OF FLORIDA
COUNTY OF _____

THE FOREGOING INSTRUMENT was acknowledged before me this _____ day of _____, 2023, by _____, as _____ of Tohopekaliga Water Authority, an independent special district established and created pursuant to Chapter 189, Florida Statutes, by special act of the Florida Legislature, who is (check one): _____ is personally known to me, or _____ produced _____ as identification.

[AFFIX NOTARY SEAL]

Notary Public Signature _____
Print Notary Name: _____
My commission expires: _____

EXHIBIT "A"

LEGAL DESCRIPTION OF EASEMENT AREA

A parcel of land being a portion of Sections 22 & 23, Township 25 South, Range 29 East, Osceola County, Florida and being more particularly described as follows:

Commence at the Northwest corner of Section 23, Township 25 South, Range 29 East, Osceola County, Florida; thence S00°24'47"E, along the West line of said Section 23, a distance of 731.40 feet to the Point of Beginning; thence N82°20'04"W, a distance of 5.30 feet; thence S26°57'28"W, a distance of 46.93 feet; thence S32°11'50"E, a distance of 9.74 feet; thence S16°45'42"E, a distance of 8.65 feet; thence S05°03'11"E, a distance of 15.65 feet; thence S03°22'59"E, a distance of 23.68 feet; thence S03°27'59"E, a distance of 39.72 feet; thence S05°58'04"E, a distance of 20.16 feet; thence S11°44'01"E, a distance of 13.69 feet; thence S20°10'34"E, a distance of 20.89 feet; thence S28°18'46"E, a distance of 22.99 feet; thence S29°26'35"E, a distance of 15.40 feet; thence S24°21'02"E, a distance of 20.39 feet; thence S20°28'03"E, a distance of 2.20 feet; thence S59°12'18"W, a distance of 970.79 feet; thence N30°38'34"W, a distance of 11.77 feet; thence S60°00'47"W, a distance of 62.34 feet; thence N88°50'37"W, a distance of 110.02 feet; thence N01°39'36"E, a distance of 36.36 feet; thence S85°05'23"W, a distance of 44.87 feet; thence S03°02'45"E, a distance of 131.16 feet; thence S49°37'14"W, a distance of 23.03 feet; thence S59°15'51"W, a distance of 219.31 feet; thence N74°48'14"W, a distance of 32.26 feet; thence N38°01'13"W, a distance of 26.10 feet; thence N00°22'28"E, a distance of 53.00 feet; thence N88°15'22"W, a distance of 91.73 feet; thence S00°36'12"W, a distance of 166.42 feet; thence N89°58'35"E, a distance of 58.04 feet; thence N59°32'27"E, a distance of 1,017.13 feet; thence N58°42'43"E, a distance of 500.89 feet; thence N62°14'27"E, a distance of 46.36 feet; thence S32°44'24"E, a distance of 253.50 feet; thence N83°44'57"E, a distance of 432.52 feet; thence S83°50'16"E, a distance of 8.55 feet; thence N45°19'05"E, a distance of 62.36 feet; thence S79°35'39"W, a distance of 76.04 feet; thence S88°06'45"W, a distance of 67.70 feet; thence N87°00'49"W, a distance of 84.09 feet; thence S81°58'55"W, a distance of 88.29 feet; thence S86°11'44"W, a distance of 67.31 feet; thence N80°46'10"W, a distance of 111.63 feet; thence N16°57'06"W, a distance of 41.66 feet; thence N04°32'45"W, a distance of 119.36 feet; thence N38°09'46"W, a distance of 39.54 feet; thence N60°52'14"W, a distance of 112.31 feet; thence N02°3'44"E, a distance of 50.69 feet; thence N13°35'27"E, a distance of 50.84 feet; thence N88°35'24"W, a distance of 10.65 feet; thence 00°28'14"W, a distance of 54.06 feet; thence N82°20'04"W, a distance of 30.79 feet to the Point of Beginning.

Containing 125,028 square feet or 2.870 acres, more or less.

The Easement Area is depicted on Exhibit "A-1" attached hereto.

EXHIBIT "A-1"

Sketch of Description of Easement Area

[ATTACH]

SKETCH OF DESCRIPTION

SEE SHEET 2 OF 8 FOR OVERALL
SEE SHEETS 3-8 OF 8 FOR SKETCH

LEGAL DESCRIPTION:

CONSTRUCTION EASEMENT 1

(Parcel ID's: 22-25-29-00U0-0025-0000; 22-25-29-00U0-0029-0000;
22-25-29-00U0-0014-0000; 23-25-29-00U0-0080-0000)

A parcel of land being a portion of Sections 22 & 23, Township 25 South, Range 29 East, Osceola County, Florida and being more particularly described as follows:

Commence at the Northwest corner of Section 23, Township 25 South, Range 29 East, Osceola County, Florida; thence S00°24'47"E, along the West line of said Section 23, a distance of 731.40 feet to the Point of Beginning; thence N82°20'04"W, a distance of 5.30 feet; thence S26°57'28"W, a distance of 46.93 feet; thence S32°11'50"E, a distance of 9.74 feet; thence S16°45'42"E, a distance of 8.65 feet; thence S05°03'11"E, a distance of 15.65 feet; thence S03°22'59"E, a distance of 23.68 feet; thence S03°27'59"E, a distance of 39.72 feet; thence S05°58'04"E, a distance of 20.16 feet; thence S11°44'01"E, a distance of 13.69 feet; thence S20°10'34"E, a distance of 20.89 feet; thence S28°18'46"E, a distance of 22.99 feet; thence S29°26'35"E, a distance of 15.40 feet; thence S24°21'02"E, a distance of 20.39 feet; thence S20°28'03"E, a distance of 2.20 feet; thence S59°12'18"W, a distance of 970.79 feet; thence N30°38'34"W, a distance of 11.77 feet; thence S60°00'47"W, a distance of 62.34 feet; thence N88°50'37"W, a distance of 110.02 feet; thence N01°39'36"E, a distance of 36.36 feet; thence S85°05'23"W, a distance of 44.87 feet; thence S03°02'45"E, a distance of 131.16 feet; thence S49°37'14"W, a distance of 23.03 feet; thence S59°15'51"W, a distance of 219.31 feet; thence N74°48'14"W, a distance of 32.26 feet; thence N38°01'13"W, a distance of 26.10 feet; thence N00°22'28"E, a distance of 53.00 feet; thence N88°15'22"W, a distance of 91.73 feet; thence S00°36'12"W, a distance of 166.42 feet; thence N89°58'35"E, a distance of 58.04 feet; thence N59°32'27"E, a distance of 1,017.13 feet; thence N58°42'43"E, a distance of 500.89 feet; thence N62°14'27"E, a distance of 46.36 feet; thence S32°44'24"E, a distance of 253.50 feet; thence N83°44'57"E, a distance of 432.52 feet; thence S83°50'16"E, a distance of 8.55 feet; thence N45°19'05"E, a distance of 62.36 feet; thence S79°35'39"W, a distance of 76.04 feet; thence S88°06'45"W, a distance of 67.70 feet; thence N87°00'49"W, a distance of 84.09 feet; thence S81°58'55"W, a distance of 88.29 feet; thence S86°11'44"W, a distance of 67.31 feet; thence N80°46'10"W, a distance of 111.63 feet; thence N16°57'06"W, a distance of 41.66 feet; thence N04°32'45"W, a distance of 119.36 feet; thence N38°09'46"W, a distance of 39.54 feet; thence N60°52'14"W, a distance of 112.31 feet; thence N02°23'44"E, a distance of 50.69 feet; thence N13°35'27"E, a distance of 50.84 feet; thence N88°35'24"W, a distance of 10.65 feet; thence N00°28'14"W, a distance of 54.06 feet; thence N82°20'04"W, a distance of 30.79 feet to the Point of Beginning.

Containing 125,028 square feet or 2.870 acres, more or less.

SURVEYOR'S NOTES:

1. BEARINGS AS SHOWN HEREON ARE BASED ON THE WEST LINE OF SECTION 23, TOWNSHIP 25 SOUTH, RANGE 29 EAST, OSCEOLA COUNTY, FLORIDA, ASSUMED BEARING OF S00°24'47"E.
2. THIS DRAWING REPRESENTS A SKETCH OF DESCRIPTION AND IS NOT A BOUNDARY SURVEY.
3. PROPERTY SHOWN HEREON IS BASED UPON
4. NO CORNERS WERE SET AS A PART OF THIS SKETCH.

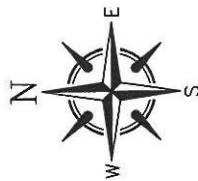
REQUESTED BY: WSP USA, INC

SHEET 1 OF 8

DATE OF SURVEY	8/2/2022	REVISIONS	JOHNSTON'S SURVEYING INC. 900 Cross Prairie Parkway, Kissimmee, Florida 34744 Tel. (407) 847-2179 Fax (407) 847-6140  9/20/2022 RICHARD D. BROWN, P.S.M. #5700 (DATE) NOTE: NOT VALID WITHOUT RAISED SURVEYOR'S SEAL.
SCALE	1" = 60'	ADDED PARCEL ID NUMBERS 9/19/2022	
F.B.	PAGE		
SECTIONS	22 & 23		
TWP.	25 S., RNG. 29 E.		
JOB NO.	18-271A		

SKETCH OF DESCRIPTION

SEE SHEET 1 OF 8 FOR LEGAL DESCRIPTION
SEE SHEETS 2 OF 8 FOR OVERALL
SEE SHEETS 3-8 OF 8 FOR SKETCH



SCALE: 1" = 300'

U.S. HIGHWAY 192

15 14
22 23

SHEET 3 OF 8

MATCH LINE

SHEET 4 OF 8

MATCH LINE

SHEET 8 OF 8

SHEET 5 OF 8

OAK STREET

MATCH LINE

SHEET 6 OF 8

The remaining is for
pipeline

MATCH LINE

SHEET 7 OF 8

Intake and Pump
Station at East City
Ditch

LEGEND AND ABBREVIATIONS

TWP. = TOWNSHIP
RNG. = RANGE
NO. = NUMBER
LB. = LICENSED BUSINESS
R/W = RIGHT OF WAY
P.S.M. = PROFESSIONAL SURVEYOR AND MAPPER
TEL. = TELEPHONE
F.B. = FIELD BOOK
P.B. = PLAT BOOK
± = PLUS OR MINUS
& = AND

JOHNSTON'S
SURVEYING INC.
900 Cross Prairie Parkway, Kissimmee, Florida 34744
Tel. (407) 847-2179 Fax (407) 847-6140

SHEET 2 OF 8

SKETCH OF DESCRIPTION

SEE SHEET 1 OF 8 FOR LEGAL DESCRIPTION
SEE SHEETS 2 OF 8 FOR OVERALL
SEE SHEETS 3-8 OF 8 FOR SKETCH



SCALE: 1" = 60'

15 14
22 23

POINT OF
COMMENCEMENT
NORTHWEST CORNER
OF SECTION 23,
TOWNSHIP 25 SOUTH,
RANGE 29 EAST

U.S. HIGHWAY 192

UNPLATTED

OAK STREET
RIGHT OF WAY VARIES

LOT 1
MILL CREEK MALL
PLAT BOOK 11, PAGES 104-105
OSCEOLA COUNTY, FLORIDA

LOT 2
MILL CREEK MALL
PLAT BOOK 11,
PAGES 104-105
OSCEOLA COUNTY,
FLORIDA

LOT 1
SSA KISSIMMEE
PLAT BOOK 17,
PAGE 43
OSCEOLA COUNTY,
FLORIDA

S00°24'47"E 731.40' (BEARING BASIS)
WEST LINE OF SEC. 23-25-29

LOT 4A
MILL CREEK MALL LOT 4 REPLAT
PLAT BOOK 32, PAGES 65-66
OSCEOLA COUNTY, FLORIDA

LEGEND AND ABBREVIATIONS

TWP.	= TOWNSHIP
RNG.	= RANGE
NO.	= NUMBER
LB	= LICENSED BUSINESS
R/W	= RIGHT OF WAY
P.S.M.	= PROFESSIONAL SURVEYOR AND MAPPER
TEL.	= TELEPHONE
F.B.	= FIELD BOOK
P.B.	= PLAT BOOK
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&	= AND

MATCH LINE
SEE SHEET 4

JOHNSTON'S
SURVEYING INC.

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

SHEET 3 OF 8

SKETCH OF DESCRIPTION

SEE SHEET 1 OF 8 FOR LEGAL DESCRIPTION
SEE SHEETS 2 OF 8 FOR OVERALL
SEE SHEETS 3-8 OF 8 FOR SKETCH



SCALE: 1" = 60'

MATCH LINE
SEE SHEET 3

LOT 1

SSA KISSIMMEE
PLAT BOOK 17,
PAGE 43
OSCEOLA COUNTY,
FLORIDA

TRACT A

SSA KISSIMMEE
PLAT BOOK 17,
PAGE 43
OSCEOLA COUNTY,
FLORIDA

**POINT OF
BEGINNING**

LOT 4A

MILL CREEK MALL LOT 4 REPLAT
PLAT BOOK 32, PAGES 65-66
OSCEOLA COUNTY, FLORIDA

PARCEL ID:
23-25-29-1708-0001-004A

LEGEND AND ABBREVIATIONS

TWP.	= TOWNSHIP
RNG.	= RANGE
NO.	= NUMBER
LB	= LICENSED BUSINESS
R/W	= RIGHT OF WAY
P.S.M.	= PROFESSIONAL SURVEYOR AND MAPPER
TEL.	= TELEPHONE
F.B.	= FIELD BOOK
P.B.	= PLAT BOOK
±	= PLUS OR MINUS
&	= AND

UNPLATTED
PARCEL ID: 22-25-29-0010-0014-0000

MATCH LINE
SEE SHEET 5

UNPLATTED
PARCEL ID:
23-25-29-0010-0080-0000

MATCH LINE
SEE SHEET 8

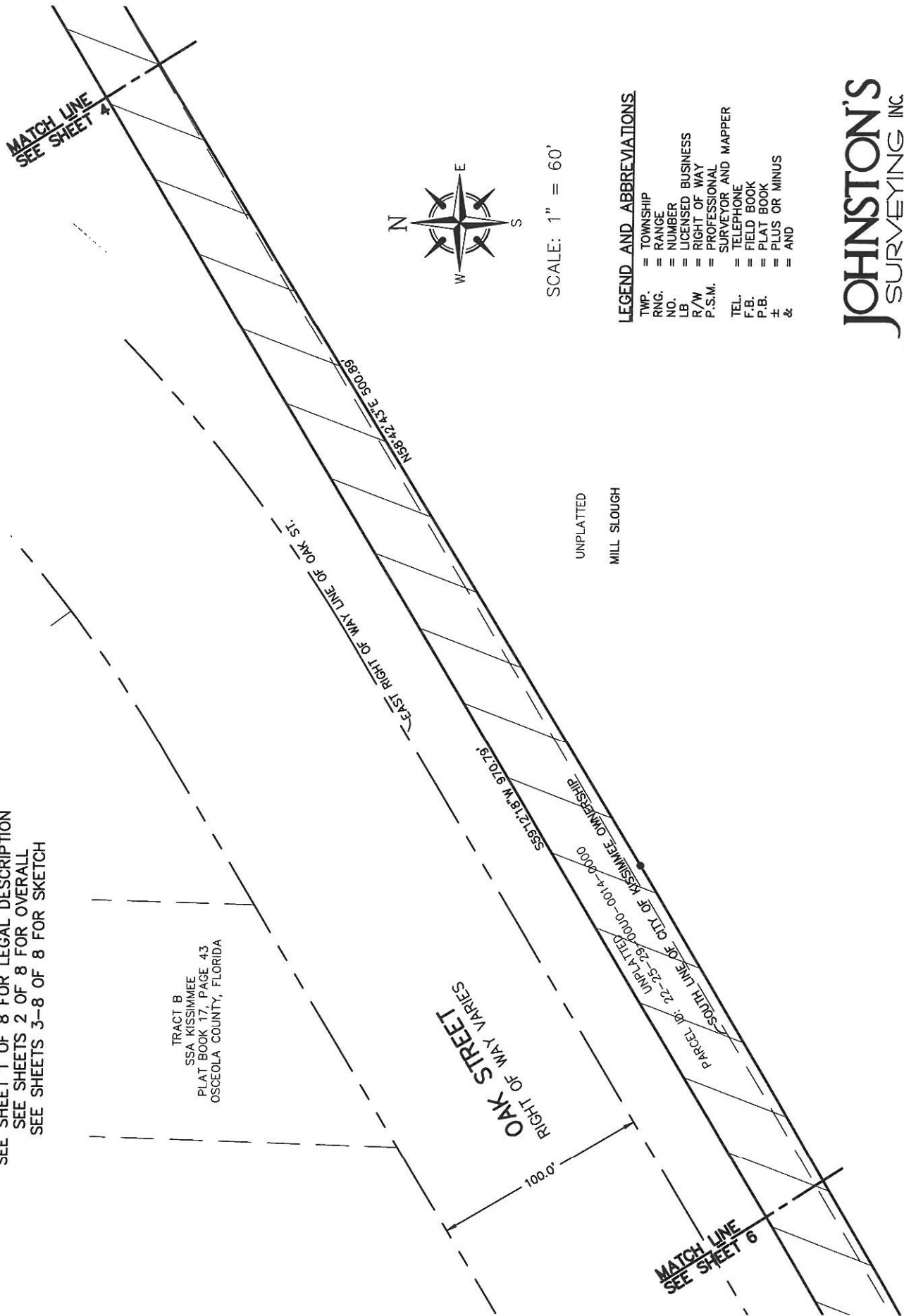
EAST LINE OF
SECTION 22-25-29
WEST LINE OF
SECTION 23-25-29

JOHNSTON'S
SURVEYING INC.
900 Cross Prairie Parkway, Kissimmee, Florida 34744
Tel. (407) 847-2179 Fax (407) 847-6140

SHEET 4 OF 8

SKETCH OF DESCRIPTION

SEE SHEET 1 OF 8 FOR LEGAL DESCRIPTION
SEE SHEETS 2 OF 8 FOR OVERALL
SEE SHEETS 3-8 OF 8 FOR SKETCH



SCALE: 1" = 60'

LEGEND AND ABBREVIATIONS

- TWP. = TOWNSHIP
- RNG. = RANGE
- NO. = NUMBER
- LB. = LICENSED BUSINESS
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- P.S.M. = PROFESSIONAL SURVEYOR AND MAPPER
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- F.B. = FIELD BOOK
- P.B. = PLAT BOOK
- ± = PLUS OR MINUS
- & = AND

UNPLATTED
MILL SLOUGH

JOHNSTON'S
SURVEYING INC.

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

SHEET 5 OF 8

SKETCH OF DESCRIPTION

SEE SHEET 1 OF 8 FOR LEGAL DESCRIPTION
SEE SHEETS 2 OF 8 FOR OVERALL
SEE SHEETS 3-8 OF 8 FOR SKETCH

MATCH LINE
SEE SHEET 5

NORTH RIGHT OF WAY LINE OF OAK ST.

OAK STREET
RIGHT OF WAY VARIES

SOUTH RIGHT OF WAY LINE OF OAK ST.

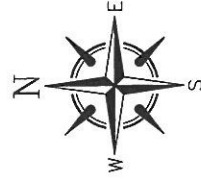
RETENTION
POND

UNPLATTED

PARCEL ID: 22-25-29-0000-0029-0000

MATCH LINE
SEE SHEET 7

UNPLATTED



SCALE: 1" = 60'

LEGEND AND ABBREVIATIONS

TWP.	=	TOWNSHIP
RNG.	=	RANGE
NO.	=	NUMBER
LB	=	LICENSED BUSINESS
R/W	=	RIGHT OF WAY
P.S.M.	=	PROFESSIONAL SURVEYOR AND MAPPER
TEL.	=	TELEPHONE
F.B.	=	FIELD BOOK
P.B.	=	PLAT BOOK
±	=	PLUS OR MINUS
&	=	AND

JOHNSTON'S
SURVEYING INC.

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

SHEET 6 OF 8

SKETCH OF DESCRIPTION

SEE SHEET 1 OF 8 FOR LEGAL DESCRIPTION
SEE SHEETS 2 OF 8 FOR OVERALL
SEE SHEETS 3-8 OF 8 FOR SKETCH

NORTH RIGHT OF WAY LINE OF OAK ST.

OAK STREET
RIGHT OF WAY VARIES

SOUTH RIGHT OF WAY LINE OF OAK ST.

RETENTION
POND

UNPLATTED

PARCEL ID: 22-25-29-00U0-0029-0000

PORTION OF
GOVERNMENT LOT 2

MATCH LINE
SEE SHEET 6

UNPLATTED
PARCEL ID: 22-25-29-00U0-0025-0000

UNPLATTED

PARCEL ID: 22-25-29-00U0-0029-0000

UNPLATTED



SCALE: 1" = 60'

LEGEND AND ABBREVIATIONS

- TWP. = TOWNSHIP
- RNG. = RANGE
- NO. = NUMBER
- LB. = LICENSED BUSINESS
- R/W = RIGHT OF WAY
- P.S.M. = PROFESSIONAL SURVEYOR AND MAPPER
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JOHNSTON'S
SURVEYING INC.

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

SHEET 7 OF 8

UNPLATTED

UNPLATTED

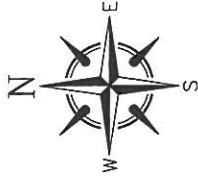
UNPLATTED

UNPLATTED

UNPLATTED

SKETCH OF DESCRIPTION

SEE SHEET 1 OF 8 FOR LEGAL DESCRIPTION
SEE SHEETS 2 OF 8 FOR OVERALL
SEE SHEETS 3-8 OF 8 FOR SKETCH



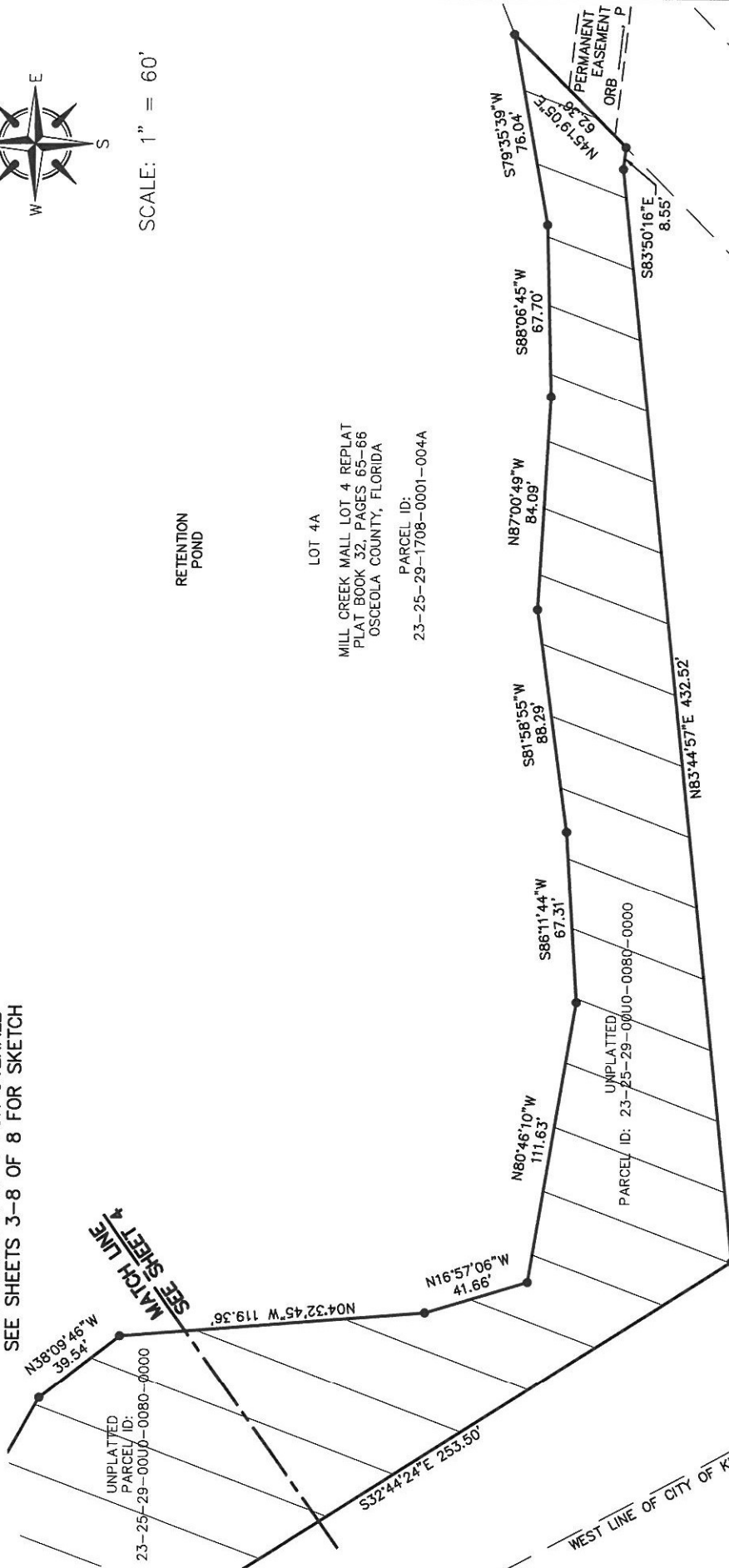
SCALE: 1" = 60'

RETENTION
POND

LOT 4A

MILL CREEK MALL LOT 4 REPLAT
PLAT BOOK 32, PAGES 65-66
OSCEOLA COUNTY, FLORIDA

PARCEL ID:
23-25-29-1708-0001-004A



LEGEND AND ABBREVIATIONS

TWP. = TOWNSHIP
RNG. = RANGE
NO. = NUMBER
LB. = LICENSED BUSINESS
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P.S.M. = PROFESSIONAL
SURVEYOR AND MAPPER
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F.B. = FIELD BOOK
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± = PLUS OR MINUS
& = AND

UNPLATTED

PARCEL ID: 23-25-29-0000-0080-0000

UNPLATTED

MILL SLOUGH

JOHNSTON'S
SURVEYING INC.

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

SHEET 8 OF 8

This instrument prepared by and
return to:
Paul S. Quinn, Jr., Esq.
GrayRobinson, P.A.
301 E. Pine Street, Suite 1400
Orlando, FL 32801

Property Appraiser's Parcel ID Numbers:
Portion of:
23-25-29-3640-000E-0030
23-25-29-00U0-0082-0000

TEMPORARY CONSTRUCTION EASEMENT

THIS TEMPORARY CONSTRUCTION EASEMENT (the "**Easement**") is made and entered into effective as of the ____ day of _____, 2023 (the "**Effective Date**"), by and between **CITY OF KISSIMMEE**, a political subdivision of the State of Florida, whose address is 101 Church Street, Kissimmee, Florida 34741 ("**Grantor**"), and **TOHOPEKALIGA WATER AUTHORITY**, an independent special district created and established pursuant to Chapter 189, Florida Statutes, by special act of the Florida Legislature, whose address is 951 Martin Luther King Boulevard, Kissimmee, Florida 34741 (hereinafter, "**Grantee**" or "**Toho**"). Grantor and Grantee are sometimes together referred to herein as the "**Parties**", and separately as the "**Party**."

WITNESSETH:

For and in consideration of the sum of Ten Dollars (\$10.00), and other good and valuable consideration, receipt of which is hereby acknowledged, the Grantor does hereby authorize the use of and hereby grants and conveys to Toho, its successors and assigns, a temporary construction easement across those certain parcels of real property located in Osceola County, Florida, as more particularly described in **Exhibit "A"** attached hereto and incorporated herein (collectively, the "**Easement Area**") for the purposes of constructing an intake and pump station, and facilities related thereto (the "**Utilities**"), to provide utility services to Grantor's property and surrounding area properties.

This Easement is granted solely to provide temporary ingress and egress by Grantee over and across the Easement Area, and to perform all such necessary acts for the construction of the Utilities serving the surrounding area properties. This Easement shall have an term of five (5) years (the "**Easement Term**"). Grantor shall provide Grantee the option to extend the term of this Easement additional two (2) years upon at least thirty (30) days written notice to the Grantor.

The Grantee shall have all other rights and benefits necessary or convenient for the full enjoyment or use of the rights herein granted, including, but without limiting the same to, the right of ingress and egress over and across the Easement Area.

Grantee shall obtain from Grantor and any other governmental entity having jurisdiction over the construction of the Utilities, all permits and approvals required to construct the Utilities. Grantee shall restore the surface of the Easement Area, as nearly as practicable and permissible, to its prior condition and contour following any disturbance occasioned by the construction of the Utilities.

The use of the Easement granted herein does not run to the public and no rights hereunder are granted or approved except for the purposes and use by Toho, its agents, successors and assigns, for the

uses and purposes stated herein provided such uses and purposes shall be subject to the terms and conditions of this Easement.

It is agreed that this Easement covers all the agreements between the Parties and no representations or statements, verbal or written, have been made, modifying, adding to, or changing the terms of this agreement.

[SIGNATURE PAGES FOLLOW NEXT]

IN WITNESS WHEREOF, the Parties have caused this Easement to be duly executed under seal and delivered as of the Effective Date.

Signed, sealed and delivered
in the presence of:

“GRANTOR”

CITY OF KISSIMMEE, a political
subdivision of the State of Florida

Print Name: Mike Steigerwald
Address: 101 Church Street
Kissimmee, Florida 34741

By: _____
Name: Olga Gonzalez
Title: Mayor

Print Name: Olga Sanchez De Fuentes
Address: 101 Church Street
Kissimmee, Florida 34741

STATE OF FLORIDA
COUNTY OF OSCEOLA

The foregoing instrument was acknowledged before me by means of ☐ physical presence or ☐ online notarization, this ____ day of _____, 2023, by _____, as _____ of the City of Kissimmee, a political subdivision of the State of Florida, who (check one): _____ is personally known to me, or _____ produced _____ as identification.

[AFFIX NOTARY SEAL]

Notary Public Signature
Print Notary Name: Linda S. Hansell
My commission expires: _____

Signed, sealed and delivered
in the presence of:

GRANTEE:

TOHOPEKALIGA WATER AUTHORITY

Print name: _____
Address: _____

By: _____
Name: _____
Its: _____

Print name: _____
Address: _____

STATE OF FLORIDA
COUNTY OF _____

THE FOREGOING INSTRUMENT was acknowledged before me this _____ day of _____, 2023, by _____, as _____ of Tohopekaliga Water Authority, an independent special district established and created pursuant to Chapter 189, Florida Statutes, by special act of the Florida Legislature, who is (check one): _____ is personally known to me, or _____ produced _____ as identification.

[AFFIX NOTARY SEAL]

Notary Public Signature
Print Notary Name: _____
My commission expires: _____

EXHIBIT "A"

LEGAL DESCRIPTION OF EASEMENT AREA

A parcel of land being a portion of Section 23, Township 25 South, Range 29 East, Osceola County, Florida and being more particularly described as follows:

Commence at the Northwest corner of Section 23, Township 25 South, Range 29 East, Osceola County, Florida; thence S00°24'47"E, along the West line of said Section 23, a distance of 731.40 feet; thence S82°20'04"E, a distance of 30.79 feet; thence S00°28'14"E, a distance of 54.06 feet; thence S88°35'24"E, a distance of 10.65 feet; thence S13°35'27"W, a distance of 50.84 feet; thence S02°23'44"W, a distance of 50.69 feet; thence S60°52'14"E, a distance of 112.31 feet; thence S38°09'46"E, a distance of 39.54 feet; thence S04°32'45"E, a distance of 119.36 feet; thence S16°57'06"E, a distance of 41.66 feet; thence S80°46'10"E, a distance of 111.63 feet; thence N86°11'44"E, a distance of 67.31 feet; thence N81°58'55"E, a distance of 88.29 feet; thence S87°00'49"E, a distance of 84.09 feet; thence N88°06'45"E, a distance of 67.70 feet; thence S57°04'11"E, a distance of 103.97 feet to the Point of Beginning; thence S46°12'115"E, a distance of 48.72 feet; thence N45°35'21"E, a distance of 626.41 feet; thence N68°00'14"W, a distance of 49.43 feet; thence S45°54'32"W, a distance of 608.16 feet to the Point of Beginning.

Containing 28,994 square feet or 0.666 acres, more or less.

The Easement Area is depicted on Exhibit "A-1" attached hereto.

EXHIBIT “A-1”

Sketch of Description of Easement Area

[ATTACH]

SKETCH OF DESCRIPTION

SEE SHEET 2 OF 6 FOR OVERALL
SEE SHEETS 3-6 OF 6 FOR SKETCH

LEGAL DESCRIPTION:

CONSTRUCTION EASEMENT 3

(Parcel IDs: 23-25-29-3640-000E-0030 & 23-25-29-3640-000A-0015)

A parcel of land being a portion of Section 23, Township 25 South, Range 29 East, Osceola County, Florida and being more particularly described as follows:

Commence at the Northwest corner of Section 23, Township 25 South, Range 29 East, Osceola County, Florida; thence S00°24'47"E, along the West line of said Section 23, a distance of 731.40 feet; thence S82°20'04"E, a distance of 30.79 feet; thence S00°28'14"E, a distance of 54.06 feet; thence S88°35'24"E, a distance of 10.65 feet; thence S13°35'27"W, a distance of 50.84 feet; thence S02°23'44"W, a distance of 50.69 feet; thence S60°52'14"E, a distance of 112.31 feet; thence S38°09'46"E, a distance of 39.54 feet; thence S04°32'45"E, a distance of 119.36 feet; thence S16°57'06"E, a distance of 41.66 feet; thence S80°46'10"E, a distance of 111.63 feet; thence N86°11'44"E, a distance of 67.31 feet; thence N81°58'55"E, a distance of 88.29 feet; thence S87°00'49"E, a distance of 84.09 feet; thence N88°06'45"E, a distance of 67.70 feet; thence S57°04'11"E, a distance of 103.97 feet to the Point of Beginning; thence S46°12'15"E, a distance of 48.72 feet; thence N45°35'21"E, a distance of 626.41 feet; thence N68°00'14"W, a distance of 49.43 feet; thence S45°54'32"W, a distance of 608.16 feet to the Point of Beginning.

Containing 28,994 square feet or 0.666 acres, more or less.

SURVEYOR'S NOTES:

1. BEARINGS AS SHOWN HEREON ARE BASED ON THE WEST LINE OF SECTION 23, TOWNSHIP 25 SOUTH, RANGE 29 EAST, OSCEOLA COUNTY, FLORIDA, ASSUMED BEARING OF S00°24'47"E.
2. THIS DRAWING REPRESENTS A SKETCH OF DESCRIPTION AND IS NOT A BOUNDARY SURVEY.
3. PROPERTY SHOWN HEREON IS BASED UPON
4. NO CORNERS WERE SET AS A PART OF THIS SKETCH.

REQUESTED BY: WSP USA, INC

SHEET 1 OF 6

DATE OF SURVEY	8/2/2022	REVISIONS
SCALE	1" = 60'	ADDED PARCEL ID NUMBERS 9/19/2022
F.B.	PAGE	
SECTIONS	23	
TWP.	25 S., RNG. 29 E.	
JOB NO.	18-271A	

JOHNSTON'S
SURVEYING INC.

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

R.D.B.

9/20/2022

RICHARD D. BROWN, P.S.M. #5700 (DATE)

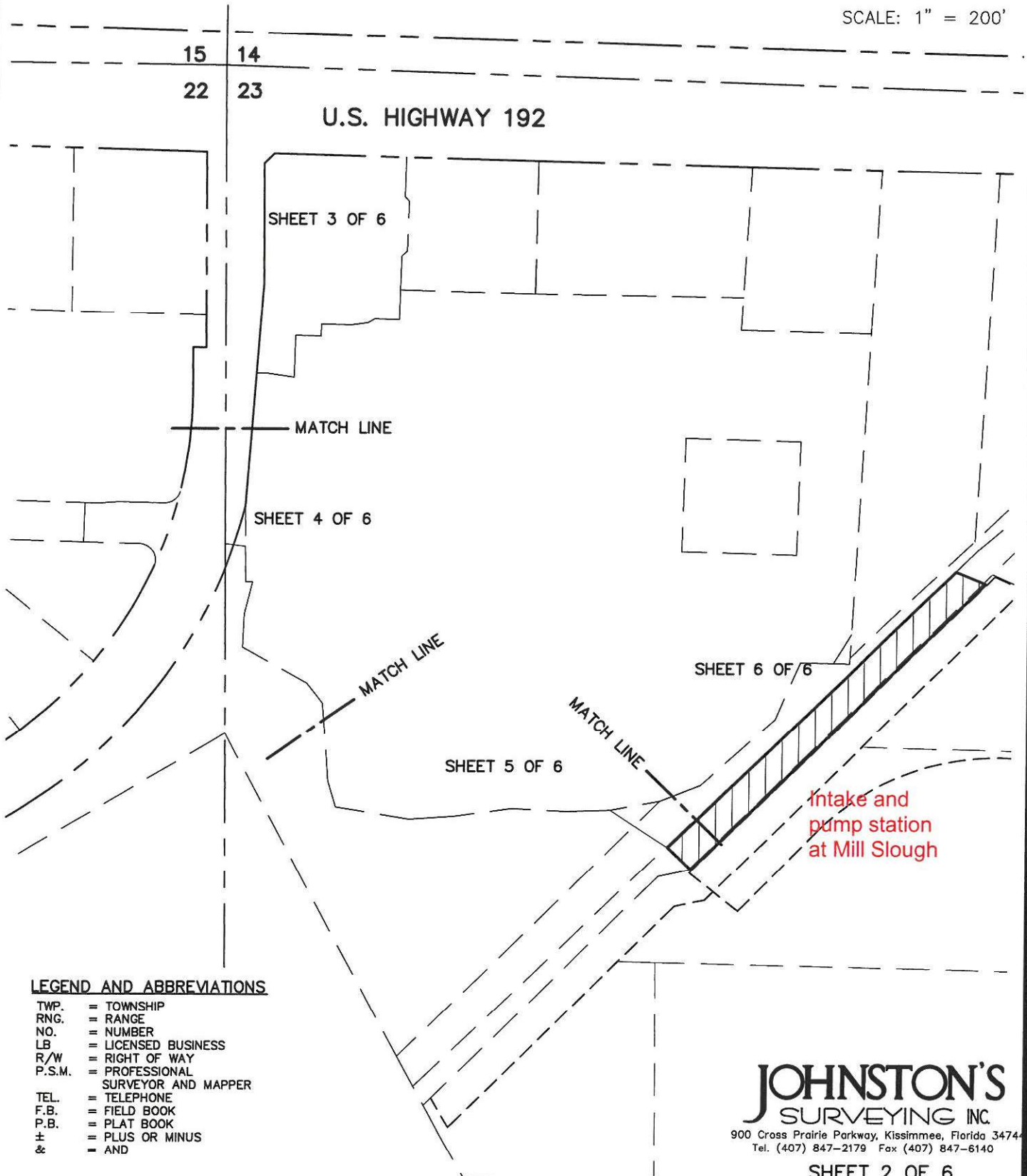
NOTE: NOT VALID WITHOUT RAISED SURVEYOR'S SEAL.

SKETCH OF DESCRIPTION

SEE SHEET 1 OF 6 FOR LEGAL DESCRIPTION
SEE SHEETS 2 OF 6 FOR OVERALL
SEE SHEETS 3-6 OF 6 FOR SKETCH



SCALE: 1" = 200'



LEGEND AND ABBREVIATIONS

TWP. = TOWNSHIP
RNG. = RANGE
NO. = NUMBER
LB. = LICENSED BUSINESS
R/W = RIGHT OF WAY
P.S.M. = PROFESSIONAL SURVEYOR AND MAPPER
TEL. = TELEPHONE
F.B. = FIELD BOOK
P.B. = PLAT BOOK
± = PLUS OR MINUS
& = AND

JOHNSTON'S
SURVEYING INC.
900 Cross Prairie Parkway, Kissimmee, Florida 34744
Tel. (407) 847-2179 Fax (407) 847-6140

SHEET 2 OF 6

SKETCH OF DESCRIPTION

SEE SHEET 1 OF 6 FOR LEGAL DESCRIPTION
SEE SHEETS 2 OF 6 FOR OVERALL
SEE SHEETS 3-6 OF 6 FOR SKETCH



SCALE: 1" = 60'

15 14
22 23

POINT OF
COMMENCEMENT
NORTHWEST CORNER
OF SECTION 23,
TOWNSHIP 25 SOUTH,
RANGE 29 EAST

U.S. HIGHWAY 192

UNPLATTED

OAK STREET
RIGHT OF WAY VARIES

S00°24'47"E 731.40' (BEARING BASIS)
WEST LINE OF SEC. 23-25-29

LOT 1

SSA KISSIMMEE
PLAT BOOK 17,
PAGE 43
OSCEOLA COUNTY,
FLORIDA

LOT 1
MILL CREEK MALL
PLAT BOOK 11, PAGES 104-105
OSCEOLA COUNTY, FLORIDA

LOT 2
MILL CREEK MALL
PLAT BOOK 11,
PAGES 104-105
OSCEOLA COUNTY,
FLORIDA

LOT 4A

MILL CREEK MALL LOT 4 REPLAT
PLAT BOOK 32, PAGES 65-66
OSCEOLA COUNTY, FLORIDA

LEGEND AND ABBREVIATIONS

TWP.	= TOWNSHIP
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NO.	= NUMBER
LB	= LICENSED BUSINESS
R/W	= RIGHT OF WAY
P.S.M.	= PROFESSIONAL SURVEYOR AND MAPPER
TEL.	= TELEPHONE
F.B.	= FIELD BOOK
P.B.	= PLAT BOOK
±	= PLUS OR MINUS
&	= AND

MATCH LINE
SEE SHEET 4

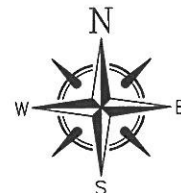
JOHNSTON'S
SURVEYING INC.

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

SHEET 3 OF 6

SKETCH OF DESCRIPTION

SEE SHEET 1 OF 6 FOR LEGAL DESCRIPTION
SEE SHEETS 2 OF 6 FOR OVERALL
SEE SHEETS 3-6 OF 6 FOR SKETCH



SCALE: 1" = 60'

MATCH LINE
SEE SHEET 3

LOT 1

SSA KISSIMMEE
PLAT BOOK 17,
PAGE 43
OSCEOLA COUNTY,
FLORIDA

TRACT A

SSA KISSIMMEE
PLAT BOOK 17,
PAGE 43
OSCEOLA COUNTY,
FLORIDA

OAK STREET
RIGHT OF WAY VARIES

LOT 4A

MILL CREEK MALL LOT 4 REPLAT
PLAT BOOK 32, PAGES 65-66
OSCEOLA COUNTY, FLORIDA

LEGEND AND ABBREVIATIONS

TWP.	= TOWNSHIP
RNG.	= RANGE
NO.	= NUMBER
LB	= LICENSED BUSINESS
R/W	= RIGHT OF WAY
P.S.M.	= PROFESSIONAL SURVEYOR AND MAPPER
TEL.	= TELEPHONE
F.B.	= FIELD BOOK
P.B.	= PLAT BOOK
±	= PLUS OR MINUS
&	= AND

MATCH LINE
SEE SHEET 5

JOHNSTON'S
SURVEYING INC.

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

SHEET 4 OF 6

EAST LINE OF
SECTION 22-25-29
WEST LINE OF
SECTION 23-25-29

UNPLATTED
PARCEL ID: 22-25-29-0010-0014-0000

100.0'

S82°20'04"E
30.79'

S00°28'14"E
54.06'

S88°35'24"E
10.65'

S13°35'27"W
50.84'

S02°23'44"W
50.69'

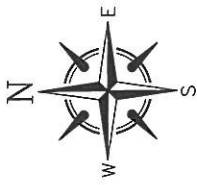
S60°32'14"E 112.31'

S38°09'46"E
39.54'

S04°32'45"E 119.36'

SKETCH OF DESCRIPTION

SEE SHEET 1 OF 6 FOR LEGAL DESCRIPTION
SEE SHEETS 2 OF 6 FOR OVERALL
SEE SHEETS 3-6 OF 6 FOR SKETCH



SCALE: 1" = 116.6'
PLAT L
OSCEC

RETENTION
POND

LOT 4A

MILL CREEK MALL LOT 4 REPLAT
PLAT BOOK 32, PAGES 65-66
OSCEOLA COUNTY, FLORIDA

MATCH LINE
SEE SHEET 6

N88°06'45"E
67.70'

S87°00'49"E
84.09'

N81°58'55"E
88.29'

N86°11'44"E
67.31'

S80°46'10"E
111.63'

S16°57'06"E
41.66'

S04°32'45"E 119.36'

MATCH LINE
SEE SHEET 4

PERMANENT UTILITY
EASEMENT PER
ORB
PG

S57°04'11"E
103.97'

POINT OF
BEGINNING

UNPLATTED
PARCEL ID: 23-25-29-00U0-0080-0000

S46°12'15"E
48.72'

LEGEND AND ABBREVIATIONS

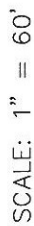
- TWP. = TOWNSHIP
- RNG. = RANGE
- NO. = NUMBER
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- F.B. = FIELD BOOK
- P.B. = PLAT BOOK
- ± = PLUS OR MINUS
- & = AND

JOHNSTON'S
SURVEYING INC.

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

SHEET 5 OF 6

SEE SHEET 1 OF 6 FOR LEGAL DESCRIPTION
SEE SHEETS 2 OF 6 FOR OVERALL
SEE SHEETS 3-6 OF 6 FOR SKETCH



LEGEND AND ABBREVIATIONS

TWP.	=	TOWNSHIP
RNG.	=	RANGE
NO.	=	NUMBER
LB	=	LICENSED BUSINESS
R/W	=	RIGHT OF WAY
P.S.M.	=	PROFESSIONAL SURVEYOR AND MAPPER
TEL.	=	TELEPHONE
F.B.	=	FIELD BOOK
P.B.	=	PLAT BOOK
±	=	PLUS OR MINUS
&	=	AND

LOT 1
BLOCK A
KISSIMMEE GARDENS
PLAT BOOK 1, PAGE 32
OSCEOLA COUNTY, FLORIDA

LOT 2
BLOCK A
KISSIMMEE GARDENS
PLAT BOOK 1, PAGE 32
OSCEOLA COUNTY, FLORIDA

JOHNSTON'S
SURVEYING INC

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

SHEET 6 OF 6

ITEM 7.Q

Budget Amendment for Traffic Signal Design and Construction

Request

Approval to amend/increase the amount of Contract # 20240137 in the Interlocal Agreement (ILA) with Osceola County for Traffic Signal Design and Construction by \$400,000 for costs associated with labor and material price escalations which resulted in the low bid being higher than what the City originally budgeted for the project. Approval to transfer the funds from the Gas Tax project GT2307.

Explanation

In September 2020, the City entered into an Interlocal Agreement (ILA) with Osceola County to provide Signal Design and Construction services. The total cost of each "signal" was approximately \$600,600 which included costs for design, construction, and construction engineering inspection (CEI) services. Since that time, the County and city staff have been working with the contractor, residents, and the public to implement the project.

The construction bids that were received by Osceola County were higher than initially estimated and awarded to the lowest responsible and responsive bidder. The additional funds we are requesting will cover the costs of construction and the fee for Osceola County to continue managing the projects. The Broadway/Main at Neptune signal is short \$193,390.00 and the Oak Street at Central Avenue signal is short \$109,682.00. Staff requests to transfer the funds from a signal project that can be deferred to a later fiscal year.

The County is continuing to perform signal inspections and maintenance for the City per the Signal Maintenance ILA.

Financial Information

Account #	Project #	Increase / Decrease	Budget	Actual
10445406-506393	ST2020	Increase	\$200,000	
10445406-506393	ST2011	Increase	\$200,000	
10345406-506393	GT2307	Decrease	\$400,000	

Financial Summary:

Gas tax funds will be used to cover the increased costs of sales tax projects ST2020 and ST2011. Adequate funding is readily available in the gas tax account project GT 2307.

Recommendation

Approve increase to the project amount to the Interlocal Agreement between Osceola County and the City of Kissimmee for Traffic Signal Design and Construction to increase the project amount by \$400,000.

City of Kissimmee

REQUESTED CITY COMMISSION ACTION:

Approve

Department: Public Works & Engineering

Presenter:

Attachment(s):

1. ILA for Signal Design & Construction

**INTERLOCAL AGREEMENT
BY AND BETWEEN
OSCOELA COUNTY AND CITY OF KISSIMMEE
FOR TRAFFIC SIGNAL DESIGN AND CONSTRUCTION**

THIS INTERLOCAL AGREEMENT is made this 21st day of September, 2020 by and between and **OSCEOLA COUNTY**, a political subdivision of the State of Florida, whose business address is 1 Courthouse Square, Kissimmee, Florida 34741, Florida, hereinafter “**COUNTY**” and the **CITY OF KISSIMMEE**, a municipal corporation of the State of Florida, 101 Church Street, Kissimmee, Florida 34741, hereinafter “**CITY**” each represents as follows:

WITNESSETH:

WHEREAS, pursuant to the Florida Interlocal Cooperation Act of 1969, (Chapter 163.01, Florida Statutes), local governments are authorized to make the most efficient use of their powers by cooperating with one another for mutual advantage to provide services that harmonize geographic and economic needs of the local community; and

WHEREAS, the **CITY** entered into that certain Agreement dated August 20, 2019 with the **COUNTY** for Traffic Signal Preventative Maintenance, Repair and Transfer which included transfer of assets to the **COUNTY** of items owned by the **CITY** related to the maintenance of the Traffic Control Devices; and

NOW THEREFORE, in consideration of the mutual promises contained herein and for other good and value considerations, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

1. **RECITALS.** The foregoing recitals are true and correct and specifically incorporated herein.
2. **PROCUREMENT.** Starting with the traffic signals at Neptune Road and Broadway Street, and Oak Street and Central Avenue, the City agrees to allow the County to procure design and construction services on behalf of the City for any traffic signal that the City deems in need of replacement through Osceola County Continuing Services Contracts.
3. **MANAGEMENT OF CONSTRUCTION.** The County shall oversee the design, engineering and construction work of the Contractors on behalf of the City.
4. **PROJECT MANAGER.** The City shall appoint a Project Manager who shall act as the primary staff contact to the County, on behalf of the City. The Project Manager

shall process invoices for payment, and perform any other function necessary as related to the County's administration of the construction.

5. **FUNDING / PAYMENT.** The total cost of construction for each intersection at this time is estimated to be \$600,600.00. Upon request by the City, the County shall provide the City with a cost estimate for the replacement and construction of mast arm signals. The City shall evaluate the cost, and determine whether the City's budget is sufficient to cover the cost, and may approve or reject the bid depending on funding. When work is approved by the City, the City shall provide the County written acceptance of the construction proposal, and the County shall engage the Contractor to perform the work. The County shall bill the City for the actual cost of design, engineering and construction as evidenced by invoices from the Contractors performing the work. The City shall pay the County an additional five percent (5%) over invoice as a coordination fee. In the event that the City cancels a project before its completion, the City shall be responsible for all outstanding balances owed by the County and their consultants and contractors.
6. **EFFECTIVE DATE; TERM.** This Agreement shall become effective upon full execution by all parties hereto ("Effective Date") and shall continue in full force and effect until either of the two parties to this Agreement informs the other of their intent to terminate. The intent to termination shall be provided in writing by the initiating party to the receiving party thirty (30) days prior to intended effective date of termination.
7. **AMENDMENTS.** This Agreement may be modified only by written instrument properly executed by all parties hereto.
8. **VALIDITY.** After consulting with their respective legal counsel, each party hereto represents and warrants to the others its respective authority and power under Florida law to enter into this Agreement, acknowledges the validity and enforceability of this Agreement, and waives any future right of defense based on claim of illegality, invalidity or unenforceability of any nature. The parties each hereby represent, warrant, and covenant to and with the others (i) that this Agreement has been validly approved by its respective governing body at a duly held public meeting, and (ii) that this Agreement constitutes a legal, valid and binding contract enforceable against the respective party in accordance with the terms hereof (assuming due authorization, execution and delivery hereof by the other party hereto).
9. **GOVERNING LAW; VENUE.** 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. The parties agree to waive the right to a jury trial in any action, proceeding or counterclaim arising from this Agreement.

10. **FURTHER ASSURANCES.** The parties agree to perform any further acts and to sign and deliver any further documents that may be reasonably necessary to carry out the provisions of this Agreement.
11. **ENTIRE AGREEMENT.** This Agreement contains the entire agreement of the parties with respect to the matters addressed herein. Previous agreements and understandings of the parties with respect to such matters are null and void and of no effect.
12. **COUNTERPARTS.** This Agreement may be executed in several counterparts, each of which shall be an original and all of which shall constitute one and the same agreement.
13. **SOVEREIGN IMMUNITY.** Notwithstanding any other provision of this Agreement, nothing contained herein shall be construed as a waiver or attempt at a waiver of the parties' sovereign immunity pursuant to section 768.28, Florida Statutes, or other limitations imposed on the parties' potential liability under state or federal law.
14. **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:

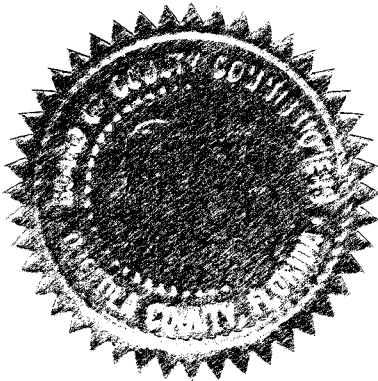
City of Kissimmee Public Works & Engineering Department
Traffic Engineering Division
Attn: Nabil Muhaisen
2205 Mabbette Street
Kissimmee, FL 34741
nmuhaisen@kissimmee.org

Notice to County:

Osceola County Transportation & Transit Department
Attn: Kathy Lee
1 Courthouse Square, Suite 3100
Kissimmee, FL 34741
Kathy.Lee@osceola.org

Interlocal Agreement
Traffic Signal Construction
Page 3 of 5

IN WITNESS WHEREOF, This Interlocal Agreement shall become effective on September 21, 2020, upon execution by both parties and a copy of this Agreement duly filed with the Clerk of the City of Kissimmee, Florida and the Osceola County Clerk of the Board's Office.



**BOARD OF COUNTY COMMISSIONERS
OF OSCEOLA COUNTY, FLORIDA**

BY: Tuan Janer
Chair/Vice Chair

DATE: BCC approved 09/21/2020

ATTEST:

OSCEOLA COUNTY CLERK OF THE BOARD

BY: Debra A. Davis
Clerk/Deputy Clerk of the Board

As authorized for execution at the Board of
County Commissioners meeting of:

DATE: September 21, 2020

CITY OF KISSIMMEE

BY: _____

Mayor-Commissioner

DATE: _____

09/09/2020

ATTEST:

CLERK OF THE CITY OF KISSIMMEE

BY: Rinda Stansell

City Clerk

Approved as to form and legal sufficiency:

BY: Alyssa Sanchez as Clerk

City Attorney

ITEM 7.R

Ground Lease Agreement with KUA at Kissimmee Gateway Airport

Request

Approve Kissimmee Utility Authority (KUA) Ground Lease Agreement, Contract # 202401146 at the Kissimmee Gateway Airport.

Explanation

KUA operates an electrical substation at Kissimmee Gateway Airport. KUA has expressed the need to expand the substation to meet forecasted electrical service demand for its customers in the service territory. There are approximately two (2) acres adjacent to the present two (2) acre site available for this expansion. This agreement records and defines the current rights and responsibilities to operate the substation and enable the required expansion. The ground lease is a fifty (50) year term at fair market value ground rental rates with annual CPI rate adjustments.

Recommendation

Approval for the City Manager to execute the Kissimmee Utility Authority (KUA) Ground Lease Agreement at the Kissimmee Gateway Airport.

REQUESTED CITY COMMISSION ACTION:

Approve

Department: Airport

Presenter:

Attachment(s):

1. (S) AIRPORT LEASE AGREEMENT KUA SUBSTATION EXPANSION (COK FINAL)

**KISSIMMEE GATEWAY AIRPORT and
KISSIMMEE UTILITY AUTHORITY
GROUND LEASE AGREEMENT AIRPORT TENANT**

THIS LEASE AGREEMENT (the "AGREEMENT" or "LEASE") is made this ____ day of 2023, between the **CITY OF KISSIMMEE**, a municipal corporation of the state of Florida, hereinafter referred to as "CITY" and **KISSIMMEE UTILITY AUTHORITY**, a body politic organized and existing pursuant to separate charter amendment of the City of Kissimmee, Florida and under the laws of the State of Florida, whose address is 1701 W. Carroll Street, Kissimmee, Florida 34741, hereinafter referred to as "KUA" and each represents as follows:

WITNESSETH:

WHEREAS, CITY is the owner of certain real property and improvements to real property located near 800 N. Hoagland Blvd, Kissimmee, Florida 34741, commonly known as the Kissimmee Gateway Airport, a municipal airport of the City of Kissimmee, Florida (the "**Airport**"); and

WHEREAS, on October 1, 1985, KUA came into existence as a separate unit of the city government of the City of Kissimmee, known as the Kissimmee Utility Authority, a municipal electric utility, pursuant to a separate charter amendment approved by referendum. Pursuant to its Charter, KUA assumed complete and full legal and operational control of all assets and liabilities of the City of Kissimmee's electric system, including an electric substation operated by the City of Kissimmee located at the Airport, ("**Airport Substation**").

WHEREAS, on or about the time of assuming control of the Airport Substation, KUA and CITY entered into a lease governing the terms of KUA's use and possession of the Airport Substation and also providing for the payment of rent from KUA to CITY ("**Original Lease**"). Subsequently the Original Lease has been misplaced and no copies of it have been found.

WHEREAS, accordingly, the Parties wish to memorialize, restate and record this Ground Lease Agreement Airport Tenant ("**Lease**") which has governed the Parties' rights and responsibilities of KUA's Operation of the Airport Substation since KUA assumed operational control of the Airport Substation from CITY.

WHEREAS, in order to provide retail electric services to the electric utility customers in its service territory, KUA desires to continue to lease from CITY, and CITY desires to lease to KUA, for use exclusively as an electrical substation, the real property more commonly known as "**Airport Substation**" (the "**Substation**") and more particularly described and depicted on attached Exhibit "A" made a binding part hereof, together with all improvements and fixtures located thereon, and all appurtenances pertaining thereto (collectively, the "**Premises**").

WHEREAS, the Parties also wish for this memorialized and restated Lease to include the addition of land adjoining the existing Premises ("**Adjacent Premises**"), more particularly described and depicted on attached "**Exhibit B**" and made a part hereof. The Parties agree that KUA shall enjoy the same rights and obligations over the Adjacent Premises that has governed

KUA's use and possession of the Premises as an electrical substation since 1985 (the Premises and Adjacent Premises shall be referred to hereinafter together as "**Substation Premises**").

WHEREAS, it is intended that the Rent provided for in this Lease shall be absolutely net to CITY throughout the Term, free of any taxes, costs, utilities, insurance expenses, liabilities, charges or other deductions whatsoever with respect to the Substation Premises, and the operation, maintenance, repair, rebuilding, use or occupation thereof all of which shall be KUA's sole responsibility during the entire Term.

WHEREAS, the Parties desire to set forth their mutual obligations and responsibilities in regard to the use of the Substation Premises such that the Airport maintains compliance with applicable requirements set forth in Federal Aviation Administration ("FAA") and Florida Department of Transportation ("FDOT") assurances.

NOW, THEREFORE, in consideration of the premises and of the mutual covenants contained herein and for other able consideration, the Parties hereto agree as follows:

PART ONE
DESCRIPTION OF LEASED PREMISES

- A. LEASED PREMISES. CITY leases to KUA that certain real property located at the Airport, as more specifically described on Exhibit A and B attached hereto and incorporated herein, which consists of approximately 3.87 acres of combined real property (the "Leased Premises"), together with all improvements located thereon and appurtenances thereto, CITY shall deliver exclusive possession of the Leased Premises to KUA on the Commencement Date.
- B. CONDITION OF LEASED PREMISES. KUA accepts the Leased Premises and the Improvement "As Is, Where Is" and in their present condition.
- C. RE-ADJUSTMENT OF LEASED PREMISES. This Lease shall be subject to all restrictions of record affecting the Airport and the use thereof, all federal, state, county and city laws and regulations affecting the same, and shall be subject and subordinate to the provisions of any and all existing agreements between the City and the United States of America, the State of Florida, or the County of Osceola, or their agencies, and to any future agreements between or among the foregoing relative to the operation or maintenance of the Airport, the execution of which may be required as a condition precedent to the expenditure of federal, state, county or City funds for the development of the Airport, or any part thereof.

All provisions hereof shall be subordinate to the right of the United States to occupy or use the Airport, or any part thereof, during time of war or national emergency; provided that if KUA is precluded from using the Leased Premises during any such period, all of KUA's obligations under this Lease, including its obligation to pay Annual Rent shall be abated during such period and, if such interruption continues for more than ninety (90) days, KUA

shall have the option to extend the Term for the period of such interruption or to terminate this Agreement pursuant to Section 9.B.2 of this Lease. CITY represents and warrants that none of the foregoing restrictions precludes KUA from using the Leased Premises for the permitted uses described herein, except as expressly provided in the previous sentence.

In the event the Federal Aviation Administration or its successors require modifications or changes in this Lease as a condition precedent to the granting of its approval or to the obtaining of funds for the improvement of the Airport, KUA hereby consents to any and all such modifications and changes as may be reasonably required to the extent that such modifications and changes do not materially increase KUA's obligations under this Lease (including the payment of Annual Rent) or unreasonably impede the intended use and benefit of and to KUA of the Leased Premises and of this Lease.

PART TWO TERM OF LEASE

- A. PRIMARY TERM. The term of this Lease shall be for a fifty (50) year period, commencing on _____ (the "Commencement Date"), and ending at ____ p.m. on _____, unless otherwise extended for a Renewal Period or earlier terminated as provided in this Lease (as extended or earlier terminated, such period being the "Term"). Once KUA builds infrastructure on the Leased Premises, the Term will be extended and readjusted to the last day of the fiftieth (50th) year after the completion of the substation and other Improvements on the property.
- B. RENEWAL OPTION. Provided KUA is not in default of the Agreement at the time of the exercise of the option past any applicable notice and cure period, KUA is hereby granted an exclusive first option to renew this Agreement upon all the existing terms and conditions of this Lease for one (1) additional term often (10) years (the "Renewal Period"). This option shall be exercised by written notice to the City not less than one hundred twenty (120) days prior to expiration of the existing Term.
- C. HOLDING OVER. In the event KUA shall continue to occupy the Leased Premises beyond the term of this Agreement after CITY gives written notice to vacate, such holding over shall not constitute a renewal of this Agreement but shall be a tenancy of sufferance only. The amount of rent to be paid by KUA during this hold over period shall equal one hundred twenty-five (125%) times the Monthly Rent, prorated for any partial months.

PART THREE RENT

- A. RENT. The net rent under this Lease for the Leased Premises is \$ 67,430.88 per year, payable monthly ("Annual Rent") plus sales tax and any other applicable tax including property tax. The following sum shall be payable monthly, in advance, in the amount of \$ 5,619.24 ("Monthly Rent"). Payment of Monthly Rent will commence on the Commencement Date. Monthly Rent will be due on the first day of every month ("Due Date") and shall be deemed delinquent if not received by the CITY on or before the tenth

day of every month. The Annual Rent and Monthly Rent shall be subject to adjustment as enumerated in Part Three of this Lease. KUA is a governmental municipality, and as such is exempt from the payment of Florida sales and use tax pursuant to Chapter 212, Florida Statutes.

- B. RENT ADJUSTMENTS. CITY and KUA recognize and agree that the purchasing power of the United States Dollar is evidenced by the Consumer Price Index — Urban Wage Earners and Clerical Workers ("Price Index") as published by the United States Department of Labor's Bureau of Labor Statistics. CITY and KUA also recognize that local market trends in Central Florida and the Kissimmee area evolve over time and greatly influence the current market values of leaseholds located at the Kissimmee Gateway Airport.

CPI Adjustment. The parties agree that commencing on the first day of the twelfth (12) month following the Commencement Date and on the first day of each 12 months (12) month thereafter for the remainder of the Term (and any Renewal Period) (each such date being an "CPI Adjustment Date"), the parties hereto will compare the Price Index as of the CPI Adjustment Date to the Price Index that existed on the same date one (1) year earlier to establish the percentage increase in the Price Index for such annual period (such percentage increase being, the "CPI Adjustment Percentage"). After the Adjustment Percentage is determined, the Annual Rent (and corresponding Monthly Rent) shall be modified retroactive to the applicable CPI Adjustment Date as follows:

(i) If the CPI Adjustment Percentage is one tenth of one percent (0.1%) to five percent (5.0%): Annual Rent (and corresponding Monthly Rent) shall increase by the same value as the CPI Adjustment Percentage up to five percent (5%);

(ii) If the CPI Adjustment Percentage is greater than five and one tenth of one percent (5.1%): Annual Rent (and corresponding Monthly Rent) shall increase by five percent (5%), plus one-half of the CPI Adjustment Percentage in excess of 5%, but in no event more than ten percent (10%). By way of example, if the CPI Adjustment Percentage increases by 8%, the Annual Rent (and corresponding Monthly Rent) increase shall be 6.5% (5% plus one-half of the difference between 5% and 8%).

Fair Market Value Adjustment. In addition to the Price Index Adjustment described above, commencing on the first day following the fifth anniversary of the Commencement Date and on each fifth anniversary thereafter for the remainder of the Term (and any Renewal Term) (each such date being an "Appraisal Adjustment Date"), the City may obtain an appraisal of ground lease property at the Airport from a MAI certified appraiser that is mutually acceptable to CITY and KUA to establish the then Fair Market Rent (as defined below) for the land constituting the Leased Premises, excluding all improvements constructed thereon. If the City deems an appraisal is appropriate due to market conditions, the City shall notify the KUA of its intention to invoke the right of obtaining an appraisal, sixty (60) days prior to seeking the appraisal and identify in such notice a disinterested

MAI appraiser having at least 10 years' experience appraising airport ground rental values in Florida and not having represented CITY in the previous five (5) year period. KUA may approve the appraiser in its reasonable discretion. Such determination to complete an appraisal shall be at the sole discretion and expense of the City. The selected appraiser shall be directed to provide a range of values (from Minimum to Maximum) that constitute the then Fair Market Rent for ground leased premises at the Airport as of the applicable Appraisal Adjustment Date. If the lowest value in the range of Fair Market Rent on the Appraisal Adjustment Date is higher than existing Annual Rent, the Annual Rent (and corresponding Monthly Rent) shall be increased (retroactive to the applicable Appraisal Adjustment Date) to lowest value in the range of Fair Market Rent on the Appraisal Adjustment Date, not to exceed a five percent (5%) increase over the then current Annual Rent. In addition, if the Annual Rent is adjusted as provided in this paragraph, the definition of the CPI Adjustment Date shall be amended to mean the thirty-seventh (37th) month following the Appraisal Adjustment Date used to adjust the Annual Rent as provided in this paragraph and third (3rd) anniversary thereafter for the remainder of the Term (and any Renewal Period). As used herein, the term "Fair Market Rent" shall mean the ground rent that an arms' length third party ground tenant would pay (on a per square foot basis) to the airport authority for unimproved premises at the Airport, not being under any obligation to do so, taking into account all relevant factors.

The City shall pay the fees and expenses of each appraiser appointed by such party. Any appraiser designated to serve in accordance with the provisions of this Lease shall be designated as an "MAI" appraiser by the American Institute of Real Estate Appraisers or shall be comparably qualified to appraise commercial real estate, shall be disinterested.

- C. RENT CAPS. Notwithstanding anything to the contrary in this Lease, in no event shall the Annual Rent (and corresponding Monthly Rent) increase under this Article 3 by more than ten percent (10%) during any ten (10) year period during the Term.

PART FOUR PAYMENTS

- A. TIME AND PLACE OF PAYMENT. All payments of rents, fee, taxes, and other charges are to be made at the Kissimmee Gateway Airport, City of Kissimmee, 401 Dyer Blvd, Kissimmee, FL 34741, or such other place CITY may direct KUA in writing.
- B. DELINQUENT PAYMENT OF RENT AND FEES. If rent or fees are not timely paid, then the KUA shall pay to CITY a penalty of 5% of the amount due commencing sixteen (16) days after the DUE DATE. CITY shall charge no penalty upon that portion of any debt that, in good faith, is in dispute or charge a penalty that exceeds the then amount permitted under Florida law. All late fees are to be paid to CITY within 30 days of the initial date of accrual.
- C. RENT ABATEMENT FOR KUA IMPROVEMENTS. The CITY is requiring KUA to lower a pole on Hoagland Boulevard as the height is affecting how the FAA will allow the airport to safely operate. The costs to lower the overhead pole and switch to a horizontal

construction will be approximately \$16,549.00 (the location of this pole is depicted on the map attached hereto as Exhibit C). In addition, new fencing is required in the new lot south of the YMCA which will cost approximately \$42,000.00. Notwithstanding anything to the contrary contained in this Lease, but provided KUA is not in Default hereunder, in exchange for KUA paying the costs of lowering the pole and installation of the new fence, the CITY hereby grants KUA an abatement of the Annual Rent payable during the period beginning on the Commencement Date. Upon the completion of both the fencing and lowering of the pole, KUA will provide to the City a final accounting of the actual costs expended which will then be used to determine the final rent abatement amount ("Rent Abatement"). The Annual Rent payments will resume once KUA has realized the full benefit of the Rent Abatement described herein.

PART FIVE PRIVILEGES

- A. USE. The Leased Premises shall be used solely for the construction, operation and maintenance of an electric substation for the transmission and distribution of electric power, with related amenities and facilities, in the business of KUA, used for the safe, reliable delivery of electric power and for no other use whatsoever. KUA covenants that it shall comply with all applicable building, zoning, fire and other governmental laws, ordinances, regulations and rules in its use and operation of the Substation Premises.
- B. PROHIBITED USES. The KUA shall not use or permit the use of the Leased Premises or any part thereof for any purpose or purposes other than those set forth in this Lease, unless approved in writing by the CITY such approval not to be unreasonably withheld, conditioned or delayed. KUA shall not commit or suffer to be committed any waste in or upon the Leased Premises or maintain any public or private nuisance, nor, without limiting the generality of the foregoing, shall the KUA use or permit the use of the Leased Premises for any illegal, improper, immoral, or unlawful purposes.
- C. INGRESS AND EGRESS. KUA shall have at all times the full and free right of ingress and egress over, across and through the Leased Premises and the Airport. Such right also extends to persons or organizations supplying materials or furnishing services to KUA, as well as employees, customers, guest, and other invitees, who include vehicles, machinery, and equipment reasonably required by such persons or organizations. CITY shall work with KUA to increase current parking availability to thirty to forty parking spaces on the Leased Premises.

PART SIX OBLIGATIONS OF AGREEMENT

- A. NET LEASE. The use and occupancy of the Leased Premises by KUA shall be without cost or expense to CITY. This Agreement shall be without cost to the City except for the City's obligations set forth or specifically provided elsewhere herein. The KUA accepts the Leased Premises in its "As Is, Where Is" condition except with regards to items or

duties which are expressly agreed to and set forth in writing by CITY. KUA shall keep and maintain the Leased Premises as set forth in PART SIX (B), pay all taxes in accordance with PART THREE, pay all casualty, liability and other insurance premiums as set forth in PART SIX (J), and satisfy all of its other obligations under this Agreement.

B. MAINTENANCE BY KUA. KUA shall be responsible for the following maintenance and repair to the Leased Premises:

1. All upkeep, repair, and maintenance of the Leased Premises including but not limited to interior walls, doors, locks, windows, flooring, fixtures, ceilings, roofs, lighting, electrical and plumbing systems, all heating, air conditioning and heating systems related to the electric substation.
2. KUA's responsibilities under this section shall also include all other internal, external, and supporting structures and equipment;
3. Upon occupation of the Leased Premises, maintain current landscaping in the area of the Leased Premises, Exhibit A.
4. KUA will not store or dispose of any debris or waste materials on Airport property, except by means of waste receptacles or containers authorized by CITY;
5. KUA shall comply with all federal, state, and local fire codes and regulations. KUA shall also provide and maintain hand-operated fire extinguishers for the interior of the building in accordance with applicable safety codes;
6. KUA will comply in all aspects with the City of Kissimmee Code including all planning, zoning, and building codes, regulations, and ordinances. CITY warrants that the intended use is compliant as to the City's land use and zoning codes.
7. If such reasonable maintenance is not completed within a reasonable time period, the CITY shall give KUA thirty (30) days written notice to complete this reasonable maintenance. If the thirty (30) days period elapses without such maintenance being done to the CITY's reasonable satisfaction, CITY shall have the right to seek a court ordered injunction mandating that KUA perform such maintenance. In the event City prevails in securing such an injunction against KUA, KUA shall reimburse CITY for all reasonable attorney's fees and costs associated with obtaining the injunction.
8. KUA agrees that upon the expiration of the term of this Agreement or sooner termination thereof, the Leased Premises shall be delivered to CITY in its then existing condition (but subject to KUA's maintenance obligations herein). CITY reserves the right upon not less than 72 hours prior notice, during normal weekdays, to KUA to enter and make periodic inspections of the Leased Premises and improvements thereon during normal business hours. CITY reserves the reasonable

right to enter the Leased Premises during such times as necessitated by an emergency or in order to prevent the occurrence of waste to the Leased Premises and its fixtures, upon reasonable prior written notice to KUA, unless in the event of an emergency. CITY agrees not to access the Leased Premises, an energized electric substation, without KUA's assistance and supervision.

C. CONSTRUCTION, ALTERATIONS, REPAIRS.

1. KUA shall not erect any structures, make any improvements or modifications, or undertake any other construction on the Leased Premises, except as previously set forth in Part Five A, KUA may alter, remodel or demolish any KUA owned Improvements constructed, installed, renovated and/or maintained without any consents or approvals from CITY so long as such Improvements meet the purposes set forth in Part Five A.
2. Development and construction will only be permitted in accordance with the guidelines presented in the approved Airport Master Plan. Before commencement of any improvements or modifications to the Leased Premises that require CITY's consent under Part Six C.1. above, the KUA shall submit a written construction application to the Director of Aviation ("Director"), and if the Director requests, the construction application shall be in the form as set forth below. The plans for the proposed improvements or modifications to the Leased Premises shall completely describe the function and design and shall also contain the following: upon request,
 - a. A graphic presentation of the improvements showing exact locations of access and egress to and from the Leased Premises, facilities included and interior layouts and plans.
 - b. Request for approval of above, to the extent CITY's consent is required hereunder.
 - c. Proof reasonably acceptable to CITY that KUA has complied with Florida Statute, Section 255.05, which requires payment and performance bonds to be in place for work that is occurring on public lands in excess of \$200,000.00.
3. CITY shall attempt to make a timely disposition of each KUA Construction Application and, to the extent permitted to approve such work as provided herein, will not arbitrarily or capriciously withhold or condition approval of the same.
4. Upon approval, if such CITY approval is expressly required herein, the KUA shall proceed with the construction, with reasonable diligence and at its sole cost and expense.

5. Where such alterations or construction has been made, KUA shall, within (30) thirty days following completion of the alterations, present to CITY a complete set of "as-built" drawings including, without limitation, plumbing and electrical systems.
- D. UTILITIES. KUA shall be solely responsible for and pay all charges for utilities for the Leased Premises, including but not limited to all charges pertaining to providing water, sewer, gas, electricity, telephone and internet service. KUA shall pay utility charges within thirty (30) days of receiving the invoice for said utilities. KUA will pay all costs of Storm Water fees associated with the paved aircraft parking area. KUA will pay a proportional cost of any reasonable future fees enacted to cover the cost of utility services.
- E. TRASH AND GARBAGE REMOVAL. KUA shall maintain the Leased Premises, improvements, and fixtures at all times in a safe, neat, and aesthetically pleasing condition. KUA shall not permit the accumulation of any trash, ashes, or debris on the Leased Premises and shall remove such debris to a disposal site off the Airport property. KUA shall provide a complete and proper arrangement for the adequate sanitary handling and disposal, away from the Airport, of all trash, garbage, and other refuse caused from its operation. KUA shall provide and use suitable covered metal receptacles in an area acknowledged by CITY for all such garbage, trash, and other refuse. Piling of boxes, cartons, barrels, or other similar items in an unsightly or unsafe manner on or about the Leased Premises shall not be permitted.
- F. SIGNS. Subject to applicable rules and regulations, KUA will be permitted, without the CITY's consent, to have one or more signs on the Substation Premises which identify the Substation Premises as a Kissimmee Utility Authority Substation and warn against trespass and dangers associated with the substation's operation. No other signs, billboards, flyers shall be erected or maintained by KUA on the Leased Premises except according to the CITY's requirements for location and use of signs on Airport property. Any required approvals by CITY pursuant to this Section shall not be unreasonably withheld, delayed or conditioned. Before erection of any sign, billboard or flyer on city property, KUA must obtain any applicable permits required by the City.
- G. NONDISCRIMINATION. Exhibit D, relating to FAA required non-discrimination provisions, is attached hereto and incorporated herein by this reference.
- H. HANDLING AND STORAGE OF PETROLEUM PRODUCTS AND OTHER MATERIAL BY KUA. KUA shall handle, use, store, and dispose of hazardous materials, fuel petroleum products, and all other materials, whether hazardous or not, owned or used by KUA, its agents, contractors, assigns, guests, invitees, or any other person or firm in privity with KUA on the Airport in accordance with all applicable federal, state, local laws which include but are not limited to CITY's regulations, rules, and ordinances. No waste or disposable materials shall be released on the ground or in the storm sewer. Should such materials be spilled or escape from storage or in any way contaminate the Airport or property adjacent to the Airport through activities of the KUA, the KUA shall be responsible for the clean-up, containment and otherwise abatement of such contamination

at KUA's sole cost and expense. Further, KUA shall notify the CITY and all other appropriate government agencies of such an occurrence immediately after said incidence. Should the KUA fail to comply with any term contained in this section and KUA is not taking commercially reasonable efforts to cure such condition within thirty (30) days after CITY delivers written notice of such failure to KUA, the CITY may take any reasonable and appropriate action in the place of KUA. The KUA shall promptly pay the full reasonable cost of such remedial action incurred by the CITY due to noncompliance under this section. Notwithstanding anything to the contrary in this Lease, (i) in no event shall KUA be responsible for any hazardous materials, fuel petroleum products, or other materials, whether hazardous or not, that exist on the Adjacent Premises on the Commencement Date, and (ii) KUA's obligations under this Lease with respect to hazardous materials shall apply only in connection with, and to the extent of, hazardous materials and substances brought onto the Leased Premises by KUA or KUA's employees, agents or contractors during the Term.

I. NO LIENS.

1. Except as otherwise provided herein, KUA shall keep the Leased Premises free from all liens, including, but not limited to, mechanics liens arising from any alteration or construction work performed or labor or materials supplied to the Leased Premises. Any construction work on the Leased Premises authorized by the KUA shall be performed pursuant to a "no-lien" contract and KUA shall make certain that the Florida Statutes relating to the "no-lien" contracts are complied with in every particular detail.
2. If, at any time, KUA shall cause any mechanic's, laborers, or material man's lien to be filed against the Leased Premises or any part thereof, KUA shall cause the same to be discharged either by record, by payment, deposit, bond, order of a court of competent jurisdiction, or otherwise. If KUA fails to cause such liens to be discharged by payment or through appropriate bond within thirty (30) days from the date KUA's receives notice of said lien, then such failure should be deemed a default in the performance of this Agreement.
3. Nothing in this Agreement shall be deemed or construed in any way as constituting the consent or request of the CITY, express or implied by inference or otherwise, to any contractor, subcontractor, laborer, or material man for any specific improvement, alteration to or repair of the Leased Premises, or any part of the Leased Premises.

J. INDEMNITY AND INSURANCE BY KUA.

1. Indemnification. KUA further covenants and agrees to indemnify and hold the City, its members, officers, employees, and agents of each (collectively, "City Indemnified Parties"), forever harmless from and against all liabilities, claims,

judgments, costs, damages, fines, penalties, and expenses, including those which arise as the result of administrative action, which may accrue against, be charged to, or recovered from the foregoing by reason or on account of damages to or destruction of the property of the City, or the property of, injury to, or death of any person, resulting or arising from KUA' use, occupancy, operation, or maintenance of the Leased Premises, including the work, acts, or omissions of KUA' officers, agents, employees, contractors, subcontractors, operators, except when proximately caused by the negligence or willful misconduct of any of the City Indemnified Parties. The City will refer to KUA promptly upon notice thereof, any claim made or suit instituted against the City, which, in any way, affects KUA or its insurer, and KUA or its insurer shall have the right to compromise and defend the same to the extent of its interest. KUA shall pay all reasonable attorneys' fees and costs incurred by the City in its defense of any such action and in the recovery of all amounts owed by KUA to the City under this Agreement. Any non-appealable final judgment rendered against the City for any cause for which KUA is liable hereunder shall be conclusive against KUA as to a liability and amount. In addition to and without limiting the generality of any other provisions of this Agreement but subject to the limitations in Part Six, Section H above, KUA shall and hereby does indemnify and hold the City harmless from and against any and all losses, damages, expenses, fees, claims, demands causes of action, judgments, costs, fines, penalties, and liabilities, including, but not limited to, attorneys' fees and costs of litigation, and costs and expenses of response, remedial and corrective work, and other cleanup activities, arising out of or in any manner connected with (i) the "release" or "threatened release" (as those terms are defined in Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), as from time to time amended and the rules and regulations promulgated thereunder) by KUA or its employees or contractors.

CITY covenants and agrees to indemnify and hold KUA, its members, officers, employees, and agents of each (collectively, the "KUA Indemnified Parties"), forever harmless from and against all liabilities, claims, judgments, costs, damages, fines, penalties, and expenses, including those which arise as the result of action which may accrue against, be charged to, or recovered from the foregoing by reason or on account of damages to or destruction of the property of the KUA, or the property of, injury to, or death of any person, resulting or arising from (i) the negligence or willful misconduct of any of the City Indemnified Parties, and (ii) CITY's use, occupancy, operation, or maintenance of the Airport, including the work, acts, or omissions of KUA' officers, agents, employees, contractors, subcontractors, operators, except when proximately caused by the negligence or willful misconduct of the KUA Indemnified Parties. KUA will refer to CITY promptly upon notice thereof, any claim made or suit instituted against KUA, which, in any way, affects CITY or its insurer, and CITY or its insurer shall have the right to compromise and defend the same to the extent of its interest. CITY shall pay all reasonable attorneys' fees and costs incurred by KUA in its defense of any such action and in the recovery of all amounts owed by CITY to KUA under this Agreement. Any final non-appealable judgment rendered against KUA for any

cause for which CITY is liable hereunder shall be conclusive against CITY as to a liability and amount. In addition to and without limiting the generality of any other provisions of this Agreement, CITY shall and hereby does indemnify and hold KUA harmless from and against any and all losses, damages, expenses, fees, claims, demands causes of action, judgments, costs, fines, penalties, and liabilities, including, but not limited to, attorneys' fees and costs of litigation, and costs and expenses of response, remedial and corrective work, and other cleanup activities, arising out of or in any manner connected with (i) the "release" or "threatened release"(as those terms are defined in Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) and the rules and regulations promulgated thereunder, as from time to time amended) at the Leased Premises before the Commencement Date and on the Airport generally.

2. KUA Insurance. KUA procure and maintain in effect, at its own expense during the term of this Agreement (i) an "all risk" property policy covering KUA's personal property on the Leased Premises, (ii) Workers Compensation Insurance as required by Florida Statutes, or adequate Employee's Liability Insurance; Public Liability Insurance; and Property Damage Insurance covering all of KUA's activities and the Leased Premises at the Airport, and (iii) general liability insurance coverage of \$ 1 for each occurrence and over \$2,000,000 general aggregate, as well as the Auto insurance required in the Minimum Standards.

The KUA shall maintain such insurance underwriters authorized to do business in the State of Florida reasonably satisfactory to the CITY. Coverage is to be written on the broadest liability form including but not limited to products liability, blanket contractual and independent contractors. All liability policies shall include the City or Kissimmee as an additional insured. KUA shall furnish CITY with a Certificate of Insurance from the KUA's carrier indicating that there is such insurance coverage as hereinbefore provided, and, in the event of a legal dispute and upon request from CITY, KUA shall submit to the CITY, a true copy of the above insurance coverage. KUA shall provide not less than five (5) days written notice to CITY before KUA's policy or policies of insurance are canceled or materially modified.

3. Waiver of Claims and Subrogation. Notwithstanding anything to the contrary in this Lease, KUA and CITY hereby release each other and their respective representatives, agents, employees, and partners from any claims for damage and/or injury to the Leased Premises and/or the Airport or the trade fixtures, personal property, improvements, and alterations in or on or about the Leased Premises or the Airport that are caused by or result from risks that can be insured against under comprehensive "all risk-special form causes of loss" property insurance policies regardless of whether such policies are actually carried.

K. COMPLIANCE WITH LAW RULES AND REGULATIONS. Subject to the limitations in Part Six B.8 above regarding Structural/Capital Repairs, KUA and CITY shall each, at its sole expense, observe and comply with the ordinances, statutes, rules, and regulations of all governmental authorities which are applicable to the conduct of each party's business and in addition, with respect to KUA, those rules, and regulations of the CITY not inconsistent with the provisions of this Agreement. Any penalties and costs levied as a result of such party's breach of any terms or covenants contained within this Agreement shall be borne by the breaching party. KUA will ensure the integrity of the Airport perimeter security with respect to the Leased Premises at all times. This includes ensuring all gates to the Leased Premises, to include pedestrian gates, remain locked at all times unless monitored by an employee of the KUA. Personnel vehicles of KUA's employees, customers or contractors will not be parked on the airside.

L. RENOVATIONS.

1. All proposed construction that requires CITY's consent hereunder shall be in accordance with Part Six of this Agreement, and reviewed and approved by the Director and may also have to be reviewed and approved by the City Building Official, to include obtaining a Building Permit from the City.
2. KUA expressly assumes full responsibility for all damages and injuries that may result to any person or persons or to adjoining property by reason of the excavation for, and the erection, construction, alteration, renovation, refurbishment, improvement, or maintenance of any structure on the Leased Premises by KUA, pursuant to or under this Agreement, and shall indemnify CITY against any and all claims arising from such actions, except to the extent of the negligence or willful misconduct of any of the City Indemnified Parties. This obligation to indemnify shall not apply to claims which would be covered by the insurance policies referenced in Part Six J.3 above.

3.

PART SEVEN
OBLIGATIONS OF CITY

- A. OPERATION AS A PUBLIC AIRPORT. CITY covenants and agrees that at all times it will operate and maintain the Airport as a public airport consistent with and pursuant to the Sponsor's Assurances given by CITY to the United States Government under the Federal Airport Act.
- B. ENTRY AND INSPECTION. CITY shall have the right to enter upon and inspect the Leased Premises at any reasonable time, with seventy-two (72) hours' notice, during normal weekday, during the Term for any purpose necessary, incidental to or connected with the performance of its obligations hereunder or in the exercise of its governmental functions and, upon reasonable notice to KUA. The CITY shall not, during the course of any such inspection, unreasonably interfere with KUA's use and enjoyment of or access to the Leased Premises. CITY agrees not to access the Leased Premises, an energized electric substation, without KUA's assistance and supervision.

PART EIGHT
DAMAGE OR DESTRUCTION OF LEASED PREMISES

- A. CASUALTY.
1. Casualty. If, during the portion of the Term the Leased Premises are totally or partially destroyed, rendering the Leased Premises totally or partially inaccessible or unusable, CITY shall use commercially reasonable efforts to promptly restore the Leased Premises to a condition substantially similar to that which existed immediately prior to such damage or destruction, in accordance with applicable laws ("Restoration"). Such destruction shall not terminate this Lease. If the applicable laws do not permit the Restoration of the Leased Premises to a condition substantially similar to that which existed prior the casualty, KUA may terminate this Lease by giving notice to CITY within ninety (90) days after CITY delivers written notice to KUA describing the extent to which the Improvements shall be restored in accordance with applicable laws.
 2. Extent of CITY's Obligation to Restore. CITY shall not be required to Restore KUA's trade fixtures or KUA's personal property or equipment.
 3. Effect of Termination. If this Lease is terminated following a casualty pursuant to this Section 8.A, (i) CITY shall be entitled to receive and retain all the insurance proceeds relating to insurance policies insuring CITY resulting from or attributable to such casualty, except for those proceeds payable under policies obtained by and insuring KUA, and (ii) KUA shall be entitled to receive and retain all the insurance proceeds relating to insurance policies insuring KUA resulting from or attributable

to such casualty, except for those proceeds payable under policies obtained by and insuring CITY.

4. Abatement of Base Rent Due to Casualty. During any period when KUA cannot reasonably use all or any portion of the Leased Premises for the conduct of KUA's business by reason of a casualty, Annual Rent shall be equitably abated in proportion to the degree of such interference. Such abatement shall commence upon the date of the casualty and shall end upon the sixtieth (60th) day following delivery of the affected portion of the Leased Premises with the Restoration complete (or termination of this Agreement as provided herein), it being agreed that KUA shall be permitted sixty (60) days after such delivery to install its furniture, fixtures and equipment. KUA shall not be entitled to any compensation or damages from CITY for loss of the use of the Leased Premises, KUA's personal property, alterations or other damage or any inconvenience occasioned by a casualty or by the repair or restoration of the Leased Premises thereafter.

PART NINE

TERMINATION OF AGREEMENT, ASSIGNMENT, AND TRANSFERS

- A. TERMINATION. This Agreement shall terminate without action by either party at the end of the Term.
- B. TERMINATION BY KUA. KUA may terminate this Agreement after:
 1. Material default by CITY in the performance of a 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 of written notice of default from KUA. Unless CITY is diligently attempting to remedy such default in which case CITY shall be allowed such reasonable time as may be required.
 2. Upon KUA giving ninety (90) days written notice to the CITY pursuant to PART ELEVEN (G) of this Agreement and immediately upon or after the occurrence of any of the following events:
 - a. The failure or refusal of the Federal Aviation Administration (FAA) to permit the KUA to operate into, from, or through the Kissimmee Gateway Airport during which time rent will abate;
 - b. The duly enactment and implementation of a City, State, or Federal law, order, rule or regulation which is directly binding on the Leased Premises and the operation of the KUA which directly results in (i) the inability of the KUA to use or access the Leased Premises in a manner substantially similar to that which existed prior to such interference, or (ii) loss of any of the use classifications in Section 5.A., in either case, for a period longer than one hundred eighty days (180) days during which time rent will abate;

- C. EXERCISING KUA'S RIGHTS OF TERMINATION. KUA 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.
- D. TERMINATION BY CITY. CITY may terminate this Agreement in the event KUA shall:
1. Be in arrears in the payment of the whole or any part of the rent or other fees, payments, or sums due under this Lease for a period of sixty (60) days after written notice and the time such payments become due;
 2. Make a general assignment for the benefit of creditors;
 3. File a voluntary or involuntary petition in bankruptcy;
 4. Abandon the Leased Premises;
 5. Default in the performance of any of the covenants, agreements and conditions required herein to be kept and performed by KUA, and such default continues for a period of thirty (30) days after receipt of written notice from CITY of said default, unless KUA is diligently attempting to remedy such default in which case KUA shall be allowed such reasonable time as may be required;
 6. Appoint or to cause the appointment of a receiver for KUA; or
 7. Violate local, state, federal, or CITY's laws, statutes, ordinances, rules, and regulations not inconsistent with the provisions of this Agreement and such default continues for a period of sixty (60) days after receipt of written notice from CITY of said default, unless KUA is diligently attempting to remedy such default in which case KUA shall be allowed such reasonable time as may be required.
- E. 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 D of this Article, Termination by CITY, a notice of termination shall be sufficient to terminate this agreement. Upon such termination, KUA agrees that it will forthwith surrender possession of the Leased Premises to CITY. KUA will be given access to Leased Premises to remove its property following termination.
- F. SUBLETTING AND ASSIGNMENT. KUA may not rent or sublease the Leased Premises without the prior written consent of the CITY, which shall not be unreasonably withheld, conditioned or delayed. Notwithstanding the foregoing, CITY may not withhold consent if the proposed assignment or sublease otherwise satisfies any minimum requirements contained in the Service Standards or other similar standards applicable at the Airport.

KUA may, with the prior written consent of CITY, assign this Agreement; in such event, KUA 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 KUA shall contain a provision to this effect. Further, any assignee of the lease shall be bound by the terms and conditions of this Agreement.

Notwithstanding anything to the contrary in Section 9.F, KUA shall have the right without obtaining CITY's consent, to assign the Lease, to sublet the Leased Premises or otherwise transfer KUA's interest under the Lease to: (i) any parent, affiliate or subsidiary entity of KUA, (ii) any entity resulting from a merger, consolidation, spin off or split up involving KUA or its parent entity, if any, (iii) any person or entity acquiring substantially all of the assets or stock of KUA, (iv) in connection with an initial public offering, or (v) to any third party acquiring the electric substation. Any such transfer shall not be subject to the foregoing provisions of Section 9.F, be prohibited or require CITY's consent; provided, however, in no such event shall any such transfer affect the continuing primary liability of the assigning party (which, following assignment, shall be joint and several with the assignee(s)), or relieve assigning party of any of its obligations under this Lease). Promptly following a permitted transfer, KUA shall deliver to CITY a copy of the agreement by which a transferee (other than KUA) agrees to assume all liabilities of the KUA under this Lease arising and relating to periods after such transfer.

- G. MORTGAGES. KUA shall at all times and from time to time have the right to encumber by mortgage, deed of trust, or security agreement (the "Mortgage") KUA's leasehold estate in the Leased Premises, together with KUA's rights and interests in the Improvements, including all rents, issues, profits, revenues, and other income to be derived by KUA therefrom, to secure such loans from time to time made to KUA; provided, however, that such Mortgage shall in no event encumber CITY's fee title or leasehold interest (as applicable) in the Leased Premises or CITY's interest under this Lease.

PART TEN RIGHTS UPON TERMINATION

- A. LEASED PREMISES. It is the intent of this Agreement that the Leased Premises shall be and remain the property of CITY during the entire term of this Agreement and thereafter.
- B. REMOVAL OF PERSONAL PROPERTY. Upon the expiration or termination of this Agreement, all buildings, improvements, and fixtures constructed or placed upon Leased Premises shall revert, free and clear of any mortgage or lien, to CITY if not removed by KUA.

PART ELEVEN GENERAL PROVISIONS

- A. CITY'S RESERVED RIGHTS.

1. City reserves the right: (i) to further develop, improve, repair and alter the Airport and all roadways, parking areas, terminal facilities, landing areas and taxiways as it may reasonably see fit, and provided that City shall use reasonable efforts to preserve KUA's rights hereunder, City shall be free from any and all liability to KUA for loss of business or damages of any nature whatsoever to KUA occasioned by the making of such improvements, repairs, alterations and additions, unless such loss or damages are caused by the negligence or willful misconduct of the City, (ii) to establish such fees and charges for the use of the Airport by KUA (excluding any additional charge for the use of the Leased Premises) and all others similarly situated from time to time as City may deem advisable, and (iii) for itself and others to utilize and maintain any utility and drainage easements located on the Leased Premises, and (iv) to run water, sewer, electrical, telephone, gas, drainage and other lines under or through the Leased Premises and to grant necessary utility easements therefore, provided that in the exercise of any of the foregoing rights, KUA's use of and access to the Leased Premises and any Improvements, shall not be unreasonably impaired and any damage to the Leased Premises or any Improvements caused by City as a result thereof shall be repaired without cost to KUA.
2. This Agreement shall be subordinate to the provisions of any existing or future agreement between CITY and the United States, relative to the operation or maintenance of the Airport, the terms relative to the operation or maintenance of the Airport, the terms and execution of which have been or may be reimbursement to CITY for federal funds for the development of the Airport.

B. NON-INTERFERENCE.

1. NON-INTERFERENCE WITH OPERATION OF AIRPORT. KUA by accepting this Agreement expressly agrees for itself and its successors and assigns that it will not make use of the Leased Premises in any manner, which might interfere with the landing and taking off of aircraft at the Airport or otherwise constitute a hazard.

In the event that this covenant is breached as a result of a new law, rule, standard, or FAA ruling, KUA shall mitigate to remove the interference. The actual cost of any KUA mitigation shall be applied to the rent due to the City via rent abatement.

In the event this covenant is breached in a reasonable timeframe, the CITY reserves the right to enter upon the Leased Premises and cause the abatement of such interference at the reasonable expense of KUA. CITY agrees not to access the Leased Premises, an energized electric substation, without KUA's assistance and supervision.

2. NON-INTERFERENCE WITH KUA'S OPERATIONS OF ITS SUBSTATION. The CITY covenants and agrees not to use or construct any improvements on, under

or over the Substation Premises or adjacent to the Substation Premises that in any way interferes with KUA's use, enjoyment of its electric substation.

CITY shall maintain and keep in repair the landing area of the Airport and may have the right to direct and control all activities of the KUA in this regard.

C. NONEXCLUSIVE RIGHT.

The KUA expressly agrees on behalf of itself and its successors and assigns that to the extent, it has any rights under this Agreement to conduct any activity on the Airport property, such rights are non-exclusive, and City has reserved the right to grant similar rights to others at the Airport. The provisions of this subsection shall not confer any rights on KUA, which have not been expressly granted to KUA elsewhere in this Agreement.

D. WAIVER OF JURY TRIAL VENUE. It is mutually agreed by and between KUA 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.

F. PARAGRAPH HEADINGS. The paragraph headings are for convenience in reference and are not intended to define or limit the scope of any provision of this Agreement.

G. NOTICE. Whenever any notice is required by this Agreement to be made, given, or transmitted, such notice shall be served by Certified or Registered Mail with return receipt or by nationally recognized overnight carrier, addressed to the CITY in following manner:

To COK: Kissimmee Gateway Airport
401 Dyer Boulevard
Kissimmee, FL 324741-4613
Attn: Director of Aviation

With a required copy to: City of Kissimmee
101 Church Street
Kissimmee, FL 34741
Attention: City Attorney

and notices, consents and approvals to addressed to KUA in the following manner:

To KUA: Kissimmee Utility Authority
1701 W. Carroll Street
Kissimmee, FL 34741
Attn: Vice President of Operations

With a required copy to: Kissimmee Utility Authority
1701 W. Carroll Street
Kissimmee, FL 34741
Attn: General Counsel

or such other addresses as the parties may designate to each other in writing.

- H. FLORIDA LAW. This Agreement shall be interpreted in accordance with the laws of the State of Florida.
- I. SUCCESSORS AND ASSIGNS. All of the terms, covenants, and agreements herein contained shall be binding upon and shall inure to the benefit of the successors and assigns of the parties.
- J. AMERICANS WITH DISABILITIES ACT. As used herein, "ADA" shall mean the Americans with Disabilities Act, P.L. 101-336, 104 Stat. 327 (1990), as amended from time to time, and the regulations promulgated thereunder. CITY hereby represents and warrants that the Improvements comply with ADA on the Commencement Date. Thereafter, KUA shall be responsible for any actions required to comply with ADA (including, without limitation, any actions required by the City to enable the City to meet its ADA obligations with respect to KUA's operations) as a result of (i) any Improvements or modifications which it makes to the Leased Premises, (ii) its particular use of the Leased Premises (as opposed to mere occupancy), and (iii) subject to any other limitations in this Lease (including Section 6.B.8), any changes to the ADA after the Effective Date. Any modification to the Leased Premises, which KUA is required to make under this Section, shall be performed in accordance with applicable laws. In the event the KUA shall fail to construct or modify any Improvements to the Leased Premises as required under this Section, the City shall have the right to enter the Leased Premises and perform such modifications on the KUA's behalf, without liability for any disruption to the KUA's activities therein during the completion of or as a result of such modifications, and the reasonable cost of such modifications shall be invoiced to the KUA and shall be promptly paid by the KUA to the City as additional Rent hereunder.
- K. ATTORNEY FEE PROVISION. Other than as set forth in Part Six B.7 and Part Six J.1 above, and Parts Twelve A. and Twelve B.3 below, each party shall be responsible for its own attorney's fees and costs for any proceeding at law or in equity that arises hereunder.

- L. RADON GAS NOTICE. Radon is a naturally occurring radioactive gas that, when it has accumulated in a building in sufficient quantities, may present health risks to persons who are exposed to it over time. Levels of radon that exceed federal and state guidelines have been found in buildings in Florida. Additional information regarding radon and radon testing may be obtained from your county public health unit.
- M. PUBLIC ENTITIES CRIME NOTICE. The KUA acknowledges the following notice:
- A person or affiliate who has been placed on the convicted vendor list following a conviction for a public entity crime may not submit a bid on a contract to provide any goods or services to a public entity, may not submit a bid on a contract with a public entity for the construction or repair of a public building or public work, may not submit bids on leases of real property to a public entity, may not be awarded or perform work as a contractor, supplier, subcontractor, or consultant under a contract with any public entity, and may not transact business with any public entity in excess of \$35,000 for a period of 36 months from the date of being placed on the convicted vendor list.
- N. BROKER LANGUAGE. City and KUA represent and warrant to each other that they have dealt with no broker in connection with this Agreement and the transactions contemplated hereby, and each agrees to indemnify and hold the other harmless in the event its representation and warranty contained herein is not true.
- O. ESTOPPEL PROVISION. At the request of either party, the other shall with reasonable promptness deliver to the requesting party a written and acknowledged statement that this Agreement is unmodified and in full force and effect (or if there have been modifications, that the same is in full force and effect as modified and stating the modifications), that to the best of the responding party's knowledge, the requesting party is not in default under this Agreement (or if the responding party has knowledge that the requesting party is in default, identifying the default), and providing such other information with respect to the Agreement and the relationship between City and KUA as may reasonably be requested. In addition, at the City's request, KUA shall promptly execute and return to City a short form memorandum of this Agreement, which may be recorded in the public records of Osceola County, Florida in City's sole discretion.
- P. EFFECTIVE DATE. The Effective Date shall mean the date that the last party fully executes this Agreement.
- Q. LANDLORD/TENANT RELATIONSHIP; AND THIRD-PARTY BENEFICIARIES. This Lease creates a landlord/tenant relationship, and no other relationship, between the Parties. This Lease is for the sole benefit of the Parties hereto and, except for assignments permitted hereunder, no other person or entity shall be a third-party beneficiary hereunder.
- R. SOVEREIGN IMMUNITY. The CITY and KUA are Florida municipal entities whose limits of liability are set forth in Section 768.28, Florida Statutes, and nothing herein shall be construed to extend the liabilities of the CITY or KUA beyond that provided in Section 768.28, Florida Statutes. Further, nothing herein is intended as a waiver of the CITY's or

KUA's sovereign immunity under Section 768.28, Florida Statutes. Nothing hereby shall inure to the benefit of any third party for any purpose, including but not limited to, anything that might allow claims otherwise barred by sovereign immunity or operation of law.

PART TWELVE ENVIRONMENTAL MATTERS

A. INDEMNIFICATION. CITY agrees to indemnify and hold the KUA Indemnified Parties harmless from and against all liabilities, claims, judgment, costs, damages, fines, penalties, and expenses, including those which arise as the result of administrative action, which may accrue against, be charged to or recovered from the foregoing by reason or on account of damages to or destruction of the property of the City, or the property of, injury to or death of any person, resulting or arising from any Hazardous Materials existing on the Adjacent Premises as of the Commencement Date or the failure of any above or underground storage tanks existing on the Adjacent Premises on the Commencement Date to comply with all applicable federal, state, and local government regulations relating thereto.

B. HAZARDOUS MATERIALS COVENANTS.

1. KUA hereby represents and warrants to and for the benefit of CITY that KUA shall dispose of any Hazardous Materials (hereinafter defined) placed upon the Leased Premises or any portion thereof by KUA during the Term in accordance with all applicable Laws (as defined below) so as to prevent Hazardous Materials Contamination. From purposes hereof the term "Hazardous Materials" shall mean and refer to (i) any "hazardous waste" as defined by the Resource Conservation and Recovery Act of 1976 (42 U.S.C. *6901 et seq.), as amended from time to time, and regulations promulgated thereunder; (ii) any "hazardous substance" as defined by the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (42 U.S.C. 24, *6901, et seq.) ("CERCLA"), as amended from time to time, and regulations promulgated thereunder; (iii) asbestos (iv) polychlorinated biphenyls; (v) urea formaldehyde; (vi) any substance the presence of which on the Leased Premises is prohibited by the City that the Leased Premises will not use or operated in any manner that will result in the storage use treatment, manufacture, or any applicable environmental laws or regulations ("Laws") or by any other legal requirements affecting the Leased Premises; (viii) petroleum-based materials (with the exception of tires affixed to vehicles); and (viii) any other substance which is defined as hazardous, toxic, infectious, or radioactive by any laws or by any other legal requirements affecting the Leased Premises. The term "Hazardous Materials Contamination" shall mean and refer to the contamination of the Leased Premises, soil, surface water, ground water, air, or other elements on or off the buildings, facilities, soil, surface water, ground water, air, or other elements on, or of, any other property as a result of Hazardous Materials placed

on the Leased Premises by KUA during the Term emanating from the Leased Premises at any time.

2. In addition to and without limiting the generality of any other provisions of this Agreement, KUA shall and hereby does indemnify and hold the City harmless from and against any damages, expenses, fees, claims, demands, causes of action, judgments, costs, fines, penalties, and liabilities, including, but not limited to, attorneys' fees and costs of litigation, and costs and expenses of response, remedial, and corrective work and other cleanup activities, arising out of or in any manner connected with (i) the "release" or "threatened release" (as those term are defined in CERCLA and the rules and regulations promulgated thereunder, as from time to time amended) by KUA or KUA's employees, agents, delegates, invitees, licensees, concessionaires, contractors, or representatives, of any Hazardous materials, or (ii) any occurrence of Hazardous Materials Contamination affecting the Leased Premises caused solely by KUA. Notwithstanding anything to the contrary in this Lease, (1) in no event shall KUA be responsible for any Hazardous Materials, fuel petroleum products, or other materials, whether hazardous or not, that exist on the Leased Premises on the Commencement Date, and (2) KUA's obligations under this Lease with respect to Hazardous Materials shall apply only in connection with, and to the extent of, hazardous materials and substances brought onto the Leased Premises by KUA or KUA's employees, agents or contractors during the Term. The provisions of this Section shall survive any acquisition of the Leased Premises by the City, and such provisions shall remain in full force and effect as long as the possibility exists that the City may suffer or incur any such losses, damages, expenses, fees, claims, demands, causes of action, judgments, costs, liabilities, and all losses.
3. Within thirty (30) days of the expiration of this Agreement, CITY shall prepare an environmental report equivalent to Phase I and, if the results of the Phase I reasonable demonstrate a need for one, a Phase II, to include borings to establish the environmental condition of the Leased Premises as of expiration of the Agreement. In the event it is determined that KUA released pollutants onto the Leased Premises during Term (by comparison to the Baseline) in amounts which violate any applicable Federal, State or local governmental standards, KUA shall be responsible for any and all action reasonably necessary to remediate such condition in accordance with applicable Laws.

Signature page to follow

IN WITNESS THEREOF, the Parties now sign, agree to, and enter into this Kissimmee Gateway Airport and Kissimmee Utility Ground Lease Agreement Airport Tenant on the day and year first above written.

CITY OF KISSIMMEE

Date: _____

By: _____

Name: Mike Steigerwald

City Manager

ATTEST:

City Clerk

WITNESSES:

Print Name: _____

Print Name: _____

**STATE OF FLORIDA
COUNTY OF OSCEOLA**

The foregoing Lease Agreement was acknowledged before me by [] online notarization or [] physical presence, this ____ day of _____, 2023, as _____, and attested by _____, as City Clerk, of the City of Kissimmee, Florida. They are both known to me.

NOTARY PUBLIC

Print Name

Commission No.

My Commission Expires: [SEAL]

Approved as to form and legal sufficiency:

Olga Sanchez de Fuentes
City Attorney

KISSIMMEE UTILITY AUTHORITY,
a body politic (KUA)

Date: _____

By: _____

Name: _____

Title: _____

ATTEST:

WITNESSES:

Print Name: _____

Print Name: _____

STATE OF FLORIDA
COUNTY OF OSCEOLA

The foregoing Lease Agreement was acknowledged before me by [☐] online notarization or [☐] physical presence, this ____ day of _____, 2023, as _____, as _____ of Kissimmee Utility Authority. He/She is personally known to me.

NOTARY PUBLIC

Print Name

Commission No.

My Commission Expires:

[SEAL]

Approved as to form and legal sufficiency:

Grant Lacerte

Authority General Counsel

Exhibit “A”

Premises Legal Description and Map

SKETCH OF DESCRIPTION

LEGAL DESCRIPTION

A PARCEL OF LAND LYING IN THE NORTHEAST 1/4 OF SECTION 19, TOWNSHIP 25 SOUTH, RANGE 29 EAST, OSCEOLA COUNTY, FLORIDA, BEING MORE PARTICULARLY DESCRIBED AS:

COMMENCING AT THE SOUTHWEST CORNER OF SAID NORTHEAST 1/4 OF SECTION 19, RUN N00°37'38"W ALONG THE WEST LINE OF SAID NORTHEAST 1/4 OF SECTION 19, A DISTANCE OF 834.02 FEET TO THE POINT OF BEGINNING; THENCE CONTINUE N00°37'38"W ALONG SAID WEST LINE, A DISTANCE OF 205.96 FEET; THENCE DEPARTING SAID WEST LINE RUN N89°18'13"E, A DISTANCE OF 30.00 FEET; THENCE RUN N00°34'10"W, A DISTANCE OF 60.00 FEET; THENCE RUN N71°54'07"E, A DISTANCE OF 219.13 FEET; THENCE RUN S72°09'16"E, A DISTANCE OF 233.08 FEET; THENCE RUN S35°25'23"W, A DISTANCE OF 116.46 FEET; THENCE RUN N73°34'30"W, A DISTANCE OF 144.91 FEET; THENCE RUN S00°34'10"E, A DISTANCE OF 206.96 FEET; THENCE RUN S89°31'50"W, A DISTANCE OF 252.88 FEET TO THE POINT OF BEGINNING.

CONTAINING 2.15 ACRES, MORE OR LESS.

ABBREVIATIONS/LEGEND

SEC. SECTION
O.R.B. OFFICIAL RECORDS BOOK
PGS. PAGES
TEMP. TEMPORARY
R RADIUS
L LENGTH
CB CHORD BEARING
CD CHORD DISTANCE
Δ CENTRAL ANGLE
○ DESCRIPTIVE POINT

NOTES

BEARINGS AS SHOWN HEREON ARE BASED ON THE FLORIDA STATE PLANE COORDINATE SYSTEM, EAST ZONE, (NAD 83, 2007 ADJUSTMENT). THIS SURVEYOR HAS NOT MADE A SEARCH OF THE PUBLIC RECORDS FOR EASEMENTS, RESTRICTIONS, RESERVATIONS AND/OR RIGHT OF WAYS. THIS SKETCH IS NOT INTENDED TO REPRESENT A BOUNDARY SURVEY. NO CORNERS WERE SET AS A PART OF THIS SKETCH.

REQUESTED BY: CITY OF KISSIMMEE

DATE OF SKETCH	9/18/23	REVISIONS
SCALE	1" = 150'	
F.B.	PAGE	
SECTION	19	
TWP.	25 S., RNG. 29 E.	
JOB NO.	23-444	SHEET 1 OF 2

JOHNSTON'S
SURVEYING INC.

900 Cross Prairie Parkway, Kissimmee, Florida 34744
Tel. (407) 847-2179 Fax (407) 847-6140 LB 966

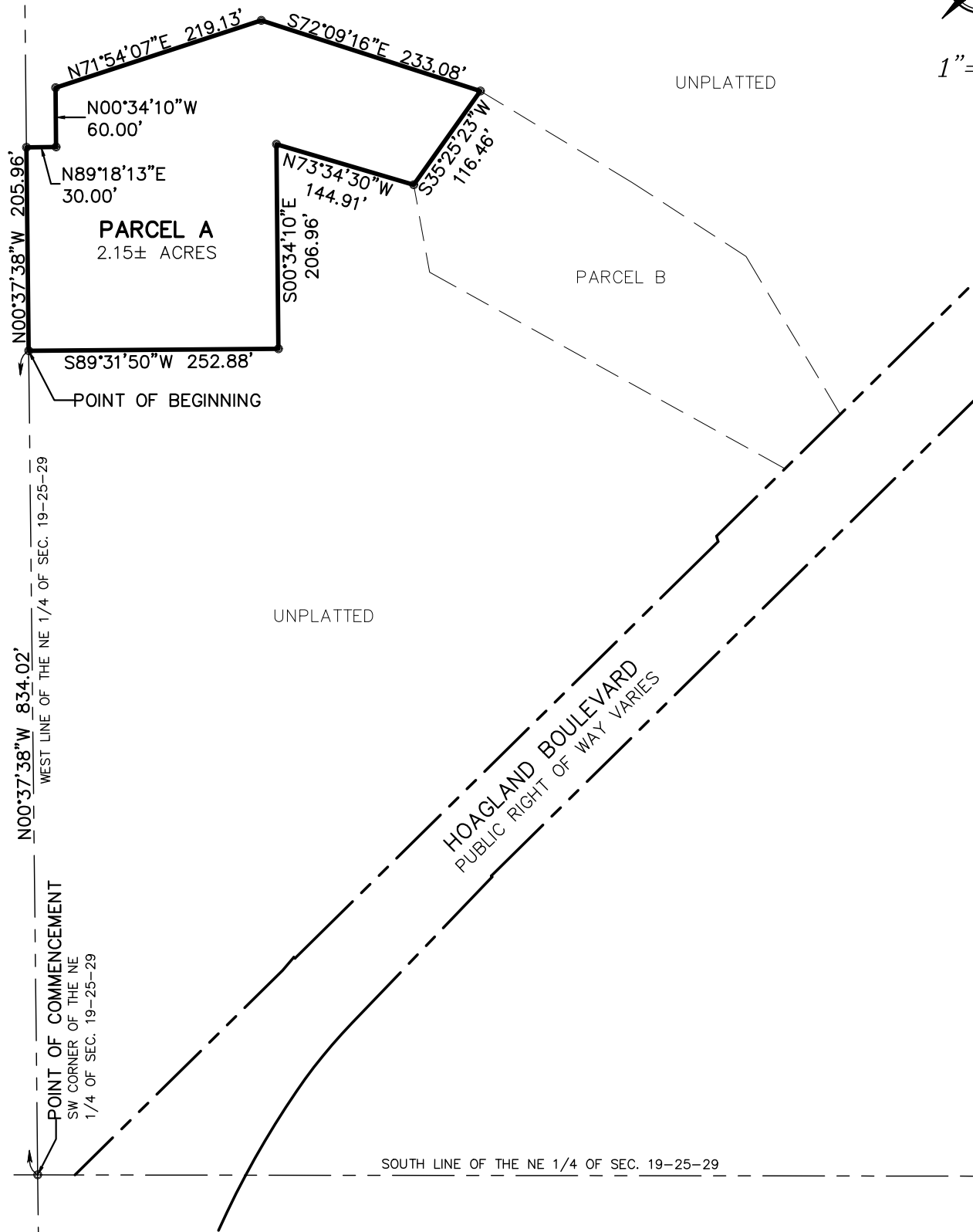
R.D.B.

09-19-2023

RICHARD D. BROWN, P.S.M. #5700 (DATE)

NOTE: NOT VALID WITHOUT SURVEYOR'S SIGNATURE AND SEAL.

SKETCH OF DESCRIPTION



JOHNSTON'S
SURVEYING INC.
900 Cross Prairie Parkway, Kissimmee, Florida 34744
Tel. (407) 847-2179 Fax (407) 847-6140 LB 966

EXHIBIT “B”

Adjacent Premises Legal Description and Map

SKETCH OF DESCRIPTION

LEGAL DESCRIPTION

A PARCEL OF LAND LYING IN THE NORTHEAST 1/4 OF SECTION 19, TOWNSHIP 25 SOUTH, RANGE 29 EAST, OSCEOLA COUNTY, FLORIDA, BEING MORE PARTICULARLY DESCRIBED AS:

COMMENCING AT THE SOUTHWEST CORNER OF SAID NORTHEAST 1/4 OF SECTION 19, RUN S89°55'22"E ALONG THE SOUTH LINE OF SAID SOUTHEAST 1/4 OF SECTION 19, A DISTANCE OF 37.70 FEET TO A POINT ON THE WESTERLY RIGHT OF WAY LINE OF HOAGLAND BOULEVARD; THENCE RUN THE FOLLOWING SIX (6) COURSES ALONG SAID WESTERLY RIGHT OF WAY LINE: RUN N45°27'08"E, A DISTANCE OF 294.96 FEET TO A POINT ON A NON-TANGENT CURVE, CONCAVE TO THE SOUTHEAST, HAVING A RADIUS OF 996.50 FEET AND A CENTRAL ANGLE OF 01°00'54"; THENCE RUN NORTHEASTERLY ALONG THE ARC OF SAID CURVE, A DISTANCE OF 17.65 FEET (CHORD BEARING = N40°13'04"E, CHORD = 17.65 FEET); THENCE RUN S44°31'28"E, A DISTANCE OF 1.61 FEET; THENCE RUN N45°27'08"E, A DISTANCE OF 601.20 FEET; THENCE RUN N16°44'27"W, A DISTANCE OF 5.65 FEET; THENCE RUN N45°27'08"E, A DISTANCE OF 97.44 FEET TO THE POINT OF BEGINNING; THENCE CONTINUE N45°27'08"E ALONG SAID WESTERLY RIGHT OF WAY LINE, A DISTANCE OF 78.37 FEET; THENCE DEPARTING SAID WESTERLY RIGHT OF WAY LINE RUN N30°50'00"W, A DISTANCE OF 186.09 FEET; THENCE RUN N57°00'34"W, A DISTANCE OF 137.66 FEET; THENCE RUN N58°56'12"W, A DISTANCE OF 179.25 FEET; THENCE RUN S35°25'23"W, A DISTANCE OF 116.46 FEET; THENCE RUN S10°17'13"E, A DISTANCE OF 90.00 FEET; THENCE RUN S61°05'41"E, A DISTANCE OF 411.19 FEET TO THE POINT OF BEGINNING.

CONTAINING 1.72 ACRES, MORE OR LESS.

ABBREVIATIONS/LEGEND

R/W RIGHT OF WAY
SEC. SECTION
O.R.B. OFFICIAL RECORDS BOOK
PGS. PAGES
TEMP. TEMPORARY
R RADIUS
L LENGTH
CB CHORD BEARING
CD CHORD DISTANCE
Δ CENTRAL ANGLE
○ DESCRIPTIVE POINT

NOTES

BEARINGS AS SHOWN HEREON ARE BASED ON THE FLORIDA STATE PLANE COORDINATE SYSTEM, EAST ZONE, (NAD 83, 2007 ADJUSTMENT). THIS SURVEYOR HAS NOT MADE A SEARCH OF THE PUBLIC RECORDS FOR EASEMENTS, RESTRICTIONS, RESERVATIONS AND/OR RIGHT OF WAYS. THIS SKETCH IS NOT INTENDED TO REPRESENT A BOUNDARY SURVEY. NO CORNERS WERE SET AS A PART OF THIS SKETCH.

REQUESTED BY: CITY OF KISSIMMEE

DATE OF SKETCH	9/18/23	REVISIONS
SCALE	1" = 150'	
F.B.	PAGE	
SECTION	19	
TWP.	25 S., RNG. 29 E.	
JOB NO.	23-444	SHEET 1 OF 2

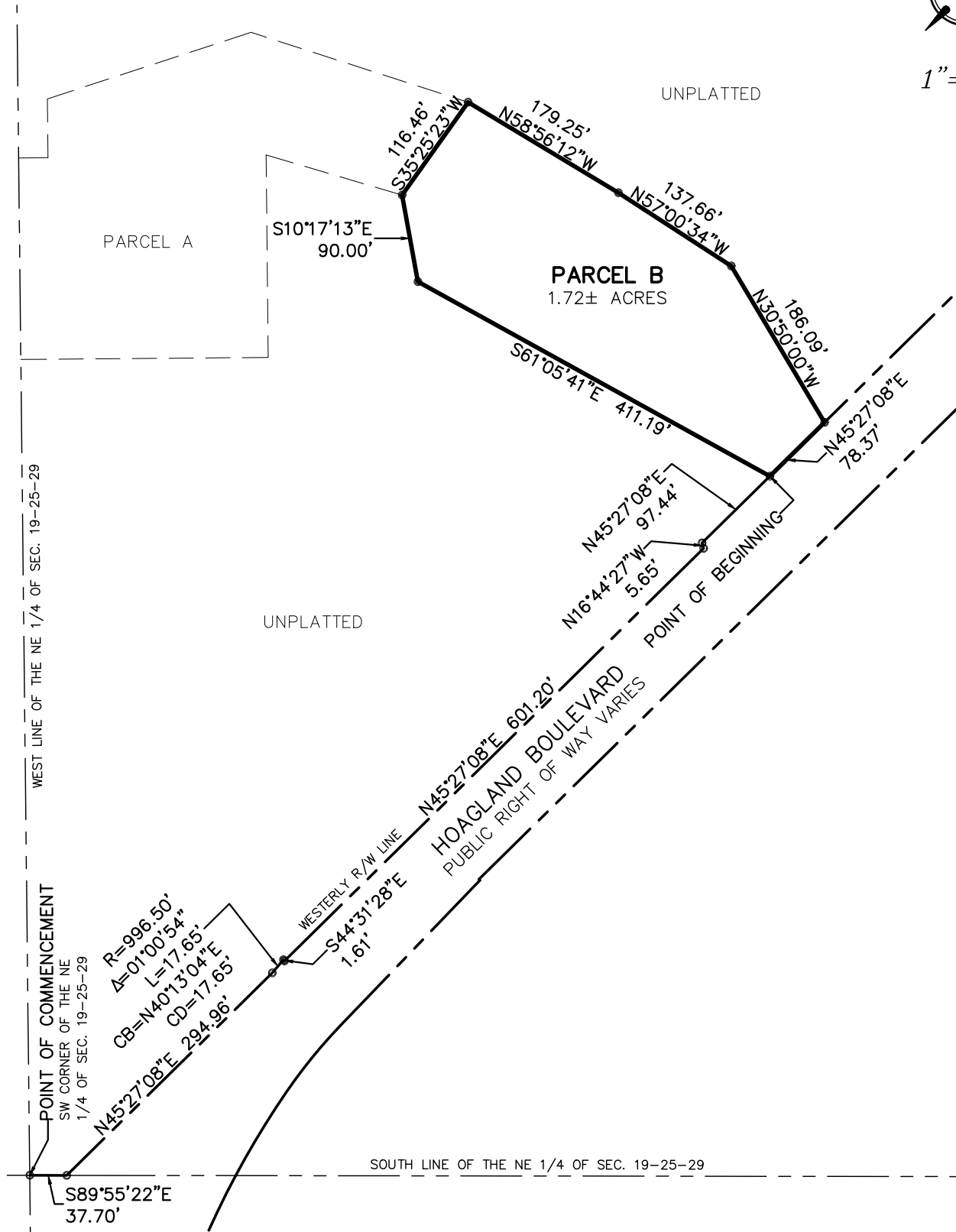
JOHNSTON'S
SURVEYING INC.
900 Cross Prairie Parkway, Kissimmee, Florida 34744
Tel. (407) 847-2179 Fax (407) 847-6140 LB 966

R.D.B.

09-19-2023

RICHARD D. BROWN, P.S.M. #5700 (DATE)
NOTE: NOT VALID WITHOUT SURVEYOR'S SIGNATURE AND SEAL.

SKETCH OF DESCRIPTION



JOHNSTON'S
SURVEYING INC.
900 Cross Prairie Parkway, Kissimmee, Florida 34744
Tel. (407) 847-2179 Fax (407) 847-6140 LB 966

SHEET 2 OF 2

EXHIBIT “C”

Map of Location of Pole Subject to Lowering

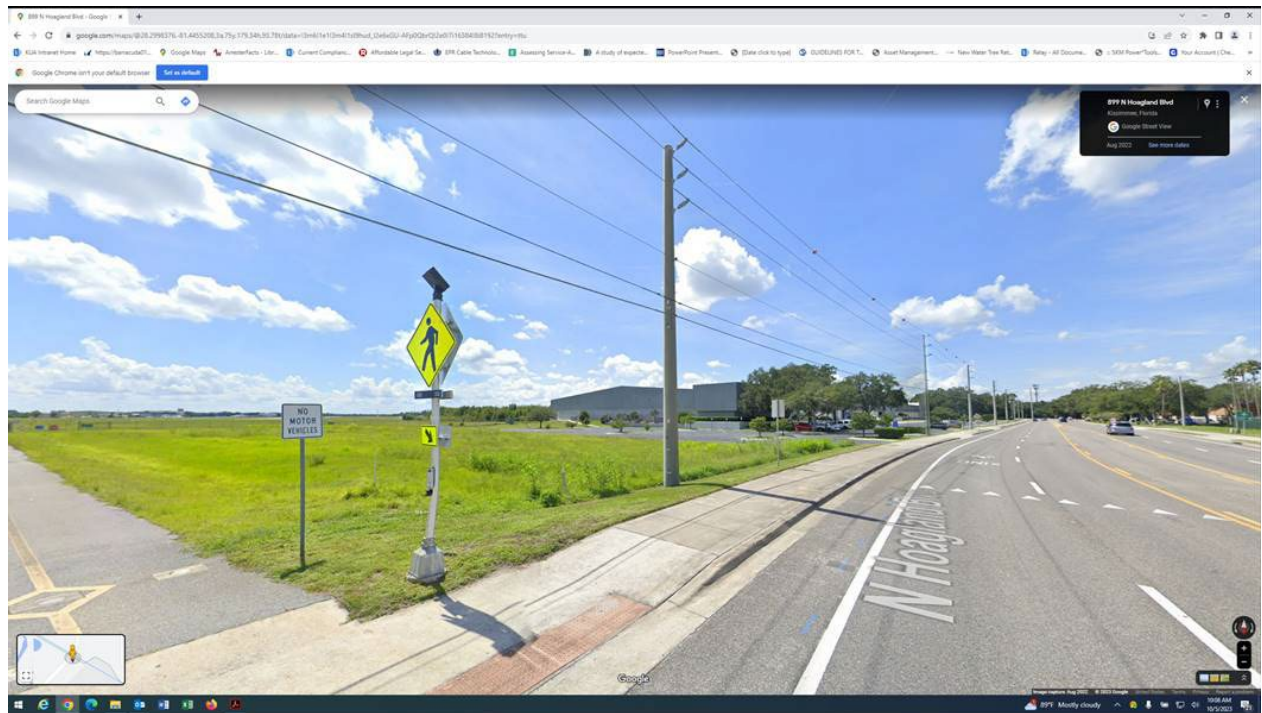
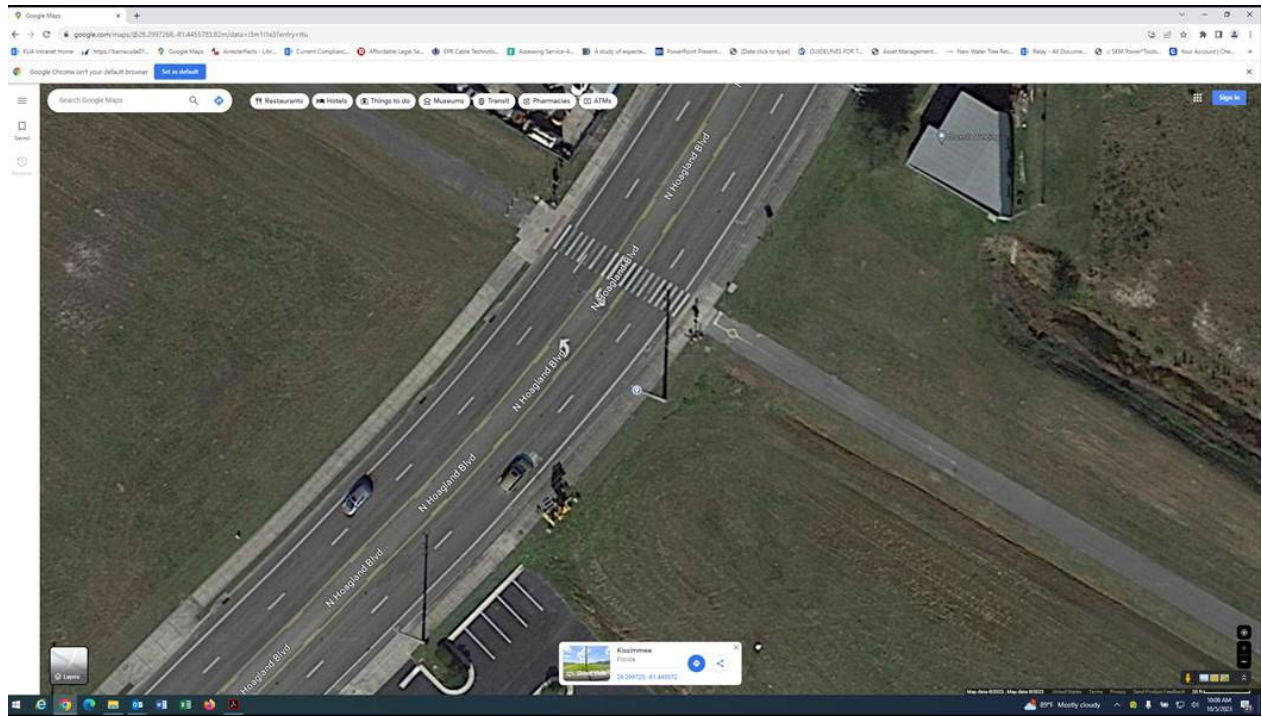


EXHIBIT “D”

FAA required non-discrimination provisions.

FAA Required Contract Provisions GENERAL CIVIL RIGHTS PROVISIONS

If and to the extent applicable as a matter of law, the Lessee agrees to comply with pertinent statutes, Executive Orders and such rules as are promulgated to ensure that no person shall, on the grounds of race, creed, color, national origin, sex, age, or disability be excluded from participating in any activity conducted with or benefiting from Federal assistance. If the Lessee transfers its obligation to another, the transferee shall be obligated in the same manner as the Lessee.

This provision obligates the Lessee for the period during which the property is owned, used or possessed by the Lessee and the airport remains obligated to the Federal Aviation Administration. This provision is in addition to that required by Title VI of the Civil Rights Act of 1964, if and to the extent applicable as a matter of law.

Compliance with Nondiscrimination Requirements:

During the performance of this contract, the Lessee, for itself, its assignees, and successors in interest (hereinafter referred to as the “Lessee”), agrees as follows, if and to the extent applicable as a matter of law:

Compliance with Regulations: The Lessee (hereinafter includes consultants) will comply with the Title VI List of Pertinent Nondiscrimination Acts and Authorities set forth herein, which are herein incorporated by reference and made a part of this contract.

Nondiscrimination: The Lessee, with regard to the work performed by it during the contract, will not discriminate on the grounds of race, color, or national origin in the selection and retention of sub-Lesseees, including procurements of materials and leases of equipment. The Lessee will not participate directly or indirectly in the discrimination prohibited by the Nondiscrimination Acts and Authorities, including employment practices when the contract covers any activity, project, or program set forth in Appendix B of 49 CFR part 21.

Solicitations for Subcontracts, including Procurements of Materials and Equipment:

In all solicitations, either by competitive bidding or negotiation made by the Lessee for work to be performed under a subcontract, including procurements of materials, or leases of equipment, each potential sub-Lessee or supplier will be notified by the Lessee of the Lessee’s obligations under this contract and the Nondiscrimination Acts and Authorities on the grounds of race, color, or national origin.

Information and Reports: **If and to the extent applicable as a matter of law,** the Lessee will provide all information and reports required by the Acts, the Regulations, and directives issued pursuant thereto and will permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the sponsor or the Federal Aviation Administration to be pertinent to ascertain compliance with such Nondiscrimination Acts and Authorities and instructions. Where any information required of a Lessee is in the exclusive possession of another who fails or refuses to furnish the information, the Lessee will so certify to the sponsor or the Federal Aviation

Administration, as appropriate, and will set forth what efforts it has made to obtain the information.

Sanctions for Noncompliance: In the event of a Lessee's noncompliance with the non-discrimination provisions of this contract, the sponsor will impose such contract sanctions as it or the Federal Aviation Administration may determine to be appropriate, including, but not limited to:

- a. Withholding payments to the Lessee under the contract until the Lessee complies; and/or
- b. Cancelling, terminating, or suspending a contract, in whole or in part.

Incorporation of Provisions: The Lessee will include the provisions of paragraphs one through six in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Acts, the Regulations, and directives issued pursuant thereto. The Lessee will take action with respect to any subcontract or procurement as the sponsor or the Federal Aviation Administration may direct as a means of enforcing such provisions including sanctions for noncompliance. Provided, that if the Lessee becomes involved in, or is threatened with litigation by a sub-Lessee, or supplier because of such direction, the Lessee may request the sponsor to enter into any litigation to protect the interests of the sponsor. In addition, the Lessee may request the United States to enter into the litigation to protect the interests of the United States.

CLAUSES FOR TRANSFER OF REAL PROPERTY ACQUIRED OR IMPROVED UNDER THE AIRPORT IMPROVEMENT PROGRAM

1. The Lessee for itself, successors in interest, and assigns, as a part of the consideration hereof, does hereby covenant and agree that:
 - a. In the event facilities are constructed, maintained, or otherwise operated on the property described in this Agreement for a purpose for which a Federal Aviation Administration activity, facility, or program is extended or for another purpose involving the provision of similar services or benefits, the Lessee will maintain and operate such facilities and services in compliance with all requirements imposed by the Nondiscrimination Acts and Regulations listed herein if and to the extent applicable as a matter of law, such that no person on the grounds of race, color, or national origin, will be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of said facilities.
2. In the event of breach of any of the above Nondiscrimination covenants, the Aviation City will have the right to terminate the Agreement and to enter, re-enter, and repossess said lands and facilities thereon, and hold the same as if the Agreement had never been made or issued.

CLAUSES FOR CONSTRUCTION/USE/ACCESS TO REAL PROPERTY ACQUIRED UNDER THE ACTIVITY, FACILITY OR PROGRAM

1. The Lessee for itself, successors in interest, and assigns, as a part of the consideration hereof, does hereby covenant and agree that (1) no person on the ground of race, color, or national origin, will be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of said facilities, (2) that in the construction of any improvements on, over, or under such land, and the furnishing of services thereon, no person on the ground of race, color, or national origin, will be excluded from participation in, denied the benefits of, or otherwise be subjected to discrimination, (3) that the Lessee will use the Leased Premises in compliance with all other requirements imposed by or pursuant to the Title VI List of Pertinent Nondiscrimination Acts and Authorities set forth herein if and to the extent applicable as a matter of law.
2. In the event of breach of any of the above nondiscrimination covenants, the Aviation City will have the right to terminate the Lease and to enter or re-enter and repossess said land and the facilities thereon, and hold the same as if said Lease had never been made or issued.

TITLE VI LIST OF PERTINENT NONDISCRIMINATION ACTS AND AUTHORITIES

During the performance of this contract, the Lessee agrees to comply with the following non-discrimination statutes and authorities if and to the extent applicable as a matter of law, such may be amended from time to time upon thirty (30) days' advanced written notice to Lessee:

Title VI of the Civil Rights Act of 1964 (42 USC § 2000d *et seq.*, 78 stat. 252) (prohibits discrimination on the basis of race, color, national origin);

49 CFR part 21 (Non-discrimination in Federally-assisted programs of the Department of Transportation—Effectuation of Title VI of the Civil Rights Act of 1964);

The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, (42 USC § 4601) (prohibits unfair treatment of persons displaced or whose property has been acquired because of Federal or Federal-aid programs and projects);

Section 504 of the Rehabilitation Act of 1973 (29 USC § 794 *et seq.*), as amended (prohibits discrimination on the basis of disability); and 49 CFR part 27;

The Age Discrimination Act of 1975, as amended (42 USC § 6101 *et seq.*) (Prohibits discrimination on the basis of age);

Airport and Airway Improvement Act of 1982 (49 USC § 471, Section 47123), as amended (prohibits discrimination based on race, creed, color, national origin, or sex);

The Civil Rights Restoration Act of 1987 (PL 100-209) (broadened the scope, coverage and applicability of Title VI of the Civil Rights Act of 1964, the Age Discrimination Act of 1975

and Section 504 of the Rehabilitation Act of 1973, by expanding the definition of the terms “programs or activities” to include all of the programs or activities of the Federal-aid recipients, sub-recipients and contractors, whether such programs or activities are Federally funded or not);

Titles II and III of the Americans with Disabilities Act of 1990, which prohibit discrimination on the basis of disability in the operation of public entities, public and private transportation systems, places of public accommodation, and certain testing entities (42 USC §§ 12131 – 12189) as implemented by U.S. Department of Transportation regulations at 49 CFR parts 37 and 38;

The Federal Aviation Administration’s Nondiscrimination statute (49 USC § 47123) (prohibits discrimination on the basis of race, color, national origin, and sex);

Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, which ensures nondiscrimination against minority populations by discouraging programs, policies, and activities with disproportionately high and adverse human health or environmental effects on minority and low-income populations;

Executive Order 13166, Improving Access to Services for Persons with Limited English Proficiency, and resulting agency guidance, national origin discrimination includes discrimination because of limited English proficiency (LEP). To ensure compliance with Title VI, you must take reasonable steps to ensure that LEP persons have meaningful access to your programs (70 Fed. Reg. at 74087 to 74100);

Title IX of the Education Amendments of 1972, as amended, which prohibits you from discriminating because of sex in education programs or activities (20 USC 1681 et seq).

ITEM 7.S

Addition of Two New Positions in Fleet Division

Request

Request approval to add two new positions in the Fleet Division's Parts Room as part of a reorganization of the vehicle parts operation.

Explanation

The Public Works & Engineering Department's Fleet Division's agreement with NAPA IBS System will end on February 15, 2024, and Fleet will begin operating an in-house parts room. The original agreement was entered into on July 21, 2015. Currently, the Fleet division orders approximately 12,000 parts per year utilizing an annual budget of approximately \$826,000. Staffing the Parts Room will require additional personnel; a parts room supervisor and a parts room specialist. NAPA provides management and parts services for our Fleet Division and both positions are currently funded through our agreement with NAPA. The total annual savings from ending the agreement with NAPA is projected to be \$240,000. Once the agreement ends, the cost of adding these positions will be absorbed into our personnel budget, using the savings from the cancelation of the agreement's management fees and administrative costs.

The Fleet Division Manager will manage and oversee both positions, which are described as follows:

The Fleet Parts Supervisor position, pay grade 17, salary range: \$48,589 - \$77,730 annually. Performs responsibilities under the Fleet manager. Some duties performed will be; supervisory responsibilities for parts room personnel, work to locate, order, store, and issue replacement parts, tools, supplies, and accessories for a wide variety of motor vehicles, heavy-duty trucks, fire and rescue, police and construction equipment, inventory control, parts warranty process, and quality control of records.

The Fleet Parts Specialist position, pay grade 14, salary range: \$41,974 - \$67,142 annually. Under the Fleet Parts Supervisor's direction, help with pick-ups, deliver, and assist with inventory management, and other duties that support the operation of the parts room.

Requested starting pay \$63,159 and \$50,000 respectively plus benefits (amounts listed below reflect February – September, 2024):

Fleet Parts Supervisor \$42,106 / \$14,056

Fleet Parts Specialist \$33,333 / \$13,385

Total cost of salary and benefits: \$102,880

Estimated costs of tools and equipment for each position:

Equipment; desktop, tablet, printer, document scanner, and accessories \$ 3,700

Desk \$1,500

Chair (2) \$ 750

Total equipment cost is \$5,950

The anticipated amount to fund both positions is \$108,830.

City of Kissimmee

Financial Information

Account #	Project #	Increase / Decrease	Budget	Actual
56045703 503434		Decrease	\$238,500	\$108,830
56045701 501212		Increase		\$75,439
56045701 502121		Increase		\$5,772
56045701 502323		Increase		\$20,069
56045701 502424		Increase		\$1,600
56045703 505255		Increase		\$5,950

Financial Summary:

Sufficient funds are available in the Central Services Fund to cover the costs of both positions in the current fiscal year 2024. Ongoing funding for these positions will be included in the proposed operating budget starting with the FY2025 budget.

Recommendation

Approval to fund two new positions in the Fleet Division's Parts Room; Fleets Parts Supervisor and Fleet Parts Specialist, a total cost of \$108,830.

REQUESTED CITY COMMISSION ACTION:

Approve

Department: Public Works & Engineering

Presenter:

Attachment(s):

1. Fleet Parts Supervisor
2. Fleet Parts Specialist

City of Kissimmee, Florida
Classification Description

Classification Title: Fleet Parts Supervisor
Department: Public Works & Engineering
Pay Grade: 17
FLSA Status: Non-Exempt

General Statement of Job

Under the Fleet manager performs responsible supervisory responsibilities along with manual, clerical, and work to locate, order, store and issue replacement parts, tools, supplies and accessories for a wide variety of motor vehicles, heavy duty trucks, fire and rescue, police and construction equipment; responsible for inventory control, parts warranty process and quality control of records; performs related work as required.

Specific Duties and Responsibilities

Essential Functions:

Researches, orders, receives, stores and issues replacement part, tools, supplies and accessories for City fleet motor vehicles, fire and rescue, police, and heavy duty/construction equipment.

Monitors inventory, employee time, schedules, special order, bid processes and assist in parts budgeting.

Maintains and monitors a perpetual computerized inventory control system of automotive and heavy duty/construction equipment parts, tools, supplies and accessories.

Charges parts, tools, supplies and accessories to direct repair orders.

Updates reorder points, initiates order for regular inventory and supplies as necessary, and research and orders specialized or non-stock items as needed.

Maintains a liaison with vendors to ensure timely delivery of parts, tools, supplies and accessories.

Monitors and revises parts catalogs and price sheets to maintain current information.

Maintains up to date vendor lists to determine appropriate sources for parts, tools, supplies and accessories.

Performs related work as assigned or required.

Minimum Education and Training

High School Diploma or GED; Two (2) years' experience in automotive and/or heavy-duty parts and supply settings. Possession of a valid Florida driver's license "Class E"

An equivalent combination of training, skills, abilities, and credentials relevant to this position which provides the required knowledge, skills and abilities may be considered as hands-on experience. Must possess or obtain the most current FEMA 100, 200, 300, 400, 700, and 800 Incident Command System certifications within 12 months of appointment to the job.

Minimum Qualifications and Standards Required

Skill Requirements:

Utilize available computer hardware and software in the daily performance of duties and responsibilities:

Read and interpret shop manuals and parts lists;

Perform basic mathematical computations;

Understand and carry out oral and written instructions;

Safely operate motorized equipment and vehicles;

Communicate effectively, both orally and in writing;

Maintain a variety of accurate records;

Prepare accurate, clear and concise reports and other documents;

Establish and maintain effective working relationships at all organizational levels, as well as with other agencies and the public;

Demonstrate and maintain a high degree of maturity, integrity, accountability, and good judgment.

Supervisory experience in storekeeping work of a progressively responsible nature.

Knowledge:

Basic office practices, procedures and terminology;

Parts, tools, supplies and accessories used in general automotive and heavy duty/construction equipment repair and maintenance;

Stock room organization and inventory management, including inventory movement, stock rotation and vendor returns;

Basic mathematics such as addition and subtraction;

Software tools used in the management of parts inventories;

Effective customer service principles and practices.

Responsibilities:

Duties also involve participation in requisitioning, receiving, storing, issuing and recording of all commodities and materials utilized. Work requires the use of initiative and judgment in cooperating with various divisions to provide a timely flow of all supplies, materials and services in accordance with needs. Direct supervision over subordinate personnel by assignment and review of work or by assisting in difficult or unusual work situations. Work is reviewed for conformity with departmental policy and for the efficient operation of the facility, assist with yearly budget meetings.

Physical Requirements:

The ability to exert moderate physical effort in moderate work; tasks involve some combination of climbing and balancing, stooping, kneeling, crouching and crawling, which may require the lifting, carrying, pushing and/or pulling of objects and materials of moderately heavy weight (20-50 pounds); occasionally very heavy weight (in excess of 100 pounds).

Other:

It is understood that every incidental duty connected with operations enumerated in the job description is not always specifically described, and employees, at the discretion of

the City, may be required to perform duties not within their job descriptions

City of Kissimmee, Florida
Classification Description

Classification Title: Fleet Parts Specialist
Department: Public Works & Engineering
Pay Grade: 14
FLSA Status: Non-Exempt

General Statement of Job

Under general supervision performs responsible manual, clerical, and supervisory work to locate, order, store and issue replacement parts, tools, supplies and accessories for a wide variety of motor vehicles, heavy duty trucks, fire and rescue, police and construction equipment; responsible for inventory control, parts warranty process and quality control of records; performs related work as required.

Specific Duties and Responsibilities

Essential Functions:

Researches, orders, receives, stores and issues replacement part, tools, supplies and accessories for City fleet motor vehicles, fire and rescue, police, and heavy duty/construction equipment.

Maintains and monitors a perpetual computerized inventory control system of automotive and heavy duty/construction equipment parts, tools, supplies and accessories.

Charges parts, tools, supplies and accessories to direct repair orders.

Updates reorder points, initiates order for regular inventory and supplies as necessary, and research and orders specialized or non-stock items as needed.

Maintains a liaison with vendors to ensure timely delivery of parts, tools, supplies and accessories.

Monitors and revises parts catalogs and price sheets to maintain current information.

Maintains up to date vendor lists to determine appropriate sources for parts, tools, supplies and accessories.

Performs related work as assigned or required.

Minimum Education and Training

High School Diploma or GED; Two (2) years' experience in automotive and/or heavy-duty parts and supply settings. Possession of a valid Florida driver's license "Class E"

An equivalent combination of training, skills, abilities, and credentials relevant to this position which provides the required knowledge, skills and abilities may be considered as hands-on experience. Must possess or obtain the most current FEMA 100, 200, 300, 400, 700, and 800 Incident Command System certifications within 12 months of appointment to the job.

Minimum Qualifications and Standards Required

Skill Requirements:

Utilize available computer hardware and software in the daily performance of duties and responsibilities:

Read and interpret shop manuals and parts lists;

Perform basic mathematical computations;

Understand and carry out oral and written instructions;

Safely operate motorized equipment and vehicles;

Communicate effectively, both orally and in writing;

Maintain a variety of accurate records;

Prepare accurate, clear and concise reports and other documents;

Establish and maintain effective working relationships at all organizational levels, as well as with other agencies and the public;

Demonstrate and maintain a high degree of maturity, integrity, accountability and good judgment.

Some supervisory experience in storekeeping work of a progressively responsible nature.

Knowledge:

Basic office practices, procedures and terminology;
Parts, tools, supplies and accessories used in general automotive and heavy duty/construction equipment repair and maintenance;
Stock room organization and inventory management, including inventory movement, stock rotation and vendor returns;
Basic mathematics such as addition and subtraction;
Software tools used in the management of parts inventories;
Effective customer service principles and practices.

Responsibilities:

Duties also involve participation in requisitioning, receiving, storing, issuing and recording of all commodities and materials utilized. Work requires the use of initiative and judgment in cooperating with various divisions to provide a timely flow of all supplies, materials and services in accordance with needs. Direct supervision may be exercised over subordinate personnel by assignment and review of work or by assisting in difficult or unusual work situations. Work is reviewed for conformity with departmental policy and for the efficient operation of the facility.

Physical Requirements:

The ability to exert moderate physical effort in moderate work; tasks involve some combination of climbing and balancing, stooping, kneeling, crouching and crawling, which may require the lifting, carrying, pushing and/or pulling of objects and materials of moderately heavy weight (20-50 pounds); occasionally very heavy weight (in excess of 100 pounds).

Other:

It is understood that every incidental duty connected with operations enumerated in the job description is not always specifically described, and employees, at the discretion of the City, may be required to perform duties not within their job descriptions

ITEM 8.A

2024 City Commission Meeting Calendar

Request

Request approval to establish the Commission annual meeting calendar for 2024.

Explanation

Each year the City Commission adopts the calendar for the upcoming year in order to assist staff in scheduling agenda items and to notify the Commission, staff, and the public of the Commission meeting schedule.

Since the Commission holds meetings on the 1st and 3rd Tuesdays of each month, these dates are checked first to confirm there is no conflict with City Holidays. For 2024, there are no conflicts with holidays and staff is requesting that only the January 2, 2024, meeting be canceled due to staffing being limited to produce the agenda during the holidays and to accommodate an additional meeting for the month for the Commission retreat.

Staff recommends the Commission accept the full calendar for 2024, including the dates as listed for the Annual Commission Retreat, Budget Workshop, and the Budget Hearings. The Budget Hearings have been tentatively scheduled for the 1st and 3rd Tuesday in September. However, the City is statutorily required to yield our adoption dates to Osceola County and the Osceola County School District. In order to comply, the dates will be confirmed later in the year.

While the Commission meetings are established, Workshops and CRA meetings will also be scheduled as necessary throughout the year.

Recommendation

Approval to adopt the 2024 City Commission Meeting Calendar with the cancelation of the January 2, 2024 meeting.

REQUESTED CITY COMMISSION ACTION:

Approve

Department: City Manager

Presenter:

Attachment(s):

1. 1st Draft - 2024 Commission Meeting Dates (Agenda 12-19-2023)



CITY OF KISSIMMEE

Office of the City Clerk

101 Church Street . Kissimmee, Florida 34741-5054 . Phone 407-518-2308 . FAX 407-518-2260

2024 City of Kissimmee Commission Meeting Dates *Adopted Commission Dates (To Commission 12/19/2024) DRAFT*

January 2, 2024 **Cancelled**
January 16, 2024
January 26, 2024 (Commission Retreat)**8:30am

February 6, 2024
February 20, 2024

March 5, 2024
March 19, 2024

April 2, 2024
April 16, 2024

May 7, 2024
May 21, 2024

June 4, 2024
June 18, 2024

July 2, 2024
July 16, 2024
July 23, 2024 Budget Workshop ** 2:00pm

August 6, 2024
August 20, 2024

Tentative Budget Hearings / 1st & 2nd Hearings

September 3, 2024 (1st Budget Hearing)
September 17, 2024 (2nd Budget Hearing)

October 1, 2024
October 15, 2024

November 5, 2024
November 19, 2024

December 3, 2024
December 17, 2024

The City Commission meets on the 1st and 3rd Tuesday each month. Dates are subject to change and/or meetings may be added with Commission approval.

All meetings are at 6:00 p.m. unless otherwise noted. ** Meetings start at 8:30 a.m., 2:00 p.m., or 5:30 p.m. or as noted.