



**MEETING AGENDA
SESSION OF THE CITY COMMISSION
CITY OF KISSIMMEE
CITY HALL, COMMISSION CHAMBERS
101 CHURCH STREET, KISSIMMEE, FLORIDA 34741-5054
TUESDAY, FEBRUARY 20, 2024 AT 6:00 PM**

1. MEETING CALLED TO ORDER

2. MOMENT OF SILENCE AND PLEDGE OF ALLEGIANCE

3. PROCLAMATIONS AND SPECIAL PRESENTATIONS

3.A Proclamation - Barbie Austria Appreciation Day

4. PUBLIC HEARINGS - FIRST AND SECOND READINGS

5. PUBLIC HEARINGS

6. HEAR AUDIENCE

Anything requiring a vote will be heard at a later time.

7. CONSENT AGENDA

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

7.A Approval of City Commission Minutes from the January 16, 2024, and February 6, 2024 meeting

7.B Approval of a Resolution adopting the Third Amendment to the Local Housing Assistance Plan Covering Fiscal Year 2022 through 2024

7.C Carry Forward for Airport Project Automated Weather Observation System Project

7.D Application for Airport Taxiway Delta Environmental Study Grant

7.E Building Fund budget adjustment for furnishings and plaza improvements

7.F Amendment to the Interlocal Agreement Creating the Orlando Urban Area Metropolitan Planning Organization d/b/a MetroPlan Orlando

7.G Architectural and Engineering Continuing Services Agreements

7.H Master Services Agreement with Rubicon Global, LLC for Solid Waste Division

7.I Agreement with SSD International, Inc to purchase night vision and thermal optics for SWAT rifles

7.J Emergency Medical Transportation Billing and Collection and Ground Ambulance Data Collection Services Contract

7.K Re-allocation of HOME Funds for the Acquisition of the Super 8 Motel

7.L Budget Transfer For Airport Security Enhancement Project

7.M Lakefront Park Security Improvements

7.N Airport Administrative, Operational and Asset Management Software Agreement

7.O Disposal of City Assets

7.P Mill Slough waterway debris removal contract award

7.Q Consent to Sub-Lease Between Sunstate Aviation Holdings, LLC and Sunstate Aviation Flight School, LLC

7.R Aston Square Easements

8. DISCUSSION ITEMS

8.A Freebee presentation and contract renewal

8.B Community Project Funding Discussion

8.C Toho Water Authority Board Reappointment

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

Proclamation - Barbie Austria Appreciation Day

Request

To present a proclamation to Barbie Austria founder of the non-profit organization, Kissimmee-Poinciana Homeless Outreach Inc.

Explanation

N/A

Department: City Manager
Presenter: Mike Steigerwald

Attachment(s):

1. Proclamation- Barbie Austria Appreciation Day

Proclamation



BARBIE AUSTRIA APPRECIATION DAY

WHEREAS, the City of Kissimmee is dedicated to acknowledging individuals who contribute significantly to the well-being of our community; and

WHEREAS, Barbie Austria, through her unwavering dedication and compassionate spirit, has made a remarkable impact on the lives of the residents of Kissimmee; and

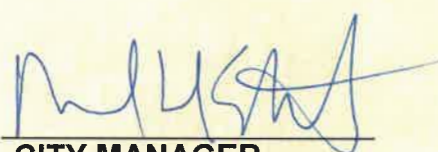
WHEREAS, Barbie Austria continually demonstrates compassion, empathy, and a selfless commitment to fostering positive change, these qualities align seamlessly with the values upheld by the City of Kissimmee; and

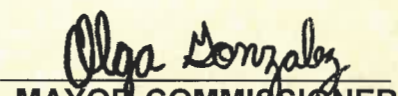
WHEREAS, since 2016, Barbie Austria has shown exemplary leadership with the Kissimmee-Poinciana Homeless Outreach Inc., her non-profit is dedicated to addressing homelessness and plays a vital role in providing shelter, support, and pathways to stability for those who have fallen on hard times; and

WHEREAS, the City of Kissimmee recognizes and commends Barbie Austria for her exceptional community service. We express our deepest gratitude for her influence, which has enriched the lives of many and contributed to the betterment of our beloved city; and

NOW, THEREFORE, we, the City Commission for the City of Kissimmee do hereby proclaim February 20, 2024 as "**Barbie Austria Appreciation Day**" in the City of Kissimmee, in honor of her remarkable achievements and enduring legacy of kindness and generosity; and

IN WITNESS, THEREOF, this is signed this 20th day of February, 2024.


CITY MANAGER


MAYOR-COMMISSIONER



ITEM 7.A**Approval of City Commission Minutes from the January 16, 2024, and February 6, 2024 meeting****Request**

Request Commission approval of the January 16, 2024, and February 6, 2024, Commission Minutes.

Explanation

Minutes of the Commission meeting held on January 16, 2024, and February 6, 2024, are attached for approval.

Recommendation

Request Commission approval of the minutes.

REQUESTED CITY COMMISSION ACTION:

Department: City Commission

Presenter:

Attachment(s):

1. (S) January 16, 2024 City Commission Meeting Minutes
2. (S) February 6, 2024 City Commission Meeting Minutes



**MEETING MINUTES
SESSION OF THE CITY COMMISSION
CITY OF KISSIMMEE
CITY HALL, COMMISSION CHAMBERS
101 CHURCH STREET, KISSIMMEE, FLORIDA 34741-5054
TUESDAY, JANUARY 16, 2024 AT 6:00 PM**

1. MEETING CALLED TO ORDER

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

Staff Present: City 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 Gonzalez called the meeting to order at 6:00 PM.

2. MOMENT OF SILENCE AND PLEDGE OF ALLEGIANCE

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

3. PROCLAMATIONS AND SPECIAL PRESENTATIONS

3.A Kissimmee Festival of Lights Award Winners for 2023

Presentation of the 2023 Festival of Lights award winners.

Steve Lackey, Parks & Recreation Director, introduced Kayla Rogers who announced the winners of the Festival of Lights Parade awards. She was assisted in the presentation of awards by Jozef Bladek from Parks & Recreation Events and Venues.

Award winners are as follows:

Best Lights and Effects - High 5 Signs

Best Walking Group - Give Kids the World

Best Overall (Nightmare Before Christmas) - Kissimmee Utility Authority

Best Downtown Window Display - Robert Anthony Florist

Crowd Favorite Window Display - Diane's Tea Room

3.B Proclamation - National Certified Registered Nurse Anesthetists Week

To present a proclamation in honor of "National Certified Registered Nurse Anesthetists Week" to Marion English-Rowe, CRNA from the Florida Association of Resident Registered Nurse Anesthetists.

City Manager Steigerwald read a proclamation in honor of National Certified Registered Nurse Anesthetists Week as the Mayor and Commissioners presented the proclamation to Marion English-Rowe.

Ms. English-Rowe, expressed her appreciation to the Commission on behalf of the 61,000 registered Nurse Anesthetists' in the United States.

3.C Recognition of Lewis Music Store, LLC, for their 50-year business anniversary

Presentation of an award to the Lewis family for their firm's extraordinary achievement in reaching 50-years in business.

Economic Development Director, Tom Tomerlin recognized Lewis Music Store LLC for their 50th Business Anniversary. They opened in October 1973 and still have family members running the business. Present to accept the City recognition are Paul Lewis, Brandie Lewis Green, and Brandie's daughter Stephanie.

Ms. Green explained that her grandparents started the business in 1973 and multiple generations followed and are still running the business. The Lewis family thanked the City for this recognition.

3.D Employee of the Month for January

Request that the City Commission join the City Manager in recognizing Carmen Cantres, Fire Logistics Coordinator, as January's Employee of the Month.

City Manager Steigerwald introduced Carmen Cantres, employee of the month for January as he reviewed the qualities and attributes that led to her nomination and selection as employee of the month. Carmen started in the City Clerk's Division six (6) years ago and most recently was the first Facilities Inspector in Public Works before transferring to her current position as Fire Logistics Coordinator. City Manager Steigerwald reminded everyone that the selection of Employee of the Month is decided by a committee of peers and not by management or the Commission, and there is no greater honor.

Ms. Cantres thanked everyone for this honor.

3.E Service Awards for October, November and December

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

City Manager Steigerwald recognized employees who have reached milestones in their years of service with the City.

Employees who were present to receive their service award:

Five (2) Years: Rod Bargaineer, Daisy Gonzalez

Ten (10) Years: Don Carrion, John Hambley, Justin Hetu, Geoff Miller

Fifteen (15) Years: Delkys Terrero

Twenty-five (25) Years: Moe Dellofano

Employees who were unable to attend and will receive their service award at a later date:

Five (2) Years: James Hamilton, Eugenio Morales, Carlos Risper, Mirta Rosa, Milagros Sanchez, Rita Taveras

Ten (10) Years: Bryan Benson, Zachary Cubero, Todd Gray, Cynthia Pugsley, Luis Santiago, Minerva Vazquez

Fifteen (15) Years: Daniel Korob

4. PUBLIC HEARINGS - FIRST AND SECOND READINGS

4.A Public Hearing - Second & Final Reading - Proposed Ordinance #23-19 - Ordinance to annex 556.33 acres of land - AX-22-0003

AN ORDINANCE PROVIDING FOR THE ANNEXATION OF CERTAIN HEREIN DESCRIBED LAND, TO THE CITY OF KISSIMMEE, FLORIDA, FURTHER PROVIDING FOR THE TERMS AND CONDITIONS OF SUCH LAND AFTER ITS ANNEXATION, REPEALING ALL ORDINANCES IN CONFLICT HERewith AND PROVIDING AN EFFECTIVE DATE

Approval to Annex approximately 556 acres of property located east of Simpson Road and west of East Lake Tohopekaliga.

City Attorney Sanchez de Fuentes read Proposed Ordinance # 3091 by title.

Development Services Senior Planner, Brenda Ryan reviewed the process for the annexation and commented the First Reading before the Commission was held on October 3, 2023 with Commission approval. Staff recommends approval to annex approximately 556 acres of property located east of Simpson Road and west of East Lake Tohopekaliga.

Mayor Gonzalez announced the Public Hearing.

Marc Shuck, 2827 Indigo Bay Drive, Kissimmee, inquired about the direction of the water drainage from the property in question. He is concerned due to there only being a ditch between his home and the property under consideration for annexation.

City Manager Steigerwald stated Item 4.C. would have more information on drainage and that was confirmed by Planner Ryan.

Dr. Brian Agard, 2423 Aurora Court, Kissimmee, stated his backyard is where they will be building and he is concerned with the continuous flooding they have experienced behind their homes and he requests their concerns be noted. They are asking for a larger buffer zone between their property and the Pulte property.

Commissioner Alvarez moved to approve the Public Hearing and adopt Ordinance # 3091. Commissioner Castano seconded the motion.

Upon roll call, the vote was as follows:

Commissioner Alvarez	AYE
Commissioner Martinez	AYE
Commissioner Castano	AYE
Commissioner Eady	AYE
Mayor Gonzalez	AYE

Motion carried 5 - 0.

- 4.B Public Hearing - Second & Final Reading - Proposed Ordinance #23-20 - An Ordinance amending the Future Land Use Map designation from County Low Density Residential (LDR), City Multiple Family Medium Density (MF-MDR), and City Single Family Low Density (SF-LDR) to City Single Family Low Density (SF-LDR), Commercial General (CG), Multiple Family Medium Density (MF-MDR), and Conservation Area (CONS): Hilliard Isle, LUPA-22-0006.

AN ORDINANCE AMENDING ORDINANCE NO. 3050 KNOWN AS THE ORDINANCE ADOPTING THE COMPREHENSIVE DEVELOPMENT PLAN FOR THE CITY OF KISSIMMEE, FLORIDA, UNDER THE AUTHORITY OF FLORIDA STATUTE 163.3184; DIRECTING THE CITY MANAGER TO AMEND THE COMPREHENSIVE LAND USE PLAN AS HEREIN PROVIDED AFTER THE PASSAGE OF THIS ORDINANCE; PROVIDING FOR A PUBLIC HEARING AS REQUIRED BY LAW; REPEALING ALL ORDINANCES IN CONFLICT HERewith; AND PROVIDING AN EFFECTIVE DATE

Approval of a Land Use Plan Amendment changing the Future Land Use Map designation from County Low Density Residential (LDR), City Multiple Family Medium Density (MF-MDR), and City Single Family Low Density (SF-LDR) to City Single Family Low Density (SF-LDR), Commercial General (CG), Multiple Family Medium Density (MF-MDR), and Conservation Area (CONS) on approximately 883.27 acres of land.

City Attorney Sanchez de Fuentes read Proposed Ordinance # 3092 by title.

Planner Ryan reviewed the request to amend the Future Land Use designation from County Low Density to City Multiple Family, Single Family Low Density, Commercial General, Multiple Family Medium Density, and Conservation Area. , The land use designations are compatible with the surrounding area and staff recommends approval.

After the First Reading on October 3, 2023, staff transmitted the land use amendment to the State agencies and their comments are in the agenda packet.

Mayor Gonzalez announced the Public Hearing.

Tina Wybiral, 2555 Stemwood Court, Kissimmee, started by commenting she spoke last year on an issue relating to a previous annexation and she and her neighbors have the same concerns with single family versus multiple family development. She is against any building on Hilliard Isle and commented on the information provided by the City for the approval of 2–3 units per acre in the front, but none on the property closest to or on Hilliard Isle. Ms. Wybiral requested to speak under both Item 4.B. and 4.C. and strongly opposes the use of multiple family dwellings. She and her neighbors were opposed before, and they are not in favor now. Their homes are on two (2) to four (4) acre lots and this request is not compatible with their current family dwellings. She understands change, but this is too much of a compromise, and she encouraged the Commission to deny this request.

Commissioner Eady inquired what Ms. Wybiral's number one concern is relating to this project. Her response included what items that come with multiple family dwellings like rentals, apartment buildings, bed & breakfasts, congestion, traffic, and crime.

The Commission participated in conversations with the speakers as well as staff.

City Manager Steigerwald and Planner Ryan discussed the multiple family lots as part of Phase 1 which is already in the City limits and not part of this annexation. There are 190,000 square feet of commercial property and not dwelling units. City Manager Steigerwald stated Ms. Wybiral concerns reference Hilliard Isle is because the developer choose to name their project Hilliard Isle. Development Services Director Craig Holland reviewed the map with staff and the audience and confirmed that the multiple family units are not near the Hilliard Isle Road. Ms. Wybiral was satisfied with that answer after being shown on the map.

Michelle Lux, 2675 Hilliard Court, Kissimmee, expressed concern as her street still appears to be affected by the multiple family dwellings. City Manager Steigerwald showed the section on the map that was in question and it was displayed as a retention pond for Hilliard Court.

Eric Raasch, Inspire Placemaking Collective, 4767 New Broad Street, Orlando, introduced himself as the applicant and stated they will be making a detailed presentation under Item 4.C.

Commissioner Martinez moved to approve the Public Hearing and adopt Ordinance #

3092. Commissioner Castano seconded the motion.

Upon roll call, the vote was as follows:

Commissioner Martinez	AYE
Commissioner Castano	AYE
Commissioner Eady	AYE
Commissioner Alvarez	AYE
Mayor Gonzalez	AYE

Motion carried 5 - 0.

4.C Public Hearing - Final Reading - An Ordinance amending the Zoning Map designation from County Estate (E-1), County Agricultural & Conservation Development (AC), and City Agricultural & Conservation Development (AC) to Mixed Used Planned Unit Development (MUPUD): Hilliard Isle, PUD-22-0004- Proposed Ordinance #23-24

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

Recommendation of approval of a Zoning Map Amendment changing the Zoning designation from County Estate (E-1), County Agricultural & Conservation Development (AC), and City Agricultural & Conservation Development (AC) to Mixed Used Planned Unit Development (MUPUD) on approximately 883 acres of land.

City Attorney Sanchez de Fuentes read Ordinance # 3093 by title.

Planner Ryan introduced this item for a Zoning Map designation from County to City Agricultural and Mixed Use Planned Unit Development. She requested the applicant be given time to review the PowerPoint which describes the lay-out of the project.

Eric Raasch, Inspire Placemaking Collective, 4767 New Broad Street, Orlando, thanked City staff for working with them through this project. Mr. Raasch displayed information being reviewed including location, vision, annexation and future land use map, compatibility, and design. Key points reviewed were all traditional neighborhood design standards which are being used. Primary access points will be roads to the west that will not go through residential areas, a reduction of nearly 2,500 development units compared to what would have been zoned by the county code. The Planning Advisory Board recommended approval as well as the City Commission. A meeting was held with the residents on October 16, 2023, notices were sent out to 370+ property owners and Pulte has addressed the concerns. Mr. Raasch stated the entire project is compatible with land use and the Comprehensive Plan. The project team is present to answer any questions.

Dr. Brian Agard, 2423 Aurora Court, Kissimmee, addressed the Commission with concerns about the maximum heights of the buildings. Mr. Raasch clarified that the two-story was for single-family residential, three (3) and four (4) story will only be adjunct to Simpson Road in the Mix-Use Village area. There is nothing in the plans for heights above two-story to be adjacent to the existing single-family.

Chris Wrenn, 4901 Vineland Road, Suite 46, Orlando, representing Pulte, clarified for Mr. Agard on plans for two-story buildings, he believed Dr. Agard was commenting on

conversations held after the Planning Board Meeting had ended and there would be record of those conversations and there was no presentation concerning height during the meeting, Mr. Wrenn committed to Dr. Agard that they would not be building anything near their homes that was higher than two-stories.

Tina Wybiral, 2555 Stemwood Court, Kissimmee, expressed concern that she nor her neighbors received any notification about the meeting being discussed by Mr. Raasch; they have attended all the meetings over the last 10 years (County or City) and would not have missed it. She requested confirmation that there would be no multiple family dwellings built next to the Hilliard Isle single-family homes. Ms. Wybiral spoke multiple times during this item. Planner Ryan confirmed that the property in questions cannot accommodate multiple family dwellings based on the land-use. There were no changes to the project between the Planning Advisory Board meeting and the information provided to the Commission for this meeting. Ms. Wybiral disputed the information due to a comment that Phase 1 would include townhomes. Ms. Wybiral reiterated her opposition to anything other than single family detached homes.

City Manager Steigerwald asked planning staff for a description of the townhomes and Planner Ryan explained single-family can accommodate town-homes but it is based on the density, town-homes are attached single-family and "fee simple"; they can be individually owned and maintained with their own parcel. Mr. Wrenn stated the project is at the PUD (Planned Unit Development) stage, and he does not have a final count and the plan is to mix townhomes throughout the community; both single-family attached and single-family detached.

Michelle Lux, 2675 Hillard Court, Kissimmee, referenced an email submitted by her husband John and the Commission acknowledged it was received (Exhibit "A"). Ms. Lux reviewed some of the specific concerns about living on Hillard Court and the agricultural property that will now hold family homes on smaller lots. They were told the setback would be 25 feet from the current property line and their request is for it to be half an acre and include a natural barrier or some type of fencing. Pulte has not offered to allow the property owners to purchase the land behind their homes so Pulte does not lose money.

Commissioner Martinez asked for comments from the developer concerning the reference in the email (Exhibit "A") that there are no plans to deal with the already overcrowded schools.

Jo Thacker, 17 S. Orlando Avenue, Kissimmee, informed the Commission that the School District has a 100% impact fees for every home that is developed so they pay the full impact of adding students to the school district; those fees are paid upfront when the permit to build the dwelling is pulled.

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

Commissioner Eady moved to approve the Public Hearing and adopt Ordinance # 3093. Commissioner Martinez seconded the motion.

Upon roll call, the vote was as follows:

Commissioner Castano	AYE
Commissioner Eady	AYE

Commissioner Alvarez	AYE
Commissioner Martinez	AYE
Mayor Gonzalez	AYE

Motion carried 5 - 0.

- 4.D Public Hearing - Final Reading - An Ordinance amending the Future Land Use Map designation from Commercial General (CG) & Single Family Low Density Residential (SF-LDR) to Single Family Low Density Residential (SF-LDR): Palmetto Ave, LUPA-23-0005 - Proposed Ordinance #23-22

AN ORDINANCE AMENDING ORDINANCE NO. 3050 KNOWN AS THE ORDINANCE ADOPTING THE COMPREHENSIVE DEVELOPMENT PLAN FOR THE CITY OF KISSIMMEE, FLORIDA, UNDER THE AUTHORITY OF FLORIDA STATUTE 163.3184; DIRECTING THE CITY MANAGER TO AMEND THE COMPREHENSIVE LAND USE PLAN AS HEREIN PROVIDED AFTER THE PASSAGE OF THIS ORDINANCE; PROVIDING FOR A PUBLIC HEARING AS REQUIRED BY LAW; REPEALING ALL ORDINANCES IN CONFLICT HERewith; AND PROVIDING AN EFFECTIVE DATE.

Recommendation of approval of a Land Use Amendment changing the Future Land Use Map designation from CG (Commercial General) to Single Family Low Density Residential (SF-LDR) on approximately 1.06 acres of land.

City Attorney Sanchez de Fuentes read Ordinance # 3094 by title.

Assistant Director of Development Services, Douglas Etheredge, reviewed the request to change the Future Land Use Map from commercial general to single family low density on this 1.06 acre property. Access to this property has been difficult under commercial general due the surrounding homes. The applicant is requesting to make the change for this reason, so the property will be compatible with the surrounding properties. The Planning Advisory Board has approved this request, and staff recommends approval after holding the Public Hearing.

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

Commissioner Castano moved to approve the Final Reading and adopt Ordinance # 3094. Commissioner Alvarez seconded the motion.

Upon roll call, the vote was as follows:

Commissioner Eady	AYE
Commissioner Alvarez	AYE
Commissioner Martinez	AYE
Commissioner Castano	AYE
Mayor Gonzalez	AYE

Motion carried 5 - 0.

- 4.E Public Hearing - Final Reading - An Ordinance amending the Zoning Map designation from Highway Commercial (HC) to Single-Family Residential (RA-2): Palmetto Ave., ZMA-23-0007 - Proposed Ordinance #23-23

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

Recommendation of approval of a Zoning Map Amendment to change the Zoning Map designation from Highway Commercial (HC) to Single-Family Residential (RA-2) on approximately 1.06 acres of land.

City Attorney Sanchez de Fuentes read Proposed Ordinance # 3095 by title.

Assistant Director Douglas Etheredge, reviewed the request to change the zoning from highway commercial to single-family residential. The Planning Advisory Board approves, and staff recommends approval after holding the Public Hearing.

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

Commissioner Martinez moved to approve the Public Hearing and adopt Ordinance #3095. Commissioner Castano seconded the motion.

Upon roll call, the vote was as follows:

Commissioner Alvarez	AYE
Commissioner Martinez	AYE
Commissioner Castano	AYE
Commissioner Eady	AYE
Mayor Gonzalez	AYE

Motion carried 5 - 0.

5. PUBLIC HEARINGS

None.

6. HEAR AUDIENCE

Forms submitted under Hear the Audience were for Items 4.B, 4.C. and 8.A

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

Motion carried 5 - 0.

7.A Approval of City Commission Minutes from the December 19, 2023 meeting

Request Commission approval of the December 19, 2023 Commission Minutes.

7.B 2024 Tourism Enhancement Grants for Events

Approval of 2024 Tourism Enhancement Grants for five Parks and Recreation Events in 2024 for a total of \$60,000 to use toward marketing, contract #'s 20240163, 20240164,

20240165, 20240166 and 20240167.

7.C Service Agreement for Onsite Employee Health Clinic

Approval of the Letter of Authorization with Evernorth Direct Health to initiate implementation activities, including negotiation of a Professional Services Agreement (PSA) contract #20240176 for Evernorth Direct Health to operate the City's health clinic. Staff also requests the Commission authorize the City Manager to sign the PSA and any documents required for the implementation of the transition of the health clinic from the current service provider to Evernorth Direct Health.

7.D 2024 Event and Festival Series Calendar

Approval of 2024 Event and Festival Series Calendar

7.E Gorman Pools - Drainage Canal Right Of Way Variance

Approval to waive the right-of-way dedication requirement outlined in LDC §14-3-10(D)(3) concerning the drainage canal adjacent to a proposed commercial development.

7.F Internship Grant From Florida Airports Council (FAC)

Approval to accept an Internship Grant from Florida Airports Council (FAC) for Kissimmee Gateway Airport.

7.G Resolution for Airfield Markings Project

Approval to accept, by Resolution, a Public Transportation Grant Agreement (PTGA) from Florida Department of Transportation (FDOT) for an Airfield Pavement Markings Project.

7.H Space Use Permit for Lead Air

Approval of a Space/Use Permit (contract #2024-4677) at the airport for Lead Air.

7.I Airfield Pavement Markings Service Agreement

Approval for a service agreement (contract #2024-0178) with Florida Airfield Maintenance, JV of Sanford, for airfield pavement markings, in the amount of \$202,580.72.

7.J Mill Slough Waterway Debris Removal Grant Acceptance

Approval to accept \$266,067.29 in Federal grant funding that has been awarded to assist with the removal of debris caused by Hurricane Ian and to amend the budget to reflect the funding received.

7.K Knightsbridge, Phase 1 – Subdivision Final Acceptance

8. DISCUSSION ITEMS

8.A Review of Options for Downtown Hotel Site RFQ

Request consideration of options regarding the submittal associated with RFQ2023-008 Hotel/Civic Center Development Project.

Economic Development Director, Tom Tomerlin, reviewed the request for developing a hotel at the Kissimmee Civic Center site. A Request for Qualifications (RFQ) was advertised, and one submission was received from IHRMC Hotels; we thank them for their submission. The selection committee recommends that the Commission not proceed with the award based on the criteria outlined in the Agenda. The Commission has two options. Option A is to agree with the selection committee and reject the proposal and terminate the RFQ. Option B would be to proceed with the IHRMC proposal and direct staff to initiate negotiations of a development agreement. Staff would like to discuss all the options with the Commission.

Mayor Gonzalez recognized those who submitted a "Hear the Audience" form.

Ella Wood, Political Director for Unite Here Local 737, 1833 Biscayne Drive, Orlando. Ms. Woods stated Local 737 is a labor union that represents over 19,000 hospitality workers in Central Florida including over 1,100 who live in Kissimmee and more in the surrounding area. Development of a good successful hotel is a tremendous benefit to the community and they would like to work with the City to make that happen. There is a lot to work with in Kissimmee, and they feel the staff made the correct recommendation by rejecting the RFQ, and they encourage the City to keep its stake as the owner of any future project. The taxpayers of Kissimmee deserve to be part of the success of the development of a hotel project downtown, and they will have an equity share if the City retains possession of the property. Public ownership of hotels is becoming more common. Ms. Wood quoted an article (Exhibit "B") from the *Orlando Sentinel* with reference to local taxpayers retaining an interest in the property instead of it being a sole money maker for the hotel chain.

Brayan Escudero, 3225 Smoke Signal Circle, Kissimmee, states he has worked for Disney for over ten years, is a union member, and has lived in Kissimmee most of his life. He loves coming to downtown and feels it would not be in the best interest of the City to give away the Civic Center or the planned hotel. Mr. Escudero would like to see a full-service hotel that would generate more jobs and the hotel and Civic Center to remain City property so future revenue would benefit City residents.

John Cortes, 216 Old Mill Circle, Kissimmee, believes the hotel and Civic Center should be part of the City and he does not feel involving the hotel company in the project would be a problem as long as the City remains the owner.

The Commission and City Manager discussed the plans and cost of operating the Civic Center as well as possibly requesting feedback from the residents on a hotel being built downtown.

City Manager Steigerwald encouraged the involvement of the Commission and public to get tourist development dollars and securing funding from Experience Kissimmee to assist with this project.

Commissioner Eady made a motion to cancel the RFQ and end the bid process. Commissioner Castano seconded the motion.

Motion carried 5 - 0.

Commission consensus to request collaboration from Osceola County, Experience Kissimmee, and to pursue any available funding from tourist development dollars.

8.B Advisory Board Vacancy: Parks and Recreation Board

The Commission is requested to make an appointment to fill a vacancy on the Parks and Recreation Advisory Board.

Commissioner Alvarez made a motion to appoint Manuel "Manny" Gomez to the Parks & Recreation Advisory Board. Commissioner Castano seconded the motion.

Motion carried 5 - 0.

9. HEAR CITY OFFICIALS

9.A CITY MANAGER

9.B CITY ATTORNEY

9.C CITY COMMISSION

Commissioner Castano wished everyone a wonderful night. Commissioner Eady wished Mayor Gonzalez a happy birthday. Mayor Gonzalez welcomed everyone to 2024, looking forward to a great year.

10. ADJOURNMENT

There being no further business to come before the Commission, Mayor Gonzalez adjourned the meeting at 7:30 PM.

MAYOR-COMMISSIONER

ATTEST:

CITY CLERK

Exhibit "A"
Item 4.C – PUD-22-0004
Email from John Lux

Hand-out 4.A
4.B
4.C

Tameara Crespo

From: John Lux <jlux2202@gmail.com>
Sent: Tuesday, January 16, 2024 7:26 AM
To: CITY CLERK
Subject: Hilliard Isle (Please read into official record)

RE: Michelle Lux
1/16/2024

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

My name is John Lux and I'm a 25+ year resident of Osceola County and current resident of the Hilliard Isle Community. Our family moved to our current home to enjoy the rural atmosphere that the community offers. Our house sits on an acre of property with just 17 homes on our street. Behind us sits hundreds of acres of calm, rural old Florida.

We know that it's inevitable that the land is going to be developed. Our hope is that the land will be responsibly developed, not allowed to be more of Northern Osceola County's rapid overdevelopment.

The Kissimmee City Council heard a request regarding a 13 acre plot near the corner of Simpson Road and Hilliard Isle Road in 2022. The Council agreed that no more than 3 homes per acre would be allowed to preserve the quiet almost country-like setting. I believe a similar decision regarding homes immediately against existing homes in the Hilliard Isle community is a reasonable request.

We understand the plan is to keep lots 25 feet off the back of our current property line. Twenty five feet is not big so we hope a half acre could be the distance between property lines so our rural country living is respected. We also request that it be mandated to be a natural barrier or berm with trees and/or grass between existing property lines and new development. We strongly request that it not be a brick/plastic wall or fence. Even moreso, we were told there would be no through traffic on Hilliard Isle Road. PLEASE, ensure that remains and any request to access the new development through Hilliard Isle Road is not approved. Preserving the volume of traffic on Hilliard Isle Road and the offshoot streets in our community is vital. Even further, if given the opportunity, I believe current residents with property backing up to the proposed development would entertain an option to purchase portions of land immediately behind their homes to ensure new homes aren't built too close. This option would ensure the developer does not take a loss for leaving large parcels of land empty.

We've attended previous hearings and attended the most recent Pulte open house where they discussed the long term plans. There remains no plan to deal with our already overcrowded schools. We can't fill teaching and support staff positions already. There are no bus drivers to transport kids. Traffic is unbearable during the morning and evening busy hours while weekends are even worse. The developers pointed to the Simpson Road expansion as the solution. But the expansion is to deal with the current traffic volume. The Hilliard Isle development will bring an additional 6,000+ cars to Simpson Road. I would urge you to consider reducing the new residences you allow in the community. Our infrastructure is not equipped to deal with this additional volume.

Those of us that live in the Hilliard Isle Community are not anti development. But we urge you to respect the current homeowners and act responsibly when considering the new development as we are all impacted by the decisions you make regarding this property.

Thank you for your consideration.
John & Michelle Lux and Family

Exhibit "B"
Item 8.A - Review of Hotel RFQ
Orlando Sentinel Article

Orlando Sentinel

Opinion

Exhibit B
Hand-out
8A
(Ella Wood)

Editorials Letters to the Editor Scott Maxwell Commentary Commentary Central Floridian of the Year

A publicly owned hotel could help taxpayers in Osceola | Commentary



By **SCOTT MAXWELL** | smaxwell@orlandosentinel.com | Orlando Sentinel

PUBLISHED: January 10, 2024 at 9:37 a.m. | UPDATED: January 10, 2024 at 12:49 p.m.

In part one of this week's two-part series on looking out for taxpayers, we saw a case study in what *not* to do. Elected leaders in Orlando and Orange County teamed up to give the Orlando Magic a corporate welfare wind-fall.

The team threatened to leave town if it didn't get a new arena. Yet even after agreeing to spend nearly half a billion tax dollars, city and county officials let the team keep many of the most valuable revenue streams, including the naming rights to a venue the team doesn't own and barely helped finance.

This is the worst possible example of return on investment — where taxpayers invest and someone else pockets the returns.

We see something similar with convention centers. Communities dump billions of tax dollars into convention centers, mainly so that hoteliers can reap the profits.

A handful of cities have realized how flawed this tired economic formula is and have done better by the citizens they represent.

A prime example is in Chicago, where the convention authority *owns* the two big hotels near its convention center. This allows taxpayers to recoup some of their money.

See, the dirty little secret in the convention business is that it's often a money-losing enterprise. Convention centers, including the gargantuan one in Orange, usually run deficits. Sometimes tens of millions of tax dollars lost each year on annual operating costs *on top of* hundreds of millions in construction debt.

So in Chicago, one of the few cities with a center bigger than Orange, leaders decided they would try to do right by taxpayers by keeping ownership of two hotels that benefit most from convention business there.

There, the Chicago convention authority owns the hotels, but two private companies, Hyatt and Marriott, run them. This has allowed the authority to cover its annual debt. In 2019, for example, the center itself lost a whopping \$51 million. But the two hotels brought in \$53 million, helping make taxpayers whole.



Osceola County commissioners are considering making room for a hotel at their big events center at Osceola Heritage Park in Kissimmee. If they follow the lead of places like Chicago, they could make the hotel publicly owned (and privately run) — and score big returns for taxpayers. (Stephen M. Dowell/Orlando Sentinel)

What a radical idea — looking out for taxpayers instead of hoteliers.

All of which brings us to Osceola County.

As the Sentinel's Natalia Jaramillo [reported this week](#), the county is looking for ways to encourage hotel development at the county's biggest entertainment and gathering venue — Osceola Heritage Park and the Silver Spurs arena, which attracts more than [700,000 visitors](#) each year.

The idea makes sense. Right now, the options for nearby lodging are pretty limited with organizers of this week's popular Mecum car show saying, for instance, that they are staying at the Margaritaville resort a half-hour away.

What would make even more sense would be for Osceola to follow the lead of Chicago and other communities that have decided to own the hotels themselves. Instead of simply depleting county coffers to subsidize the tourism industry, they can help refill them.

The good news: Osceola County Manager Don Fisher said this week that public ownership is definitely something the county is considering.

That's incredibly refreshing. In neighboring Orange County, commissioners have spent billions of hotel tax dollars amassing a 7 million square-foot convention center that has lost \$100 million over the last four years, content to let hotel chains suck up the profits that might otherwise help balance the public books.

If Osceola seizes the opportunity, it will be part of a growing trend. According the industry news site, [Hotel-Online.com](#), more than 30 local governments across the country have opted for public ownership of hotels.

The two main arguments against the concept come from hoteliers who don't like the competition and people who argue that government shouldn't involve itself in business that is traditionally the domain of the private sector.

But both of those arguments are fatally flawed for the same reason: Government is *already* meddling in this private sector — to the tune of billions of dollars in subsidies. This is just a way to help taxpayers recover a tiny portion of what they invest.

If you want government out of the hotel business, then stop asking for the subsidies. And if you *do* want the subsidies, don't you dare criticize the governments trying to help taxpayers reclaim a portion of what they spend.

Again, the common theme here is a very basic economic principle: return on investments. And it's way past time for the politicians to look for returns that benefit the people whose money they're spending — instead of just the owners of basketball teams and hotels.

smaxwell@orlandosentinel.com



**MEETING MINUTES
SESSION OF THE CITY COMMISSION
CITY OF KISSIMMEE
CITY HALL, COMMISSION CHAMBERS
101 CHURCH STREET, KISSIMMEE, FLORIDA 34741-5054
TUESDAY, FEBRUARY 6, 2024 AT 6:00 PM**

1. MEETING CALLED TO ORDER

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

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

Members Absent: None

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

2. MOMENT OF SILENCE AND PLEDGE OF ALLEGIANCE

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

3. PROCLAMATIONS AND SPECIAL PRESENTATIONS

3.A Proclamation - Black History Month

To present a Proclamation in honor of Black History Month.

City Manager Steigerwald read a proclamation in honor of Black History Month as the Mayor and Commissioners presented the proclamation to Mr. Andy King.

Mr. King accepted the award on behalf of the black community. He thanked the Commission for their support and read a passage in honor of black history.

3.B Proclamation- "Pastor Michael Douglas Young Appreciation Day"

To present a proclamation to Pastor Michael Douglas Young, Pastor of The Kingdom Church Kissimmee Campus.

City Manager Steigerwald read a proclamation in honor of Pastor Michael Douglas Young as the Mayor and Commissioners presented the proclamation to him.

Pastor Young thanked the City Commission, staff, his congregation, colleagues, community, mentors, and his family. He reminded the audience that "leaders lead" and emphasized the importance of strong and knowledgeable leadership.

3.C Recognition of the Bob Makinson Aquatic Center for achieving the 2023 Gold International Aquatic Safety Award

Recognition of the staff at the Bob Makinson Aquatic Center for achieving the 2023 Gold International Aquatic Safety Award.

Assistant Director, Matt Libby and Recreation and Leisure Services Manager, Rod Bargaineer, announced Supervisor of the Aquatic Center, Kristina Chavarria, and Recreation Specialist, Jenna Smith, for their commitment, leadership and efforts in securing the safety award and contributing to the well-being of our residents. Pictures were taken as staff posed received the award.

3.D Employee of the Month for February

Request that the City Commission join the City Manager in recognizing Mark Vazquez, Code Enforcement Manager, as February's Employee of the Month.

City Manager Steigerwald introduced Mark Vazquez of the Code Enforcement division and reviewed the qualities and attributes which led to his nomination and selection as employee of the month. This is Mark's third time being selected as Employee of the Month. City Manager Steigerwald reminded everyone that the Employee of the Month is not selected by the Commission, City Manager, or department heads but by nominations that are reviewed and selected by a committee of their peers from all departments in the City, and there is no greater honor.

Mark Vazquez thanked the Development Services department and his entire code enforcement team by name, emphasizing that without them the job would not get done. He appreciates the recognition and is honored to be acknowledged tonight.

4. PUBLIC HEARINGS - FIRST AND SECOND READINGS

5. PUBLIC HEARINGS

6. HEAR AUDIENCE

Anything requiring a vote will be heard at a later time.

Theodore "Ted" Baker, 806 Persons Street, Kissimmee, FL, addressed the commission on matters related to his neighborhood in West Kissimmee which includes, more speed bumps, updates to access bridges near Oak Street Park, and the need for gravel near Mann Street and Toho Water Authority. Commissioner Eady, Mr. Baker and the City Manager discussed a possible busted pipe and drainage issue near Toho Water Authority; the City Manager will follow up with Toho's CEO to bring the matter to their attention. Commissioner Alvarez and the City Manager provided an update on one of the access bridges and informed Mr. Baker that reconstruction is underway and should be finalized in the next week.

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

Motion carried 5 - 0.

7.A Osceola HOME Consortium Disbursement Agreement Between Osceola County and the City of Kissimmee FY 2023-3024

Approval for the Mayor to execute Contract #20240196 with Osceola County for the disbursement of FY 2023-2024 HOME funds in the amount of \$359,424.80.

7.B Mechanical, Electrical, and Plumbing Continuing Services

Approval to award continuing services contracts (contract #20240185) for Citywide Mechanical, Electrical, and Plumbing services to the top two (2) contractors that provided a responsive bid to the request for qualifications.

7.C Purchase of Two Solid Waste Grapple Trucks

Approval for the purchase of two (2) grapple trucks in the amount of \$532,752.62 from the

Solid Waste fund.

- 7.D Contract for Comprehensive Plan Future Land Use and Transportation Element Updates
Request approval of a contract with GAI Consultants to develop a transportation and land use master plan and update the Comprehensive Plan under continuing services contract # 20240102 at a cost of \$300,000.
- 7.E Acceptance of Donation from the Walmart Foundation
Approval to accept a \$7,800 donation from the Wal-Mart Foundation for the purchase of Christmas gifts for the "Shop with a Cop" Program.
- 7.F Second Amendment to Contract for the Marydia Community Center
Approval of the Second Amendment to contract #20230295 between Osceola County and the City of Kissimmee regarding the provision of recreational programs at the Marydia Community Center through June 30, 2024 not to exceed \$103,676.
- 7.G Contract for Comprehensive Plan Evaluation and Appraisal Report
Request approval of a contract with GAI Consultants for the Evaluation and Appraisal Report (EAR) for the Comprehensive Plan under continuing services contract # 20240102 at a cost of \$27,500.
- 7.H Upgrade and Replacement of Access Control Systems
Request approval for Miller Electric Inc. to upgrade components of the City's access control systems (Contract # 20240218).
- 7.I Beaumont Complex Replat – Final Plat
Request City Commission approval of the final plat known as Beaumont Complex Replat (DRC # SR-22-0017), without a performance guarantee/agreement.
- 7.J Purchase of Video Management Solution
Request approval to engage Thundercat Technology to implement a turn-key control room video management and video wall solution.
- 7.K Supplemental Agreement No.1 for Connect Kissimmee Project
Approval of Supplemental Agreement No.1 for the Connect Kissimmee Complete Street Project with AECOM for contract No. 20230049 for the amount of \$216,986. The additional funding needed will be provided by Metroplan Orlando and the City of Kissimmee.
- 7.L Purchase of Equipment from Stryker Medical for New Rescue 2024
Approval to purchase equipment from Stryker Medical, Inc., contract # 20240210, to equip the new Rescue unit that will arrive in 2024.

8. DISCUSSION ITEMS

- 8.A Request by Fernando Homs to waive or reduce Code Enforcement liens for 2046 Valencia Circle

Fernando Homs requested the waiver or reduction of Code Enforcement liens totaling \$8,800.00 on 2046 Valencia Circle.

Fernando Homs, 2046 Valencia Circle, Kissimmee, FL, addressed the commission with a request to reduce or waive the fines accrued upon his property in the amount of \$8,800. Mr. Homs provided documentation detailing his case and concerns for the Commission's review (Exhibit "A"). He stated in his discussion, that staff's lengthy permitting process is the basis for his appeal and asserted he should not have to pay the fines or liens on his property since he already paid additional penalties at the time of pulling the permits.

City Manager Steigerwald confirmed that the City's code allows him to negotiate and

reduce fines on behalf of the City Commission. Mr. Homs came to him with a request for reduction, and that he personally investigated the matter for months, reviewing all the case materials and Special Magistrates recommendations thoroughly, and found there to be no indication that the fines should be reduced, and recommended Mr. Homs to address the City Commission for a reduction.

The Commission, Development Services Director Craig Holland and Mr. Homs engaged in ongoing discussion regarding the history surrounding the multiple violations upon the property. Director Holland provided the Commission with clarification to their questions on the permitting process, including staff's statutory timelines for responding to applicants, how comments and rejections are conveyed to applicants, additional permit fee protocols, potential barriers for Spanish speaking applicants, and special magistrate case statistics.

Commissioner Martinez believes there is merit to Mr. Homs concerns on response times with the current process. Director Holland asserted that education and compliance is the City's mission before violating citizens, but in this instance, Mr. Homs is a repeat offender, and had multiple extensions to correct the issues prior to being recommended to the Special Magistrate.

After holding the discussion, a motion was made by Commission Eady to reduce the fines by half (50%). The motion died for a lack of a second.

As a response to Commissioner Eady's inquiry, Director Holland provided the Commission with a report that estimated the cost of the City's expenses and staff time expended on Mr. Hom's cases, which totaled approximately \$3,321.04 (Exhibit "B"). A motion to reduce the fines to \$3,321 was made by Commission Eady, the motion died for a lack of a second.

Commission Castano believed that \$2,000 was a fair and sufficient compromise.

Commissioner Castano made a motion to reduce the fines to \$2,000. Commissioner Martinez seconded the motion.

AYE: Mayor-Commissioner Gonzalez, Commissioner Alvarez, Commissioner Castano, Commissioner Eady, Commissioner Martinez

NAY: None

Motion carried 5 - 0.

8.B Advisory Board Vacancy: Board of Adjustment

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

Commissioner Martinez recommended nominating Jose A. Barretto for the Board of Adjustment. The applicant has not yet filed an application with the City.

Commissioner Martinez made a motion to appoint Jose A. Barretto to the Board of Adjustment. Commissioner Angela Eady seconded the motion.

AYE: Mayor-Commissioner Gonzalez, Commissioner Alvarez, Commissioner Castano, Commissioner Eady, Commissioner Martinez

NAY: None

Motion carried 5 - 0.

9. HEAR CITY OFFICIALS

9.A CITY MANAGER

The City Manager announced that he will be out of the office tomorrow.

9.B CITY ATTORNEY

9.C CITY COMMISSION

Commissioner Castano requested Commission approval to host an event at the Ruby Plaza on March 8, 2024. The event will be free to the public and will help support business growth in Kissimmee. City Manager Steigerwald clarified that the City's policy requires commission consensus and approval to utilize the City's facilities to host an event. The Economic Development Department does believe it will be a good event.

Commissioner Alvarez made a motion to approve the CamFest 2024 Event at the Ruby Plaza. Commissioner Martinez seconded the motion.

AYE: Mayor-Commissioner Gonzalez, Commissioner Alvarez, Commissioner Castano, Commissioner Eady, Commissioner Martinez

NAY: None

Motion carried 5-0

Commissioner Castano requested staff present at the next meeting on the City's permitting process. City Manager Steigerwald recommended making it a formal workshop.

Commissioner Castano made a motion to plan a future workshop and presentation to discuss the City's permitting process and directed staff to provide data on the City's current process, software, and competitiveness to other surrounding governments. Commissioner Alvarez seconded the motion.

AYE: Mayor-Commissioner Gonzalez, Commissioner Alvarez, Commissioner Castano, Commissioner Eady, Commissioner Martinez

NAY: None

Motion carried 5-0

Commissioner Alvarez reminded the audience of the Run and Walk 5k this weekend. Commissioner Martinez read a passage regarding community leadership and reminded the citizens that the commission is here to serve them. Mayor Gonzalez recommended watching football on the big screen at Lakefront Park. City Manager Steigerwald stated they ran into some issues with NFL licensing but are hoping it will be possible in the future.

10. ADJOURNMENT

There being no further business to come before the Commission, Mayor Gonzalez adjourned the meeting at 7:16 PM.

MAYOR-COMMISSIONER

ATTEST:

CITY CLERK

Exhibit "A"
Discussion Item 8.A.
Fernando Homs Appeal Documentation

DEVELOPMENT SERVICES DEPARTMENT

CITY OF KISSIMMEE
101 CHURCH ST; SUITE 120
KISSIMMEE, FLORIDA 34741-5054



TRANSMITTAL FOR PLAN REVIEW

DATE: 1/18/2022
ADDRESS: 2046 VALENCIA CIR
PERMIT NUMBER: MSR-21-0197

This permit has been

DISAPPROVED.

BUILDING/ZONING DIVISION - Joshua Tulak - 407.518.2155 - Joshua.Tulak@kissimmee.gov

Please see below the comments/conditions (if applicable):

1. Please provide an updated survey showing all as-built structures on this property, show the setback measurement from these structures to the property lines, provide the total lot coverage percentage. Note The maximum impervious surface area is 50%.

2. The as-built porch/carport does not meet the side setback of 8 feet from the property line and cannot be permitted.

Per code: Accessory structures shall meet the side and street side yard setback requirements of the zoning district. Property located in a RA-2 zoning district, side setback is 8 feet.

* It appears there is another accessory structure on the west side of the home that does not meet the side setback of 8 feet as well.

* The concrete slab north end of this as-built porch can be permitted as long as it is not located within utility easement. Any accessory structures built on the concrete slab have to meet required setbacks of the zoning district that the property is located within.

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

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

Additional comments may be forth coming as a result of revisions to the plans, any new changes in the information provided, future plan review up to plan approval and permitting and/or with submittal of supporting documentation.

Provide a response to comments within one hundred eight (180) days, or a request for an extension submitted for consideration. Otherwise, the project will be considered abandoned and a new application will be required to proceed.

DEVELOPMENT SERVICES DEPARTMENT
CITY OF KISSIMMEE
101 CHURCH ST; SUITE 120
KISSIMMEE, FLORIDA 34741-5054



TRANSMITTAL FOR PLAN REVIEW

ADDRESS: 2046 VALENCIA CIR
PERMIT NUMBER: MSR-21-0197

DATE: 1/13/2022

This permit has been

DISAPPROVED.

BUILDING DIVISION – Albert Rocco - 407.518.2158 - Albert.Rocco@kissimmee.gov

Please see below the comments/conditions (if applicable):

- 1) Please provide on the submitted survey or a plot plan the dimensions of the as built carport and its setbacks from property lines and any existing structures.
- 2) Please include on the submitted survey or a plot plan all existing structures on subject property. This includes, but not limited to, structures shown on satellite imagery (pool and roofed over area on west and north side of dwelling). Be sure to indicate their dimensions and setbacks from property lines and any other existing structures.
- 3) Please provide an Aluminum Structures Letter of Responsibility signed by the owner and contractor.
- 4) Please provide published product approval/notice of acceptance for the aluminum insulated roof.
- 5) Please provide construction details for all aluminum connection points.
- 6) Please indicate the size and depth of the footings.
- 7) As per provided garage door product approval FL#15012.1, attachment to aluminum members is not one of the approved framing materials. Please provide method of attachment detail or show compliance with submitted product approval.

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

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

Additional comments may be forth coming as a result of revisions to the plans, any new changes in the information provided, future plan review up to plan approval and permitting and/or with submittal of supporting documentation.

Provide a response to comments within one hundred eight (180) days, or a request for an extension submitted for consideration. Otherwise, the project will be considered abandoned and a new application will be required to proceed.

DEVELOPMENT SERVICES DEPARTMENT
BUILDING DIVISION
CITY OF KISSIMMEE
101 CHURCH ST; SUITE 120
KISSIMMEE, FLORIDA 34741-5054



TRANSMITTAL FOR PLAN REVIEW

ADDRESS: 2046 VALENCIA CIR
PERMIT NUMBER: MSR-21-0197

DATE: 1/5/2022

**This permit has been
DISAPPROVED.**

Please see below the comments/conditions (if applicable):

ENGINEERING DEPARTMENT - Erika Allen - 407.518.2168 - Erika.Allen@kissimmee.gov

1. Please add the following information to the site plan:
 - a. Pre-development lot drainage patterns
 - b. Post-development lot drainage patterns
2. If any new grading or fill is proposed, please provide a grading plan, prepared by a licensed Professional Engineer to include the following:
 - a. All survey and site plan information mentioned above
 - b. Location, extent, and amount excavation and fill to be done
3. If no new fill or lot grading will be done with this development, indicate as a note on the site plan: "No new fill or lot grading proposed with this development."
4. Please add the following note to the site plan: "New construction to be done so as not to impose any additional runoff onto nor impede runoff from adjacent properties."

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

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

Additional comments may be forth coming as a result of revisions to the plans, any new changes in the information provided, future plan review up to plan approval and permitting and/or with submittal of supporting documentation.

Provide a response to comments within one hundred eight (180) days, or a request for an extension submitted for consideration. Otherwise, the project will be considered abandoned and a new application will be required to proceed.

INSPECTION WORKSHEET (IBR-008540-2023)

City of Kissimmee

Cellphone: XXX-XXX-XXXX. Address: XXX XXXXX BLVD XXXX

Case Number: MSR-22-0906
Inspection Date: Mon Apr 17, 2023
Inspector: Martinez, Luis

Case Module: Permit
Inspection Status: Approved
Inspection Type: Final Pool (Res)

Job Address: 2046 VALENCIA CIR
KISSIMMEE, FL, 34741

Parcel Number: 20-25-29-1875-0001-0050

Contact Type	Company Name	Name
Property Owner		HOMS, FERNANDO
Applicant	3VD CONSTRUCTIONS LLC	VASQUEZ MATA, JUAN
Contractor	3VD CONSTRUCTIONS LLC	VASQUEZ MATA, JUAN

Checklist Item

General Comments

Status

NA

Note: An Engineering letter has been attached to the file.


Martinez, Luis

2046
Valencia

Permit Number	Permit Type	Permit Work C...	Permit Status	Application Da... ↓	Expiration Date	Final Date	Description	Main Address
<u>MSR-23-0500</u>	Miscellaneous (Residential)	Fence/Wall	Finalized	08/17/2023	04/22/2024	10/26/2023	new aluminum gate	2046 VALENCIA CIR
<u>ER-23-0214</u>	Electrical (Residential)	Sub Permit	Void	04/06/2023			ELECTRICAL POOL	2046 VALENCIA CIR
<u>ER-23-0208</u>	Electrical (Residential)	Sub Permit	Finalized	04/04/2023	10/09/2023	04/21/2023	WIRING POOL	2046 VALENCIA CIR
<u>MSR-22-0906</u>	Miscellaneous (Residential)	Pool	Finalized	09/21/2022	10/16/2023	04/21/2023	NEW ABOVE GROUND POOL (20'X5'-9"). TO LE EGALIZE: ALTERATION (DEMOLITION) OF THE POOL TO COMPLY WITH SETBACKS. ADDITION (TWO COVERED PORCH) AND PAV ER-CONCRETE SLAB TO DEMOLITION. TO LE GALIZE: ALTERATION OF TWO COVERED PORCHES TO COMPLY WITH SETBACKS AND REMOVED PAVERS AND CONCRETE TO COMPLY WITH MINIMUM IMPERVIOUS AREA.	2046 VALENCIA CIR
<u>MSR-22-0902</u>	Miscellaneous (Residential)	Accessory Structure	Finalized	09/21/2022	10/11/2023	04/16/2023		2046 VALENCIA CIR
<u>ER-22-0349</u>	Electrical (Residential)	Stand Alone	Finalized	05/11/2022	01/24/2023	07/29/2022	provide power motor gate 20a 120v 2ph	2046 VALENCIA CIR
<u>MSR-22-0179</u>	Miscellaneous (Residential)	Accessory Structure	Disapproved Review	03/07/2022	10/08/2022		OPEN PORCH WITH ROOF INSULATED PANEL	2046 VALENCIA CIR
<u>MSR-22-0177</u>	Miscellaneous (Residential)	Pool	Superseded	03/07/2022	09/03/2022		ABOVE GROUND POOL Superseded MSR-22-0906 20'X11'X4' DEEP	2046 VALENCIA CIR
<u>BR-22-0283</u>	Building (Residential)	Exterior Alteration	Void	02/28/2022			1. install new Gate Motor 2HP 120V. 20A 2. install new Water fall 1 1/2 HP 120V 20A	2046 VALENCIA CIR
<u>MSR-21-0197</u>	Miscellaneous (Residential)	Accessory Structure	Superseded	12/31/2021	09/23/2022		Carport	2046 VALENCIA CIR
<u>BP-21-02085</u>	Building Permit	Roof/Re-Roof	Finalized	06/22/2021	05/23/2022	11/24/2021	SHINGLES NOA 16-04 25.01	2046 VALENCIA CIR



CITY OF KISSIMMEE

Office of the City Clerk
101 Church Street . Kissimmee, Florida 34741-5054 . Phone 407-518-2308 . FAX 407-518-2261

TRANSMITTAL

DATE October 16, 2023

TO: Fernando Homs
14501 Tabago Bay Drive
Winter Garden, FL 34787

FROM: City of Kissimmee
City Clerk's Office
101 Church Street
Kissimmee, FL 34741

SUBJECT: Claim of Lien – Case #: BZ-21-0007
BZ-21-00010
BZ-21-00017
Parcel ID #: 20-25-29-1875-0001-0050
2046 Valencia Circle

\$4000
\$1500
\$4000

Attached please find a copy of the above-mentioned Claim of Lien(s) placed against your property. These lien(s) were filed on October 5, 2023, and returned to our office from the Osceola County Clerk of the Courts Recording Division.

If you have any questions or you would like a current pay-off on this lien(s), please contact the Code Enforcement Department at 407-518-2133.

COPY: Mark Vazquez, Code Enforcement Manager

Code Case Number: CE-BZ-21-00010

Code Case Details | Tab Elements | Main Menu

Code Case Type: Building/Zoning **Opened:** 11/24/2021 **Closed:** 11/02/2022
Status: Special Magistrate **Project Name:**
Assigned To: Risper, Carlos **District:** Zone 4
Description: Pool installed at the rear of the residence without a permit.

Locations Fees Inspections Attachments Contacts **Violations**

Violations | First Tab | Code Case Details | Main Menu

Violations

						Sort	Code
Code	Description	Status	Priority	Citation Issue Date	Compliance Date	Resolved Date	
9-251 - BUILDING PERMITS	The latest edition of the state building code and reference standards are hereby adopted and binding within the corporate limits of the city and police jurisdictions thereof. A copy of the Florida Building Code, also referred to herein as the state building code and referenced standards, is on file in the office of the city manager. As identified in Florida Building Code, Section 105.1 any owner or owner's authorized agent who intends to construct, enlarge, alter, repair, move, demolish or change the occupancy of a building or structure, or to erect, install, enlarge, alter, repair, remove, convert or replace any impact-resistant coverings, electrical, gas, mechanical or plumbing system, the installation of which is regulated by this code, or to cause any such work to be performed, shall first make application to the building official and obtain the required permit.	In Violation	Medium	11/24/2021	12/10/2021		

Code Case Number: CE-BZ-21-00007

Code Case Details | Tab Elements | Main Menu

Code Case Type: Building/Zoning

Opened: 11/19/2021

Closed: 11/28/2022

Status: Special Magistrate

Project Name:

District: Zone 4

Assigned To: Risper, Carlos

Description: Room/Garage added to residence without a permit.

Locations

Fees

Inspections

Attachments

Contacts

Violations

Violations | First Tab | Code Case Details | Main Menu

Violations

						Sort	Code
Code	Description	Status	Priority	Citation Issue Date	Compliance Date	Resolved Date	
9-251 - BUILDING PERMITS	The latest edition of the state building code and reference standards are hereby adopted and binding within the corporate limits of the city and police jurisdictions thereof. A copy of the Florida Building Code, also referred to herein as the state building code and referenced standards, is on file in the office of the city manager. As identified in Florida Building Code, Section 105.1 any owner or owner's authorized agent who intends to construct, enlarge, alter, repair, move, demolish or change the occupancy of a building or structure, or to erect, install, enlarge, alter, repair, remove, convert or replace any impact-resistant coverings, electrical, gas, mechanical or plumbing system, the installation of which is regulated by this code, or to cause any such work to be performed, shall first make application to the building official and obtain the required permit.	In Violation	High	11/19/2021	12/02/2021		

Code Case Number: CE-BZ-21-00017

Code Case Details | Tab Elements | Main Menu

Code Case Type: Building/Zoning

Opened: 12/09/2021

Closed: 11/28/2022

Status: Special Magistrate

Project Name:

District: Zone 4

Assigned To: Risper, Carlos

Description: Structure added to the rear of the main residence without a permit.

Locations Fees Inspections Attachments Contacts

Violations

Violations | First Tab | Code Case Details | Main Menu

Violations

Sort Code						
Code	Description	Status	Priority	Created/Issue Date	Compliance Date	Resolved Date
9-251 - BUILDING PERMITS	The latest edition of the state building code and reference standards are hereby adopted and binding within the corporate limits of the city and police jurisdictions thereof. A copy of the Florida Building Code, also referred to herein as the state building code and referenced standards, is on file in the office of the city manager. As Identified In Florida Building Code, Section 105.1 any owner or owner's authorized agent who intends to construct, enlarge, alter, repair, move, demolish or change the occupancy of a building or structure, or to erect, install, enlarge, alter, repair, remove, convert or replace any impact-resistant coverings, electrical, gas, mechanical or plumbing system, the installation of which is regulated by this code, or to cause any such work to be performed, shall first make application to the building official and obtain the required permit.	In Violation	Medium	12/09/2021	12/27/2021	

EXPRESS GARAGE DOORS, INC.

2865 Michigan Ave., Kissimmee, FL.
34744

Phone 407-483-0403 Fax 407-483-0405

Invoice

Date	Invoice #
1/6/2022	9089

Bill To
FERNANDO HOMES, P.A.1105 2046 VELENCIA ST KISSIMMEE FL 34741 407-8736-9370

P.O. No.	Terms	Project

Description	Qty	Rate	Amount
NEW GARAGE DOOR 9 X 7 SOLID (WHITE) FLUSH Z-4 SOLID	1	1,100.00	1,100.00T
INSTALLATION GARAGE DOOR OPENER LIFT MASTER AND PART FOR INSTALLATION	1	275.00	275.00T
4 GLASS FOR GARAGE DOOR (WAITING FOR THE APPROVAL FROM THE CITY TO DO IT)	1	200.00	200.00T

Subtotal		\$1,575.00
Sales Tax (0.0%)		\$0.00
Total		\$1,575.00
Payments/Credits		\$0.00
Balance Due		\$1,575.00



DEVELOPMENT SERVICES DEPARTMENT

CITY OF KISSIMMEE
101 CHURCH ST; SUITE 120
KISSIMMEE, FLORIDA 34741-5054



TRANSMITTAL FOR PLAN REVIEW

DATE: 1/18/2022
ADDRESS: 2046 VALENCIA CIR
PERMIT NUMBER: MSR-21-0197

This permit has been

DISAPPROVED.

BUILDING/ZONING DIVISION - Joshua Tulak - 407.518.2155 - Joshua.Tulak@kissimmee.gov

Please see below the comments/conditions (if applicable):

1. Please provide an updated survey showing all as-built structures on this property, show the setback measurement from these structures to the property lines, provide the total lot coverage percentage. Note The maximum impervious surface area is 50%.
2. The as-built porch/carport does not meet the side setback of 8 feet from the property line and cannot be permitted.

Per code: Accessory structures shall meet the side and street side yard setback requirements of the zoning district. Property located in a RA-2 zoning district, side setback is 8 feet.

* It appears there is another accessory structure on the west side of the home that does not meet the side setback of 8 feet as well.

* The concrete slab north end of this as-built porch can be permitted as long as it is not located within utility easement. Any accessory structures built on the concrete slab have to meet required setbacks of the zoning district that the property is located within.

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

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

Additional comments may be forth coming as a result of revisions to the plans, any new changes in the information provided, future plan review up to plan approval and permitting and/or with submittal of supporting documentation.

Provide a response to comments within one hundred eight (180) days, or a request for an extension submitted for consideration. Otherwise, the project will be considered abandoned and a new application will be required to proceed.

DEVELOPMENT SERVICES DEPARTMENT
CITY OF KISSIMMEE
101 CHURCH ST; SUITE 120
KISSIMMEE, FLORIDA 34741-5054



TRANSMITTAL FOR PLAN REVIEW

ADDRESS: 2046 VALENCIA CIR
PERMIT NUMBER: MSR-21-0197

DATE: 1/13/2022

This permit has been

DISAPPROVED.

BUILDING DIVISION – Albert Rocco - 407.518.2158 - Albert.Rocco@kissimmee.gov

Please see below the comments/conditions (if applicable):

- 1) Please provide on the submitted survey or a plot plan the dimensions of the as built carport and its setbacks from property lines and any existing structures.
- 2) Please include on the submitted survey or a plot plan all existing structures on subject property. This includes, but not limited to, structures shown on satellite imagery (pool and roofed over area on west and north side of dwelling). Be sure to indicate their dimensions and setbacks from property lines and any other existing structures.
- 3) Please provide an Aluminum Structures Letter of Responsibility signed by the owner and contractor.
- 4) Please provide published product approval/notice of acceptance for the aluminum insulated roof.
- 5) Please provide construction details for all aluminum connection points.
- 6) Please indicate the size and depth of the footings.
- 7) As per provided garage door product approval FL#15012.1, attachment to aluminum members is not one of the approved framing materials. Please provide method of attachment detail or show compliance with submitted product approval.

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

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

Additional comments may be forthcoming as a result of revisions to the plans, any new changes in the information provided, future plan review up to plan approval and permitting and/or with submittal of supporting documentation.

Provide a response to comments within one hundred eight (180) days, or a request for an extension submitted for consideration. Otherwise, the project will be considered abandoned and a new application will be required to proceed.

DEVELOPMENT SERVICES DEPARTMENT
BUILDING DIVISION
CITY OF KISSIMMEE
101 CHURCH ST; SUITE 120
KISSIMMEE, FLORIDA 34741-5054



TRANSMITTAL FOR PLAN REVIEW

ADDRESS: 2046 VALENCIA CIR
PERMIT NUMBER: MSR-21-0197

DATE: 1/5/2022

**This permit has been
DISAPPROVED.**

Please see below the comments/conditions (if applicable):

ENGINEERING DEPARTMENT - Erika Allen - 407.518.2168 - Erika.Allen@kissimmee.gov

1. Please add the following information to the site plan:
 - a. Pre-development lot drainage patterns
 - b. Post-development lot drainage patterns
2. If any new grading or fill is proposed, please provide a grading plan, prepared by a licensed Professional Engineer to include the following:
 - a. All survey and site plan information mentioned above
 - b. Location, extent, and amount excavation and fill to be done
3. If no new fill or lot grading will be done with this development, indicate as a note on the site plan:
"No new fill or lot grading proposed with this development."
4. Please add the following note to the site plan: "New construction to be done so as not to impose any additional runoff onto nor impede runoff from adjacent properties."

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

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

Additional comments may be forthcoming as a result of revisions to the plans, any new changes in the information provided, future plan review up to plan approval and permitting and/or with submittal of supporting documentation.

Provide a response to comments within one hundred eighty (180) days, or a request for an extension submitted for consideration. Otherwise, the project will be considered abandoned and a new application will be required to proceed.

INSPECTION WORKSHEET (IBR-008540-2023)

City of Kissimmee

Cellphone: XXX-XXX-XXXX. Address: XXX XXXXX BLVD XXXX

Case Number: MSR-22-0906
Inspection Date: Mon Apr 17, 2023
Inspector: Martinez, Luis

Case Module: Permit
Inspection Status: Approved
Inspection Type: Final Pool (Res)

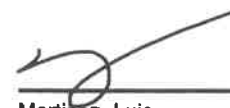
Job Address: 2046 VALENCIA CIR
KISSIMMEE, FL, 34741

Parcel Number: 20-25-29-1875-0001-0050

Contact Type	Company Name	Name
Property Owner		HOMS, FERNANDO
Applicant	3VD CONSTRUCTIONS LLC	VASQUEZ MATA, JUAN
Contractor	3VD CONSTRUCTIONS LLC	VASQUEZ MATA, JUAN

Checklist Item	Status
General Comments	NA

Note: An Engineering letter has been attached to the file.


Martinez, Luis

2046
Valencia

Permit Number	Permit Type	Permit Work C...	Permit Status	Application Da... ↓	Expiration Date	Final Date	Description	Main Address
<u>MSR-23-0500</u>	Miscellaneous (Residential)	Fence/Wall	Finalized	08/17/2023	04/22/2024	10/26/2023	new aluminum gate	2046 VALENCIA CIR
<u>ER-23-0214</u>	Electrical (Residential)	Sub Permit	Void	04/06/2023			ELECTRICAL POOL	2046 VALENCIA CIR
<u>ER-23-0208</u>	Electrical (Residential)	Sub Permit	Finalized	04/04/2023	10/09/2023	04/21/2023	WIRING POOL	2046 VALENCIA CIR
<u>MSR-22-0906</u>	Miscellaneous (Residential)	Pool	Finalized	09/21/2022	10/16/2023	04/21/2023	NEW ABOVE GROUND POOL (20'X5'-9"). TO LEVELIZE: ALTERATION (DEMOLITION) OF THE POOL TO COMPLY WITH SETBACKS. ADDITION (TWO COVERED PORCH) AND PAVEMENT-CONCRETE SLAB TO DEMOLITION. TO LEVELIZE: ALTERATION OF TWO COVERED PORCHES TO COMPLY WITH SETBACKS AND REMOVED PAVERS AND CONCRETE TO COMPLY WITH MINIMUM IMPERVIOUS AREA.	2046 VALENCIA CIR
<u>MSR-22-0902</u>	Miscellaneous (Residential)	Accessory Structure	Finalized	09/21/2022	10/11/2023	04/16/2023		2046 VALENCIA CIR
<u>ER-22-0349</u>	Electrical (Residential)	Stand Alone	Finalized	05/11/2022	01/24/2023	07/29/2022	provide power motor gate 20a 120v 2ph	2046 VALENCIA CIR
<u>MSR-22-0179</u>	Miscellaneous (Residential)	Accessory Structure	Disapproved Review	03/07/2022	10/08/2022		OPEN PORCH WITH ROOF INSULATED PANEL	2046 VALENCIA CIR
<u>MSR-22-0177</u>	Miscellaneous (Residential)	Pool	Superseded	03/07/2022	09/03/2022		ABOVE GROUND POOL Superseded MSR-22-0906 20'X11'X4' DEEP 1. install new Gate Motor 2HP 120V. 20A 2. install new Water fall 1 1/2 HP 120V 20A	2046 VALENCIA CIR
<u>BR-22-0283</u>	Building (Residential)	Exterior Alteration	Void	02/28/2022				2046 VALENCIA CIR
<u>MSR-21-0197</u>	Miscellaneous (Residential)	Accessory Structure	Superseded	12/31/2021	09/23/2022		Carport	2046 VALENCIA CIR
<u>BP-21-02085</u>	Building Permit	Roof/Re-Roof	Finalized	06/22/2021	05/23/2022	11/24/2021	SHINGLES NOA 16-04 25.01	2046 VALENCIA CIR



CITY OF KISSIMMEE

Office of the City Clerk
101 Church Street . Kissimmee, Florida 34741-5054 . Phone 407-518-2308 . FAX 407-518-2261

TRANSMITTAL

DATE October 16, 2023

TO: Fernando Homs
14501 Tabago Bay Drive
Winter Garden, FL 34787

FROM: City of Kissimmee
City Clerk's Office
101 Church Street
Kissimmee, FL 34741

SUBJECT: Claim of Lien – Case #: BZ-21-0007
BZ-21-00010
BZ-21-00017
Parcel ID #: 20-25-29-1875-0001-0050
2046 Valencia Circle

\$4000
\$1500
\$4000

Attached please find a copy of the above-mentioned Claim of Lien(s) placed against your property. These lien(s) were filed on October 5, 2023, and returned to our office from the Osceola County Clerk of the Courts Recording Division.

If you have any questions or you would like a current pay-off on this lien(s), please contact the Code Enforcement Department at 407-518-2133.

COPY: Mark Vazquez, Code Enforcement Manager

Code Case Number: CE-BZ-21-00010

Code Case Details | Tab Elements | Main Menu

Code Case Type: Building/Zoning Opened: 11/24/2021 Closed: 11/02/2022
Status: Special Magistrate Project Name:
Assigned To: Risper, Carlos District: Zone 4
Description: Pool installed at the rear of the residence without a permit.

Locations Fees Inspections Attachments Contacts **Violations**

Violations | First Tab | Code Case Details | Main Menu

Violations

						Sort	Code
Code	Description	Status	Priority	Citation Issue Date	Compliance Date	Resolved Date	
9-251 - BUILDING PERMITS	The latest edition of the state building code and reference standards are hereby adopted and binding within the corporate limits of the city and police jurisdictions thereof. A copy of the Florida Building Code, also referred to herein as the state building code and referenced standards, is on file in the office of the city manager. As identified in Florida Building Code, Section 105.1 any owner or owner's authorized agent who intends to construct, enlarge, alter, repair, move, demolish or change the occupancy of a building or structure, or to erect, install, enlarge, alter, repair, remove, convert or replace any impact-resistant coverings, electrical, gas, mechanical or plumbing system, the installation of which is regulated by this code, or to cause any such work to be performed, shall first make application to the building official and obtain the required permit.	In Violation	Medium	11/24/2021	12/10/2021		

Code Case Number: CE-BZ-21-00007

Code Case Details | Tab Elements | Main Menu

Code Case Type: Building/Zoning **Opened:** 11/19/2021 **Closed:** 11/28/2022
Status: Special Magistrate **Project Name:** **District:** Zone 4
Assigned To: Risper, Carlos
Description: Room/Garage added to residence without a permit.

Locations Fees Inspections Attachments Contacts **Violations**

Violations | First Tab | Code Case Details | Main Menu

Violations

Sort: Code

Code	Description	Status	Priority	Citation Issue Date	Compliance Date	Resolved Date
9-251 - BUILDING PERMITS	The latest edition of the state building code and reference standards are hereby adopted and binding within the corporate limits of the city and police jurisdictions thereof. A copy of the Florida Building Code, also referred to herein as the state building code and referenced standards, is on file in the office of the city manager. As identified in Florida Building Code, Section 105.1 any owner or owner's authorized agent who intends to construct, enlarge, alter, repair, move, demolish or change the occupancy of a building or structure, or to erect, install, enlarge, alter, repair, remove, convert or replace any impact-resistant coverings, electrical, gas, mechanical or plumbing system, the installation of which is regulated by this code, or to cause any such work to be performed, shall first make application to the building official and obtain the required permit.	In Violation	High	11/19/2021	12/02/2021	

Code Case Number: CE-BZ-21-00017

Code Case Details | Tab Elements | Main Menu

Code Case Type: Building/Zoning

Opened: 12/09/2021

Closed: 11/28/2022

Status: Special Magistrate

Project Name:

District: Zone 4

Assigned To: Risper, Carlos

Description: Structure added to the rear of the main residence without a permit.

Locations

Fees

Inspections

Attachments

Contacts

Violations

Violations | First Tab | Code Case Details | Main Menu

Violations

Sort: Code

Code	Description	Status	Priority	Created/Issue Date	Compliance Date	Resolved Date
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2865 Michigan Ave., Kissimmee, Fl.
34744

Phone 407-483-0403 Fax 407-483-0405

Invoice

Date	Invoice #
1/6/2022	9089

Bill To
FERNANDO HOMES, P.A.1105 2046 VELENCIA ST KISSIMMEE FL 34741 407-8736-9370

P.O. No.	Terms	Project

[illegible]

	Subtotal	\$1,575.00
	Sales Tax (0.0%)	\$0.00
	Total	\$1,575.00
	Payments/Credits	\$0.00
	Balance Due	\$1,575.00







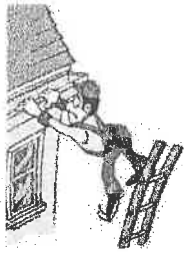












J.R. Light Maintenance, Inc.

2223 Eagles Landing Way
Kissimmee, FL 34744
thequitterspecialists@yahoo.com

Office: 407-289-2022

Cel: 407-346-8308

NAME: Fernando Homs
ADDRESS: 2046 Valencia Circle
Kissimmee, FL 34741

DATE: October 25, 2021.
PHONE: 407-449-0000
EMAIL: fernando@fernandohoms.com

Insulated Aluminum Carport

1. Clean installation area.
2. Installation of new insulated carport on right side of property \$11,980.00

Total Price..... \$11,980.00

Amount Paid: \$11,980.00 [cash]



TERMS OF PAYMENT: No deposit is due at the time of signing and balance is due in full upon completion of work listed above unless a different agreement is reached in writing by us and the homeowner. Past due payments (over 30 days) are subject to a 1.5% (18% APR) late charge plus expenses incurred in collection to include, but not limited to attorney's fees. Such accounts will be turned over to a legal agency for collection.

BUYER'S RIGHT TO CANCEL: If do not want the goods or services, you may cancel this agreement by providing written notice to the seller in person, by telegram, or by mail. This notice must indicate that you do not want the goods or services and must be delivered or postmarked before midnight or the third business day after you sign this agreement. If you cancel this agreement the seller may not keep all or part of any cash down payment. If you fail to cancel within the prescribed amount of time the fee for cancellation will be equal to 50% of the total invoice.

ACCEPTANCE: This estimate is subject to change and may be withdrawn if not accepted within 30 days after the date of the estimate. This estimate is subject to the terms and conditions listed and/or hand-written on the face and the reverse side hereof.

OBSTRUCTIONS: We are not responsible for re-installation of Satellite Dishes, TV Antennas, or any other item or equipment that may interfere with the installation of the above items. Such obstructions will be removed and it is the homeowner's responsibility to arrange for re-installment.

WARRANTY: This job carries a limited FIVE YEAR WARRANTY. We are not responsible for loss or damages due to natural phenomenon, neglect, fair wear and tear, or any alterations not performed by us after completion of the job. Additional written instructions on the care and maintenance of your gutters will be provided to the homeowner upon request.

INVOICE: Upon signing and receipt of deposit this estimate becomes the invoice for the specified amount. This contract shall not be binding on us until approved and signed by one of its agents. Homeowner is responsible for meeting all requirements of the Homeowners Association (if applicable).

According to Florida's Construction Lien Law (sections 713.001-713.37, Florida Statutes) those who work on your property or provide materials and are not paid in full have a right to enforce their claim for payment against your property. This claim is known as a CONSTRUCTION LIEN. If your contractor or a subcontractor fails to pay subcontractors, sub-subcontractors, or material suppliers or neglects other legally required payments, the people who are owed money may look to your property for payment, even if you have paid your contractor in full. If you fail to pay your contractor, your contractor may also have a lien on your property. This means if a lien is filed your property could be sold against your will to pay for labor, materials, or other services that your contractor may have failed to pay. Florida's Construction Lien Law is complex and it is recommended that whenever a specific problem arises, you consult an attorney.

I have read and agree to the terms and conditions listed above and authorize above work to be done:

Customer Signature: _____

Date: 10 / 25 / 2021

Company Rep: _____

Date: ____ / ____ / 20 ____

Work has been completed to my satisfaction:

Customer Signature: _____

Date: ____ / ____ / 20 ____

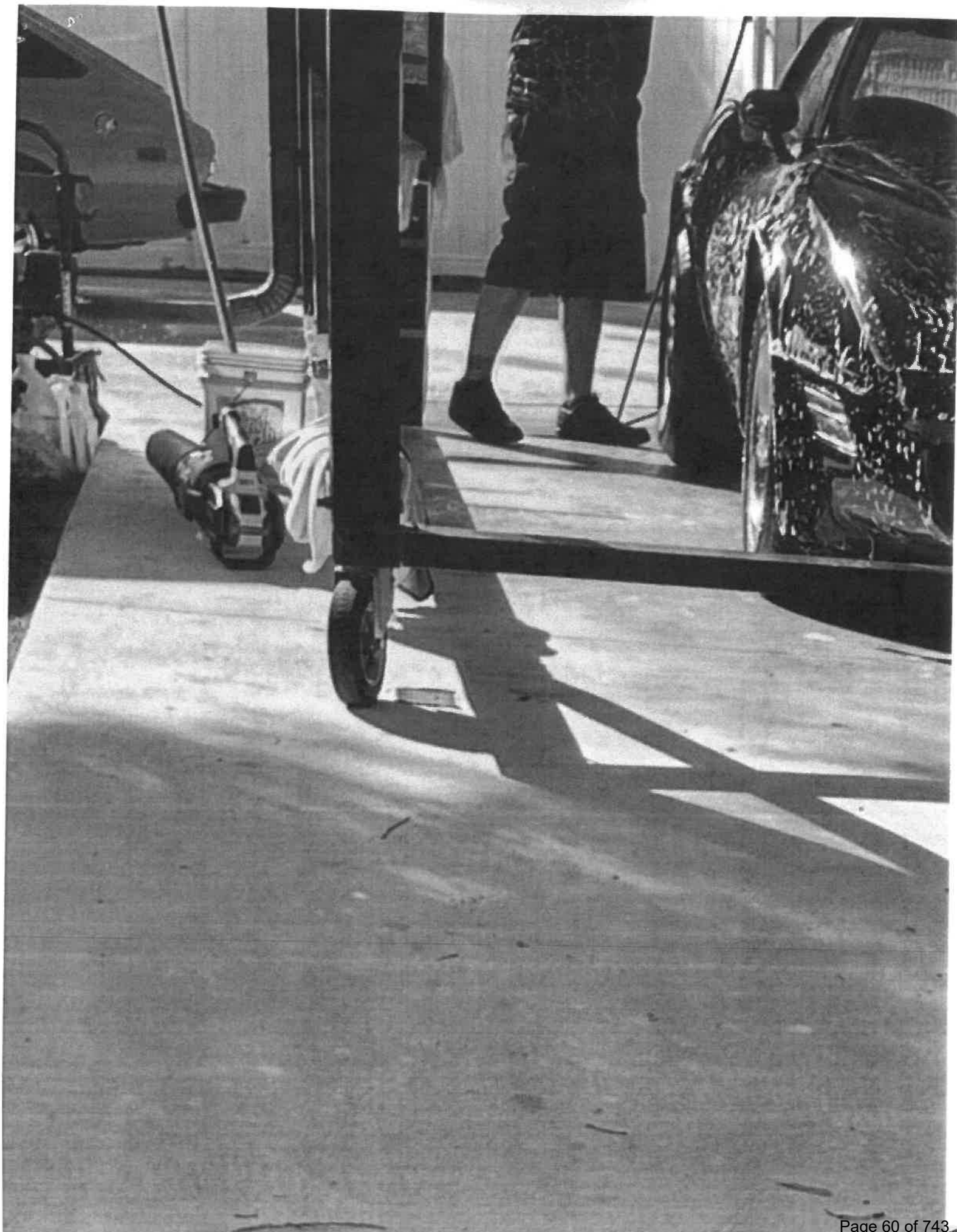
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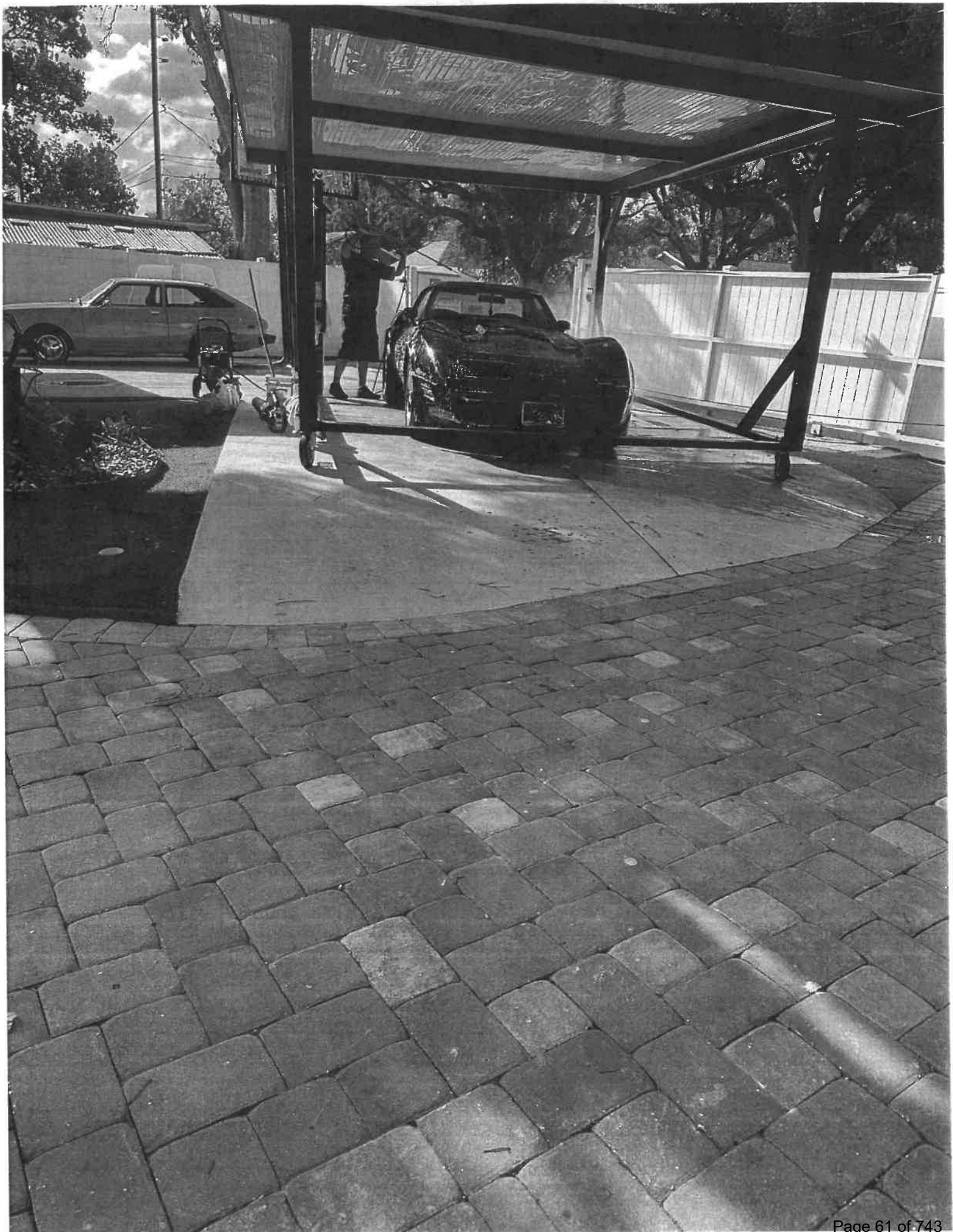


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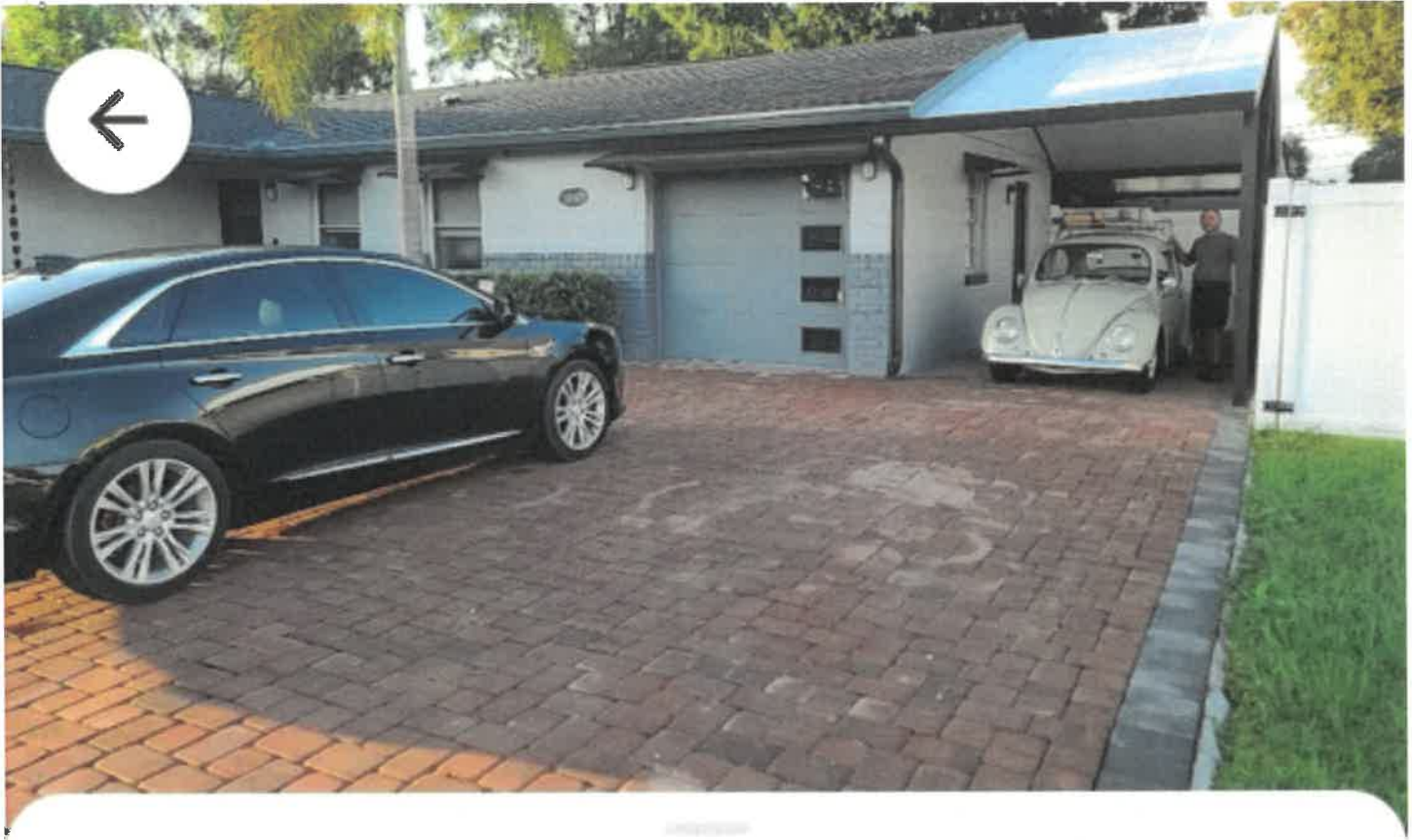












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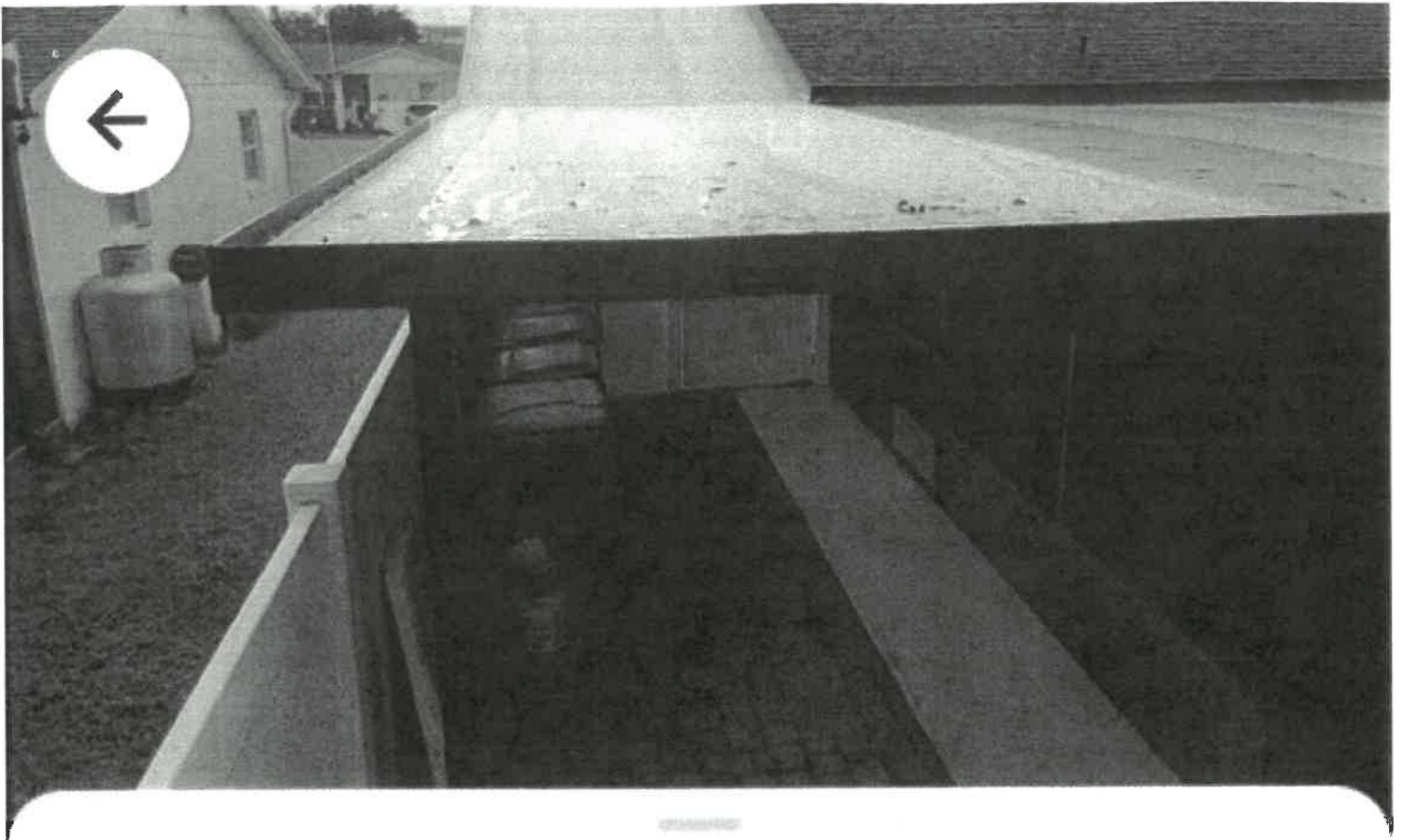


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**BEFORE THE SPECIAL MAGISTRATE
OF THE CITY OF KISSIMMEE, FLORIDA**

CITY OF KISSIMMEE,

Case Number: CE-BZ-21-00017

vs.

Fernando Homs
Respondent,

Owner of the Property located at:
2046 Valencia Circle
Parcel ID#: 20-25-29-1875-0001-0050

**FINDINGS OF FACT, CONCLUSIONS OF LAW AND
ORDER (FIRST VIOLATION)**

On May 9, 2022, the undersigned Special Magistrate heard the matter of the CITY OF KISSIMMEE ("City") vs. FERNANDO HOMES ("Respondent"), which matter involved an alleged violation of City Code Section #9-251 – *Building Permits*, for erecting a structure without a valid permit at the rear of 2046 Valencia Circle, Kissimmee, FL 34741 (the "Property"). As a result of the hearing ("Hearing"), the Special Magistrate issues this Order.

FINDINGS OF FACT AND CONCLUSIONS OF LAW:

Based upon the evidence and testimony presented at the Hearing, the undersigned finds:

1. The violation occurred at the Property assigned with Parcel ID#: 20-25-29-1875-0001-0050. The Property is legally owned by Respondent. City asserted violation of City Code Section #9-251 – *Building Permits*.
2. Documentary evidence and sworn testimony were received and considered by the undersigned Special Magistrate.
3. Respondent was provided a Notice of Violation in accordance with Section 2-3-13 of the City Code and consistent with Sections 162.06 and 162.12, Florida Statutes. Respondent was provided a Notice of Hearing in accordance with Section 2-3-13 of the City Code and consistent with Sections 162.06 and 162.12, Florida Statutes. No objections were made by Respondent or any other person regarding receipt of notice or otherwise.
4. The City met all notice and other Due Process requirements in accordance with Chapter 162, Florida Statutes, including those for the Hearing.
5. City Code Enforcement staff was present, provided sworn testimony and submitted evidence to the Special Magistrate at the Hearing. The Respondent was present to speak and provided sworn testimony at the Hearing.

6. The violation of City Code Section #9-251 – *Building Permits* existed on the Property on the date alleged by the City and Respondent was provided a reasonable amount of time prior to the Hearing to correct said violation.

7. Respondent failed to timely correct the violation prior to the Hearing.

8. At the conclusion of the presentation of evidence, the Parties were allowed to present closing arguments to summarize their respective positions as to the charges under consideration by the Special Magistrate.

9. Based on the testimony and evidence presented, Respondent violated City Code Section #9-251 – *Building Permits*, by failing to properly obtain a permit for the structure located on the rear Property.

10. The City has proven a violation of City Code Section #9-251 – *Building Permits*, by the requisite standard of proof.

ORDER:

NOW, THEREFORE, based upon the foregoing facts and conclusions, and upon the testimony and evidence submitted for consideration, and the Special Magistrate being otherwise fully advised regarding this matter, it is found, determined, and ordered:

1. Respondent is given ninety (90) days, until August 8, 2022, to come into compliance by obtaining a permit for the pool constructed on the Property. Respondent shall be responsible to provide notice of correction of said violation to the City's Code Enforcement Department to be found in compliance.

2. If Respondent fails to correct the violation(s) within the time period set forth herein, a fine will be entered in the amount of **ONE HUNDRED DOLLARS (\$100.00) per day commencing on August 9, 2022 and will continue to accrue until the property is brought back into compliance with City Code.**

3. Future violations of City Code Section #9-251 – *Building Permits* for erecting structure without a valid permit at the rear of the Property shall be classified as a repeat violation.

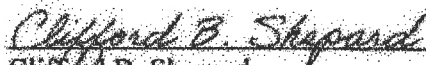
4. These findings shall be binding upon the Property. A certified copy of this Order may be recorded in the public records of Osceola County, Florida, and shall constitute notice to any subsequent purchasers, successors in interest, or assigns to the Property.

5. All future recurrence(s) of any violation(s) addressed herein shall necessitate further proceedings before the Special Magistrate. While the Code Enforcement Officer shall give Respondent notice of the repeat violation, the Code Enforcement Officer is not required to provide Respondent a reasonable time to correct such repeat violation(s). The Special Magistrate, upon finding that such repeat violation(s) exist(s), may impose a fine not to exceed Five Thousand Dollars (\$5,000.00) for each day a repeat violation continues, beginning with the date the repeat violation is found to have occurred by the Code Enforcement Officer.

DONE AND ORDERED on the date below written.

DATED this 17th day of May, 2022

SPECIAL MAGISTRATE FOR THE CITY OF
KISSIMMEE, FLORIDA


Clifford B. Shepard

Original filed with:
Ms. Shawnta Dillard
Code Enforcement Secretary
101 Church Street, Suite 110
Kissimmee, Florida 34741

I HEREBY CERTIFY that on the 18th day of May 2022, a true and correct copy
of the above and foregoing Order was furnished to Respondent(s) standard USPS mail at the
below-listed address.


JAMEARA R. CRESPO
CLERK TO THE SPECIAL MAGISTRATE
FOR THE CITY OF KISSIMMEE, FLORIDA
101 Church Street
Kissimmee, Florida 34741

Copies provided to:
Fernando Homs
2046 Valencia Circle
Kissimmee, FL 34741

City Attorney
101 Church St.
Kissimmee, FL 34741

Fernando Homs
14501 Tabago Bay Drive
Winter Garden, FL 34787

**BEFORE THE SPECIAL MAGISTRATE
OF THE CITY OF KISSIMMEE, FLORIDA**

CITY OF KISSIMMEE,

Case Number: CE-BZ-21-00010

vs.

Fernando Homs
Respondent,

Owner of the Property located at:
2046 Valencia Circle
Parcel ID#: 20-25-29-1875-0001-0050

**FINDINGS OF FACT, CONCLUSIONS OF LAW AND
ORDER (FIRST VIOLATION)**

On May 9, 2022, the undersigned Special Magistrate heard the matter of the CITY OF KISSIMMEE ("City") vs. FERNANDO HOMES ("Respondent"), which matter involved an alleged violation of City Code Section #9-251 – *Building Permits*, for constructing a pool without a valid permit on property located at 2046 Valencia Circle, Kissimmee, FL 34741 (the "Property"). As a result of the hearing ("Hearing"), the Special Magistrate issues this Order.

FINDINGS OF FACT AND CONCLUSIONS OF LAW:

Based upon the evidence and testimony presented at the Hearing, the undersigned finds:

1. The violation occurred at the Property assigned with Parcel ID#: 20-25-29-1875-0001-0050. The Property is legally owned by Respondent. City asserted violation of City Code Section #9-251 – *Building Permits*.
2. Documentary evidence and sworn testimony were received and considered by the undersigned Special Magistrate.
3. Respondent was provided a Notice of Violation in accordance with Section 2-3-13 of the City Code and consistent with Sections 162.06 and 162.12, Florida Statutes. Respondent was provided a Notice of Hearing in accordance with Section 2-3-13 of the City Code and consistent with Sections 162.06 and 162.12, Florida Statutes. No objections were made by Respondent or any other person regarding receipt of notice or otherwise.
4. The City met all notice and other Due Process requirements in accordance with Chapter 162, Florida Statutes, including those for the Hearing.
5. City Code Enforcement staff was present, provided sworn testimony and submitted evidence to the Special Magistrate at the Hearing. The Respondent was present to speak and provided sworn testimony at the Hearing.

6. The violation of City Code Section #9-251 – *Building Permits* existed on the Property on the date alleged by the City and Respondent was provided a reasonable amount of time prior to the Hearing to correct said violation.

7. Respondent failed to timely correct the violation prior to the Hearing.

8. At the conclusion of the presentation of evidence, the Parties were allowed to present closing arguments to summarize their respective positions as to the charges under consideration by the Special Magistrate.

9. Based on the testimony and evidence presented, Respondent violated City Code Section #9-251 – *Building Permits*, by constructing a pool without a valid permit on the Property.

10. The City has proven a violation of City Code Section #9-251 – *Building Permits*, by the requisite standard of proof.

ORDER:

NOW, THEREFORE, based upon the foregoing facts and conclusions, and upon the testimony and evidence submitted for consideration, and the Special Magistrate being otherwise fully advised regarding this matter, it is found, determined, and ordered:

1. Respondent is given ninety (90) days, until **August 8, 2022**, to come into compliance by obtaining a permit for the pool constructed on the Property. Respondent shall be responsible to provide notice of correction of said violation to the City's Code Enforcement Department to be found in compliance.

2. If Respondent fails to correct the violation(s) within the time period set forth herein, a fine will be entered in the amount of **ONE HUNDRED DOLLARS (\$100.00)** per day commencing on **August 9, 2022** and will continue to accrue until the property is brought back into compliance with City Code.

3. Future violations of City Code Section #9-251 – *Building Permits* for constructing a pool without a valid permit on the Property shall be classified as a repeat violation.

4. These findings shall be binding upon the Property. A certified copy of this Order may be recorded in the public records of Osceola County, Florida, and shall constitute notice to any subsequent purchasers, successors in interest, or assigns to the Property.

5. All future recurrence(s) of any violation(s) addressed herein shall necessitate further proceedings before the Special Magistrate. While the Code Enforcement Officer shall give Respondent notice of the repeat violation, the Code Enforcement Officer is not required to provide Respondent a reasonable time to correct such repeat violation(s). The Special Magistrate, upon finding that such repeat violation(s) exist(s), may impose a fine not to exceed Five Thousand Dollars (\$5,000.00) for each day a repeat violation continues, beginning with the date the repeat violation is found to have occurred by the Code Enforcement Officer.

DONE AND ORDERED on the date below written.

DATED this 17th day of May, 2022

SPECIAL MAGISTRATE FOR THE CITY OF
KISSIMMEE, FLORIDA

Clifford B. Shepard
Clifford B. Shepard

Original filed with:
Ms. Shawnta Dillard
Code Enforcement Secretary
101 Church Street, Suite 110
Kissimmee, Florida 34741

I HEREBY CERTIFY that on the 18th day of May 2022, a true and correct copy of the above and foregoing Order was furnished to Respondent(s) standard USPS mail at the below-listed address.

Jamien R. Crespo
JAMIEARA R. CRESPO
CLERK TO THE SPECIAL MAGISTRATE
FOR THE CITY OF KISSIMMEE, FLORIDA
101 Church Street
Kissimmee, Florida 34741

Copies provided to:
Fernando Homs
2046 Valencia Circle
Kissimmee, FL 34741

City Attorney
101 Church St.
Kissimmee, FL 34741

Fernando Homs
14501 Tabago Bay Drive
Winter Garden, FL 34787

3

**BEFORE THE SPECIAL MAGISTRATE
OF THE CITY OF KISSIMMEE, FLORIDA**

CITY OF KISSIMMEE,

Case Number: CE-BZ-21-00007

vs.

Fernando Homs
Respondent,

Owner of the Property located at:
2046 Valencia Circle
Parcel ID#: 20-25-29-1875-0001-0050

**FINDINGS OF FACT, CONCLUSIONS OF LAW AND
ORDER (FIRST VIOLATION)**

On May 9, 2022, the undersigned Special Magistrate heard the matter of the CITY OF KISSIMMEE ("City") vs. FERNANDO HOMES ("Respondent"), which matter involved an alleged violation of City Code Section #9-251 – *Building Permits*, for construction of an additional garage without a valid permit at the front of 2046 Valencia Circle, Kissimmee, FL 34741 (the "Property"). As a result of the hearing ("Hearing"), the Special Magistrate issues this Order.

FINDINGS OF FACT AND CONCLUSIONS OF LAW:

Based upon the evidence and testimony presented at the Hearing, the undersigned finds:

1. The violation occurred at the Property assigned with Parcel ID#: 20-25-29-1875-0001-0050. The Property is legally owned by Respondent. City asserted violation of City Code Section #9-251 – *Building Permits*.
2. Documentary evidence and sworn testimony were received and considered by the undersigned Special Magistrate.
3. Respondent was provided a Notice of Violation in accordance with Section 2-3-13 of the City Code and consistent with Sections 162.06 and 162.12, Florida Statutes. Respondent was provided a Notice of Hearing in accordance with Section 2-3-13 of the City Code and consistent with Sections 162.06 and 162.12, Florida Statutes. No objections were made by Respondent or any other person regarding receipt of notice or otherwise.
4. The City met all notice and other Due Process requirements in accordance with Chapter 162, Florida Statutes, including those for the Hearing.
5. City Code Enforcement staff was present, provided sworn testimony and submitted evidence to the Special Magistrate at the Hearing. The Respondent was present to speak and provided sworn testimony at the Hearing.

6. The violation of City Code Section #9-251 – *Building Permits* existed on the Property on the date alleged by the City and Respondent was provided a reasonable amount of time prior to the Hearing to correct said violation.

7. Respondent failed to timely correct the violation prior to the Hearing.

8. At the conclusion of the presentation of evidence, the Parties were allowed to present closing arguments to summarize their respective positions as to the charges under consideration by the Special Magistrate.

9. Based on the testimony and evidence presented, Respondent violated City Code Section #9-251 – *Building Permits*, by constructing an additional garage on the Property without a valid permit.

10. The City has proven a violation of City Code Section #9-251 – *Building Permits*, by the requisite standard of proof.

ORDER:

NOW, THEREFORE, based upon the foregoing facts and conclusions, and upon the testimony and evidence submitted for consideration, and the Special Magistrate being otherwise fully advised regarding this matter, it is found, determined, and ordered:

1. Respondent is given ninety (90) days, until **August 8, 2022**, to come into compliance by obtaining a permit for the additional garage located at the front of the Property. Respondent shall be responsible to provide notice of correction of said violation to the City's Code Enforcement Department to be found in compliance.

2. If Respondent fails to correct the violation(s) within the time period set forth herein, a fine will be entered in the amount of **ONE HUNDRED DOLLARS (\$100.00)** per day commencing on **August 9, 2022** and will continue to accrue until the property is brought back into compliance with City Code.

3. Future violations of City Code Section #9-251 – *Building Permits* for construction of an additional garage on the Property without a valid permit shall be classified as a repeat violation.

4. These findings shall be binding upon the Property. A certified copy of this Order may be recorded in the public records of Osceola County, Florida, and shall constitute notice to any subsequent purchasers, successors in interest, or assigns to the Property.

5. All future recurrence(s) of any violation(s) addressed herein shall necessitate further proceedings before the Special Magistrate. While the Code Enforcement Officer shall give Respondent notice of the repeat violation, the Code Enforcement Officer is not required to provide Respondent a reasonable time to correct such repeat violation(s). The Special Magistrate, upon finding that such repeat violation(s) exist(s), may impose a fine not to exceed Five Thousand Dollars (\$5,000.00) for each day a repeat violation continues, beginning with the date the repeat violation is found to have occurred by the Code Enforcement Officer.

DONE AND ORDERED on the date below written.

DATED this 17th day of May, 2022

**SPECIAL MAGISTRATE FOR THE CITY OF
KISSIMMEE, FLORIDA**

Clifford B. Shepard
Clifford B. Shepard

Original filed with:
Ms. Shawnta Dillard
Code Enforcement Secretary
101 Church Street, Suite 110
Kissimmee, Florida 34741

I HEREBY CERTIFY that on the 18th day of May 2022, a true and correct copy of the above and foregoing Order was furnished to Respondent(s) standard USPS mail at the below-listed address.

Jameara R. Crespo
JAMEARA R. CRESPO
CLERK TO THE SPECIAL MAGISTRATE
FOR THE CITY OF KISSIMMEE, FLORIDA
101 Church Street
Kissimmee, Florida 34741

Copies provided to:
Fernando Homs
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City Attorney
101 Church St.
Kissimmee, FL 34741

Fernando Homs
14501 Tabago Bay Drive
Winter Garden, FL 34787

Exhibit "B"
Discussion Item 8.A.
Estimated Cost of City's Expenses

2046 Valencia Circle

Estimated Cost of City's Expenses*

Code Enforcement Case	Staff and Material Costs	Amount
CE-BZ-21-00007	Special Magistrate (SP)	\$353.00
	Code Enforcement Staff SP meeting	\$100.00
	Code Enforcement Inspections (16)	\$466.72
	Code Enforcement Secretary case prep and invoicing	\$53.88
	Postage	\$33.52
CE-BZ-21-00010	Special Magistrate (SP)	\$353.00
	Code Enforcement Staff SP meeting	\$100.00
	Code Enforcement Inspections (14)	\$408.38
	Code Enforcement Secretary case prep and invoicing	\$215.52
	Postage	\$32.34
CE-BZ-21-00017	Special Magistrate (SP)	\$353.00
	Code Enforcement Staff SP meeting	\$100.00
	Code Enforcement Inspections (14)	\$466.72
	Code Enforcement Secretary case prep and invoicing	\$251.44
	Postage	\$33.52
Total		\$3,321.04

*This estimate only includes Code Enforcement Staff and processes. The following Departments were not included in the estimate of cost to the City.

- City Attorney's Office
- City Clerk's Office
- City Manager's Office.

This estimate does not include cost such as gas and other equipment used for each case.

ITEM 7.B

Approval of a Resolution adopting the Third Amendment to the Local Housing Assistance Plan Covering Fiscal Year 2022 through 2024

Request

Approval of Third Amendment to the Local Housing Assistance Plan covering SHIP Fiscal Years 2022-2024 and adopt the accompanying Resolution.

Explanation

The Local Housing Assistance Plan (LHAP) is the document that describes the different programs the City of Kissimmee has adopted to be funded with SHIP funds. After a careful review of the strategies listed in the Plan and the maximum allowed assistance per strategy, the below proposed amendments are intended to clarify and address some of the shortcomings of the current LHAP that prevent projects from being implemented:

Demolition and Reconstruction:

1. Increase the maximum award amount from \$250,000 to \$350,000. The increase in cost is to allow for additional activities such as demolition and clearance of the existing unit. Also, to cover relocation costs of the occupants of the home.
2. Change the maximum amount listed on the table from \$250,000 to \$350,000.
3. Allow for the use of modular homes as replacement units.

Disaster Assistance – Owner Occupied Housing

1. Increase the maximum award amount from \$20,000 to \$40,000. The increase in cost is to allow for roof repairs/replacements even if the property was uninsured. Also, to cover additional general costs such as unseen rotted wood.

New Construction – Infill Housing

1. Increase the maximum award amount from \$25,000 to \$300,000 per unit (for the developer) to assist with the construction of the infill housing unit and \$60,000 maximum award amount for the homebuyer to assist with down payment costs and mortgage reduction. The increase in cost will allow for increases in construction costs and sales prices.

Disaster Assistance – Rental Housing

1. Increase maximum award assistance for deductible assistance per project from \$50,000 to \$100,000. The increase in cost will allow for an increase in construction costs.
2. Establish maximum award assistance for roof repairs for multifamily units per project at \$250,000.

Rapid Rehousing

1. Increase maximum award assistance from \$15,000 to \$24,000. The increase in cost will allow for an increase in rental rates in Kissimmee.

Recommendation

Approve the Third Amendment to the local Housing Assistance Plan covering SHIP Fiscal Years 2022 through 2024 and adopt the accompanying Resolution.

REQUESTED CITY COMMISSION ACTION:

Approve

Department: Development Services

Presenter:

Attachment(s):

1. Kissimmee-2022lhap_Rev. 3
2. (S) Amended Resolution - 3rd amendment



STATE HOUSING INITIATIVES PARTNERSHIP PROGRAM

LOCAL HOUSING ASSISTANCE PLAN (LHAP)

COVERING THE YEARS

2022-2023, 2023-2024, 2024-2025

April 19, 2022

(Revision #3: February 20, 2024)

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A. Administrative Budget for each fiscal year covered in the Plan	
B. Timeline for Estimated Encumbrance and Expenditure	
C. Housing Delivery Goals Chart (HDGC) For Each Fiscal Year Covered in the plan	
D. Signed LHAP Certification	
E. Signed, dated, witnessed or attested adopting resolution	
F. Ordinance: (If changed from the original creating ordinance)	

G. Interlocal Agreement	
-------------------------	--

I. Program Details:

A. LG(s)

Name of Local Government	City of Kissimmee
Does this LHAP contain an interlocal agreement?	No
If yes, name of other local government(s)	N/A

B. Purpose of the program:

- To meet the housing needs of the very low, low and moderate-income households;
- To expand production of and preserve affordable housing; and
- To further the housing element of the local government comprehensive plan specific to affordable housing.

C. Fiscal years covered by the Plan: 2022-2023, 2023-2024, 2024-2025

D. Governance: The SHIP Program is established in accordance with Section 420.907-9079, Florida Statutes and Chapter 67-37, Florida Administrative Code. Cities and Counties must be in compliance with these applicable statutes, rules and any additional requirements as established through the Legislative process.

E. Local Housing Partnership: The SHIP Program encourages building active partnerships between government, lending institutions, builders and developers, not-for-profit and community-based housing providers and service organizations, providers of professional services related to affordable housing, advocates for low-income persons, real estate professionals, persons or entities that can provide housing or support services and lead agencies of the local continuums of care.

F. Leveraging: The Plan is intended to increase the availability of affordable residential units by combining local resources and cost saving measures into a local housing partnership and using public and private funds to reduce the cost of housing. SHIP funds may be leveraged with or used to supplement other Florida Housing Finance Corporation programs and to provide local match to obtain federal housing grants or programs.

G. Public Input: Public input was solicited through the local newspaper and the city's website in the advertising of the Local Housing Assistance Plan.

H. Advertising and Outreach: SHIP funding availability will be advertised in a newspaper of general circulation and periodicals serving ethnic and diverse neighborhoods, at least 30 days before the beginning of the application period. If no funding is available due to a waiting list, no notice of funding availability is required.

I. Waiting List/Priorities: A waiting list has been established when there are eligible applicants for strategies that no longer have funding available. Those households on the waiting list are notified of their status at least on an annual basis. Applicants will be maintained in an order that is consistent with the time completed applications were submitted as well as any established funding priorities as described in this plan.

The following priorities for funding (very low income, Special Needs, etc.) described/listed here apply to all strategies unless otherwise stated in an individual strategy in Section II:

- | |
|--------------------------------|
| 1. Very low with Special Needs |
| 2. Very Low Income |

- J. Discrimination:** In accordance with the provisions of ss.760.20-760.37, it is unlawful to discriminate on the basis of race, color, religion, sex, national origin, age, handicap, or marital status in the award application process for eligible housing.
- K. Support Services and Counseling:** Support services are available from various sources. Available support services may include, but are not limited to: Homeownership Counseling (Pre and Post), Credit Counseling, Tenant Counseling, and Foreclosure Counseling.
- L. Purchase Price Limits:** The sales price or value of new or existing eligible housing may not exceed 90% of the average area purchase price in the statistical area in which the eligible housing is located. Such average area purchase price may be that calculated for any 12-month period beginning not earlier than the fourth calendar year prior to the year in which the award occurs. The sales price of new and existing units, which can be lower but may not exceed 90% of the average area purchase price established by the U.S. Treasury Department or as described above.

The methodology used is:

U.S. Treasury Department	X
Local HFA Numbers	

- M. Income Limits, Rent Limits and Affordability:** The Income and Rent Limits used in the SHIP Program are updated annually by the Department of Housing and Urban Development and posted at www.floridahousing.org.

"Affordable" means that monthly rents or mortgage payments including taxes and insurance do not exceed 30 percent of that amount which represents the percentage of the median annual gross income for the households as indicated in Sections 420.9071, F.S. However, it is not the intent to limit an individual household's ability to devote more than 30% of its income for housing, and housing for which a household devotes more than 30% of its income shall be deemed Affordable if the first institutional mortgage lender is satisfied that the household can afford mortgage payments in excess of the 30% benchmark and in the case of rental housing does not exceed those rental limits adjusted for bedroom size.

- N. Welfare Transition Program:** Should an eligible sponsor be used, a qualification system and selection criteria for applications for Awards to eligible sponsors shall be developed, which includes a description that demonstrates how eligible sponsors that employ personnel from the Welfare Transition Program will be given preference in the selection process.
- O. Monitoring and First Right of Refusal:** In the case of rental housing, the staff and any entity that has administrative authority for implementing the local housing assistance plan assisting rental developments shall annually monitor and determine tenant eligibility or, to the extent another governmental entity provides periodic monitoring and determination, a municipality, county or local housing financing authority may rely on such monitoring and determination of tenant eligibility. However, any loan or grant in the original amount of \$10,000 or less shall not be subject to these annual monitoring and determination of tenant eligibility

requirements. Tenant eligibility will be monitored annually for no less than 15 years or the term of assistance whichever is longer unless as specified above. Eligible sponsors that offer rental housing for sale before 15 years or that have remaining mortgages funded under this program must give a first right of refusal to eligible nonprofit organizations for purchase at the current market value for continued occupancy by eligible persons.

- P. Administrative Budget:** A line-item budget is attached as Exhibit A. The city/county finds that the moneys deposited in the local housing assistance trust fund are necessary to administer and implement the local housing assistance plan.

Section 420.9075 Florida Statute and Chapter 67-37, Florida Administrative Code, states: “A county or an eligible municipality may not exceed the 5 percent limitation on administrative costs, unless its governing body finds, by resolution, that 5 percent of the local housing distribution plus 5 percent of program income is insufficient to adequately pay the necessary costs of administering the local housing assistance plan.”

Section 420.9075 Florida Statute and Chapter 67-37, Florida Administrative Code, further states: “The cost of administering the program may not exceed 10 percent of the local housing distribution plus 5 percent of program income deposited into the trust fund, except that small counties, as defined in s. 120.52(19), and eligible municipalities receiving a local housing distribution of up to \$350,000 may use up to 10 percent of program income for administrative costs.” The applicable local jurisdiction has adopted the above findings in the resolution attached as Exhibit E.

- Q. Program Administration:** Administration of the local housing assistance plan will be performed by:

Entity	Duties	Admin. Fee Percentage
Local Government	Administration of the local housing assistance plan will be wholly performed and maintained by the City of Kissimmee.	10%

- R. First-time Homebuyer Definition:** For any strategies designed for first-time homebuyers, the following definition will apply: *An individual who has had no ownership in a principal residence during the 3-year period ending on the date of purchase of the property. This includes a spouse (if either meets the above test, they are considered first-time homebuyers). A single parent who has only owned a home with a former spouse while married. An individual who is a displaced homemaker and has only owned with a spouse. An individual who has only owned a principal residence not permanently affixed to a permanent foundation in accordance with applicable regulations. An individual who has only owned a property that was not in compliance with state, local or model building codes and which cannot be brought into compliance for less than the cost of constructing a permanent structure.*
- S. Project Delivery Costs:** Must state the specific strategies and the specific activities that will be charged as a PDC. *State the percentage and/or maximum dollar amount.*

1. Owner Occupied Rehabilitation
 - a. Inspections and write ups – Maximum \$1,200
 - b. Recording and closing fees – Maximum \$1,500
2. Demolition and Reconstruction
 - a. Inspections and write ups – Maximum \$1,200
 - b. Recording and closing fees – Maximum \$1,500

T. Essential Service Personnel Definition (ESP): ESP includes teachers and educators, other school district, community college, and university employees, police and fire personnel, health care personnel, and skilled building trades personnel.

U. Describe efforts to incorporate Green Building and Energy Saving products and processes: The City of Kissimmee will encourage green building requirements in the building specifications for all new construction and rehabilitation projects to include, but not limited to, the following: Energy Star rated windows, appliances, hot water heater and ceiling fans. Low flow plumbing fixtures, insulated exterior doors, increased insulations for walls and ceiling, higher efficiency HVAC units and programmable thermostats.

In building design for redevelopment activities, green building principles will be considered in addition to energy efficiency features. The City will encourage green design features such as native plant landscaping to conserve water; pervious parking surfaces (where permitted); use of gas where available; orientation of buildings to reduce energy demand; and bicycle, pedestrian, and bus amenities to encourage alternatives to automobile transportation. The City will also encourage housing developers to reduce on site impact on natural resources.

V. Describe efforts to meet the 20% Special Needs set-aside:) The City of Kissimmee gives preference to persons applying for the different programs who meet the specials needs definition listed in Florida State Statutes 420.0004(13). Depending on availability of funding, the City may provide funding notification to local organizations informing them of opportunities available to provide services to its special needs clients.

W. Describe efforts to reduce homelessness: The City of Kissimmee does not receive direct funding from the McKinney Vento Act program funds; however, the City is an active participant of the Central Florida Continuum of Care. Amongst the efforts to reduce homelessness, the City of Kissimmee provides direct rent assistance and emergency rental assistance (homeless prevention) through the SHIP program. In addition, the City uses CDBG funds to pay for the cost to administer a number of local homeless prevention initiatives. The City Commission has identified as one of their goals for the upcoming years, the design and construction of a non-congregate homeless shelter.

Section II. LHAP Strategies :

A. Purchase Assistance	Code 1,2
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a. Summary: This strategy helps homebuyers with funds to reduce the amount needed to purchase a home.

b. Fiscal Years Covered: 2022-2023, 2023-2024, 2024-2025

c. Income Categories to be served: Very low, low and moderate

d. Maximum award: \$15,000 for purchase without rehab and \$25,000 for purchase with rehab

e. Terms:

1. Repayment loan/deferred loan/grant: Deferred loan secured by a note and mortgage
2. Interest Rate: 0 %

3. Years in loan term: 10
 4. Forgiveness: Forgiven at 10% per year
 5. Repayment: No repayment required as long as the loan is in good standing
 6. Default: Loan is due and payable if:
 - a. Sale or transfer of property
 - b. Loss of homestead exemption status
 - c. Conversion to rental property
 - d. Failure to occupy the home as primary residence
 - e. Foreclosure
 - f. Death of all parties on the mortgage
 - g. Refinance of first mortgage, in cases where cash out occurs
- f. Recipient Selection Criteria:
1. Participants will be selected for assistance based on a first qualified, first served basis with priorities described in Section I.I after submitting an application to the City of Kissimmee and providing all requested written documentation.
 2. Participants must be first time homebuyers.
- g. Sponsor Selection Criteria: N/A
- h. Additional Information:
1. Funds may be used for down payment and closing cost assistance, prepaid items, mortgage principal reduction. When using this strategy, minor rehabilitation items, at a total cost of no more than \$10,000, are also eligible.
 2. New construction or existing single family and attached homes are eligible for assistance.
 3. Applicants must secure first mortgage by a City approved lender or by a not-for-profit organization such as Habitat for Humanity.
 4. The first mortgage must be fixed rate, with no pre-payment penalty, negative amortization, balloon loan, or owner financing.
 5. The assistance from this program can be combined with other DPA programs available through the state or locally.
 6. Counseling from a HUD approved agency trained in foreclosure counseling is mandatory. Proof of program completion is required before assistance can be provided.
 7. The applicant must provide a minimum of \$1,000 towards the purchase of the property.
 8. Taxes and insurance shall be included in an escrow account established and administered by the first mortgage holder or its agent.
 9. Homes must be a single family detached home, townhouse, condominium unit owned fee-simple or manufactured home owned fee simple. Only post 1994 manufactured homes that bear the Florida Department of Economic Opportunity (DEO) Insignia Seal and that are installed according to state guidelines will be eligible for assistance.
 10. If additional funds are provided for needed repairs, these repairs must be done by an eligible license contractor/subcontractor. Proof of eligibility and completion of the work must be provided prior to the City disbursing the moneys to the contractor/subcontractor.
 11. If the home is foreclosed on by a superior mortgage holder, the City will try to recapture funds through the legal process if it is determined that adequate funds may be available to justify pursuing a repayment.
 12. This program is subject to funding availability and may not be available every fiscal year.

B. Owner Occupied Rehabilitation	Code 3, 6
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- a. Summary: This strategy is designed to assist eligible homeowners to make the repairs or improvements needed for safe and sanitary habitation, and/or correction of substantial building code noncompliance of single family detached houses, townhouses, and manufacturing homes when the owner owns the land. The Roof Replacement Program falls under this strategy.
- b. Fiscal Years Covered: 2022-2023, 2023-2024, 2024-2025
- c. Income Categories to be served: Very low and low
- d. Maximum award: Roof Replacement: \$40,000; Owner Occupied Rehabilitation: \$120,000
- e. Terms:
1. Repayment loan/deferred loan/grant: Deferred loan secured by a note and mortgage
 2. Interest Rate: 0 %
 3. Years in loan term: 5 for Roof Replacement only and 10 for regular Owner Occupied Rehabilitation
 4. Forgiveness: Roof Replacement
 - a. Forgiven at 20% per year
 - Forgiveness: Owner Occupied Rehabilitation
 - a. The loan balance will not decrease during first five years. However, beginning with year 6th to the end of the term, the balance will be forgiven at 20% per year.
 5. Repayment: No repayment required as long as the loan is in good standing
 6. Default: Loan is due and payable if:
 - a. Sale or transfer of property
 - b. Loss of homestead exemption status
 - c. Conversion to rental property
 - d. Failure to occupy the home as primary residence
 - e. Foreclosure
 - f. Death of all parties on the mortgage
 - g. Refinance of first mortgage, in cases where cash out or bill consolidation occurs
- f. Recipient Selection Criteria:
1. Participants will be selected for assistance based on a first qualified, first served basis with priorities described in Section I.I after submitting a completed application to the City of Kissimmee and providing all requested written documentation.
- g. Sponsor Selection Criteria: N/A
- h. Additional Information:
1. No more than every three (3) years, the City shall seek out one or more non-profit sub-recipient(s) to manage the construction for each rehab job. The agency(ies) will be selected through a Request for Qualification (RFQ) process. The duties and responsibilities are detailed in the contract between the agency and the City. A third party provides the City with an inspection report and a scope of work. The non-profit agency, after doing its own inspection, provides the City with the final cost for the job.

After all parties have accepted, the City, the non-profit agency/contractor, and the homeowner(s) enter into an agreement for the rehabilitation of the home.

2. The actual cost of rehabilitating the home and related soft costs (such as closing costs, inspections/testing, and rehabilitation/construction management) are eligible.
3. Homes requiring emergency repairs shall be given priority in the waiting list and receive rehabilitation assistance first. Emergency repairs may include but are not limited to: structural damage, unsafe electrical, plumbing, water damage, mold remediation and issues with lateral water/sewer connections. In certain situations a damaged roof may be consider an emergency (for example, if the roof is leaking profusely or part of the roof or ceiling in the living area of the house comes in). Households with persons with special needs shall also be given priority over all others.
4. All homes eligible for rehabilitation must be owner occupied and owned with fee simple title.
5. All mortgages, taxes, and special assessments must be current.
6. The applicant must maintain sufficient hazard insurance for the term of the SHIP lien. If the homeowner does not have hazard insurance, SHIP funds may be used to purchase hazard insurance for a period not to exceed one year. Insurance must be in place at the completion of the construction project.
7. The property assisted must be free of liens and judgements. Homes with reverse mortgage loans may only participate in the program if the request for rehabilitation is deemed an emergency by the City's inspector, the City Manager or designee may approve on a case-by-case basis.
8. From time to time, the City may receive requests from local social service organizations to assist their clients with emergency repairs. If the client, is either very low income with special needs or very low income they will be considered for emergency repairs assistance; even though, they were not on the waiting list.
9. The loan is not assumable.
10. If the home is foreclosed by a superior mortgage holder, the City will try to recapture funds through the legal process if it is determined that adequate funds may be available to justify pursuing a repayment.
11. This program is subject to funding availability and may not be available every fiscal year.

C. Demolition and Reconstruction	Code 4
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a. Summary: This strategy is designed to provide funding when the home being considered under the Owner Occupied Rehabilitation program is damaged to the extent that is not feasible to repair as determined by an inspection and/or the estimated cost exceeds \$120,000.

- b. Fiscal Years Covered: 2022-2023, 2023-2024, 2024-2025
- c. Income Categories to be served: Very low and low
- d. Maximum award: \$350,000
- e. Terms:
 1. Repayment loan/deferred loan/grant: Deferred loan secured by a note and mortgage
 2. Interest Rate: 0 %
 3. Years in loan term: Up to 30; depending on amount of assistance provided:

Amount of Assistance	Years
\$120,001-152,500	15 years
\$152,501-185,000	20 years
\$185,001-\$217,500	25 years
\$217,501-350,000	30 years

4. Forgiveness: The loan balance will not decrease during first five years. However, beginning with year 6th to the end of the term, the balance will be prorated accordingly based on the remaining years of the loan.
5. Repayment: No repayment required as long as the loan is in good standing
6. Default: Loan is due and payable if:
 - a. Sale or transfer of property
 - b. Loss of homestead exemption status
 - c. Conversion to rental property
 - d. Failure to occupy the home as primary residence
 - e. Foreclosure
 - f. Death of all parties on the mortgage
 - g. Refinance of first mortgage, in cases where cash out or bill consolidation occurs
- f. Recipient Selection Criteria:
 1. Participants will be selected for assistance based on a first qualified, first served basis with priorities described in Section I.I after submitting a completed application to the City of Kissimmee and providing all requested written documentation.
- g. Sponsor Selection Criteria: N/A
- h. Additional Information:
 1. No more than every three (3) years, the City shall seek out one or more non-profit sub-recipient(s) to manage the construction for each rehab job. The agency is selected through a Request for Qualification (RFQ) process. The duties and responsibilities are detailed in the contract between the agency and the City. A third party provides the City with an inspection report and a scope of work. The non-profit agency, after doing its own inspection, provides the City with the final cost for the job. After all parties have accepted, the City, the non-profit agency/contractor, and the homeowner(s) enter into an agreement for the rehabilitation of the home.
 2. The actual cost of rehabilitating the home and related soft costs (such as closing costs, inspections/testing, rehabilitation/construction management and temporary lodging) are eligible.
 3. Homes requiring emergency repairs shall be given priority and receive rehabilitation assistance first. Emergency repairs may include but are not limited to: structural damage, unsafe electrical, plumbing, water damage, mold remediation and issues with lateral water/sewer connections. In certain situations a damaged roof may be consider an emergency (for example, if the roof is leaking profusely or part of the roof or ceiling in the living area of the house comes in). Households with persons with special needs shall also be given priority over all others.
 4. All homes eligible for rehabilitation must be owner occupied and owned with fee simple title.
 5. All mortgages, taxes, and special assessments must be current.
 6. The applicant must maintain sufficient hazard insurance for the term of the SHIP lien. If the

homeowner does not have hazard insurance, SHIP funds may be used to purchase hazard insurance for a period not to exceed one year. Insurance must be in place at the completion of the construction project.

7. Modular homes can be used as replacement housing.
8. The property assisted must be free of liens and judgements.
9. If there is an outstanding first mortgage on the property, the mortgage holder must agree to the demolition and reconstruction.
10. Homes with reverse mortgage loans may only participate in the program if the request for rehabilitation is deemed an emergency by the City's designated inspector, the City Manager or designee may approve on a case-by-case basis.
11. The loan is not assumable.
12. If the home is foreclosed by a superior mortgage holder, the City will try to recapture funds through the legal process if it is determined that adequate funds may be available to justify pursuing a repayment.
13. This program is subject to funding availability and may not be available every fiscal year.

D. Disaster Assistance – Owner-Occupied Housing	Code 5
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a. Summary: This strategy provides assistance to households following a disaster as declared by the President of the United States or Governor of the State of Florida.

- b. Fiscal Years Covered: 2022-2023, 2023-2024, 2024-2025
- c. Income Categories to be served: Very low and low
- d. Maximum award: \$40,000
- e. Terms:
 1. Repayment loan/deferred loan/grant: Grant (Purchase of emergency grants, interim repairs, deductible assistance, temporary housing, utility assistance)
 2. Interest Rate: N/A
 3. Years in loan term: N/A
 4. Forgiveness: N/A
 5. Repayment: N/A
 6. Default: N/A
- f. Recipient Selection Criteria:
 1. Participants will be selected for assistance based on a first ready, first qualified basis after submitting a completed application to the City of Kissimmee and providing all requested written documentation.
- g. Sponsor Selection Criteria: N/A
- h. Additional Information:
 1. Funds will be used for:
 - a. Purchase of emergency supplies for eligible households to weatherproof damages homes (maximum assistance is \$500, grant);
 - b. Interim repairs to avoid further damage such as tree and debris removal required to make the

- individual housing unit habitable (maximum assistance is \$15,000, grant);
- c. Deductible assistance to make necessary repairs to the structure, including roofs (maximum assistance is \$30,000, single family only, grant);
- d. Temporary housing (hotel/motel stays) (maximum assistance is \$150 (per night), up to a maximum of \$750, grant)
- e. Utility Assistance (up to \$400, grant)
- f. Other activities as proposed by the City of Kissimmee and approved by the Florida Housing Finance Corporation.
- 2. This program will only be implemented in the event of a disaster using any funds that have not yet been encumbered or additional disaster funds issued by the Florida Housing Finance Corporation.
- 3. If damaged structured is un-insured, it may still qualify for assistance. The maximum assistance is \$40,000.
- 4. This program is subject to funding availability and may not be available every fiscal year.

E. Foreclosure Prevention	Code 7
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a. Summary: Assistance under this strategy is to help existing homeowners within the City of Kissimmee to maintain ownership of their homes.
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- b. Fiscal Years Covered: 2022-2023, 2023-2024, 2024-2025
- c. Income Categories to be served: Very low and low
- d. Maximum award: \$16,000
 - 1. Foreclosure Prevention - \$10,000;
 - 2. Taxes and Insurance - \$5,000; and,
 - 3. Utility Protection - \$1,000
- e. Terms:
 - 1. Repayment loan/deferred loan/grant: Grant
 - 2. Interest Rate: N/A
 - 3. Years in loan term: N/A
 - 4. Forgiveness: N/A
 - 5. Repayment: N/A
 - 6. Default: N/A
- f. Recipient Selection Criteria:
 - 1. Participants will be selected for assistance based on a first qualified, first served basis with priorities described in Section I.I after submitting a completed application to the City of Kissimmee and providing all requested written documentation.
- g. Sponsor Selection Criteria: N/A
- h. Additional Information:
 - 1. Funds may be used to:
 - a. Provide assistance to homeowners under threat of foreclosure from mortgage holders because of circumstances beyond their control;
 - b. Pay delinquent property taxes and homeowners insurance in eligible households; and
 - c. Provide assistance to homeowners who are delinquent in their utility bills and threatened

with shut off utilities.

2. The loan must be at least 2 months in arrears. Assistance cannot be provided if foreclosure proceedings against the property have started, before the mortgagor files a Lis Pendens.
3. The payment of attorney fees is not eligible.
4. Property shall have no other liens other than the first mortgage or previous SHIP, CDBG, or NSP lien.
5. Applicant must provide proof of arrearage in the form of notification from the mortgage holder and provide evidence of a hardship that caused the arrearage (health issue, loss of employment/income, death of household member, divorce).
6. The applicant must provide evidence of their ability to resume making payments after the assistance is used.
7. Counseling from a HUD approved agency is mandatory. Proof of counseling is required before assistance can be provided. SHIP funds may be used to pay for the counseling session.
8. Payments to homeowners associations and attorney fees are not eligible.
9. Assistance under this program is restricted to one occurrence within a three (3) year period.
10. This program is subject to fund availability and may not be available every fiscal year.

F. New Construction – Infill Housing	Code 10
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a. Summary: This program is designed to increase the stock of affordable housing. The City of Kissimmee will award funds to developers for the construction of single family housing for eligible home buyers.
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b. Fiscal Years Covered: 2022-2023, 2023-2024, 2024-2025

c. Income Categories to be served: Very low and low

d. Maximum award: \$300,000 per unit (for developer); \$60,000 (for homebuyer)

e. Terms: Developer:

1. Repayment loan/deferred loan/grant: Funds will be awarded as a deferred loan secured by a note and mortgage until conveyed to the buyer.
2. Interest Rate: 0 %
3. Years in loan term: 2
4. Forgiveness: The loan will be forgiven upon the sale of the unit to an income eligible homebuyer.
5. Repayment: No repayment required as long as the developer transfers the property to an eligible buyer.
6. Default: Failure to receive a certificate of occupancy and transfer ownership to an eligible homebuyer at the agreed sales price within 12 months of receiving the award.

Terms: Homebuyer:

1. Repayment loan/deferred loan/grant: Funds will be awarded as a deferred loan secured by a note and mortgage.
2. Interest Rate: 0 %
3. Years in loan term: 10
2. Repayment: No repayment required as long as loan is in good standing.
3. Default: Loan is due and payable if:

- a. Sale or transfer of property
- b. Loss of homestead exemption status
- c. Conversion to rental property
- d. Failure to occupy the home as primary residence
- e. Foreclosure
- f. Death of all parties on the mortgage
- g. Refinance of first mortgage, in cases where cash out or bill consolidation occurs

h. Recipient Selection Criteria (Homebuyer):

- 1. Assistance shall only be provided to first time homebuyers.
- 2. Eligible homebuyers will be selected by the Developer/Owner on a first qualified, first served basis with priorities described in Section I.I after submitting a completed application to the City of Kissimmee and providing all requested written documentation.

g. Sponsor Selection Criteria:

- 1. Developers will be scored and selected based on their experience, their financial capacity and the merits of the project.
- 2. Preference will be given to non-profit and for-profit organizations that hire personnel from Welfare transition, Workforce Development initiatives and other employment assistance programs and to projects located near transportation, employment centers, and/or mixed used development will be given preference during the selection process.
- 3. Applications will be evaluated by a selection committee made up of City staff and AHAC members.
- 4. The City may act as a developer.

h. Additional Information:

- 1. The awarded funds may be used to leverage expenses such as:
 - a. Land acquisition
 - b. Pre-development costs (i.e. mobility fees and parks and recreation impact fees), and,
 - c. Vertical construction.
- 2. Project applications will be available throughout the year.
- 3. The buyer(s) must qualify and obtain a first mortgage by a lender or by a not-for-profit organization such as Habitat for Humanity.
- 4. Anyone who is listed on the mortgage must complete at least eight (8) hours of homebuyer's education through a HUD approved housing counseling agency. Proof of program completion is required before assistance can be provided.
- 5. If the home is foreclosed by a superior mortgage holder, the City will try to recapture funds through the legal process if it is determined that adequate funds may be available to justify pursuing a repayment.
- 6. This program is subject to fund availability and may not be available every fiscal year.

G. New Construction – Rental	Code 21
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a. Summary: This program will be used to leverage other available funding to develop rental housing. The City of Kissimmee will award funds to developers for the construction of multifamily housing for eligible renters. This funding will be used as a local government match for developers participating in the different Florida Housing Finance Corporation programs.
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b. Fiscal Years Covered: 2022-2023, 2023-2024, 2024-2025

- c. Income Categories to be served: Very low and low
- d. Maximum award: \$50,000 per project and \$5,000 per unit
- e. Terms:
 - 1. Repayment loan/deferred loan/grant: Deferred loan secured by a note and mortgage
 - 2. Interest Rate: 0%
 - 3. Years in loan term: 20
 - 4. Forgiveness: Forgiven at the end of the term
 - 5. Repayment: None required as long as loan is in good standing
 - 6. Default:
 - a. Sale, transfer of property
 - b. Refinance of first mortgage
 - c. Foreclosure
- f. Recipient Selection Criteria (Tenant):
 - 1. Eligible tenants will be selected by the Developer/Owner based on a first qualified, first served basis with priorities described in Section I.I after submitting a completed application and providing all requested written documentation.
- g. Sponsor Selection Criteria:
 - 1. Project applications will be available throughout the year.
 - 2. Developers will be scored and selected based on their experience, their financial capacity and the merits of the project.
 - 5. Preference will be given to non-profit and for-profit organizations that hire personnel from Welfare transition, Workforce Development initiatives and other employment assistance programs and to projects located near transportation, employment centers, and/or mixed used development will be given preference during the selection process.
 - 6. In the event that the Florida Housing Finance Corporation approves more than one project and local funding is not available, preference will be given to the project that provides the highest percentage of units for very low and low income households as defined by the area median income limits as published by HUD and distributed by Florida Housing Finance Corporation on an annual basis.
 - 7. Applications will be evaluated by a selection committee made up of City staff and AHAC members.
- h. Additional Information:
 - 1. Projects awarded these funds must be located in the City of Kissimmee and must have been approved by the Florida Housing Finance Corporation to receive funding.
 - 2. Projects will be monitored annually for 20 years regardless of the units involved. When pairing it with other programs, the monitoring of those other programs may be used to satisfy the SHIP compliance requirement.
 - 3. This program is subject to fund availability and may not be available every fiscal year.

H. Security and/or Utility Deposits	Code 23
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| a. Summary: This program helps renter households to pay for the security and/or utility deposits on their new lease agreements. |
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- b. Fiscal Years Covered: 2022-2023, 2023-2024, 2024-2025
- c. Income Categories to be served: Very low and low
- d. Maximum award: \$5,000
- e. Terms:
 - 1. Repayment loan/deferred loan/grant: Grant
 - 2. Interest Rate: N/A
 - 3. Years in loan term: N/A
 - 4. Forgiveness: N/A
 - 5. Repayment: N/A
 - 6. Default: N/A
- f. Recipient Selection Criteria:
 - 1. Participants will be selected for assistance based on a first qualified, first served basis with priorities described in Section I.I after submitting a completed application to the City of Kissimmee and providing all requested written documentation.
- g. Sponsor Selection Criteria: N/A
- h. Additional Information:
 - 1. All rental units assisted must meet SHIP affordability requirements.
 - 2. Applicant must be able to show proof of Osceola County residency for the prior year. The issuance date of the driver's license or ID shall be used to document residency. Residency requirements will not apply to households seeking assistance as a result of relocating to Osceola County due to a natural disaster.
 - 3. Assistance under this program is restricted to one occurrence within a three (3) year period.
 - 4. If at all possible, the City shall enter into an agreement with the management company or the utility company to be reimbursed for the deposit or any remaining portion of it after the tenant moves out of the rental property.
 - 5. This program is subject to fund availability and may not be available every fiscal year.

I. Rental Assistance (Tenant)	Code 13
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a. Summary: Also known as the Eviction Prevention program. This program helps renter households because they are delinquent on their rent due to a crisis and/or hardship with up to three months assistance.
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- b. Fiscal Years Covered: 2022-2023, 2023-2024, 2024-2025
- c. Income Categories to be served: Very low and low
- d. Maximum award: \$5,000
- e. Terms:
 - 1. Repayment loan/deferred loan/grant: Grant

2. Interest Rate: N/A
3. Years in loan term: N/A
4. Forgiveness: N/A
5. Repayment: N/A
6. Default: N/A

f. Recipient Selection Criteria:

1. Participants will be selected for assistance based on a first qualified, first served basis with priorities described in Section I.I after submitting a completed application to the City of Kissimmee and providing all requested written documentation.

g. Sponsor Selection Criteria: N/A

h. Additional Information:

1. Applicant must provide proof of arrearage in the form of notification from the landlord and provide evidence of a hardship that caused the arrearage (health issue, loss of employment/income, death of household member, divorce).
2. There must be a signed lease between the landlord and tenant, with a length of no less than one (1) year.
3. The rental unit must meet SHIP affordability requirements.
4. Applicant must provide evidence of their ability to maintain making their own monthly rental payments after the assistance is used.
5. Assistance under this program is restricted to one occurrence within a three (3) year period.
6. This program is subject to fund availability and may not be available every fiscal year.

J. Disaster Assistance – Rental Housing	Code 16
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a. Summary: This strategy provides assistance to renters following a disaster as declared by the President of the United States or Governor of the State of Florida.

b. Fiscal Years Covered: 2022-2023, 2023-2024, 2024-2025

c. Income Categories to be served: Very low and low

d. Maximum award: \$5,000 per unit

e. Terms:

1. Repayment loan/deferred loan/grant: Grant (Purchase of emergency grants, interim repairs, deductible assistance, roof repairs, temporary housing, utility assistance); Loan (insurance deductible)
2. Interest Rate: 0
3. Years in loan term: 15 years
4. Forgiveness: Forgiven at the end of the term
5. Repayment: None required as long as loan is in good standing
6. Default:
 - a. Sale, transfer of property
 - b. Refinance of first mortgage
 - c. Foreclosure

- f. Recipient Selection Criteria:
 1. Participants will be selected for assistance based on a first ready, first qualified basis after submitting a completed application to the City of Kissimmee and providing all requested written documentation.
 2. The City of Kissimmee may also work directly with apartment complexes that have been impacted by the disaster.
- g. Sponsor Selection Criteria: N/A
- h. Additional Information:
 1. Funds will be used for:
 - a. Purchase of emergency supplies for eligible households to weatherproof damages homes (maximum assistance is \$500; grant);
 - b. Interim repairs to avoid further damage such as tree and debris removal required to make the individual housing unit habitable (maximum assistance is \$5,000; grant);
 - c. Deductible assistance (maximum assistance per unit is \$5,000; maximum assistance per project is \$100,000; loan)
 - d. Roof Repairs (for single family structures, the maximum assistance is \$20,000 and for multifamily units, the maximum assistance is \$250,000 per project; loan)
 - e. Rental Assistance; and/or temporary housing (hotel/motel stays) (maximum amount is \$150 per night, not to exceed \$750; grant)
 - f. Other activities as proposed by the City of Kissimmee and approved by the Florida Housing Finance Corporation.
 2. This program will only be implemented in the event of a disaster using any funds that have not yet been encumbered or additional disaster funds issued by the Florida Housing Finance Corporation.
 3. This program is subject to funding availability and may not be available every fiscal year.

K. Rapid Rehousing	Code 26
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a. Summary: Rapid Re-Housing is an intervention program using a housing first approach for homeless, as defined in s. 420.621, when the person initially qualified for a rent subsidy. This program involves three Core program components that make up a tailored package of assistance including housing identification, rent and move in assistance, and rapid rehousing case management and services (the last one is not paid by SHIP dollars).

- b. Fiscal Years Covered: 2022-2023, 2023-2024, 2024-2025
- c. Income Categories to be served: Very low and low
- d. Maximum award: \$24,000
- e. Terms:
 1. Repayment loan/deferred loan/grant: Grant
 2. Interest Rate: N/A
 3. Years in loan term: N/A
 4. Forgiveness: N/A
 5. Repayment: N/A

6. Default: N/A

f. Recipient Selection Criteria:

1. Participants will be selected for assistance based on a first qualified, first served basis with priorities described in Section I.I after providing all requested information.
2. Applicants who are homeless must be referred by a social service agency that serves homeless populations, preferably through the local Continuum of Care (CoC) Coordinated Entry system and tracked through the Homeless Management Information System (HMIS).
3. Self-referrals are not allowed.

g. Sponsor Selection Criteria: N/A

h. Additional Information:

1. Funds may be used to:
 - a. Provide assistance for security and utility deposit assistance ;
 - b. Pay for rent subsidies for up to 12 months;
 - c. Pay sub-recipient a reasonable service delivery fee, if fee is related to administering the program, and it does not pay for case management.
2. The City of Kissimmee intends to partner with Osceola County or with a non-profit agency that has past experience working with the target population and/or with similar programs and the capacity to implement this program. The agency is selected through a Request for Application process.
3. All rental units assisted must meet SHIP affordability requirements.
4. Applicant must be able to show proof of Osceola County residency for the prior year. The issuance date of the driver's license or ID shall be used to document residency. Residency requirements will not apply to households seeking assistance as a result of relocating to Osceola County after a major hurricane.
5. Case management is an integral part of this program so the program participants are required to meet with their appointed case managers and follow a case management plan.
6. Assistance is individualized, based on need.
7. The period of assistance may not exceed 12 months for an eligible household.
8. The City of Kissimmee and Osceola County have an Interlocal Agreement to allow the use of the City's SHIP funds for Rapid Re-Housing across jurisdictional lines within the unincorporated area of the county.
9. This program is subject to fund availability and may not be available every fiscal year.

III. LHAP Incentive Strategies

In addition to the **required Incentive Strategy A and Strategy B**, include all adopted incentives with the policies and procedures used for implementation as provided in Section 420.9076, F.S.:

A. Name of the Strategy: **Expedited Permitting**

Permits as defined in s. 163.3177 (6) (f) (3) for affordable housing projects are expedited to a greater degree than other projects.

Provide a description of the procedures used to implement this strategy:

The current process used to expedite permits is as follow:

1. A developer must provide documentation to the City's Housing Program staff their project has received funding in whole or in part from federal, state, or local agencies and that a portion of the units are to benefit low and moderate income persons as defined by the U.S. Department of Housing and Urban Development.
2. The Housing and Community Development staff will review the documentation submitted by the developer to determine if the project meets the requirements to be considered "affordable housing".
3. The Housing and Community Development staff will then provide the developer with a Notification form (on bright color paper) which details the particulars regarding the project and signed by the Housing and Community Development staff.
4. The Notification form is then submitted by the developer or their contractor with applicable applications for building permits or development permits, which indicate that the project is a publicly funded affordable housing project and that the review process should be expedited to the greatest extent possible.
5. Review staff shall indicate on the forms the date of submission and approval and return the form to the Housing and Community Development staff so that they can track and report the city's efforts to implement the expedited permitting requirement.

This process has been adopted as a policy.

B. Name of the Strategy: **Ongoing Review Process**

An ongoing process for review of local policies, ordinances, regulations and plan provisions that increase the cost of housing prior to their adoption.

Provide a description of the procedures used to implement this strategy:

The City of Kissimmee has established a process by which the local government considers before adopting policies, procedures, ordinances, regulations, or plan revisions if it increases the cost of housing. Land Development Code (LDC) amendments and Comprehensive Plan amendments are reviewed by the Planning Division, the Planning Advisory Board, and the City Commission. Final review and approval is by City Commission. Those responsible for reviewing proposed ordinance and policy amendments consider a variety of issues including the reason(s) why the amendment is being proposed and whether the regulations and policies within the LDC and the Comprehensive Plan support the proposed amendment.

One of the recommendations included in the 2021 Annual AHAC Report is for 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. It is expected that staff is going to develop the Housing Impact Statement template for AHAC review in 2022.

C. Other Incentive Strategies Adopted: After the review of the incentives conducted in 2021, the following recommendations were made:

Modification of Impact Fees

- a. Existing Strategy: In lieu of an impact fee reduction or reimbursement, the City of Kissimmee

includes in its Local Housing Assistance Plan a strategy that gives developers a financial incentive in the amount of \$20,000 as a contribution to affordable housing projects if they are participating in the Florida Housing Finance Corporation's funding process. In years when SHIP funding was not available the City Commission has waived building permit fees in the amount of \$20,000 as a local government contribution for the construction of affordable housing. However, this is not a standing policy.

- b. Proposed Recommendation: Develop a policy to offer reimbursement of mobility fees and park and recreation impact fees for affordable housing developments based on a sliding scale related to the level of affordability and subject to availability of funding.

Flexible Densities

- a. Existing Strategy: The Kissimmee City Code allows for a density bonus of 5% if the development sets aside at least 10% of its units as affordable housing. These units must remain affordable for up to 30 years.
- b. Proposed Recommendation: In order for developments to be eligible for a density bonus of 5%, the development must set aside at least 20% of its units as affordable housing. These units must remain affordable for up to 15 years.

Affordable Accessory Residential Units

- a. Existing Strategy: Accessory dwelling units are permitted in most zoning districts provided they meet the requirements of the Land Development Code.
- b. Proposed Recommendation: City should not include attached Accessory Dwelling Units (ADU) in the density calculations for any of the zoning districts; however, the attached ADU should be included in the calculation for infrastructure for the purpose of calculating mobility fees, impact fees and connection fees. In addition, the City should remove the requirement that the principal structure be owner occupied.

Public Land Inventory

- a. Existing Strategy: The current list, which was reviewed and adopted in 2019, includes all of the parcels of land owned by the City, not just those that are appropriate for the development of affordable housing.
- b. Proposed Recommendation: Housing staff shall prepare the inventory list of surplus land including only those parcels that are appropriate for affordable housing and to draft guidelines for a Surplus Land for Affordable Housing Program. The program shall include guidelines on parcel identification, oversight, disposition procedures, affordability requirements, etc.

Support of Development Near Transportation Hubs

- a. Existing Strategy: There is not a strategy to provide financial support of development near transportation hubs at this time.

- b. Proposed Recommendation: The City shall encourage housing developments that meet the definition of either affordable housing or workforce housing and are located near transportation, employment centers, and/or mixed used development through available funding sources and/or regulatory incentives.

Other:

Community Land Trust

- a. Existing Strategy: There is not a strategy to support community land trusts at this time.
- b. Proposed Recommendation: The Community Land Trust model shall be evaluated as a potential program for affordable housing in the City of Kissimmee.

Definition of Affordable and Workforce Housing Developments

- a. Existing Strategy: There is not a strategy that defines affordable and workforce housing at this time.
- b. Proposed Recommendation: Affordable Housing Developments– Developments in which at least 20% of the units are set aside and meet the definition of affordable housing as defined in Chapter 420 of the Florida Statutes. Workforce Housing – No separate definition was recommended since housing units set aside for persons earning between 80% to 120% are already included in the above definition.

Most of the recommendations listed above are expected to be adopted in 2022.

IV. EXHIBITS:

Required

- A. Administrative Budget for each fiscal year covered in the Plan.
- B. Timeline for Estimated Encumbrance and Expenditure.
- C. Housing Delivery Goals Chart (HDGC) For Each Fiscal Year Covered in the plan.
- D. Signed LHAP Certification.
- E. Signed, dated, witnessed or attested adopting resolution.

Optional

- F. Ordinance: (If changed from the original creating ordinance).
- G. Interlocal Agreement (Required if applicable).
- H. Other Documents Incorporated by Reference.

RESOLUTION #: _____

A RESOLUTION OF THE CITY OF KISSIMMEE, FLORIDA APPROVING THE AMENDED LOCAL HOUSING ASSISTANCE PLAN AS REQUIRED BY THE STATE HOUSING INITIATIVES PARTNERSHIP PROGRAM ACT, SUBSECTIONS 420.907-420.9079, FLORIDA STATUTES; AND RULE CHAPTER 67-37, FLORIDA ADMINISTRATIVE CODE; AUTHORIZING AND DIRECTING THE MAYOR TO EXECUTE ANY NECESSARY DOCUMENTS AND CERTIFICATIONS NEEDED BY THE STATE; AUTHORIZING THE SUBMISSION OF THE LOCAL HOUSING ASSISTANCE PLAN FOR REVIEW AND APPROVAL BY THE FLORIDA HOUSING FINANCE CORPORATION; AND PROVIDING AN EFFECTIVE DATE.

* * * * *

WHEREAS, the State of Florida enacted the William E. Sadowski Affordable Housing Act, Chapter 92-317 of Florida Sessions Laws, allocating a portion of documentary stamp taxes on deeds to local governments for the development and maintenance of affordable housing; and

WHEREAS, the State Housing Initiatives Partnership (SHIP) Act, ss. 420.907-420.9079, Florida Statutes (1992), and Rule Chapter 67-37, Florida Administrative Code, requires local governments to develop a one- to three-year Local Housing Assistance Plan outlining how funds will be used; and

WHEREAS, the SHIP Act requires local governments to establish the maximum SHIP funds allowable for each strategy; and

WHEREAS, the SHIP Act further requires local governments to establish an average area purchase price for new and existing housing benefiting from awards made pursuant to the Act; The methodology and purchase prices used are defined in the attached Local Housing Assistance Plan; and

WHEREAS, as required by *section 420.9075, F.S.* It is found that 5 percent of the local housing distribution plus 5 percent of program income is insufficient to adequately pay the necessary costs of administering the local housing assistance plan. The cost of administering the program may not exceed 10 percent of the local housing distribution plus 5% of program income deposited into the trust fund, except that small counties, as defined in s. 120.52(19), and eligible municipalities receiving a local housing distribution of up to \$350,000 may use up to 10 percent of program income for administrative costs.

WHEREAS, the Development Services Department has prepared a three-year Local Housing Assistance Plan for submission to the Florida Housing Finance Corporation; and

WHEREAS, the City Commission finds that it is in the best interest of the public for the City of

Kissimmee to submit the Local Housing Assistance Plan for review and approval so as to qualify for said documentary stamp tax funds; and

NOW THEREFORE, BE IT RESOLVED BY THE COMMISSION OF THE CITY OF KISSIMMEE, FLORIDA that:

Section 1: The Kissimmee City Commission hereby approves the Amended Local Housing Assistance Plan, as attached and incorporated hereto for submission to the Florida Housing Finance Corporation as required by ss. 420.907-420-9079, Florida Statutes, for fiscal years 2022-2023, 2023-2024, 2024-2025.

Section 2: The Mayor or designee, is hereby designated and authorized to execute any documents and certifications required by the Florida Housing Finance Corporation as related to the Amended Local Housing Assistance Plan, and to do all things necessary and proper to carry out the term and conditions of said program.

Section 3: This resolution shall take effect immediately upon its adoption.

PASSED AND ADOPTED THIS 20TH DAY OF FEBRUARY, 2024.

Mayor

(SEAL)

ATTEST:

City Clerk

ITEM 7.C

Carry Forward for Airport Project Automated Weather Observation System Project

Request

Approval to carry forward Airport Funds (FY2021 AP2102) to FY2024 Budget for an Automated Weather Observation System (AWOS) Project in the amount of \$32,000.

Explanation

Airport funds allocated in FY2021 were not expended and were not carried forward. Therefore, staff is requesting to transfer the funds into the current FY2024 Budget to close out this State and Airport funded project.

Financial Information

Account #	Project #	Increase / Decrease	Budget	Actual
46170100-509276	AP2102	Decrease	32,000	32,000
47070106-506393	AP2102	Increase	32,000	32,000

Financial Summary:

Portions of this project are funded by the Florida Department of Transportation (FDOT) and the Kissimmee Gateway Airport. The total project amount is \$390,100 with each agency funding the following amounts:

FDOT-PTGA (FM No.: 4492651-94-01) - \$300,000

Kissimmee Gateway Airport: AP2102 - \$90,100

Recommendation

Approval to carry forward Airport Funds (FY2021 AP2102) to FY2024 Budget for an Automated Weather Observation System (AWOS) Project in the amount of \$32,000.

REQUESTED CITY COMMISSION ACTION:

Approve

Department: Airport

Presenter:

Attachment(s):

None

City of Kissimmee

ITEM 7.D

Application for Airport Taxiway Delta Environmental Study Grant

Request

Approval to apply for a Public Transportation Grant Agreement (PTGA) from the Florida Department of Transportation (FDOT) for an Environmental Study for Taxiway Delta Extension Project at Kissimmee Gateway Airport.

Explanation

The Kissimmee Gateway Airport's 3-year Capital Improvement Plan has identified the need to extend Taxiway Delta 'South' and connect to Runway 33. This project will provide runway access to the former golf course site providing economic development opportunities as well as enhancing airfield safety. To be eligible for Federal/State funding, the Federal Aviation Administration (FAA) requires an environmental study be performed for the project's area. The cost is approximately \$100,000 and is eligible for FDOT grant funding. The scope of work will be developed, and a final cost determined prior to applying for the grants.

Recommendation

Approval to apply for a Public Transportation Grant Agreement (PTGA) from the Florida Department of Transportation (FDOT) for an Environmental Study for Taxiway Delta Extension Project at Kissimmee Gateway Airport.

REQUESTED CITY COMMISSION ACTION:

Approve

Department: Airport

Presenter:

Attachment(s):

None

ITEM 7.E

Building Fund budget adjustment for furnishings and plaza improvements

Request

Approval of a budget transfer of \$800,000 from the Building Fund Reserve account to the Capital Project and Equipment accounts for furnishings and plaza improvements as part of the permit center expansion project.

Explanation

The City Hall addition that will house the Development Services Building Division is currently under construction with a completion date of early June 2024. The 12,000 square foot addition will need furniture for the offices, the building lobby, cubicle spaces and the conference room/City's Emergency Operation Center. Also, the plaza between the new addition and the existing City Commission Chambers will be enhanced as a rain garden and public gathering space.

The cost of each project will be \$400,000 for a total of \$800,000. A rendering of the rain garden is included in the Commission's backup.

Financial Information

Account #	Project #	Increase / Decrease	Budget	Actual
10140100-509276	NA	Decrease	\$800,000	
10140106-506292	TBD	Increase	\$400,000	
10140103-505255	NA	Increase	\$400,000	

Financial Summary:

The Building Fund has adequate reserves to cover these expenditures.

Recommendation

Approve a budget transfer request for the permit center expansion project.

REQUESTED CITY COMMISSION ACTION:

Approve

Department: Development Services

Presenter:

Attachment(s):

1. Kissimmee Raingarden_FINAL

City of Kissimmee



21 SEPTEMBER 2023



21 SEPTEMBER 2023



21 SEPTEMBER 2023



21 SEPTEMBER 2023



21 SEPTEMBER 2023



STAGE

26 SEPTEMBER 2023

ITEM 7.F

Amendment to the Interlocal Agreement Creating the Orlando Urban Area Metropolitan Planning Organization d/b/a MetroPlan Orlando

Request

Approval of the Amendment to the Interlocal Agreement with MetroPlan Orlando to incorporate changes to the Membership Apportionment Plan.

Explanation

This is an Amendment to the Interlocal Agreement Creating the Orlando Urban Area Metropolitan Planning Organization, d/b/a/ MetroPlan Orlando, a Regional Transportation Partnership. This amendment adds the City of St. Cloud as a voting member and an additional Orange County voting representative to the MetroPlan Orlando Board based on population growth. Upon approval of this Amendment, the MetroPlan Orlando Board membership in the Apportionment Plan will consist of twenty-two (22) voting representatives and five (5) non-voting representatives as follows:

Orange County - 7 Representatives
Osceola County - 1 Representative
Seminole County - 2 Representatives
City of Altamonte Springs - 1 Representative
City of Apopka - 1 Representative
City of Kissimmee - 1 Representative
City of Orlando - 2 Representatives
City of Sanford - 1 Representative
City of St. Cloud - 1 Representative
Central Florida Regional Transportation Authority - 1 Representative
Greater Orlando Aviation Authority - 1 Representative
Central Florida Expressway Authority - 1 Representative
Sanford Airport Authority - 1 Representative
MetroPlan Orlando Municipal Advisory Committee - 1 Representative

Recommendation

Approval of the Amendment to the Interlocal Agreement Creating MetroPlan Orlando to incorporate changes to the Membership Apportionment Plan.

REQUESTED CITY COMMISSION ACTION:

Approve

Department: City Manager

Presenter:

Attachment(s):

1. (S) 2024-01-04 - Amendment to the Interlocal Agreement 2024

**AMENDMENT TO THE INTERLOCAL AGREEMENT CREATING THE
ORLANDO URBAN AREA METROPOLITAN PLANNING ORGANIZATION
D/B/A/ MetroPlan Orlando**

THIS AMENDMENT (hereinafter “Amendment”) is made and entered into by and between the State of Florida, Department of Transportation; the Counties of Orange County, Florida, Osceola County, Florida, Seminole County, Florida; the Cities of City of Altamonte Springs, Florida, City of Apopka, Florida, City of Kissimmee, Florida, City of Orlando, Florida, City of Sanford, Florida, the City of St. Cloud, Florida, the Central Florida Regional Transportation Authority, The Greater Orlando Aviation Authority, the Central Florida Expressway Authority, and the Sanford Airport Authority, and the MetroPlan Orlando Municipal Advisory Committee (hereinafter the “Parties”).

RECITALS

WHEREAS, the Parties reaffirm the Interlocal Agreement dated June 7, 2000, as amended, except as amended hereby;

WHEREAS, section 134 Title 23 of the United States Code requires the designation of metropolitan planning organizations (hereinafter “MPO” or “MPOs”) in urban areas, as defined by the United States Census Bureau;

WHEREAS, section 339.175(4)(a), Fla. Stat., requires the Governor to review the composition of the Metropolitan Planning Organizations membership in conjunction with the decennial census;

WHEREAS, section 134 of Title 23 of the United State Code sets forth membership requirements for MPOs designated for transportation management areas with a population of 200,000 or more residents;

WHEREAS, on August 15, 2023, the Executive Committee of the governing board of MetroPlan Orlando, considered alternative membership scenarios for presentation to the governing board of MetroPlan Orlando;

WHEREAS, on September 13, 2023, the governing board of MetroPlan Orlando met to review its voting composition and approved a Resolution Supporting the Adoption of the Executive Committee’s recommended MPO Membership Apportionment Plan (“Apportionment Resolution”) and determined that it was appropriate that the City of St. Cloud be added as a voting member to the Interlocal Agreement, as amended, creating MetroPlan Orlando;

WHEREAS, the signatories to this Amendment hereby ratify and reaffirm the Apportionment Resolution as if fully set forth herein; and,

WHEREAS, the governing body of MetroPlan Orlando has determined that it is appropriate that Orange County, Florida, be granted a new representative as a voting member to the Interlocal Agreement as amended creating MetroPlan Orlando.

NOW, THEREFORE, in consideration of the mutual covenants, promises, and representation herein, the parties agree as follows:

I. Recitals. The forgoing recitals are true and correct.

II. Interlocal Agreement. Article 4, Section 4.01(a) of the Interlocal Agreement dated June 7, 2000, as amended, is amended to read as follows:

The membership of the MPO shall consist of twenty-two (22) voting representatives and five (5) non-voting representatives. The names of the member local governmental entities and the voting apportionment of the governing board as approved by the Governor shall be as follows:

<i>Orange County</i>	<i>7 Representatives</i>
<i>Osceola County</i>	<i>1 Representative</i>
<i>Seminole County</i>	<i>2 Representatives</i>
<i>City of Altamonte Springs</i>	<i>1 Representative</i>
<i>City of Apopka</i>	<i>1 Representative</i>
<i>City of Kissimmee</i>	<i>1 Representative</i>
<i>City of Orlando</i>	<i>2 Representatives</i>
<i>City of Sanford</i>	<i>1 Representative</i>
<i>City of St. Cloud</i>	<i>1 Representative</i>
<i>Central Florida Regional Transportation Authority</i>	<i>1 Representative</i>
<i>Greater Orlando Aviation Authority</i>	<i>1 Representative</i>
<i>Central Florida Expressway Authority</i>	<i>1 Representative</i>
<i>Sanford Airport Authority</i>	<i>1 Representative</i>
<i>MetroPlan Orlando Municipal Advisory Committee</i>	<i>1 Representative</i>

III. Severability. The invalidity or unenforceability of any term or provision of this Amendment or the non-applicability of any such term or provision to any person or circumstance shall not impair or affect the remainder of this Amendment, and the remaining terms and provisions hereof shall not be invalidated but shall remain in full force and effect but shall be construed as if such invalid, unenforceable, or non-applicable provisions were omitted.

IV. Entire Agreement. This Amendment represents the entire understanding and agreement between the parties with respect to the subject matter hereof. None of the terms and provisions hereof may be amended, supplemented, waived or changed orally, but only by a writing signed by each of the parties hereto.

V. Rules of Construction. Whenever used herein, the singular number shall include the plural, the plural shall include the singular, and the use of any gender shall include all genders.

VI. Amendment Execution and Counterpart Signature Pages. This Amendment may be executed in any number of counterparts, each of which when so executed and delivered, shall be an original; but such counterparts shall together constitute but one and the same instrument.

VII. Effective Date. This Amendment shall become effective upon its filing in the Office of the Clerk of the Circuit Court of each county in which a party hereto is located. Any amendment hereto shall become effective only upon its filing in the Office of the Clerk of the Circuit Court for each county in which a party hereto is located.

IN WITNESS WHEREOF, the undersigned parties have caused this Amendment to the Interlocal Agreement dated June 7, 2000, as amended, to be duly executed on their behalf.

ORANGE COUNTY, FLORIDA

BY: _____

DATE: _____

TITLE: _____

ATTEST: _____

TITLE: _____

OSCEOLA COUNTY, FLORIDA

BY: _____

DATE: _____

TITLE: _____

ATTEST: _____

TITLE: _____

[Continued on following pages]

BOARD OF COUNTY COMMISSIONERS
SEMINOLE COUNTY, FLORIDA

By: _____
JAY ZEMBOWER, Chairperson

Date: _____
As authorized for execution by the Board of
County Commissioners at its _____,
2024 regular meeting.

ATTEST:

_____, Clerk to the Board of
County Commissioners of Seminole County, Florida.
For the use and reliance of Seminole County only.
Approved as to form and legal sufficiency.

County Attorney

CITY OF ALTAMONTE SPRINGS, FLORIDA

BY: _____
DATE: _____
TITLE: _____
ATTEST: _____
TITLE: _____

CITY OF APOPKA, FLORIDA

BY: _____
DATE: _____
TITLE: _____
ATTEST: _____
TITLE: _____

CITY OF KISSIMMEE, FLORIDA

BY: _____
TITLE: _____
DATE: _____
ATTEST: _____
TITLE: _____

[Continued on following pages]

CITY OF ORLANDO, FLORIDA

BY: _____

TITLE: _____

DATE: _____

ATTEST: _____

TITLE: _____

CITY OF SANFORD, FLORIDA

BY: _____, Mayor

Date: _____

ATTEST

_____, City Clerk

For use and reliance of the City of Sanford
City Commission only.

Approved as to form and legality.

_____, City Attorney

CITY OF ST. CLOUD, FLORIDA

BY: _____

TITLE: _____

DATE: _____

ATTEST: _____

TITLE: _____

THE CENTRAL FLORIDA REGIONAL TRANSPORTATION AUTHORITY

BY: _____

DATE: _____

TITLE: _____

ATTEST: _____

TITLE: _____

[Continued on following page]

THE GREATER ORLANDO AVIATION AUTHORITY

BY: _____

DATE: _____

TITLE: _____

ATTEST: _____

TITLE: _____

THE CENTRAL FLORIDA EXPRESSWAY AUTHORITY

BY: _____

DATE: _____

TITLE: _____

ATTEST: _____

TITLE: _____

SANFORD AIRPORT AUTHORITY

BY: _____

DATE: _____

TITLE: _____

ATTEST: _____

TITLE: _____

METROPLAN ORLANDO MUNICIPAL ADVISORY COMMITTEE

BY: _____

TITLE: _____

DATE: _____

ATTEST: _____

TITLE: _____

STATE OF FLORIDA, DEPARTMENT OF TRANSPORTATION

BY: _____

TITLE: _____

DATE: _____

ATTEST: _____

TITLE: _____

APPROVED AS TO FORM, LEGALITY

STATE OF FLORIDA, DEPARTMENT OF TRANSPORTATION

BY: _____

ATTORNEY

DATE: _____

TITLE: _____

ITEM 7.G

Architectural and Engineering Continuing Services Agreements

Request

Request approval of the Architectural/Engineering Services master agreements, Contract # 2024-0133 with Baker Barrios Architects, Inc., Colliers Engineering & Design, Inc., CPH, LLC, The Lunz Group, WSP USA Environmental & Infrastructure, Inc., and Bentley Group, Inc.

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 USA 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.

On December 19, 2023, the Commission approved agreements with eight (8) out of the fifteen (15) firms.

The following six (6) firms have submitted all of their contract documents, therefore staff is requesting approval for their agreements. The remaining one (1) agreement will be brought to the Commission for approval once all documentation is received.

- Baker Barrios Architects, Inc.
- Colliers Engineering & Design, Inc.
- CPH, LLC
- The Lunz Group
- WSP USA Environmental & Infrastructure, Inc.
- Bentley Group, Inc

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 each agreement is for five (5) years unless otherwise terminated.

Recommendation

Approval of the Architectural/Engineering Services master agreements with Baker Barrios Architects, Inc., Colliers Engineering & Design, Inc., CPH, LLC, The Lunz Group, WSP USA Environmental & Infrastructure, Inc., and Bentley Group, Inc.

REQUESTED CITY COMMISSION ACTION:

Approve

Department: Public Works & Engineering

Presenter:

City of Kissimmee

Attachment(s):

1. (S) Baker Barrios Architects (Revised Exhibit A)
2. (S) Colliers Engineering & Design, Inc.
3. (S) CPH, LLC
4. (S) The Lunz Group
5. (S) WSP USA Environmental & Infrastructure, Inc.
6. (S) Bentley Group, Inc (Revised Exhibit A)

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 **BAKER BARRIOS ARCHITECTS, INC.**, 189 S ORANGE AVE, SUITE 1700, ORLANDO, FL 32801 whose Federal Identification Number is: 59-3444163 (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.

12.11 Neither party to this Agreement will be liable to the other party for delays, or for the direct or indirect cost resulting from such delays, that may result from acts of God, acts of governmental authorities, acts of terrorism, pandemics, extraordinary weather conditions or other natural catastrophes, or any other cause beyond the control or contemplation of either party. Each party will take reasonable steps to mitigate the impact of any force majeure. Consultant shall not be deemed in default of this Agreement to the extent that any delay or failure in the performance of Consultant's obligations results from any cause beyond its reasonable control and without its negligence.

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 \$150,000 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. 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 Intentionally Deleted

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, and hold the CITY, and its officers, employees, free and harmless from and against any and all claims, actions, causes of action, liabilities (joint or several), penalties, forfeitures, damages, losses and reasonable 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 to the extent caused by: (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.

14.4 PURSUANT TO SECTION 558.0035 FLORIDA STATUTES, THE CONSULTANT'S CORPORATION IS THE RESPONSIBLE PARTY FOR THE PROFESSIONAL SERVICES IT AGREES TO PROVIDE UNDER THIS AGREEMENT. NO INDIVIDUAL PROFESSIONAL EMPLOYEE, AGENT, DIRECTOR, OFFICER, OR PRINCIPAL SHALL BE INDIVIDUALLY LIABLE FOR NEGLIGENCE ARISING OUT OF THIS CONTRACT.

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 nonperforming 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: **BAKER BARRIOS 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:

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 **Intentionally Deleted**

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: Managing Partner - Orlando

STATE OF FLORIDA
COUNTY OF Orange

The foregoing instrument was acknowledged before me this 18 day of January, 2024, 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: Kaydeon Tenn
My Commission Expires: July 19, 2025

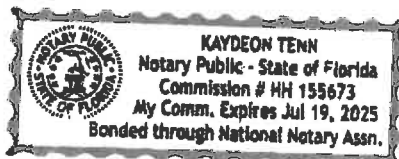


EXHIBIT "A"



ORLANDO

2024 Hourly Rates

189 S. ORANGE AVE.

SUITE 1700

ORLANDO, FLORIDA

32801

407.926.3000

AA0002981 | LC26000427

COMMERCIAL

CORPORATE

EDUCATION

ENTERTAINMENT

HEALTHCARE

HOSPITALITY

INDUSTRIAL

MIXED-USE

RESIDENTIAL

RETAIL

SENIOR LIVING

SPORTS & RECREATION

Architectural Design Services

Executive / President / Vice President	(AR7)	\$350
Managing Partner/ Managing Principal	(AR6)	\$300
Practice Leader / Principal	(AR5)	\$250
Sr. Architect / Sr. Designer / Sr. Project Manager	(AR4)	\$200
Architect / Sr. Drafter / Project Manager	(AR3)	\$165
Project Architect	(AR2)	\$145
Drafter / Graduate Architect	(AR1)	\$100
Intern Architect (Internship)	(AR0)	\$90

Landscape Architectural Design Services

Practice Leader / Principal	(LA5)	\$250
Sr. Architect / Sr. Designer / Sr. Project Manager	(LA4)	\$190
Project Architect / Sr. Drafter / Project Manager	(LA3)	\$160
Architect	(LA2)	\$130
Drafter	(LA1)	\$100
Intern Architect (Internship)	(LA0)	\$85

Interior Design Services

Practice Leader / Principal	(ID5)	\$250
Sr. Interior Designer	(ID4)	\$200
Interior Designer	(ID3)	\$165
Project Designer	(ID2)	\$130
Drafter / Graduate Interior Designer	(ID1)	\$100
Intern Interior Designer (Internship)	(ID0)	\$90

Quality Assurance

Sr. Quality Assurance Specialist	(QA2)	\$175
Quality Assurance Specialist	(QA1)	\$140

Other

Director of Special Projects	(DSP)	\$250
Computer Support	(IT1)	\$130
Graphics	(GD1)	\$90
Administrative Support	(AM1)	\$100
Business Development	(BD4)	\$250
Marketing	(MA4)	\$250

1.1.24

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 reproducibles 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

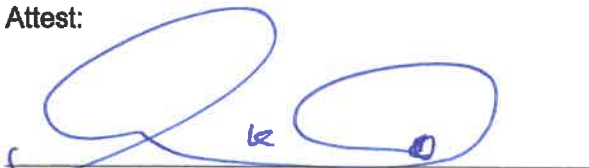
SOLICITATION NO.: RFP2023-006 PROJECT NAME: Architectural and Engineering Services

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.

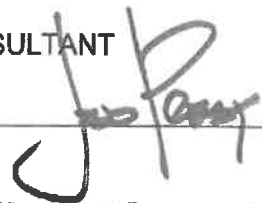
BIDDER ATTESTS THAT THEY ARE FULLY COMPLIANT WITH ALL APPLICABLE IMMIGRATION LAWS (SPECIFICALLY TO THE 1986 IMMIGRATION ACT AND SUBSEQUENT AMENDMENTS).

Attest:


Corporate Secretary

CONSULTANT

By:

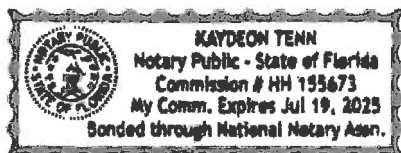

Title: Managing Partner - Orlando

STATE OF FLORIDA

COUNTY OF Orange

The foregoing instrument was acknowledged before me this 18 day of January, 2024, 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: Kaydeon Tenn

My Commission Expires: July 19, 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 **COLLIERS ENGINEERING & DESIGN, INC.**, 1101 North Lake Destiny Road Suite 415 Maitland, Florida 32751, whose Federal Identification Number is: 22-2651610 (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 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;

13.1.4 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.

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

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

13.1.7 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.

13.1.8 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: Colliers Engineering & Design, 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:

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 Brian E. Curtis, Esq.
VP/Secretary/General Counsel

By: 

Michael Ehrhart, PSM
Title: Principal Associate

STATE OF FLORIDA
COUNTY OF Hillsborough

The foregoing instrument was acknowledged before me this 16th day of January, 2024, by means of ☐ physical presence or ☒ online notarization, by (name of person) Michael Ehrhart as Principal Associate for (name of party on behalf of whom instrument was executed), a Florida corporation, who is personally known to me or has produced identification. for Colliers Engineering & Design

Notary Seal:

Notary: 
Print Name: Michelle Eguia
My Commission Expires: 4/28/24



EXHIBIT “A”

HOURLY RATE SCHEDULE

Technical Staff Rates 2024	
Billing Titles	Hourly Rates
Executive Principal	310.00
Senior Principal	270.00
Principal	240.00
Senior Technical Director	230.00
Senior Project Manager	220.00
Technical Director	200.00
Project Manager	190.00
Senior Project Specialist	180.00
Project Specialist	170.00
Technical Professional	160.00
Technical Specialist	150.00
Specialist	140.00
Senior Data Technician	130.00
Senior Technical Assistant	120.00
Technical Assistant	110.00
Field Technician	100.00
Data Technician	100.00
Survey Crew – 1 Person w/Robotic Equipment	150.00
Additional Survey Crew Member	60.00
SUE Crew (designating) – 1 Person	150.00
Additional (designating) Member	80.00
SUE Crew (locating) – 2 Person	200.00
Additional (locating) Member	80.00

Rates are effective through December 31, 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.

- 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").

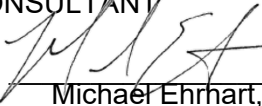
THE CITY MAY CONSIDER THE EMPLOYMENT BY ANY CONTRACTOR OF UNAUTHORIZED ALIENS A VIOLATION OF SECTION 274A(e) OF THE INA. **SUCH VIOLATION BY THE RECIPIENT OF THE EMPLOYMENT PROVISIONS CONTAINED IN SECTION 274A(e) OF THE INA SHALL BE GROUNDS FOR UNILATERAL CANCELLATION OF THE CONTRACT BY THE CITY.**

BIDDER ATTESTS THAT THEY ARE FULLY COMPLIANT WITH ALL APPLICABLE IMMIGRATION LAWS (SPECIFICALLY TO THE 1986 IMMIGRATION ACT AND SUBSEQUENT AMENDMENTS).

Attest:



Corporate Secretary Brian E. Curtis, Esq.
VP/Secretary/General Counsel

CONSULTANT
By: 

Michael Ehrhart, PSM
Title: Principal Associate

STATE OF FLORIDA
COUNTY OF Hillsborough

The foregoing instrument was acknowledged before me this 16th day of January, 2023, by Michael Erhart as Principal Associate means of ☐ physical presence or ☒ online notarization, by (name of person) Michael Erhart 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. for Colliers Engineering & Design

Notary Seal:



Notary: 
Print Name: Michelle Eguia
My Commission Expires: 4/8/24

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 CPH Consulting, LLC 1117 E. Robinson St., Orlando, FL 32801, whose Federal Identification Number is: 59-2068806 (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: **CPH Consulting, LLC**
1117 E. Robinson St., Orlando, FL 32801

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:

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:

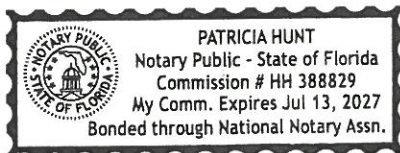
Patricia Hunt
Corporate Secretary

By: D. E. Fable
Title: Chief Operating Officer - Public Svcs

STATE OF FLORIDA
COUNTY OF Seminole

The foregoing instrument was acknowledged before me this 10 day of January, 2028, by means of ☐ physical presence or ☒ online notarization, by (name of person) David E. Mohr 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. CPA Consulting LLC Delaware PA

Notary Seal:



Notary: Patricia Hunt
Print Name: Patricia Hunt
My Commission Expires: July 13, 2027

EXHIBIT "A"
HOURLY RATE SCHEDULE

MUNICIPAL STANDARD RATES

Effective: October 11, 2023

Category	Rate
Principal I	\$336
Discipline Manager II	\$280
Discipline Manager I	\$253
Project Manager V	\$275
Project Manager IV	\$216
Project Manager III	\$190
Project Manager II	\$160
Project Manager I	\$141
Manager II	\$185
Manager I	\$152
Engineer V	\$260
Engineer IV	\$204
Engineer III	\$157
Engineer II	\$151
Engineer I	\$123
Architect V	\$282
Architect IV	\$202
Architect III	\$190
Architect II	\$182
Architect I	\$111
Interior Designer	\$114
Landscape Architect III	\$156
Landscape Architect II	\$145
Landscape Architect I	\$130
Designer V	\$150
Designer IV	\$132
Designer III	\$123
Designer II	\$103
Designer I	\$97
Scientist III	\$144
Scientist II	\$119
Scientist I	\$90

Category	Rate
Coordinator III	\$147
Coordinator II	\$130
Coordinator I	\$120
Planner III	\$165
Planner II	\$152
Planner I	\$127
GIS Manager	\$150
GIS Analyst III	\$130
GIS Analyst II	\$119
GIS Analyst I	\$95
Technician III	\$160
Technician II	\$135
Technician I	\$110
Analyst III	\$135
Analyst II	\$127
Analyst I	\$110
CADD III	\$131
CADD II	\$96
CADD I	\$88
Administrative V	\$162
Administrative IV	\$121
Administrative III	\$99
Administrative II	\$76
Administrative I	\$74
Project Administrator II	\$142
Project Administrator I	\$130
Intern II	\$76
Intern I	\$66
Graphic Designer III	\$147
Graphic Designer II	\$125
Graphic Designer I	\$106

Category	Rate
Construction Manager II	\$173
Construction Manager I	\$165
Construction Rep III	\$163
Construction Rep II	\$131
Construction Rep I	\$115
Surveyor III	\$188
Surveyor II	\$137
Surveyor I	\$125
Crew Chief	\$112
Instrument Operator	\$87
Survey Crew - 3 Man	\$360
Survey Crew - 2 Man	\$335
Survey Crew - 1 Man	\$260
GPS Crew II	\$260
GPS Crew I	\$185



*Rates are good for up to three years and will be adjusted based on annualized Consumer Price Index.

*Billing and Reimbursable Rates are Subject to Periodic Review and Adjustment.

*Outside Reimbursable markup will be 10% over actual cost. Subconsultant markup will be 7% of the total subconsultant costs.

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 reproducibles 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
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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:

Patricia Hunt

Corporate Secretary

CONSULTANT

By: David E. Mohler

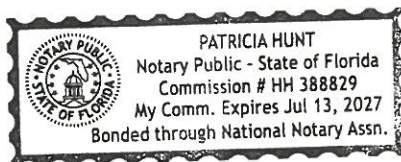
Title: Chief Operating Officer - Public Svcs

STATE OF FLORIDA

COUNTY OF Seminole

The foregoing instrument was acknowledged before me this 10 day of January, 2023, by means of ☒ physical presence or ☐ online notarization, by (name of person) David E. Mohler as (type of authority) COO for (name of party on behalf of whom instrument was executed) CPH Consulting LLC, a Florida corporation, who is personally known to me or has produced identification. relaxore All

Notary Seal:



Notary: Patricia Hunt

Print Name: Patricia Hunt

My Commission Expires: July 13, 2027

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 **THE LUNZ GROUP**, 615 Celebration Avenue, FL 34747, whose Federal Identification Number is: 59-2853955 (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. The Architect's action in reviewing submittals shall be taken in accordance with the approved submittal schedule or, in the absence of an approved submittal schedule, within ten (10) business days upon receipt to permit adequate review. 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 site observations 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 site observations 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) site observations 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) site observations 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 receipt of seven (7) days’ 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. Upon receipt of payment for approved services rendered, 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: **The Lunz Group**
58 Lake Morton Drive
Lakeland, FL 33801

35.2 Notices shall be effective when received at the addresses 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: **THE LUNZ GROUP**
58 Lake Morton Drive
Lakeland, FL 33801

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 **Intentionally Deleted**

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.

47.4 PURSUANT TO FLORIDA STATUTES SECTION §558.0035 (2013), AN INDIVIDUAL EMPLOYEE OR AGENT OF THE LUNZ GROUP (ARCHITECT) MAY NOT BE HELD INDIVIDUALLY LIABLE FOR NEGLIGENCE.

(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:

Trace P. Meyer
Corporate Secretary

CONSULTANT

By: _____
Title: PRESIDENT

STATE OF FLORIDA
COUNTY OF POLK

The foregoing instrument was acknowledged before me this 8th day of JANUARY, 2024, by means of ☒ physical presence or ☐ online notarization, by Bradley T. Lunz, AIA, LEED AP, GGP as President for The Lunz Group, LLC, a Florida corporation, who is personally known to me or has produced identification.

Notary Seal:

Notary: Eden F. Konishi
Print Name: EDEN F. KONISHI
My Commission Expires: 05-26-2025

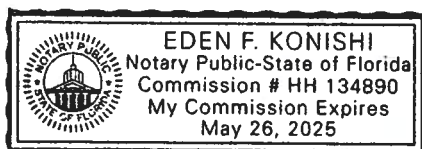


EXHIBIT “A”
HOURLY RATE SCHEDULE

CURRENT SCHEDULE OF FEES FOR PER DIEM SERVICES

DISCIPLINE	RATE/HOUR
Architect Principal	\$225.00
Staff Architect	\$175.00
Interior Designer	\$135.00
Project Manager	\$159.00
Senior Technical	\$125.00
Junior Technical	\$75.00
Clerical	\$50.00

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:

Isaac Meyer
Corporate Secretary

CONSULTANT

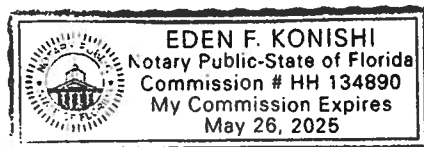
By: [Signature]

Title: PRESIDENT

STATE OF FLORIDA
COUNTY OF POLK

The foregoing instrument was acknowledged before me this 8th day of JANUARY, 2024, by means of ☒ physical presence or ☐ online notarization, by Bradley T. Lunz, AIA, LEED AP, GGP as President for The Lunz Group, LLC, a Florida corporation, who is personally known to me or has produced identification.

Notary Seal:



Notary: [Signature]
Print Name: EDEN F. KONISHI
My Commission Expires: 05-26-2025

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 **WSP USA ENVIRONMENT & INFRASTRUCTURE, INC.**, 301 E Pine St, Suite 1020, Orlando, Florida 32801, whose Federal Identification Number is: 91-1641772 (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: **WSP USA ENVIRONMENT & INFRASTRUCTURE INC.**
301 E Pine St, Suite 1020, Orlando, Florida 32801
Attn: Lance Lumbard

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: WSP USA ENVIRONMENT & INFRASTRUCTURE 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: Christine Mehle, PE, CFM, ENV SP
Vice President, Florida Water Lead

Name: Lance Lumbard, MS,MBA, CLP
Assistant Vice President / Water
Quality Management Lead

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

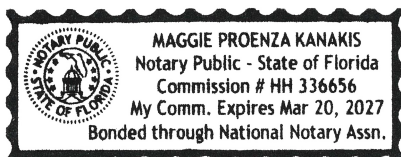
By: 

Florida District Lead - Earth & Environment
Title: Senior Vice President

STATE OF FLORIDA
COUNTY OF Miami-Dade

The foregoing instrument was acknowledged before me this 7 day of December, 2023, by means of ☐ physical presence or ☒ online notarization, by Mark Diblin as Senior Vice President for (WSP USA Environment & Infrastructure Inc), a Florida corporation, who is personally known to me or has produced identification.

Notary Seal:



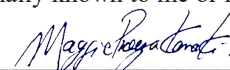
Notary: 
Print Name: Maggie Proenza-Kanakis
My Commission Expires: 03/20/2027

EXHIBIT “A”

HOURLY RATE SCHEDULE

WSP USA Environment & Infrastructure Inc.
City of Kissimmee a Municipal Corporation of the State of Florida
RFQ2023-006 Architect/Engineering Services Master Agreement
Rate Schedule

Labor Category	Burdened Rate
Principal	\$329.97
Senior Project Manager	\$262.45
Project Manager	\$181.96
Senior Architect	\$230.58
Architect	\$169.22
Junior Architect	\$138.92
Senior Landscape Architect	\$249.43
Landscape Architect	\$188.94
Junior Landscape Architect	\$113.58
Principal Civil Engineer	\$312.33
Senior Civil Engineer	\$249.87
Civil Engineer	\$201.13
Junior Civil Engineer	\$131.41
Principal Environmental Engineer/Scientist	\$294.69
Senior Environmental Engineer/Scientist	\$238.14
Environmental Engineer/Scientist	\$181.60
Junior Environmental Engineer/Scientist	\$124.52
Senior Electrical Engineer	\$255.65
Electrical Engineer	\$199.80
Junior Electrical Engineer	\$133.25
Senior Geotechnical Engineer	\$248.78
Geotechnical Engineer	\$201.13
Junior Geotechnical Engineer	\$129.31
Senior Mechanical Engineer	\$250.39
Mechanical Engineer	\$192.68
Junior Mechanical Engineer	\$136.25
Senior Structural Engineer	\$250.52
Structural Engineer	\$192.09
Junior Structural Engineer	\$141.48
Senior Fire Protection Engineer	\$306.72
Fire Protection Engineer	\$193.73
Junior Fire Protection Engineer	\$136.52
Senior Designer	\$218.07
Designer	\$145.07
Senior GIS Analyst/Specialist	\$216.45
GIS Analyst/Specialist	\$146.31
Junior GIS Analyst/Specialist	\$110.42
Senior CAD Operator	\$181.82
CAD Operator	\$106.46
Senior Technician	\$148.23
Technician	\$107.91
Junior Technician	\$82.43
Senior Construction Manager	\$208.92
Construction Manager	\$161.15
Senior Construction Inspection Technician	\$169.30
Construction Inspection Technician	\$143.28
Junior Construction Inspection Technician	\$96.27
Surveyor	\$198.89
Party Chief	\$100.91
Survey Technician	\$73.57
Cost Estimator	\$199.02
Senior Scheduler/Project Controls	\$228.70
Scheduler/Project Controls	\$151.87
Procurement/Subcontract Administration	\$151.89
Project Accounting	\$94.54
Administrative Assistant	\$89.35

* Burdened rates are effective for 1-year from date of award and subject to an escalation factor for each year thereafter.

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

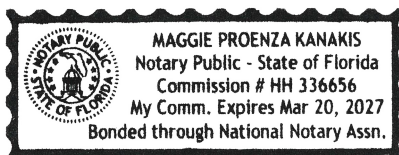
By: Mark D. Doblin

Title: Senior Vice President

STATE OF FLORIDA
COUNTY OF Miami-Dade

The foregoing instrument was acknowledged before me this 7 day of December, 2023, by means of ☐ physical presence or ☒ online notarization, by Mark Doblin as Senior Vice President for WSP USA Environment & Infrastructure Inc., a Florida corporation, who is personally known to me or has produced identification.

Notary Seal:



Notary: Maggie Proenza-Kanakis
Print Name: Maggie Proenza-Kanakis
My Commission Expires: 03/20/2027

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 **Bentley Group, Inc.**, 651 W Warren Ave, Ste. 200 Longwood, FL 32750, whose Federal Identification Number is: 59-3045321 (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.

12.11 Neither party to this Agreement will be liable to the other party for delays, or for the direct or indirect cost resulting from such delays, that may result from acts of God, acts of governmental authorities, acts of terrorism, pandemics, extraordinary weather conditions or other natural catastrophes, or any other cause beyond the control or contemplation of either party. Each party will take reasonable steps to mitigate the impact of any force majeure. Consultant shall not be deemed in default of this Agreement to the extent that any delay or failure in the performance of Consultant's obligations results from any cause beyond its reasonable control and without its negligence.

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 \$50,000.00 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. 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 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.

13.6 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, and hold the CITY, and its officers, employees, free and harmless from and against third party claims, actions, causes of action, liabilities (joint or several), penalties, forfeitures, damages, losses and reasonable 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 to the extent caused by: (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, employees; 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 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.

14.4 Pursuant to Section 558.0035 Florida Statutes, the Consultant's Corporation is the responsible party for the Professional Services it agrees to provide under this agreement. No individual professional employee, agent, director, officer, or principal shall be individually liable for negligence arising out of this contract.

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: Bentley Group, 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:

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 **Unauthorized Alien(s)**

39.1 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.

39.2 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.

40.0 **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.

41.0 **Default and Remedy**

41.1 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.

42.0 **Attorneys' Fees and Costs**

42.1 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.

43.0 **Public Records Law**

43.1 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.

43.2 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.

43.3 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.

43.4 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.

44.0 **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.

45.0 **Additional Definitions**

45.1 **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.

45.2 **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.

45.2.1 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.

45.2.2 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.

45.3 **Final Completion** means that the following items have been completed or satisfied:

45.3.1 Construction of the Project is completed, in accordance with the contract documents and certified as such by the CITY and CONSULTANT.

45.3.2 The Project is suitable for full use and occupancy as determined by the CITY and CONSULTANT.

45.3.3 All Punchlist items have been completed or otherwise disposed of or accounted for to the CITY'S satisfaction and approval.

45.3.4 A final Certificate of Occupancy and all other permits and approvals required have been legally and validly issued.

45.3.5 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.

45.4 **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.

45.5 **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.

45.6 **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.

45.7 **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.

46.0 **Additional Terms and Conditions**

46.1 INSTRUMENTS OF SERVICE

46.1.1 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.

46.1.2 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.

46.1.3 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.

46.1.4 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.

46.2 CHANGE IN SERVICES

46.2.1 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.

46.2.2 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:

46.2.2.1 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;

46.2.2.2 Enactment or revision of codes, laws or regulations or official interpretations, which necessitate changes to previously prepared Instruments of Service;

46.2.2.3 Significant change in the Project including, but not limited to, size, quality, complexity, the CITY'S schedule or budget, or procurement method;

46.2.2.4 Preparation for and attendance at a public hearing, a dispute resolution proceeding or a legal proceeding except where the CONSULTANT is party thereto.

46.3 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: VP

STATE OF FLORIDA
COUNTY OF Sevinole

The foregoing instrument was acknowledged before me this 8 day of February, 2024, by means of ☒ physical presence or ☐ online notarization, by (name of person) Gary Kranston as (type of authority) VP of Architecture for (name of party on behalf of whom instrument was executed) Bentley Group, Inc, a Florida corporation, who is personally known to me or has produced identification.

Notary Seal:

Notary: Cynthia Fuoco
Print Name: Cynthia Fuoco
My Commission Expires: 12/18/27

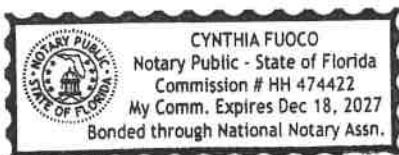


EXHIBIT "A"

PROFESSIONAL ARCHITECTURAL SERVICES
RFQ2023-006
Contract Title: ARCHITECTURAL/ENGINEERING SERVICES MASTER
AGREEMENT

EXHIBIT A
SCHEDULE OF RATES

The rates below include all labor costs, overhead, and profit.

BENTLEY GROUP, INC.

Job Title	Hrly Rate
Chief Engineer 2	\$260.00
Chief Engineer 1	\$275.00
Senior Architect	\$214.00
Project Architect	\$187.00
Chief Designer	\$155.00
Designer	\$87.00
Senior Engineer 1	\$260.00
Engineer 2	\$199.00
Engineer 1	\$174.00
Engineering Intern	\$138.00
Engineering Technician	\$107.00

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

By: _____

Title: _____

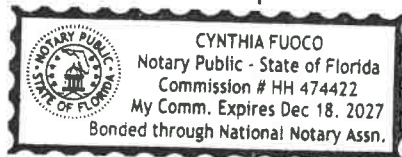
Corporate Secretary

STATE OF FLORIDA

COUNTY OF Seminole

The foregoing instrument was acknowledged before me this 8 day of February, 2023, by means of ☒ physical presence or ☐ online notarization, by (name of person) Gary Kardon as (type of authority) VP or for (name of party on behalf of whom instrument was executed) Bentley Group Inc., a Florida corporation, who is personally known to me or has produced identification.

Notary Seal:



Notary: _____

Print Name: _____

My Commission Expires: _____

ITEM 7.H

Master Services Agreement with Rubicon Global, LLC for Solid Waste Division

Request

Approval of an agreement with Rubicon Global, LLC (Contract # 20240237) to provide route optimization tools for the Solid Waste Division.

Explanation

To enhance efficiencies within the Solid Waste Division, the Division began exploring options and opportunities to streamline operations while leveraging other investments that have already been made by the City. During this process, the Division identified Rubicon Global, LLC. as a leading provider of software that enhances the efficiency of solid waste operations.

Rubicon directly integrates into the vehicle's onboard telematics device, which currently provides video and vehicle diagnostic information to the Fleet Division. Together, these devices will help provide the drivers with accurate routing information while making a positive impact on the operation's expenses. Additionally, the system will provide for the digital capturing of driver's mandatory pre- and post-drive vehicle inspections and will streamline daily load ticket reporting, which is currently a manual paper process.

Rubicon has agreed to partner with the City for a "Pilot to Contract" experience in which there is no risk or financial cost to the City for the first three (3) months of service. If the City determines the program is not beneficial or does not meet its needs, the program can be terminated at no cost.

Financial Information

Account #	Project #	Increase / Decrease	Budget	Actual
41145713-505455		Decrease	\$45,100	\$45,088

Financial Summary:

Rubicon Global, LLC was selected given its technical features and direct integration with Samsara, the existing vehicle telematics system. Rubicon is currently the only solid waste route optimization partner of Samsara, and therefore is being considered a single source purchase.

The Year 1 cost, which includes the first year of service and implementation expenses, totals \$45,088. The remaining years of the agreement will cost \$26,688 annually.

Recommendation

Approval of a 39-month agreement with Rubicon Global, LLC totaling \$98,464 over the length of the agreement for the provision of route optimization and solid waste management operations software.

REQUESTED CITY COMMISSION ACTION:

Approve

Department: Public Works & Engineering

Presenter:

Attachment(s):

1. (S) Rubicon MSA Kissimmee Pilot to Contract
2. Single Source - Rubicon & Samsara Solid Waste Partner

MASTER SOFTWARE SERVICES AGREEMENT

THIS MASTER SOFTWARE SERVICES AGREEMENT (this “Agreement”) is made and entered into as of [REDACTED], by and between RUBICON GLOBAL, LLC, a Delaware limited liability company (“Rubicon”), and THE CITY OF KISSIMMEE FL with a principal place of business at 101 Church St, Kissimmee, FL (“Client”).

In consideration of the mutual covenants and agreements made herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereby agree as follows:

1. Definitions.

Capitalized terms used and not otherwise defined in this Agreement shall have the following meanings:

1.1 “Affiliate” means any entity that is controlled by Client, where “control” means the ownership of, or the power to vote, more than fifty percent (50%) of the voting stock, shares, or interests in an entity.

1.2 “Agreement” means this Agreement, and any Orders, exhibits, Statements of Work and amendments to the foregoing.

1.3 “Client” means the entity entering into this Agreement and any Affiliate designated in this Agreement or an Order which is authorized to receive the Subscribed Services. Client shall be fully responsible for the performance of all of its Affiliates’ obligations under this Agreement.

1.4 “Client Content” means all data, imagery, information and other content (a) transmitted by or on behalf of Client through the System; (b) provided by Client or on Client’s behalf for use in connection with the Subscribed Services; or (c) otherwise processed or stored by Rubicon or its contractors on Client’s behalf pursuant to this Agreement.

1.5 “Documentation” means the then-current, commercially available user manuals, training materials and technical manuals relating to the Subscribed Services provided to Client by Rubicon pursuant to this Agreement.

1.6 “Effective Date” means the earlier of (a) the date this Agreement and the first Order are accepted and signed by Rubicon; or (b) the date Client begins using or receiving the Subscribed Services.

1.7 “Intellectual Property Rights” means, on a world-wide basis, any and all (a) rights associated with works of authorship, including without limitation, copyrights, copyrightable rights, moral rights and mask work rights; (b) trademark, service mark and trade name rights and any similar rights recognized under applicable law; (c) rights in confidential information and trade secret; (d) patents and patentable rights; (e) all rights with respect to inventions, discoveries, improvements, know-how, formulas, algorithms, processes, technical information and other technology; (f) all other intellectual and industrial property rights of every kind or nature, whether arising by operation of law, contract, license or otherwise; and (g) all international, national, foreign, state and local registrations, applications for registration and any renewals and extensions thereof (including, without limitation, any continuations, continuations-in-part, divisions, reissues, substitutions and reexaminations), all goodwill associated therewith, and all benefits, privileges, causes of action and remedies relating to any of the foregoing (including, without limitation, the exclusive rights to apply for and maintain all such registrations, renewals and extensions; to sue for all past, present and future infringements or other violations relating thereto; and to settle and retain all proceeds from any such actions).

1.8 “Marks” means the trademarks, service marks or trade names of Client.

1.9 “Order(s)” means the order(s), and any amendments thereto, executed by the parties and which references this Agreement. Each Order shall specify the Subscribed Services being subscribed for, the licensing parameters, the term of the Order, the applicable fees, billing period, and other charges, as well as payment terms. Each Order with the terms of this Agreement, and any exhibits and amendments to such Order, is a separate and independent contractual obligation of Rubicon from any other Order. In the event of any conflict between the terms of this Agreement and the terms of any such Order, the terms of such Order shall prevail.

1.10 “Professional Services” means implementation, consulting and training services, including without limitation, technical services to facilitate setup and deployment of the Subscribed Services specified in a Statement of Work.

1.11 “Rubicon Software” means Rubicon’s proprietary software programs used by Rubicon to provide the Subscribed Services (including, without limitation, all source code, object code, designs, copyrightable works, ideas, inventions, technology and other Intellectual Property Rights therein), as modified, enhanced or replaced by Rubicon from time to time. For the avoidance of doubt, Rubicon Software does not include Client Content.

1.12 “Statement of Work” means a document executed by both parties that describes the Professional Services to be performed by Rubicon pursuant to the Professional Services Terms (as defined in Section 2.6), including without limitation, the project assumptions, specifications, scope, work plan, responsibilities, duration and fees for such Professional Services, which Statements of Work shall reference this Agreement and be sequentially numbered. Each Statement of Work with the Professional Services Terms, and any exhibits, change orders and amendments to such Statement of Work, is a separate and independent contractual obligation of Rubicon from any other Statement of Work.

1.13 “Subscribed Services” means Rubicon’s proprietary, web-based services set forth in an Order which are provided to Client on a subscription basis and enable use of the Rubicon Software through the System.

1.14 “System” means the Rubicon Software and the server grade computers and related networks maintained by or on behalf of Rubicon and its third-party providers to host the Rubicon Software and provide the Subscribed Services to Client, all as hereafter modified, enhanced or replaced by Rubicon.

1.15 “Third Party Offerings” means services delivered or performed by third parties independently of Rubicon related to the Subscribed Services, or other online, web-based CRM, ERP, or other business application subscription services, and any associated offline products provided by third parties, that interoperate with the Subscribed Services.

1.16 “Work Product” means any software, data, documentation, graphics, text, code, inventions, pictures, audio, video, animations, enhancements, improvements, methods, processes, works of authorship, work-flow methods or other deliverables or any portions of the foregoing that Rubicon creates, whether alone or jointly, while performing Professional Services or any other services hereunder. Work Product excludes: (a) the Subscribed Services; (b) the System; (c) any generic routines or code that have general application to the Rubicon Software or System; and (d) all modifications, alterations, derivative works and enhancements to the foregoing, and all copies thereof.

1.17 “Free Pilot” means the first ninety days from the date the City receives the subscribed services.

2. **Services.**

2.1 **Subscribed Services.** Subject to the terms and conditions set forth herein, including without limitation, Client’s payment of all applicable fees, Rubicon hereby agrees to provide the Subscribed Services, and in connection therewith, Rubicon hereby grants to Client during the term of the applicable Order a non-exclusive, non-transferable, non-sublicensable, limited right and license to (a) access and use of the Subscribed Services subject to the terms specified in the SOW and as specified in the applicable Order, solely for Client’s internal use; (b) to transmit and receive Client Content to and from the System; and (c) use the Documentation in connection with such rights. The rights granted to Client pursuant to any Order shall terminate upon the termination or expiration of this Agreement or

the applicable Order for any reason. All rights not expressly granted to Client are reserved by Rubicon and its licensors.

2.2 Limitations. Client shall not: (a) access or use any portion of the Subscribed Services or System except as expressly authorized pursuant to an Order; (b) cause or permit decompilation, reverse assembly or reverse engineering of all or any portion of the Subscribed Services or System; (c) copy any ideas, features, functions or graphics of the Subscribed Services or System or modify or make derivative works based upon the Subscribed Services or System; (d) delete, fail to reproduce or modify any patent, copyright, trademark or other proprietary rights notices which appear on or in the Subscribed Services, System or Documentation; or (e) directly or indirectly, sublicense, relicense, distribute, disclose, use, rent or lease the Subscribed Services or System, or any portion thereof, for third party use, third party training, facilities management or time-sharing, or use as an application service provider or service bureau. Without limiting the foregoing, Client may not use the Subscribed Services or System to: (i) send or store material containing viruses, worms, Trojan horses or other harmful computer code, files, scripts, agents or programs; (ii) interfere with or disrupt the integrity or performance of the Subscribed Services, System or the data contained therein; or (iii) attempt to gain unauthorized access to the Subscribed Services or System.

2.3 Support. Client will be responsible for providing first line maintenance and support to its authorized end users in connection with the Subscribed Services. Qualified employees of Client who have been trained on use of the Subscribed Services (the “Designated Employees”) to contact Rubicon with technical questions or issues with respect to the Subscribed Services and to report System outages or failures. Rubicon shall respond to the technical support questions from the Designated Employees and commence the process of responding to System or Subscribed Services outages or failures in accordance with Rubicon’s standard procedures. The Designated Employees shall assist Rubicon in resolving issues with the Subscribed Services and System as Client resources allow. Rubicon acknowledges that limited availability of Designated Employees does not, under any circumstance, waive Rubicon’s obligations described in Addendum A. Rubicon is under no obligation to provide functional updates, enhancements or upgrades to the System or Subscribed Services by any time certain.

2.4 System Availability. Rubicon will use commercially reasonable efforts to enable and maintain access to the Subscribed Services. Updates to the System will be scheduled for evenings and/or weekends to minimize disruption. Client acknowledges and agrees that certain portions of the Subscribed Services, including without limitation, data storage, hosting, and System hardware management, may be provided by third party service providers. Rubicon will provide ongoing management of the System, located at the third-party provider’s location, in accordance with Rubicon’s agreement with the third-party provider(s), in order to maintain the best practical availability of the Subscribed Services. Rubicon may change its third-party data hosting provider to another hosting provider, in Rubicon’s sole discretion, from time to time. Additional system availabilities can be found in Addendum A.

2.5 Browsers. Client acknowledges and agrees that the Subscribed Services will only be compatible with and support use with the most recently superseded version for one year from the date of the general release of the then-current version, of the following browsers: Edge, Firefox, Safari and Google Chrome.

2.6 Professional Services. If requested and as available, Rubicon will provide Client with Professional Services pursuant to mutually agreeable Statements of Work in accordance with the Professional Services Terms attached hereto as Exhibit A (“Professional Services Terms”).

2.7 Provisioning of the Subscribed Services. Rubicon may update the functionality and user interface of the Subscribed Services from time to time in its sole discretion as part of its ongoing improvement of the Subscribed Services. Client agrees that its subscription to the Subscribed Services is neither contingent on the delivery of any future functionality or features nor dependent on any oral or written public comments made by Rubicon regarding future functionality or features.

3. Client Obligations.

3.1 Resources. Except as expressly set forth herein, Client and its end users shall be solely responsible for providing all resources, equipment and software at its or their respective facilities which are necessary for them to access the System and/or receive the Subscribed Services. Client and its end users must provide all equipment and licenses necessary to access and use the Internet, and pay all fees associated with such access and use. To the extent Rubicon's provision of the Subscribed Services requires data, documents, information or materials of any nature to be furnished, in whole or in part, by Client or its employees, agents, contractors, representatives or authorized users, Client will cause such employees, agents, contractors, representatives and authorized users to furnish such data, documents and information in a manner which permits Rubicon to perform the Subscribed Services as contemplated herein.

3.2 Third Party Coordination; Required Consents. To the extent the Subscribed Services require access to a third party service provider who is under contract with Client, or access or use of such provider's information or interconnection with such provider's services, facilities, technology or systems in order to receive or transmit Client Content, Client shall be responsible for obtaining any required third party licenses or consents necessary for Rubicon to access and use such information, services, facilities, technology or systems.

3.3 Third-Party Web Sites, Products and Services. The Subscribed Services may rely on or require that Client access Third Party Offerings. If Client elects to use the Subscribed Services with Third Party Offerings, Client agrees that: (a) its use of Third Party Offerings must at all times comply with the terms of service governing such offerings; and (b) Rubicon has the right to export and import Client Content to and from such Third-Party Offerings for purposes of delivering the Subscribed Services purchased by Client. Client's or its user's use of third-party websites must at all times comply with the terms of service governing such websites. Client understands and agrees that the availability of the Subscribed Services, or certain features and functions thereof, is dependent on the corresponding availability of Third-Party Offerings or specific features and functions of Third-Party Offerings. Rubicon will not be liable to Client or any third party in the event that changes in Third Party Offerings cause the unavailability of the Subscribed Services or any feature or function thereof. Rubicon may also refer Client to third party service providers that offer Third Party Offerings. Rubicon does not make any representations or warranties regarding any such Third Party Offerings, whether or not such Third Party Offerings or services are designated by Rubicon as "certified," "approved," "recommended" or otherwise, or the services are provided by a third party that is a member of a Rubicon partner program. To the extent that Rubicon requires that Client grant Rubicon authorizations, passwords or other user credentials to a Third-Party Offering ("Rubicon Access Codes") to retrieve Client Content or to enable interoperability with the Subscribed Services, Client shall promptly provide such Rubicon Access Codes.

3.4 Integrated Third-Party Software. Rubicon may integrate third-party computer software into the Subscribed Services. In such an event, Rubicon will obtain, at no additional charge to Client, all rights necessary for Client to use such third-party computer software with the Subscribed Services. All free software is distributed to Client WITHOUT ANY WARRANTY OF ANY KIND, INCLUDING WITHOUT LIMITATION, ANY WARRANTY OF TITLE, MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. A copy of the free software is included with the Subscribed Services. Rubicon disclaims on behalf of all individuals or entities that distributed such free software to Rubicon (the "Contributors") all warranties and conditions, express and implied, including warranties or conditions of title and non-infringement, and implied warranties or conditions of merchantability and fitness for a particular purpose; and Rubicon excludes on behalf of all such Contributors (i) all liability for damages, including direct, indirect, special, incidental and consequential damages, such as lost profits; and (ii) any provisions which differ from this Agreement which are offered by any particular Contributor alone and not by any other party.

3.5 Compliance with Laws. Client will comply with all applicable laws, rules and regulations relating to Client's or its authorized user's receipt or use of the Subscribed Services. Without limiting the foregoing, Client will be solely responsible for determining the extent to which the design or provision of the Subscribed Services is subject to any privacy laws or regulations ("Privacy Laws") or the oversight of any regulatory agency charged with the enforcement thereof ("Regulatory Oversight"). To the extent that the design and operation of the Subscribed Services is subject to any Privacy Laws or Regulatory Oversight, Client will specify any procedures to be taken by Rubicon during the customization and provision of the Subscribed Services to cause the Subscribed Services to be in compliance with such Privacy Laws and Regulatory Oversight. Client shall not export the Subscribed Services, System or Documentation in violation of U.S. Department of Commerce export administration regulations.

3.6 Activity. Rubicon will provide Client access to the Subscribed Services by issuance of a confidential site address and passwords to Client. Client is responsible for maintaining the confidentiality of such address and passwords and any activity that transpires through the use of such address and passwords. Client shall:

(a) notify Rubicon immediately of any unauthorized use of any password or account or any other known or suspected breach of security; (b) report to Rubicon immediately and use reasonable efforts to stop immediately any unauthorized copying or distribution of Client Content that is known or suspected by Client; and (c) not impersonate another Rubicon client or user or provide false identity information to gain access to or use of the Subscribed Services.

4. Prices; Ordering; Payment.

4.1 Invoicing and Payment. Except as otherwise specified in an Order or Statement of Work: (a) Client shall pay to Rubicon all fees, charges and expenses due and owing pursuant to an Order or Statement of Work in U.S. dollars to the address designated on the invoice within thirty (30) days following Rubicon's invoice date; and (b) all payment obligations are non-cancellable, non-refundable and non-contingent. Client may not set-off any amounts owing to Client against any payments owing to Rubicon hereunder. Payments which are not received when due shall bear interest at the lesser of the maximum amount chargeable by law or one and a half percent (1½%) per month commencing with the date payment was due. In addition, in the event Client fails to timely pay any fees or charges when due, Rubicon may, in its discretion, suspend or terminate any Subscribed Services or other services hereunder in accordance with Section 5.3. Client will continue to be charged for all Subscribed Services and other services during any period of suspension.

4.2 Taxes and Duties. Excluding taxes based on Rubicon's net income, Client is liable and responsible for paying all federal, state and local sales, foreign withholding, value added, use, property, excise, service and other taxes, and all duties and customs fees relating to Client's receipt or use of the Subscribed Services, whether or not Rubicon invoices Client for such taxes, duties or customs fees, unless Client timely provides Rubicon with a valid tax exemption or direct pay certificate showing Client is exempt from such payments. If Rubicon is required to pay any such taxes, duties or customs fees, Client shall reimburse Rubicon for such amounts in accordance with Section 4.1, and Client further agrees to indemnify, defend and hold harmless Rubicon for any such taxes, duties and customs fees and any related costs, interest and penalties paid or payable by Rubicon with respect thereto.

4.3 Audits. During the Term, upon thirty (30) days prior written notice to Client, Rubicon may audit Client's facilities, records and use of the Subscribed Services to determine Client's compliance with the terms and conditions of this Agreement. Such audits shall occur during regular business hours and shall be conducted in a manner designed to limit disruption to Client's business.

5. Term and Termination.

5.1 Term. The term of this Agreement ("Term") shall commence on the Effective Date and shall continue for a period of 39 months unless earlier terminated in accordance with the provisions hereof. The Term shall allow for unlimited one-year extensions at additional cost.

5.2 Termination. Either party may terminate this Agreement for any reason during the Free Pilot by providing the other party written notice. After the Free Pilot, either party may terminate this Agreement or the applicable Order or Statement of Work if the other party breaches this Agreement or such Order or Statement of Work, as applicable, and fails to correct the breach within thirty (30) days following receipt of written notice from the non-breaching party. In addition, Rubicon may terminate this Agreement immediately if Client files for bankruptcy, becomes insolvent, or makes an assignment for the benefit of creditors, or if a trustee is set up to administer a substantial portion of Client's assets or business.

5.3 Suspension of Services. In the event (a) Client fails to timely pay any fees when due; or (b) Rubicon believes, upon advice of counsel, that any element of the Subscribed Services, or Client's receipt or use thereof, violates any applicable law, rule or regulation, Rubicon may in its sole discretion suspend or terminate any Subscribed Services and other services immediately without notice.

5.4 EFFECT OF TERMINATION. Upon termination of this Agreement or an Order or Statement of Work for any reason, all payment obligations shall become immediately due and owing and Client shall immediately cease using the applicable Subscribed Services and return all Documentation to Rubicon. In addition, in the event this Agreement or any Order is terminated early, before completion of the applicable term, for any reason other than due to Rubicon's breach, Client shall pay to Rubicon (in addition to any other amounts due under this Agreement) as liquidated damages within thirty (30) days following any such termination, (a) any non-refundable costs incurred by Rubicon in connection with such termination including, but not limited to, hardware costs and licensing fees paid to third party licensors; and (b) fifty percent (50%) of the remaining annual recurring fees (including, without limitation, the subscription fees paid to use and access the Subscribed Services) that would have been charged for the then remaining term of the Agreement or Order(s), as applicable, all of which shall be immediately accelerated. Client acknowledges and agrees that (i) the payment of such fees does not constitute a penalty, but is due to the difficulty in estimating actual damages for early termination; (ii) such fees are a reasonable estimate of the amounts required to fairly compensate Rubicon in such events; and that (iii) such fees have taken into consideration Rubicon's cost savings due to the termination of this Agreement and the present value of accelerated payments. Upon termination of this Agreement, Client shall also return to Rubicon or destroy all copies of Rubicon's Trade Secrets and Confidential Information in every form. Upon request of Rubicon, Client agrees to certify in writing to Rubicon that it and each of its Affiliates have performed the foregoing obligations. Sections 1, 4, 5.4, 6.2, 6.3, and 7, 8, 10 and 11 shall survive any termination of this Agreement in accordance with their respective terms. In the event of any termination hereunder, Client shall not be entitled to any refund of any payments made by Client. Notwithstanding the foregoing, there shall be nothing owed by Client to Rubicon if Client terminates this Agreement during the Free Pilot.

6. Representations and Warranties.

6.1 Services Warranty. Provided that Client notifies Rubicon of the non-conformance within the warranty period, and subject to the limitations set forth herein, Rubicon warrants that the Subscribed Services will be provided substantially in accordance with the applicable Documentation for a period of ninety (90) days from the date such Subscribed Services are first provided. No specific result from the provision of Subscribed Services is assured or guaranteed. In the event of any breach of the foregoing warranty, Rubicon shall, at its option and as Client's sole and exclusive remedy, (a) re-perform the Subscribed Services which were not performed as warranted at no additional charge; or (b) in the event Rubicon is unable to re-perform such Subscribed Services after exercising commercially reasonable efforts to do so, refund the fees paid to Rubicon for the Subscribed Services which were not performed as warranted. Notwithstanding the foregoing, Rubicon shall have no obligation to provide the warranty services described in this Section 6.1 if: (i) the performance failure is at least partially attributable to Client's deviation from applicable operating instructions or failure to perform Client's obligations set forth in this Agreement; or (ii) Client or any other person or entity (other than Rubicon) has modified the Subscribed Services.

6.2 Client Acknowledgment. Client acknowledges and agrees that it has made its own evaluation in deciding to subscribe for the Subscribed Services. The warranties provided in this Agreement extend solely to Client

and to no other person or entity whatsoever. Without limiting the foregoing, Rubicon is not responsible for the results that may be obtained from use of the Subscribed Services.

6.3 **DISCLAIMERS.** EXCEPT AS EXPRESSLY PROVIDED IN THIS SECTION 6, RUBICON MAKES NO REPRESENTATIONS OR WARRANTIES OF ANY KIND, WHETHER EXPRESS OR IMPLIED (EITHER IN FACT OR BY OPERATION OF LAW), WITH RESPECT TO THE SUBSCRIBED SERVICES, THE SYSTEM OR ANY OTHER SERVICES PROVIDED PURSUANT TO THIS AGREEMENT, INCLUDING WITHOUT LIMITATION, PROFESSIONAL SERVICES. RUBICON EXPRESSLY DISCLAIMS ALL OTHER WARRANTIES OR CONDITIONS, INCLUDING WITHOUT LIMITATION, WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, ALL WARRANTIES ARISING FROM CONDUCT, COURSE OF DEALING OR CUSTOM OF TRADE, AND ALL WARRANTIES OF TITLE AND NON-INFRINGEMENT. RUBICON DOES NOT WARRANT THAT THE SUBSCRIBED SERVICES, SYSTEM OR OTHER SERVICES ARE OR WILL BE ERROR-FREE OR THAT THE USE OR OPERATION OF THE SUBSCRIBED SERVICES, SYSTEM OR OTHER SERVICES WILL BE UNINTERRUPTED OR THAT ALL ERRORS OR ISSUES WITH THE SUBSCRIBED SERVICES, SYSTEM OR OTHER SERVICES CAN OR WILL BE CORRECTED.

7. Confidentiality.

7.1 **Confidentiality.** Each party (the “Receiving Party”) acknowledges that it will have access to Confidential Information and Trade Secrets of the other party (the “Disclosing Party”). For purposes of this Agreement, “Trade Secrets” means information, without regard to form, which: (a) derives economic value, actual or potential, from not being generally known to, and not being readily ascertainable by proper means by, other persons who can obtain economic value from its disclosure or use; and (b) is the subject of efforts that are reasonable under the circumstances to maintain its secrecy; and “Confidential Information” means information, other than Trade Secrets, that is of value to Disclosing Party and is treated as confidential. Rubicon’s Trade Secrets and Confidential Information include, without limitation, the Subscribed Services, the System, the Documentation and object and source code for the Rubicon Software. The Receiving Party agrees to use the Trade Secrets and Confidential Information of the Disclosing Party solely for purposes of performing its obligations or exercising its rights under this Agreement. The Receiving Party agrees to discuss the Trade Secrets and Confidential information of the Disclosing Party only with, and to transmit the Trade Secrets and Confidential Information only to, those officers, employees and consultants of the Receiving Party who have a need to know the Trade Secrets or Confidential Information for the purposes set forth herein and who have agreed in writing to treat such information as confidential on terms no less restrictive than as set forth in this Agreement. The parties acknowledge and agree that the terms of any previously executed confidentiality or nondisclosure agreements shall remain in effect with respect to the information exchanged thereunder.

7.2 **Security Precautions.** The Receiving Party shall take commercially reasonable security precautions to prevent unauthorized use and disclosure of the Trade Secrets and Confidential Information of the Disclosing Party and shall use at least the same degree of care the Receiving Party employs with respect to its own Trade Secrets and Confidential Information, but in no event less than a reasonable standard of care. The Receiving Party shall not permit unauthorized access to the Trade Secrets or Confidential Information of the Disclosing Party.

7.3 **Duration and Exceptions.** With regard to Confidential Information, the obligations in this Section 7 shall continue for the Term and for a period of five (5) years thereafter. With regard to Trade Secrets, the obligations in this Section 7 shall continue for so long as such information constitutes a trade secret under applicable law, but in no event less than the Term and for a period of five (5) years thereafter. The Receiving Party’s obligations with respect to Trade Secrets and Confidential Information of the Disclosing Party shall not apply to the extent such Trade Secrets or Confidential Information: (a) are previously known to the Receiving Party without restriction on disclosure; (b) cease to be secret or confidential except by reason of a breach of this Agreement by the Receiving Party; (c) are independently developed by the Receiving Party without reference to the Trade Secrets or Confidential Information of the Disclosing Party; or (d) were received from a third party without obligations of confidence and without breach

of this Agreement. In addition, the Receiving Party may disclose Trade Secrets and Confidential Information of the Disclosing Party to the extent such disclosure is required by applicable law or by any governmental authority, provided the Receiving Party notifies the Disclosing Party, if permitted by law, of the applicable legal requirements before such disclosure occurs so as to enable the Disclosing Party to obtain such protection as may be available to preserve the confidentiality of such information.

7.4 **Public Records.** Notwithstanding the provisions contained herein regarding Confidentiality, Rubicon acknowledges Client's obligations under Article I, Section 24, of the Florida Constitution and under Chapter 119, Florida Statutes, to release public records to members of the public upon request and that the constitutional and statutory provisions control over the terms of this Agreement. As such, Rubicon shall keep and maintain public records required by the Client to perform the service.

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

- a. If the Client's Custodian of Records requests records from Rubicon, Rubicon shall provide the Client's Custodian of Records with a copy of the requested records or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the cost charged by the City of Kissimmee, as provided in Chapter 119, Florida Statutes or as otherwise provided by law.
- b. Rubicon shall ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law for the duration of the Agreement term and following completion of the Agreement if Rubicon does not transfer the records to the Client.
- c. Upon completion of the Agreement, Rubicon shall transfer, at no cost, to the Client all public records in possession of Rubicon or keep and maintain public records required by the Client to perform the service. If Rubicon transfers all public records to the Client upon completion of the Agreement, Rubicon shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If Rubicon keeps and maintains public records upon completion of the Agreement, Rubicon shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to the Client, upon request from the Client's custodian of public records, in a format that is compatible with the information technology systems of the Client. Unless otherwise directed by the Client, all records will be transferred at the conclusion of the Agreement.
- d. Upon notice to Rubicon of a request to inspect or copy public records relating to a Client's Agreement for services, Rubicon shall provide the records to the Client or allow the records to be inspected or copied within a reasonable time.
- e. If Rubicon does not comply with the Client's request for records, such failure shall constitute a material breach and the Agreement shall terminate if Rubicon does not comply upon 30 days' notice by the Client.
- f. If Rubicon fails to provide the public records to the Client within a reasonable time, they may be subject to penalties under Florida Statutes §119.10.

8. Intellectual Property Rights.

8.1 **Rubicon's Intellectual Property.** Rubicon (or its licensors) retains title to the Subscribed Services, System, and Documentation, and all modifications, alterations, derivative works, and enhancements thereto, and all copies thereof and Intellectual Property Rights therein. Except as specified herein, Client does not acquire any rights, express or implied, in the Subscribed Services, System or Documentation, and has no right to commercialize or transfer the Subscribed Services, System or Documentation, in whole or in part. No license, right or Intellectual Property Right in any Rubicon trademark, trade name or service mark is granted pursuant to this Agreement. Subject only to the following, title to all Work Product will at all times remain the sole and exclusive property of Rubicon or its licensors; provided that Rubicon shall not obtain any ownership rights in any Client Content provided by, or on behalf of, Client.

Upon request, Client agrees to execute such documents as may be reasonably requested by Rubicon to secure Rubicon's rights in and to the foregoing. Rubicon hereby grants Client during the term of the applicable Order a non-exclusive, royalty free (subject only to the fees provided for in a Statement of Work), limited right and license to copy, use, modify and sub-license all Work Product.

8.2 Client Content. Client shall own all Client Content. Client shall have sole responsibility for the accuracy, completeness, quality, integrity, legality, reliability, timeliness, appropriateness, and intellectual property ownership and right to use all Client Content, and Rubicon shall not be responsible or liable for the deletion, correction, destruction, damage, loss or failure to store Client Content for any reason. Rubicon does not warrant the correctness, completeness, merchantability or fitness for a particular purpose of any Client Content, and Client shall hold Rubicon harmless from any and all third-party claims arising out of Client's use or dissemination of any such Client Content. In the event this Agreement is terminated (other than by reason of Client's breach), Rubicon will make available to Client a file of the Client Content in its possession, if any, within thirty (30) following Client's request; provided such request is made within thirty (30) days following termination of the Agreement. Rubicon reserves the right to (a) withhold, remove and/or discard Client Content in its possession, if any, in the event Client breaches this Agreement, including, without limitation, non-payment of fees and charges; and (b) purge and delete Client Content, if any, in its possession if Client fails to request such Client Data within thirty (30) days following termination of this Agreement.

8.3 License to Client Content. Client hereby grants to Rubicon the non-exclusive right and license to (a) receive, retrieve, process, use and transmit any Client Content necessary or reasonably desirable to perform the Subscribed Services or other services; (b) use, copy, manipulate and store any Client Content that will be archived, stored or otherwise transmitted in connection with the Subscribed Services or other services; and (c) to aggregate Client Content and data with content and data from other clients ("Data Aggregations") for purposes including, without limitation, product and service development and commercialization and quality improvement initiatives. Rubicon will redact Client Content in such a way as to not divulge Client's Confidential Information or Trade Secrets. All Data Aggregations will be the sole and exclusive property of Rubicon.

8.4 License to the Marks. Client hereby grants to Rubicon the worldwide, non-exclusive limited right and license during the Term to use the Marks in connection with performance of the Subscribed Services and its other obligations under this Agreement.

9. Defense and Indemnification.

9.1 Limited Covenant to Defend. Rubicon will defend any third party claim brought against Client in the United States to the extent that the claim, if true, would constitute an infringement or misappropriation by the Subscribed Services of any valid and subsisting patent or copyright (a) recognized under the laws of the United States; and (b) of which Rubicon had actual knowledge; provided, however, that: (i) Client immediately advises Rubicon of the claim upon learning of the assertion of the claim; and (ii) Rubicon is given the sole right to control the defense and/or settlement of the claim, in litigation or otherwise.

9.2 Injunctions Obtained by Third Parties. If a third-party infringement claim, of which Rubicon is notified in accordance with Section 9.1 (or of which Rubicon is otherwise aware or believe is likely) results, or in Rubicon's opinion is likely to result, in an injunction prohibiting Client from continued use of the Subscribed Services that is the subject matter of the claim, then Rubicon may, in its sole discretion and at its expense: (a) procure for Client the right to continue to use the Subscribed Services that are the subject matter of the claim; (b) replace or modify the Subscribed Services that are the subject matter of the claim to make them non-infringing, but, where reasonably possible, preserving the functionality of such Subscribed Services; or (c) if the foregoing remedies are not commercially practical, suspend or terminate access to the infringing Subscribed Services.

9.3 Exceptions to Duties to Defend and Indemnify. Notwithstanding any other provisions hereof, Rubicon shall have no obligation to indemnify or defend Client for any third party claim pursuant to this Section 9, nor be required to pay losses, damages or expenses under this Section 9, if Client agrees to settle any such claim without the prior written consent of Rubicon, or if the claim arises out of, in whole or in part: (a) a modification of the Subscribed Services by anyone other than Rubicon; (b) use of the Subscribed Services other than in accordance with the Documentation or the terms of this Agreement; (c) use of a release of the Subscribed Services without having implemented updates, the use of which would have cured the alleged infringement; (d) any third party software or service; (e) use of the Subscribed Services in combination with Third Party Offering or any other third party hardware, software, database or materials where, absent such combination, the Subscribed Services would not be infringing; or

(f) Client's negligence or willful misconduct.

9.4 Sole Obligation. This Section 9 states Rubicon's sole obligation, and Client's sole and exclusive remedy, with respect to infringement of proprietary and Intellectual Property Rights. Notwithstanding anything else in this Section 9, Rubicon's aggregate liability for indemnification pursuant to this Section 9 shall not exceed the original subscription fees paid by Client to Rubicon for the infringing Subscribed Services.

10. Limitation on Liability.

10.1 EXCLUSION OF DAMAGES. IN NO EVENT SHALL RUBICON OR ANY OF ITS AFFILIATES OR THEIR RESPECTIVE OFFICERS, DIRECTORS, EMPLOYEES, SHAREHOLDERS, AGENTS OR REPRESENTATIVES BE LIABLE TO CLIENT OR ANY OTHER PERSON OR ENTITY FOR ANY INDIRECT, INCIDENTAL, SPECIAL, PUNITIVE OR CONSEQUENTIAL DAMAGES (INCLUDING WITHOUT LIMITATION, LOSS OF GOODWILL OR BUSINESS PROFITS, WORK STOPPAGE, DATA LOSS, OR COMPUTER FAILURE, DELAY OR MALFUNCTION), EVEN IF RUBICON HAS BEEN ADVISED OF THE POSSIBILITY OR LIKELIHOOD OF SUCH DAMAGES.

10.2 LIMITATION OF LIABILITY. RUBICON TOTAL AGGREGATE LIABILITY TO CLIENT OR ANY OTHER PERSON OR ENTITY FOR ANY AND ALL CLAIMS AND DAMAGES ARISING FROM OR OUT OF THIS AGREEMENT (WHETHER ARISING UNDER CONTRACT, TORT, NEGLIGENCE, STRICT LIABILITY OR OTHERWISE) SHALL IN NO EVENT EXCEED THE FEES PAID BY CLIENT TO RUBICON DURING THE SIX (6) MONTHS IMMEDIATELY PRECEDING THE DAY THE ACT OR OMISSION OCCURRED THAT GAVE RISE TO CLIENT'S FIRST CLAIM.

10.3 EXCEPTIONS. THE FOREGOING LIMITATIONS APPLY TO THE EXTENT PERMITTED BY APPLICABLE LAW.

11. Miscellaneous.

11.1 **Dispute Resolution; Governing Law.** The laws of the State of Florida shall govern this Agreement, without reference to conflicts of law rules or principles. The parties specifically disclaim the application of the UN Convention on Contracts for the International Sale of Goods to the interpretation or enforcement of this Agreement. Client hereby consents and submits to the exclusive jurisdiction and venue over any action, suit or other legal proceeding that may arise out of or in connection with this Agreement, by any state or federal court located within or about Osceola County, Florida USA. Client shall bring any action, suit or other legal proceeding to enforce, directly or indirectly, this Agreement or any right based upon it exclusively in such courts. The Parties agree to waive the right to a jury trial in any action, proceeding or counterclaim.

11.2 **Force Majeure.** Neither party will be liable for any loss, damage or delay resulting from any event beyond such party's reasonable control (a "Force Majeure Event"), and delivery and performance dates will be extended to the extent of any delays resulting from any such Force Majeure Event. Each party will promptly notify the other upon becoming aware that a Force Majeure Event has occurred or is likely to occur and will use commercially reasonable efforts to minimize any resulting delay in or interference with the performance of its obligations under this Agreement. Notwithstanding any other provision of this Section 11.2, a Force Majeure Event shall not relieve Client of its obligations to pay monies due and owing to Rubicon hereunder.

11.3 **Assignment.** Neither party shall assign, transfer, or otherwise delegate any of its rights, duties, or obligations under this Agreement in whole or in part to any individual, firm or corporation without the prior written consent of the other party, which consent shall not be unreasonably withheld, and any attempted assignment (whether by operation of law or otherwise) shall be void; except that Rubicon may delegate any of its rights, duties, or obligations under this Agreement to one or more of its affiliates. Notwithstanding the foregoing, either party may assign its rights, duties, and obligations hereunder, without approval of the other party, to a party that succeeds to all or substantially all of its assets or business (whether by sale, merger, operation of law or otherwise), so long as the assignee agrees in writing to be bound by the terms and conditions of this Agreement; provided, however, that any such assignment by Client shall be subject to any fee adjustments specified in an Order, or that may be necessary because of Client's use of the subscribed Services beyond the licensing parameters specified in the applicable Order; and further provided that no such assignment may be to a competitor of Rubicon. This Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their successors and permitted assigns.

11.4 **Independent Contractors.** Nothing in this Agreement shall be construed to create an agency, joint venture, partnership or other form of business association between the parties. Neither party has the right or authority to make any contract, representation or binding promise of any nature on behalf of the other party, and neither party shall hold itself out as having such right or authority.

11.5 **No Waiver.** The failure on the part of either party to exercise any right or remedy hereunder will not operate as further waiver of such right or remedy in the future or any other right or remedy.

11.6 **Severability.** In the event that any provision of this Agreement is held invalid or unenforceable in any circumstances by a court of competent jurisdiction, the remainder of this Agreement, and the application of such provision in any other circumstances, will not be affected thereby.

11.7 **Counterparts.** This Agreement may be executed in duplicate and either copy or both copies are considered originals.

11.8 **Notices.** All official notices (including any notices regarding breach, termination, renewal, etc.) required or permitted hereunder shall be in writing and shall be delivered personally or sent by certified, registered mail or next day express mail or courier, postage prepaid. Any such notice shall be deemed given (a) when so delivered personally; (b) three (3) days after, when sent by certified or registered mail; or (c) the day after, when sent by next day express mail or courier, as follows: (i) if to Client, to it at: 101 Church St, Kissimmee, FL; (ii) if to Rubicon, to it at: Rubicon Global, LLC, 335 Madison Avenue, 4th Floor, New York, NY 10017. In addition, routine, non-contractual notices, consents and approvals (including support) given under this Agreement may be delivered in writing as provided above or through electronic mail or other electronic record addressed to the parties identified herein.

11.9 **Marketing.** Client agrees that Rubicon may reference Client's execution of this Agreement and its status as a user of the Subscribed Services in marketing materials and in sales presentations. Rubicon may use Client's Marks in connection with such usage.

11.10 **Entire Agreement.** This Agreement (including any Orders, Exhibits, Statements of Work and attachments, which are hereby incorporated herein by reference) constitute the final and entire agreement between the parties, and supersedes all prior written and oral agreements, understandings, or communications with respect to the subject matter of this Agreement.

11.11 **Cooperative Purchasing.** Rubicon and the Client agree that other government entities (including but not limited to municipalities, counties, states, public utilities, non-profit hospitals, educational institutes, special governmental agencies, and non-profit corporations) that allow cooperative purchasing may utilize the terms of this agreement to procure Rubicon's software and services.

11.12 **Employment Verification (E-Verify).** In accordance with Section 448.095, Florida Statutes, RUBICON shall register with and utilize the E-Verify System operated by the United States Department of Homeland Security to verify the employment eligibility of all new employees hired during the term of the Agreement and shall expressly require any subcontractors performing work or providing services pursuant to this Agreement to likewise utilize the E-Verify System to verify the employment eligibility of all new employees hired by the subcontractor during the term of this Agreement. If RUBICON enters into a contract with a subcontractor performing work or providing services on its behalf, RUBICON shall also require the subcontractor to provide an affidavit stating that the subcontractor does not employ, contract with, or subcontract with an unauthorized alien. Information on registration for and use of the E-Verify System can be obtained via the internet at the Department of Homeland Security website: <http://www.dhs.gov/E-Verify>.

RUBICON shall, upon request provide evidence of compliance with this provision to City. Failure to comply with this provision is a material breach of this Agreement, and Client may choose to terminate the Agreement at its sole discretion. RUBICON may be liable for all costs associated with Client securing the same services, inclusive, but not limited to, higher costs for the same services and rebidding costs (if necessary).

11.13 **Scrutinized Companies Certification.** By signing this Agreement, RUBICON certifies that it is not on the Scrutinized Companies that Boycott Israel List, created pursuant to Section 215.4725, Florida Statutes, or engaged in a boycott of Israel. If Client determines, using credible information available to the public, that RUBICON has submitted false certification, Client shall provide RUBICON with written notice of its determination. RUBICON shall have 90 days following receipt of the notice to respond in writing and to demonstrate that the determination of false certification was made in error. Failure to comply with this provision is a material breach of this Agreement, and Client may choose to terminate the Agreement at its sole discretion.

Signature page to follow.

The undersigned represent and warrant that they are authorized as representatives of the party on whose behalf they are signing to sign this Master Software Services Agreement and to bind their respective party hereto.

RUBICON GLOBAL, LLC

DocuSigned by:

E237204F5315491...
Authorized Signature

Conor Riffle SVP Smart Cities
Printed Name and Title

2/12/2024 | 10:42 AM EST
Date: _____

CITY OF KISSIMMEE

By: _____
Olga Gonzalez, Mayor-Commissioner

ATTEST:

Linda Hansell, City Clerk

Approved as to form a legal sufficiency:

Olga Sanchez de Fuentes, City Attorney

Exhibit A

Professional Services Terms

These Professional Services Terms are hereby annexed to and made a part of the Master Software Services Agreement (the “Agreement”) between Rubicon and Client. In the event any provisions of these Professional Services Terms contradict or are inconsistent with the provisions of the Agreement, the provisions of these Professional Services Terms shall prevail and govern.

1. **Services.** Upon request by Client, Rubicon will provide consultants to perform implementation, consulting and training services to the extent such Professional Services are identified in any mutually agreed upon Statement of Work more fully describing the project assumptions, specifications, scope, work plan, responsibilities, duration and fees for such Professional Services, which Statements of Work shall reference the Agreement and be sequentially numbered. Any modifications to a Statement of Work shall be made by written change order, in Rubicon’s standard form, executed by both parties to this Agreement (a “Change Order”). Each Change Order complying with this Section shall be deemed to be an amendment to the applicable Statement of Work to which it applies and shall become a part thereof.
2. **Cooperation.** All Professional Services will be coordinated with the designated Client Project Coordinator, as identified in each Statement of Work. Client shall cooperate and provide information as is reasonably necessary or desirable for the timely completion of the Professional Services. Client shall at all times make available its functional and/or information technology personnel as reasonably required or desirable for Rubicon to perform the Professional Services, and Client shall timely fulfill its obligations and responsibilities set forth in each Statement of Work. To the extent required or as specified in any Statement of Work or work plan, Client shall provide Rubicon with access to its facilities, software, systems, data, information and support materials to perform the Professional Services. Client acknowledges that Rubicon’s performance hereunder is contingent on Client’s timely and effective performance of Client’s responsibilities and Client’s timely decisions and approvals. If Client fails to provide required information and/or make decisions as agreed or in a reasonably expeditious and timely manner, and such failure results in a delay in delivery of any deliverables or Work Product or to the overall project, Client agrees to extend the time frame for delivery of the deliverable or project, as applicable, on a day for day basis and compensate Rubicon for any additional work required as a result of such delay.
3. **Project Control.** Rubicon shall have the sole right to supervise, manage, contract, direct, procure, perform, or cause to be performed, all Professional Services performed by it pursuant to a Statement of Work. Rubicon may subcontract all or a portion of the Professional Services to a qualified third party. In recognition that Rubicon personnel may perform similar services for third parties, this Agreement shall not prevent Rubicon from providing services or developing materials that may be perceived as competitive with those developed or provided hereunder, subject to the confidentiality provisions of the Agreement.
4. **Compensation.** All Professional Services will be provided by Rubicon on a time, materials and expense basis at Rubicon’s then current rates, unless otherwise agreed by the parties in a Statement of Work.
5. **Termination.** These Professional Services Terms shall be effective as of the Effective Date of the Agreement and shall remain in effect until (a) terminated by either party upon thirty (30) days prior written notice in the event no

Statement of Work is outstanding; or (b) as provided in the Agreement, whichever is earlier. Client shall be liable for payment to Rubicon for all Professional Services provided or performed prior to the effective date of any such termination, including any expenses incurred pursuant to the provision of such Services.

6. Additional Services. Any services performed by Rubicon at the request of Client that are outside the scope of any Professional Services described in the applicable Statement of Work shall be governed by these terms and will be billed at Rubicon's then current rates.

This independent Order Number 1 (“Order”) to the Master Software Services Agreement is made as of [REDACTED] (“Order Effective Date”), by and between Rubicon Global, LLC (“Rubicon”) and the CITY OF KISSIMMEE (“Client”). This Order is part of the Master Software Services Agreement between the parties dated [REDACTED] (“Agreement”). Capitalized terms used and not otherwise defined in this Order shall have the respective meanings set forth in the Agreement.

1. The Subscribed Services.

DESCRIPTION	COST
Months 1 – 3	\$0.00
Year 1 Cost (Months 4 – 15)	\$45,088.00
Year 2 Cost (Months 16 – 27)	\$26,688.00
Year 3 Cost (Months 28 – 39)	\$26,688.00
Total Cost (39-month contract)	\$98,464.00

The complete pricing proposal has been included in this package as Addendum B.

2. Other Charges. As may be agreed to by the parties in writing from time to time.
3. Payment Terms. The parties agree that the fees for the above services shall be a total of NINETY- EIGHT THOUSAND, FOUR HUNDRED AND SIXTY-FOUR DOLLARS AND ZERO CENTS (US\$98,464.00) payable as follows (“Fee”):
- a. US\$0.00 due upon execution of this Agreement.
 - b. US\$45,088.00 due upon the completion of the Free Pilot outlined in this Agreement.
 - c. US\$26,688.00 due upon the 15-month anniversary of this Agreement.
 - d. US\$26,688.00 due upon the 27-month anniversary of this Agreement
4. Renewal. Unless either party gives the other party written notice of non-renewal at least ninety (90) days prior to the expiration of the initial term, upon expiration of the initial terms of the Subscribed Services (as described in the table in Section 1 of this Order) and Client’s obligations to pay the applicable fees, the parties shall meet and determine if the Agreement shall be extended by another term. If the parties shall so agree, they will negotiate in good faith terms, conditions and fees associated with any renewal term. For purposes of clarification, the liquidated damages specified in Section 5.4 of the Agreement shall apply to the initial term of the Subscribed Services, or the then-current renewal term, as the case may be.
5. Separate Agreement. Rubicon may provide Professional Services regarding the Subscribed Services provided hereunder pursuant to a Statement of Work to the Professional Services Terms executed between the parties. Client understands and agrees that such Professional Services and associated Statements of Work that may be signed are separate and independent contractual obligations from any Order or amendment thereto relating to the access and

use of the Subscribed Services. Client shall not withhold payments that are due and payable pursuant to this Order or any other Order(s) or amendment(s) thereto because of the status of Professional Services performed under any Statement of Work.

The undersigned represent and warrant that they are authorized as representatives of the party on whose behalf they are signing to sign this Order and to bind their respective party hereto.

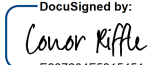
ACCEPTED BY:

ACCEPTED BY:

CITY OF KISSIMMEE, FL

RUBICON GLOBAL, LLC

Authorized Signature

DocuSigned by:

E237204F5315451...
Authorized Signature

Conor Riffle

Printed Name and Title

SVP Smart Cities
Printed Name and Title

ADDENDUM A

SERVICE AVAILABILITY

RUBICONSmartCity software is hosted externally using Amazon Web Services (AWS).

Below please find our standard Service Level Availability Policy (SLA):

Rubicon's Service Availability commitment for a given calendar month is **99.5%**. Service Availability is calculated per month as follows: $(\text{Total time} - \text{Unplanned Outage} - \text{Planned Maintenance}) / (\text{Total} - \text{Planned Maintenance}) \times 100$

- Definitions:
 - *Total time* is the total minutes in the month
 - *Unplanned Outage* is total minutes unavailable due to an unplanned outage in the month
 - *Planned Maintenance* is total minutes of planned maintenance in the month. Currently, Planned Maintenance is four (4) hours for weekly maintenance, four (4) hours for monthly maintenance, four (4) hours for quarterly maintenance. Rubicon's current weekly maintenance begins at 10 pm (Eastern) on Fridays; monthly maintenance begins at 2:00 am (Eastern) on Saturday; and quarterly maintenance begins at 6:00am (Eastern) on Saturday. All times are subject to change upon reasonable notice. If actual maintenance exceeds the time allotted for Planned Maintenance, it is considered an Unplanned Outage. If actual maintenance is less than time allotted for Planned Maintenance, that time is not applied as a credit to offset any Unplanned Outage time for the month. The measurement point for Service Availability is the availability of the Rubicon Service. Customer may request an availability report once per month.
- Service Response
 - Rubicon Production Support and Service Level Availability Policy (SLA)
 - Rubicon's Service Response commitment is: (1) not less than 50% of (online) transactions in two (2) seconds or less and not more than 10% in five (5) seconds or more.
 - Service Response is the processing time of the Rubicon Production Service in the Amazon Web Service data center to complete transactions submitted from a web browser.
 - The time required to complete the request will be measured from the point in time when the request has been fully received by the encryption endpoint in the Amazon Web Service data center, until such time as the response begins to be returned for transmission to Customer. Customer may request a response time report not more than once per month via email.
- Disaster Recovery
 - Rubicon commits to a recovery time objective of twelve (12) hours - measured from the time that the Rubicon Service becomes unavailable until it is available again. Rubicon commits to a recovery point objective of one (1) hour - measured from the time that the first transaction is lost until the Rubicon Service became unavailable.

- Rubicon will test the disaster recovery plan once every six months and will make available a written summary of the results of the most recent test available to Customer upon its request made via the Customer Center.
- Severity Level Determination Submittal
 - Customer shall reasonably self-diagnose each support issue and recommend to Rubicon an appropriate Severity Level designation. Rubicon shall validate Customer's Severity Level designation or notify Customer of a proposed change in the Severity Level designation to a higher or lower level with justification for the proposal. In the event of a conflict regarding the appropriate Severity Level designation, each party shall promptly escalate such conflict to its management team for resolution through consultation between the parties' management, during which time the parties shall continue to handle the support issue in accordance with the Rubicon Severity Level designation. In the rare case a conflict requires a management discussion, both parties shall be available within one hour of the escalation.
- Support Issue Production Levels - Response and Escalation
 - Response Time is the period from the time the Production case was logged in the Customer Center until Rubicon responds to Customer and/or escalation within Rubicon, as appropriate. Because of the widely varying nature of issues, it is not possible to provide specific resolution commitments.
 - SEVERITY LEVEL 1
 - Definition: The Rubicon Service is unavailable for all users
 - Rubicon Response Commitment: Rubicon will respond within one (1) hour of receipt of case.
 - Resolution: Rubicon will work to resolve the problem until the Service is returned to normal operation. Customer will be notified of status changes.
 - Escalation: If the problem has not been resolved within one (1) hour, Rubicon will escalate the problem within the appropriate Rubicon organization. The escalated problem will have higher priority than ongoing support, development or operations initiatives.
 - Customer Response Commitment: Customer shall remain accessible by phone for troubleshooting from the time a Severity 1 issue is logged until such time as it is resolved.
 - SEVERITY LEVEL 2
 - Definition: The Rubicon Service contains a bug that prevents Customer from executing one or more critical business processes with a significant impact and no workaround exists.
 - Rubicon Response Commitment: Rubicon will respond within one (1) hour of receipt of case.
 - Resolution: Rubicon will work to resolve the problem until the Service is returned to normal operation. Customer will be notified of status changes.
 - Escalation: If the problem has not been resolved within four (4) hours; Customer may request that Rubicon escalate the problem within the appropriate Rubicon organization where the escalated problem will have higher priority than ongoing development or operations initiatives.
 - Customer Response Commitment: Customer shall remain accessible by phone for troubleshooting from the time a Severity 2 issue is logged until such time as it is resolved.
 - SEVERITY LEVEL 3

- Definition: The Rubicon Service contains a bug that prevents Customer from executing one or more important business processes. A workaround exists but is not optimal.
- Rubicon Response Commitment: Rubicon will respond within four (4) hours of receipt of case.
- Resolution: If resolution requires a Rubicon bug fix, Rubicon will add the bug fix to its development queue for future Update and suggest potential workaround until the problem is resolved in a future Update. Customer will be notified of status changes.
- Escalation: If the problem has not been resolved within one (1) week, Customer may request that Rubicon escalate the problem to the appropriate Rubicon organization .
- Customer Response Commitment: Customer will respond to Rubicon requests for additional information and implement recommended solutions in a timely manner.
- SEVERITY LEVEL 4:
 - Definition: The Rubicon Service contains an issue that may disrupt important business processes where a workaround is available or functionality is not imperative to Customer's business operations.
 - Rubicon Response Commitment: Rubicon will respond within twenty-four (24) hour of receipt of case.
 - Resolution: If resolution requires a Rubicon bug fix, Rubicon will add the bug fix to its development queue for a future Update and suggest potential workaround until the problem is resolved in a future Update. Customer will be notified of status changes.
 - Escalation: None.
 - Customer Response Commitment: Customer will respond to Rubicon requests for additional information and implement recommended solutions in a timely manner.
- CUSTOMER CARE or OPERATIONS REQUEST (Severity Level 5):
 - Definition: Non-system issues such as Named Support Contact change, requests for SLA reports or business documents, etc. If necessary to open a Support case requesting assistance, Severity 5 should be used.
 - Rubicon Response Commitment: Rubicon will respond within twenty-four (24) hours of receipt of case.
 - Resolution Commitment: Rubicon will respond to request. Customer will be notified of status changes.
 - Escalation: None.
 - Customer Commitment: Customer will respond to Rubicon requests for additional information in a timely manner.
- Rubicon Support Scope
 - Rubicon will support functionality that is developed by Rubicon and under its direct control. For any other functionality, and/or issues or errors in the Rubicon Service caused by issues, errors and/or changes in Customer's information systems and/or third party products or services, Rubicon may assist Customer and its third party providers in diagnosing and resolving issues or errors but Customer acknowledges that these matters are outside of Rubicon's support obligations. Service Level failures attributable to (i) Customers acts or omissions; and (ii) force majeure events shall be excused.
- Rubicon Service Credit

- In the event of a failure by Rubicon to meet the Service Availability and Service Response minimums as set forth in the SLA, as Customer's sole and exclusive remedy, at Customer's request, Rubicon shall provide service credits in accordance with the following:
 - First month in any rolling six (6) month period: 10% of the Subscription Fee paid for the applicable month for the affected Service
 - Second month in any rolling six (6) month period: 20% of the Subscription Fee paid for the applicable month for the affected Service
 - Third month in any rolling six (6) month period: 30% of the Subscription Fee paid for the applicable month for the affected Service
 - Fourth month in any rolling six (6) month period: 40% of the Subscription Fee paid for the applicable month for the affected Service
 - Fifth month in any rolling six (6) month period: 50% of the Subscription Fee paid for the applicable month for the affected Service or within thirty (30) days of such failure Customer shall have the option to terminate the entire Agreement and upon such termination Customer shall receive a refund of all prepaid subscription fees that are unearned as of the date such termination is effective.
 - If more than one of the above (a through e) is triggered, Customer will be eligible for the greater amount for the applicable month only. Credits shall be deducted from subsequent invoices for subscription fees or other fees or, upon expiration or termination of the Agreement, paid to Customer directly.

ADDENDUM B

RUBICONSMARTCITY™

KISSIMMEE, FL – SOLID WASTE

Rubicon uses a Software-as-a-Service (SaaS) model for pricing. SaaS service models provide several advantages for the customer:

- Solution upgrades become available for customers automatically. Costs and effort associated with upgrades and new releases are lower than the traditional model that usually forces the user to buy an upgrade package and install it or pay for specialized services to get the environment upgraded.
- Reduce the costs for hardware and software licenses compared with the traditional model because service usually resides in shared or multi-user environments.
- Reduce the time spent on installation and configuration, lessening issues that complicate software deployment.
- No hidden costs for additional services or features.

Rubicon's standard per vehicle pricing is outlined below. The per vehicle cost outlined includes two components: a one-time implementation cost and a recurring yearly cost for each software component. Implementation costs include installation and any additional training and implementation services provided by the Customer Success Team. Recurring costs are software dependent.

For the City of Kissimmee, Rubicon will offer a 3-month free pilot of RUBICONSmartCity for use in 14 of the City's vehicles. Post pilot, we will provide 15 RUBICONSmartCity Subscriptions for use in solid waste and street sweeping vehicles. Rubicon does not cover data and cellular charges associated with City issued devices.

- Unlimited Access to Rubicon Portal
- 15 RUBICONSmartCity Software Subscriptions (Driver App)
- Ongoing software subscription for all devices
- External hosting in a secure cloud environment
- Training, support, and account management services

RUBICONSmartCity: BYOD

15 Rubicon Software Subscriptions + 92 Hours Implementation Support

(3 Months Free Pilot + 36 Months Paid Contract)

Description	List Price	Discount (20%)	Price for Kissimmee, FL
Free Pilot (Months 1-3)	\$0.00	\$0.00	\$0.00
Year 1 (Months 4 – 15)	\$56,360.00	\$11,272.00	\$45,088.00
Year 2 (Months 16 - 27)	\$33,360.00	\$6,672.00	\$26,688.00
Year 3 (Months 28 – 39)	\$33,360.00	\$6,672.00	\$26,688.00
TOTAL	\$123,080.00	\$24,616.00	\$98,464.00

Note: The cost of the contract is higher in the first year due to one-time implementation charges for training and launch that do not recur. After the first year, the annual costs of the contract drop.

Subject: Re: Rubicon Integration - Solid Waste Partner

Date: Tuesday, December 12, 2023 at 6:55:19 PM Eastern Standard Time

From: Mitul Gandhi

To: Austin Blake

CC: Ashley Willis, Robert Masiku

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

Hi Austin,

Rubicon is the only solid waste routing platform partner we have. We have other partners, but I wouldn't recommend them for solid waste they are better in their respective verticals.

Also here is some extra info about our [integration features](#). Let me know if you have any additional questions regarding this.

Mitul Gandhi

Team Lead- Senior Account Executive

mitul.gandhi@samsara.com

678-974-1207

Company Holiday Shutdown- 12/21/23- 1/2/24

On Tue, Dec 12, 2023 at 5:25PM Austin Blake <austin.blake@kissimmee.gov> wrote:

Hi, Mitul-

We are looking at moving forward with Rubicon to provide route optimization for our solid waste and potentially stormwater/street sweeper service arms. We like the fact SAMSARA and Rubicon have integrations, making their selection an ideal choice for us to ensure there is synergy.

Can you confirm or provide more information on whether Rubicon is the only solid waste route optimization partner you currently have?

Thanks,
Austin

Austin D. Blake
Assistant City Manager
City of Kissimmee

101 Church Street, Suite 500
Kissimmee, Florida 34741

407.518.2319 desk

austin.blake@kissimmee.gov<mailto:jsmith@kissimmee.org>

[signature_431574598]

[signature_2365898523]<<http://www.facebook.com/cityofkissimmee>>[signature_3560381144]

<<http://www.twitter.com/cityofkissimmee>>[signature_1804396155]

<<http://www.instagram.com/cityofkissimmee>>[signature_2228631743]

<<https://www.youtube.com/channel/UC7F24dkT2khMusOdor0vy0g>>[signature_1064342346]

<[https://nextdoor.com/agency-detail/fl/kissimmee/city-of-kissimmee-1/?](https://nextdoor.com/agency-detail/fl/kissimmee/city-of-kissimmee-1/?i=qnpmgsswmnjbzpgpkzyw)

[i=qnpmgsswmnjbzpgpkzyw](https://nextdoor.com/agency-detail/fl/kissimmee/city-of-kissimmee-1/?i=qnpmgsswmnjbzpgpkzyw)>[signature_2014827017]

<<https://www.linkedin.com/company/cityofkissimmee/>>

PUBLIC RECORDS NOTICE: All e-mail sent to and received from the City of Kissimmee, Florida, including e-mail addresses and content, are subject to the provisions of the Florida Public Records Law, Florida Statute Chapter 119, and may be subject to disclosure.

ITEM 7.I

Agreement with SSD International, Inc to purchase night vision and thermal optics for SWAT rifles

Request

Commission approval of the Agreement with SSD International Inc. (Contract #20240236) for the purchase of night vision and thermal optics with forfeiture funds available in the Law Enforcement Trust Fund (LETf).

Explanation

KPD seeks to purchase four (4) night vision and two (2) thermal optics for use by Kissimmee Police Department's SWAT team from SSD International, Inc. under State Term Contract No. 46000000-21-STC for \$53,276. Additionally, KPD seeks to purchase these items with Law Enforcement Trust Fund (LETf) monies, which is authorized under F.S. 932.7055 and requires Commission approval.

Financial Information

Account #	Project #	Increase / Decrease	Budget	Actual
01330736 506494		Increase		\$53,276
01330730 509275		Decrease		\$53,276

Financial Summary:

Full funding for this purchase is available through the State Forfeiture Fund.

Recommendation

Commission approval of the Agreement with SSD International, Inc. for the purchase of night vision and thermal optics through proceeds from the Law Enforcement Trust Fund.

REQUESTED CITY COMMISSION ACTION:

Approve

Department: Police
Presenter: Betty Holland

Attachment(s):

1. LETf Purchase Night Vision-Thermal Optics Memorandum of Approval-Chief-City Assistant Attorney
2. (S) Agreement SSD International for Rifle Sights Night Vision-Thermal Optics

City of Kissimmee

MEMORANDUM

Kissimmee Police Department

DATE: December 5, 2023

TO: Chief Betty Holland, Chief of Police

VIA: Chain of Command

FROM: Captain Ian Downing, Patrol Division/SWAT Commander *ILDS*

SUBJECT: Night Vision and Thermal Optics (SWAT Sniper Team)

This memorandum is being authored to request permission to gain commission approval to utilize state forfeiture funds to purchase equipment for the SWAT Team.

The Sniper Team, consisting of four (4) members, is in need of and requesting Eotech Clip-on Night Vision Optics (quantity 4 at \$7,999.00 each) and Eotech Clip-on Thermal Optics (quantity 2 at \$10,640.00 each) for deployments. The project will total \$53,276.00.

The Sniper Team previously participated in a lease program through the Department of the Navy for Night Vision, but the equipment has since become antiquated. The Sniper Team conducted research and spoke with other Central Florida Agencies (Orange County Sheriff's Office, Orlando Police Department, Osceola County Sheriff's Office and Saint Cloud Police Department) and participated in various product demos to determine what equipment best fit our needs and deployments. These systems attach to the Sniper Team's existing weapons platforms without modification, will not require additional training days or burden existing training practices. The Department of the Navy does not have this equipment available for lease.

The equipment listed above would best suit our needs, is warrantied for ten (10) years and available through State Term Contract No. 46000000-21-STC/SSD International, Inc.

There are sufficient funds available in state forfeiture funds. I have communicated with Police Department Legal, Procurement as well as Finance. Each entity indicated this purchase can be made through this contract and with forfeiture funds. It does require commission approval. With your permission, I will follow this memorandum with an agenda item for the commission.

Quotes, warranty information and contracts are attached to this memorandum.

MEMORANDUM

Kissimmee Police Department

DATE: February 2, 2024

TO: Chief Betty Holland

FROM: Curtis McGehee, Police Legal Advisor 

SUBJECT: LETF Certification for Purchase of Night Vision and Thermal Optics

You have indicated that KPD is seeking to use forfeiture monies from the LETF fund for the purpose of purchasing night vision and thermal optics to be used by KPD's SWAT Team.

As counsel for KPD, I certify that this request for LETF funds complies with section 932.7055, Florida Statutes. These funds will be used to purchase additional equipment to be used by KPD.

If you would like to request the City Commission to approve the use of LETF funds for this purpose, then please sign the attached form.

LAW ENFORCEMENT TRUST FUND CERTIFICATION

SUBJECT:

Use of LETF Funds for the purchase of night vision and thermal optics to be used by the KPD SWAT Team. Such funds will be used to purchase additional equipment to be used by the Department.

As counsel for KPD, I certify this request for LETF complies with section 932.7055, Florida Statutes.


Assistant City Attorney

2/2/24
Date

I certify this LETF request complies with section 932.7055, Florida Statutes.


Chief of Police

2/5/2024
Date

**AGREEMENT BETWEEN
CITY OF KISSIMMEE AND VENDOR**

THIS AGREEMENT is made this 10th day of January 2023 by and between the CITY OF KISSIMMEE, a municipal corporation of the State of Florida, 101 Church Street, Kissimmee, Florida 34741, hereinafter “City” and SSD International, Inc., 1349 South Orange Blossom Trail, Apopka, FL 32703, hereinafter “Vendor”, collectively hereinafter the “Parties” and each represents as follows:

WITNESSETH

WHEREAS, the Kissimmee Police Department is seeking to purchase rifle sights; and

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

WHEREAS, Pursuant to the City’s Purchasing Manual, the City may procure goods and services from bid or proposals from any government subdivisions when its in the best interest of the City of Kissimmee; and

WHEREAS, Pursuant to a competitive bidding and selection process the State of Florida, Department of Management Services, as Lead Public Agency, entered into State Term Contract No. 46000000-21-STC For Defense Products with Vendor, hereinafter “Master Agreement”, which is attached hereto and incorporated herein as Exhibit A; and

WHEREAS, the Master Agreement specifically allows government entities to make purchases under the terms of the Master Agreement, if agreed by Vendor; and

WHEREAS, the Vendor hereby agrees to allow City to make purchase under the terms of the Master Agreement; and

WHEREAS, the City has determined that the terms and conditions of the Master Agreement match the City’s need for rifle sights, and therefore it is economically advantageous and in the best interest of the City to enter into a cooperative purchase contract with Vendor.

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

- 1. RECITALS.** The foregoing recitals are true and correct and incorporated herein.

2. **THE CONTRACT DOCUMENTS.** The contract documents consist of this Agreement, the Master Agreement, which is attached hereto as Exhibit A, SSD International, Inc. Quote #KPD-10, which is attached hereto as Exhibit B, and any subsequent duly executed amendments to any of the aforementioned documents. These contract documents form the Agreement, and all are incorporated herein as if set forth in full. In the event of a conflict between the aforementioned documents, any duly executed amendment to this Agreement will control, followed by this Agreement, Exhibit A, and Exhibit B, in that order.

Upon execution of this Agreement, all references made to “State of Florida,” “Department of Management Services,” or “Department” in Exhibit A will be interpreted as pertaining to the City of Kissimmee and City of Kissimmee Commissioners, all references made to “Contractor,” in Exhibit A will be interpreted as pertaining to Vendor and all terms and conditions of Exhibit A not inconsistent with this Agreement, are deemed as having been implemented for use within the City of Kissimmee. It is understood that wherever the words “State of Florida,” “Department of Management Services,” or “Department” appear, they will be read as “City of Kissimmee,” “City,” and “City of Kissimmee Commissioners” and wherever the word “Contractor” appears, it will be read as “Vendor.”

3. **TERM.** The term of this Agreement shall begin upon execution and continue through September 30, 2024. This agreement may be extended if the Master Agreement is extended.
4. **SCOPE OF WORK.** Vendor agrees to provide the equipment as further described in Exhibit B (hereinafter the “Equipment”) according to the terms, conditions, and pricing further described in Exhibit B.
5. **PAYMENT.** Upon review and approval of Vendor’s invoice and verification that the Equipment have been rendered in conformity with this Agreement, the City shall pay Vendor in accordance with the Local Government Prompt Payment Act, Chapter 218, Part VII, Florida Statutes. Vendor shall not apply any late charges, interest or penalties to any invoice or charges for services until thirty (30) days from the City’s receipt of the invoice. As noted in Exhibit B, Vendor shall not charge City for shipping.
6. **SOVEREIGN IMMUNITY.** The City expressly retains all rights, benefits, and immunities of sovereign immunity in accordance with Section 768.28, Florida Statutes. Notwithstanding anything set forth in any section, article or paragraph of this Agreement to the contrary, nothing in this Agreement shall be deemed as a waiver of sovereign immunity or limits of liability which may have been adopted by the Florida Legislature or may be adopted by the Florida Legislature, and the cap on the amount and liability of City 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 the City which would otherwise be barred under the Doctrine of Sovereign Immunity or operation of law.

7. **VENUE.** Venue for any cause of action asserted by any party brought in State Court shall be in Osceola County. Venue for any action brought in Federal court shall be in the Middle District of Florida, Orlando Division.
8. **NOTICE AND PROJECT MANAGERS.** Any and all notices required by this agreement shall be in writing and either hand delivered or, if sent by U.S. Mail or overnight delivery shall be addressed as follows:

City of Kissimmee Betty Holland Chief of Police City of Kissimmee 8 North Stewart Avenue Kissimmee, FL 34741	Vendor Brad Ryan Account Manager SSD International, Inc. 1349 South Orange Blossom Trail Apopka, FL 32703
---	--

City and Vendor have identified individuals as Project Managers, listed below, who shall have the responsibility for managing the work performed under this Agreement. The person or individual identified by Vendor to serve as its Project Manager for this Agreement, or any replacement thereof, is subject to prior written approval and acceptance of City. If City or Vendor replace their current Project Manager with another individual, an amendment to this agreement shall not be required. City will notify Vendor, in writing, if the current City Project Manager is replaced by another individual.

A. City's Project Manager's contact information is as follows:

**Ian Downing
Captain
8 North Stewart Avenue
Kissimmee, Florida 3741**

B. Vendor's Project Manager's contact information is as follows:

**Brad Ryan
Account Manager
1349 South Orange Blossom Trail
Apopka, FL 32703**

- 9. HEADINGS AND CAPTIONS.** All headings and captions contained in this Agreement are provided for convenience only, do not constitute a part of this Agreement and may not be used to define, describe, interpret or construe any provision of this Agreement.
- 10. BREACH.** Failure of Vendor or City to perform the covenants, conditions, or provisions of the Agreement shall constitute a material default and breach of the Agreement. In the event of any default, City has the right to terminate this Agreement in accordance with the “Termination for Cause” provisions of the Master Agreement.
- 11. ATTACHMENTS.** Attachments to this Agreement shall be deemed to be incorporated into this Agreement as if fully set forth verbatim into the body of this Agreement.
- 12. NO THIRD PARTIES BENEFICIARIES.** This Agreement shall inure to the benefit of the Parties to this Agreement and is for the exclusive benefit of said Parties. This Agreement shall not be deemed to be made for the benefit of any other entity or person not so specified, including specifically but not limited to the selected Vendor.
- 13. WAIVER OF JURY TRIAL/AWARD OF ATTORNEY’S FEES.** It is mutually agreed by and between the Parties that each of the Parties do hereby waive trial by jury in any action, proceeding or claim which may be brought by either of the parties hereto against the other on any matters concerning or arising out of this Agreement. In any such action, each party shall be responsible for their own attorney’s fees, including those incurred in appellate proceedings.
- 14. PUBLIC RECORDS.** The Vendor acknowledges the City’s obligations under Article I, Section 24, of the Florida Constitution and under Chapter 119, Florida Statutes, to release public records to members of the public upon request and that the constitutional and statutory provisions control over the terms of this Agreement. As such, the Vendor shall keep and maintain public records required by the City to perform the service.

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

- a. If the City’s Custodian of Records requests records from the Vendor, the Vendor shall provide the City’s Custodian of Records with a copy of the requested records or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed

the cost charged by the City of Kissimmee, as provided in Chapter 119, Florida Statutes or as otherwise provided by law.

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

15. FUNDING. The obligation of City for payment to Vendor is limited to the availability of funds appropriated in a current fiscal period, and continuation of any contractual relationship into a subsequent fiscal period is subject to appropriation of funds, unless otherwise authorized by law.

16. FOREIGN GIFTS AND CONTRACTS. Vendor must comply with any applicable disclosure requirements in Section 286.101, Florida Statutes.

17. SOCIAL, POLITICAL, OR IDEOLOGICAL FACTORS. Pursuant to Section 287.05701, Florida Statutes, as may be amended, the City cannot give preference to a Vendor based on the Vendor's social, political, or ideological interest.

18. PROHIBITED TELECOMMUNICATIONS EQUIPMENT. Vendor represents and

certifies that it and its applicable subcontractors do not and will not use any equipment, system, or service that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system, as such terms are used in 48 CFR Sections 52.204-24 through 52.204-26. By executing this Agreement, Vendor represents and certifies that Vendor and its applicable subcontractors must not provide or use such covered telecommunications equipment, system, or services for any scope of work performed for the City for the entire duration of this Agreement. If Vendor is notified of any use or provisions of such covered telecommunications equipment, system, or services by a subcontractor at any tier or by any other source. Vendor must promptly report the information in 40 CFR Section 52.204-25(d)(2) to the City.

19. NON-DISCRIMINATION. Vendor shall not discriminate against any client, employee or applicant for employment because of race, age, color, religion, sex, sexual orientation, sexual preference, gender identity, national origin, physical or mental disability, marital status or medical status. Vendor shall comply with all applicable sections of the Americans with Disabilities Act. Vendor agrees that compliance with this provision constitutes a material condition to this Agreement, and that it is binding upon the Vendor, its successors, transferees, and assignees, for the period during which services are provided. Vendor further agrees to ensure that its independent contractors/subcontractors are not in violation of the terms of this provision.

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

SIGNATURES ON FOLLOWING PAGE

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

VENDOR- SSD International

By: [Signature]

Title: Director of Sales

Date: 1/10/24

STATE OF FLORIDA

COUNTY OF ORANGE

The foregoing instrument was acknowledged before me this 10 day of January, 2024, by means of ☒ physical presence or ☐ online notarization, by Bryan Ryan as Director of Sales for SSD International, Inc., a Florida corporation, who is personally known to me or has produced identification.

Notary Seal:



JOSE A. RODRIGUEZ-CASTRO
Commission # HH 103414
Expires June 4, 2025
Bonded Thru Budget Notary Services

Notary: [Signature]

Print Name: JOSE A. RODRIGUEZ-CASTRO

My Commission Expires: June 4 2025

CITY OF KISSIMMEE

Olga Gonzalez, Mayor

Date: _____

Attest:

City Clerk

Approved as to form and legality:

City Attorney

EXHIBIT A

State Term Contract No. 46000000-21-STC For Defense Products



CONTRACT AMENDMENT NO. 1

Contract No.: 46000000-21-STC

Contract Name: Defense Products

This Contract Amendment to Contract No. 46000000-21-STC ("Contract") is made by and between the State of Florida, Department of Management Services ("Department") and SSD International Inc. ("Contractor"), with its principal place of business located at 1349 South Orange Blossom Trail, Apopka, FL 32703, collectively referred to herein as the "Parties."

WHEREAS the Parties entered into Contract No. 46000000-21-STC on October 1, 2021, for the provision of Defense Products; and

WHEREAS the Parties agreed that the Contract may be amended by mutual agreement as provided in Section 6.9, Modification and Severability, of Exhibit B, Special Contract Conditions.

ACCORDINGLY, and in consideration of the mutual promises contained in the Contract documents, the Parties agree as follows:

I. Contract Amendment. The Contract shall be amended as follows:

a. The definition for Net Price, in Exhibit A, Scope of Work, Section 1, Definitions is hereby removed and replaced in its entirety as follows:

Net Price – The final price paid by the Customer after applying the applicable discount for the Group, Manufacturer/Brand, and contract term, as shown on the Contractor's submitted Product Group Discount Sheet, Attachment C. In addition to the Net Price, the Customer is also responsible for all shipping and freight charges.

b. Exhibit A, Scope of Work, Section 3.2, Preparation for Delivery is hereby removed and replaced in its entirety as follows:

3.2 Preparation for Delivery

All Products shall be packaged and prepared to ensure safe delivery to the Customer's identified destination at the lowest rates, based on Customer's requested shipping method and timeframes. The Customer is responsible for all shipping and freight charges.

Packaging shall comply with all applicable laws, including the requirements of section 403.7191, F.S. Due to the nature of the Products that are provided under this Contract, Contractors must ensure that Products are delivered only to authorized Customer representatives and are securely packaged, with precautions taken to prevent accidental

spills, discharge, breakage, or misdelivery to unauthorized individual(s). Title and risk of loss or damage to all Commodities shall be the responsibility of the Contractor until accepted by the Customer in accordance with this Contract.

Each container shall be marked to include a description of the Product, the name of the Contractor, and the State's Contract and purchase order numbers.

c. Section 15, MSRP List and Product Adjustments, of Exhibit A, Scope of Work is hereby removed and replaced in its entirety:

15. MSRP List and MSRP List Adjustments

The Contractor shall submit and maintain a current and complete MSRP List for each awarded Group and Manufacturer/Brand. The MSRP List is subject to the Department's approval. The MSRP List shall include the following for each Commodity: Manufacturer/ Brand Model Number, Manufacturer/Brand Product Description (to include Ammunition Specification for Groups 7, 8, and 9), and MSRP. Include a cover page, which shall list the applicable Group, Manufacturer/Brand, and MSRP List date. The Department shall be the final arbiter of MSRPs if a Contractor's pricing differs from the published MSRPs. The Contractor shall be responsible for removing all non-eligible and unacceptable Commodities under the Contract from the Contractor's MSRP List.

The Contractor may add Products to the MSRP List at any time during the life of the Contract by submitting a complete and revised MSRP List. Products added must be from a Group, Manufacturer/Brand, and Ammunition Specification (for Groups 7, 8, and 9) for which the Contractor received an award. The Contractor shall be responsible for removing all noneligible and unacceptable Commodities under the Contract from the Contractor's MSRP List.

Revised MSRP Lists, regardless of whether the Contractor is adding Products or updating MSRPs for existing Products, must be accompanied by a revised product sheet, as described in the Product Sheet and Product Sheet Adjustments section of the Scope of Work, as well as a list of all changes made from the previously submitted version of the MSRP List.

d. Exhibit A, Scope of Work, Section 17, Price Sheet and Price Adjustments, is hereby removed and replaced in its entirety as follows:

17. Product Sheet and Product Sheet Adjustments

The Contractor shall submit a complete product sheet to include all Commodities for each Group, Manufacturer/Brand, and Ammunition Specification (for Groups 7, 8, and 9) for which the Contractor received an award. The Commodities listed on the product sheet must match the Commodities listed on the MSRP List. The product sheet is subject to the Department's approval. The product sheet shall be provided in Excel format and include a separate tab for each Group. Each tab shall include, at minimum, the following information for each Commodity offered under that Group:

- Manufacturer/Brand (as shown on the Product Group Discount Sheet);

- Model number or other identifier that Customers can use to locate the Commodity on the Manufacturer's website;
- Description (to include Ammunition Specification for Groups 7, 8, and 9);
- MSRP (as shown on the current MSRP List);
- Discount (as shown on the Product Group Discount Sheet for the Group, Manufacturer/Brand, and, for Groups 7, 8, and 9, Ammunition Specification); and
- Net Price to the Customer.

The discount provided will apply to all Products of a given Manufacturer/Brand and Ammunition Specification (for Groups 7, 8, and 9) within a Group. Prices for new Products added during the Contract period shall be based on the MSRP and the discount shown on the Product Group Discount Sheet for the applicable Group, Manufacturer/Brand, Ammunition Specification (for Groups 7, 8, and 9), and current Contract term (initial or renewal term). All products offered for a Manufacturer/Brand within each awarded Product Group (Groups 1-6) shall be available for purchase by Customers at the applicable discount provided within the Product Group Discount Sheet.

The Contractor may add Products to the product sheet at any time during the life of the Contract by submitting a complete and revised product sheet. Products added must be from a Group, Manufacturer/Brand, and Ammunition Specification (for Groups 7, 8, and 9) for which the Contractor received an award. The Contractor shall be responsible for removing all noneligible and unacceptable Commodities under the Contract from the Contractor's product sheet.

Revised product sheets, regardless of whether the Contractor is adding Products or updating MSRPs and Net Prices for existing Products, must be accompanied by a revised MSRP List, as described in the MSRP List and Product Adjustments section, as well as a list of all changes made from the previously submitted version of the product sheet. The Department will not consider any request to decrease the MSRP discount for any awarded Product.

e. Exhibit G, Product Sheet, attached hereto and incorporated herein by reference, is added to the Contract.

f. All references to the term "Price Sheet" throughout the Contract are hereby amended to read "Product Sheet."

g. Contract Section III., Contract, is hereby removed and replaced in its entirety as follows:

III. Contract.

As used in this document, "Contract" (whether or not capitalized) shall, unless the context requires otherwise, include this document and all incorporated Attachments, which set forth the entire understanding of the Parties and supersedes all prior agreements. All modifications to this Contract must be in writing and signed by all Parties. All Attachments listed below are incorporated in their entirety into, and form part of, this Contract. The Contract document and Attachments shall have priority in the following order:

- a) This Contract document
- b) Exhibit A, Scope of Work
- c) Exhibit F, Additional Special Contract Conditions
- d) Exhibit B, Special Contract Conditions
- e) Exhibit G, Product Sheet
- f) Exhibit C, Discount Sheet
- g) Exhibit D, MSRP List
- h) Exhibit E, Preferred Pricing Affidavit

h. Exhibit B, Special Contract Conditions, Section 5.4, Suspended, Convicted, and Discriminatory Vendor Lists, is hereby removed and replaced in its entirety as follows:

5.4 Suspended, Convicted, Discriminatory, and Antitrust Violator Vendor Lists.

In accordance with sections 287.042, 287.133, 287.134, and 287.137, F.S., an entity or affiliate who is on the Suspended Vendor List, Convicted Vendor List, Discriminatory Vendor List, or Antitrust Violator Vendor List may not perform work as a contractor, supplier, subcontractor, or consultant under the Contract. The Contractor must notify the Department if it or any of its suppliers, subcontractors, or consultants have been placed on the Suspended Vendor List, Convicted Vendor List, Discriminatory Vendor List, or Antitrust Violator Vendor List during the term of the Contract.

i. Exhibit B, Special Contract Conditions, Section 12.3, Inspection of Records, Papers, and Documents, is hereby added as follows:

12.3 Inspection of Records, Papers, and Documents.

In accordance with section 216.1366, F.S., the Department is authorized to inspect the: (a) financial records, papers, and documents of the Contractor that are directly related to the performance of the Contract or the expenditure of state funds; and (b) programmatic records, papers, and documents of the Contractor which the Department determines are necessary to monitor the performance of the Contract or to ensure that the terms of the Contract are being met. The Contractor shall provide such records, papers, and documents requested by the Department within 10 Business Days after the request is made.

II. Warranty of Authority. Each person signing this Amendment warrants that he or she is duly authorized to do so and to bind the respective party.

III. Conflict. Except as expressly amended and supplemented by this Amendment, the terms and conditions of the Contract will remain in effect unchanged. If and to the extent that any inconsistency may appear between the Contract and this Amendment, the provisions of this Amendment shall control.

IV. Effect. Unless otherwise modified by this Amendment, all terms and conditions contained in the Contract shall continue in full force and effect. This Amendment is effective when signed by both Parties.

IN WITNESS WHEREOF, the Parties have executed this Amendment by their duly authorized representatives.

State of Florida:
Department of Management Services

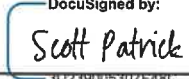
Contractor:
SSD International Inc.

By: 
DocuSigned by:
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Name: Patrick Gillespie

Title: Deputy Secretary of Business Operations

Date: 4/13/2023 | 3:12 PM EDT

By: 
DocuSigned by:
3D239005307F48C...

Name: Scott Patrick

Title: LE Accounts Manager

Date: 4/10/2023 | 10:52 AM EDT



**State Term Contract
No. 46000000-21-STC
For
Defense Products**

This Contract is between the State of Florida, Department of Management Services (Department), an agency of the State of Florida, and **SSD International Inc.** (Contractor), collectively referred to herein as the "Parties."

Accordingly, the Parties agree as follows:

I. Initial Contract Term.

The Initial Contract Term shall be for three years. The Initial Contract Term shall begin on October 1, 2021. The Contract shall expire on September 30, 2024, unless terminated earlier in accordance with the Special Contract Conditions.

II. Renewal Term.

Upon mutual written agreement, the Parties may renew this Contract, in whole or in part, pursuant to the incorporated Special Contract Conditions.

III. Contract.

As used in this document, "Contract" (whether or not capitalized) shall, unless the context requires otherwise, include this document and all incorporated Attachments, which set forth the entire understanding of the Parties and supersedes all prior agreements. All modifications to this Contract must be in writing and signed by all Parties.

All Attachments listed below are incorporated in their entirety into, and form part of, this Contract. The Contract document and Attachments shall have priority in the following order:

- a) This Contract document
- b) Exhibit A, Scope of Work
- c) Exhibit F, Additional Special Contract Conditions
- d) Exhibit B, Special Contract Conditions
- e) Exhibit C, Discount Sheet
- f) Exhibit D, MSRP List
- g) Exhibit E, Preferred Pricing Affidavit

State Term Contract
No. **46000000-21-STC**
For
Defense Products

IV. Contract Management.

Department's Contract Manager:

Joe Thomas
Division of State Purchasing
Florida Department of Management Services
4050 Esplanade Way, Suite 360
Tallahassee, Florida 32399-0950
Telephone: (850) 488.8366
Email: Joseph.Thomas@dms.fl.gov

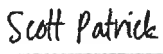
Contractor's Contract Manager:

Brad Ryan
SSD International Inc.
1349 South Orange Blossom Trail, Apopka, FL 32703
Telephone: 407.410.6914 ext. 310
Email: brad@ssdinternationalinc.com

This Contract is executed by the undersigned officials as duly authorized. This Contract is not valid and binding on all Parties until signed and dated by both Parties.

SSD International Inc.

**STATE OF FLORIDA,
DEPARTMENT OF
MANAGEMENT SERVICES**

DocuSigned by:

3D23900330748C...
Scott Patrick

LE Accounts Manager
9/21/2021 | 2:38 PM EDT

Date:

J. Todd Inman, Secretary

Date:

State Term Contract
No. 46000000-21-STC
For
Defense Products

IV. Contract Management.

Department's Contract Manager:

Joe Thomas

Division of State Purchasing

Florida Department of Management Services

4050 Esplanade Way, Suite 360

Tallahassee, Florida 32399-0950

Telephone: (850) 488.8366

Email: Joseph.Thomas@dms.fl.gov

Contractor's Contract Manager:

Brad Ryan

SSD International Inc.

1349 South Orange Blossom Trail, Apopka, FL 32703

Telephone: 407.410.6914 ext. 310

Email: brad@ssdinternationalinc.com

This Contract is executed by the undersigned officials as duly authorized. This Contract is not valid and binding on all Parties until signed and dated by both Parties.

SSD International Inc.

DocuSigned by:

Scott Patrick

3028000307738C...
Scott Patrick

LE Accounts Manager

9/21/2021 | 2:38 PM EDT

Date:

**STATE OF FLORIDA,
DEPARTMENT OF
MANAGEMENT SERVICES**



J. Todd Inman, Secretary

9/23/2021

Date:

Exhibit A
Defense Products
Contract No. 46000000-21-STC
Scope of Work

1. Definitions

Authorized Dealer - A Manufacturer's certified representative authorized by the Manufacturer to market, sell, and provide specific Commodities and services of the Manufacturer and service specific Commodities of the Manufacturer. Dealers may be contractor owned and controlled, in whole or in part or independently owned and controlled.

Commodity – As defined in section 287.012, F.S. Commodities may be referred to as "Products."

Commodity Code – The State's numeric code for classifying commodities and contractual services which meet specific requirements, specifications, terms, and conditions herein. Florida has adopted the United Nations Standard Products and Services Code (UNSPSC) for classifying commodities and services.

Confidential Information – Information that is trade secret or otherwise confidential or exempt from disclosure under Florida or federal law.

Contract – The written agreement between the Department and the awarded Bidder(s) resulting from ITB No. 21-46000000-ITB.

Contractor – A Bidder that is awarded, and enters into, a Contract with the Department as a result of ITB No. 21-46000000-ITB.

Customer – A State Agency or Eligible User.

Department – The Department of Management Services, a State Agency.

Group – A series of Commodities with applicable Commodity Codes described on the Product Group Discount Sheet, Attachment C.

Manufacturer – The original producer or provider of defense Products responsive to this solicitation which possess the minimum quality, reliability, service, and value required by the Department and Customers. May be used interchangeably with "Brand".

Manufacturer's Suggested Retail Price (MSRP) – The Manufacturer's recommended retail selling price, list price, published price, or other usual and customary price that would be paid by the purchaser for specific commodities or services without benefit of the Contract. It must be publicly listed, available, and verifiable by the Department.

MSRP List – The Manufacturer's Suggested Retail Price List, a collection of MSRPs and related information broken down by specific commodities. In the priority listed below, only the following are acceptable sources of current MSRPs and MSRP Lists for use under this Contract:

- Manufacturer's Annual U.S. Price Book, and
- Manufacturer's official website or dealer software.

Net Price – The final price paid by the Customer after applying the applicable discount for the Group, Manufacturer/Brand, and contract term, as shown on the Contractor's submitted Product Group Discount Sheet, Attachment C.

State – The State of Florida.

2. Scope

Products offered under the Contract shall be classified under nine Groups, which are listed below and described as follows:

Group	Group Description
1	HANDCUFFS, LEGCUFFS, WAIST CHAINS, KEYS, ZIP TIE HANDCUFFS, ELECTRONIC RESTRAINT DEVICES (ERD), AND OTHER PRODUCTS WITHIN THE PRODUCT GROUP AND COMMODITY CODE
2	PEPPER SPRAY/OC SPRAY
3	TRAINING EQUIPMENT/MATERIALS (INCLUDING K9 EQUIPMENT AND TRAINING AMMUNITION)
4	ARMS AND AMMUNITION ACCESSORIES (HOLSTERS, SLINGS, GEAR BAGS, AND OTHER PRODUCTS WITHIN THE PRODUCT GROUP AND COMMODITY CODE)
5	RIOT GEAR, CONTROL MECHANISMS, BODY CAMERAS, TASERS AND STUN GUNS, AND OTHER PRODUCTS WITHIN THE PRODUCT GROUP AND COMMODITY CODE
6	GRENADES (E.G., MUZZLE BLAST, HORNETS NEST) AND SMOKE BOMBS (INCLUDING LAUNCHERS)
7	HANDGUN AMMUNITION (DUTY)
8	SHOTGUN AND RIMFIRE AMMUNITION (DUTY)
9	RIFLE AMMUNITION (DUTY)

The Contract is intended to cover only those Commodities generally used by the State as listed and described herein and does not include all varieties of equipment that are commercially available. The Department in its sole discretion shall determine the eligibility and acceptability of all Commodities available and included under the Contract. The Contractor shall be responsible for removing all non-eligible and unacceptable Commodities under the Contract from the Contractor's MSRP List and Price Sheet.

Delivery of non-conforming Commodities which are not remedied as required herein, may be cause for default proceedings, Contract termination, or both.

3. Commodity Specifications and Standards

All Commodities and related services must comply with the following:

3.1 Current Model

Products furnished by the Contractor under this Contract shall be the Manufacturer's most current, recently released, standard industrial model, except for those modifications or changes required in the standard Product to comply with the requirements of this Contract. For each purchase, Contractor shall include all accessories and components which are customarily included with each Product.

3.2 Preparation for Delivery

All Products shall be packaged and prepared to ensure safe delivery to the Customer's identified destination at the lowest rates, based on Customer's requested shipping method and timeframes.

Packaging shall comply with all applicable laws, including the requirements of section 403.7191, F.S. Due to the nature of the Products that are provided under this Contract, Contractors must ensure that Products are delivered only to authorized Customer representatives and are securely packaged, with precautions taken to prevent accidental spills, discharge, breakage, or misdelivery to unauthorized individual(s). Title and risk of loss or damage to all Commodities shall be the responsibility of the Contractor until accepted by the Customer in accordance with this Contract.

Each container shall be marked to include a description of the Product, the name of the Contractor, and the State's Contract and purchase order numbers.

3.3 Testing

The Department and Customers may select Products purchased under this Contract for testing to verify Product compliance with the requirements, specifications, terms, and conditions of this Contract.

Delivery of non-conforming Commodities which are not remedied as required herein, may be cause for default proceedings, Contract termination, or both.

3.4 Warranty

The Manufacturer's and Authorized Dealer's standard warranty shall cover all Commodities purchased pursuant to the Contract. The Manufacturer's standard warranty is required to provide coverage against defective material, workmanship, and failure to perform in accordance with Product specifications, Contract specifications, and any required performance criteria. The Manufacturer's standard warranty or Authorized Dealer's standard warranty coverage shall be identical to or exceed the most inclusive of those normally provided for the Commodities specified herein that are sold to any state or local governments. The Manufacturer's standard warranty shall have a minimum term of one year from the date of acceptance in accordance with section 3.8, Acceptance, and shall begin only at the time of acceptance by the Customer, as described herein.

Should the Manufacturer's standard warranty or the Authorized Dealer's standard warranty provide less or inferior coverage than any requirements, specifications, terms, or conditions of the Contract, the Contract requirements, specifications, terms and conditions shall prevail. The Manufacturer's standard warranty and the Authorized Dealer's standard warranty terms and conditions are not part of the Contract requirements, specifications, terms, and conditions.

3.5 Recalled Products

In the event there is a recall of any of the Products, including any components, accessories, or any parts incorporating the Products ("Recalled Products"), the Contractor shall provide reasonable assistance to the Department in developing a recall strategy and shall cooperate with the Department and the Customer in monitoring the recall operation and in preparing such reports as may be required. Contractor shall, at the request of the Department or any Customer, give the Department and each Customer all reasonable assistance in locating and recovering any Products or Recalled Products. Contractor shall immediately notify and provide copies to the Department of any communications, whether relating to recalls or otherwise, with any Customer. Contractor shall ensure all Recalled Products are rectified, replaced and/or destroyed in compliance with all applicable laws, rules or regulations and the Department's reasonable instructions. All Contractor efforts relating to Recalled Products shall be at Contractor's own expense.

3.6 Commodity Compliance and Compatibility

It is the Contractor's responsibility to ensure that the Commodities supplied are compliant with the Contract requirements, specifications, terms, and conditions. Additionally, the Contractor shall ensure that all Commodities ordered by the Customer are fully compatible with each other and with any associated pre-existing Commodity possessed by the Customer and disclosed to the Contractor by the Customer. The Contractor's acceptance of the Customer's order shall indicate that the Contractor agrees to deliver a Commodity that is fully compliant and compatible with the Customer's order requirements, specifications, terms, and conditions. In the event any ordered Products are found by the Customer to be missing, incorrect, defective, damaged, noncompatible, or non-compliant, the Contractor shall, at the Customer's discretion, be required to complete one of the following:

- Repair Products, including their respective features, equipment, accessories, and components
- Replace Products, their respective features, equipment, accessories, and components, or
- Refund the purchase price of the applicable Products to the Customer.

Any changes necessary after the delivery of the Customer's order that are required to bring a Commodity into compliance or compatibility due to an incorrect order fulfillment by the Contractor shall be accomplished at the Contractor's expense.

3.7 Acknowledgement of Order Form

The Contractor shall complete and issue an Acknowledgement of Order Form (Attachment I) for all orders where the Contractor does not have the Commodities in stock and cannot deliver the Commodities to the ordering Customer within ten Business Days. The Contractor must include the date of receipt of the Customer's Purchase Order, the Manufacturer's order confirmation information, and the Customer's estimated delivery date.

The Contractor shall deliver a fully completed Acknowledgement of Order form to the Customer within ten Business Days of receiving the Purchase Order. Failure of the Contractor to timely provide the Customer with a completed Acknowledgement of Order form shall be considered acceptance of the order by default, which, if necessary, shall require the provision of the next new model of the Commodity, which meets the prices, discounts, requirements, specifications, terms, and conditions herein. Submission of the Acknowledgement of Order form is the responsibility of the Contractor without prompting or notification by the Contract Manager or Customer.

Contractor's failure to timely submit completed Acknowledgement of Order forms to Customers may be cause for default proceedings or termination.

3.8 Acceptance

Section 6.4, Inspection and Acceptance of Commodities, of Attachment B, Special Contract Conditions, is supplemented by adding the following:

The Customer, within three Business Days of delivery, will inspect the delivered Commodity for acceptability. The Customer should compare the physical Commodity delivered, Contract prices, discounts, requirements, specifications, terms, conditions, and Customer order, to ensure the Commodity received meets or exceeds the requirements, specifications, terms, and conditions of the Contract and Customer order. Additionally, the Customer shall inspect the Commodity for any damage. The Contractor is obligated to correct any errors or damage in the Commodity. Failure by the Customer to discover an error in the Commodity shall not relieve the Contractor from its obligation to correct the error in the event it is found any time after the Commodity is delivered.

The Parties agree that inspection and acceptance shall be the Customer's responsibility and occur at the location of the Customer. Title and risk of loss or damage to all Commodities shall be the responsibility of the Contractor until accepted by the Customer. The Contractor shall be responsible for filing, processing, and collecting all damage claims. The Customer shall assist the Contractor by:

- Recording any evidence of visible damage on all copies of the delivering carrier's bill of lading
- Reporting any known visible and concealed damage to the carrier and the Contractor
- Confirming said reports in writing within fifteen Business Days of delivery, requesting that the carrier inspect the damaged merchandise, and
- Providing the Contractor with a copy of the carrier's bill of lading and damage inspection report.

Transportation and delivery of the Commodity does not constitute acceptance for the purpose of payment. Acceptance and authorization of payment shall be given by the Customer only after a thorough inspection indicates that the Commodity is undamaged and meets the Contract requirements, specifications, terms, and conditions. Should the delivered Commodity be damaged or differ in any respect from the Contract requirements, specifications, terms, and conditions, payment shall be withheld until such time as the Contractor completes the required, Customer approved, corrective action.

Should the Commodity require service or adjustments as part of the Customer-approved corrective action(s), the Contractor shall either remedy the defect or be responsible for reimbursing the Manufacturer's local Authorized Dealer or others selected by the Customer to remedy the defect. The Contractor shall initiate such required service or adjustments within two Business Days following notification by the Customer. The Commodity shall not be accepted until all service and / or adjustments are satisfactorily performed and the Commodity is re-delivered in acceptable condition. The costs of any delivery required as part of the initial or any re-deliveries due to error or damage are the responsibility of the Contractor.

The Customer shall notify the Department of any Contract deviation that it cannot resolve with the Contractor. The Department and Customer shall develop a corrective action plan related to the Contract deviation, which may include the Customer's permanent refusal to accept the Commodity, in which case the Commodity shall remain the property of the Contractor, and the Customer and the State shall not be liable for payment for any portion thereof.

3.9 Contractor's Use of Dealers

The Contractor may engage Dealers in accordance with the terms herein to provide sales and support for the awarded Commodities offered under this Contract. In the event the Contractor elects to use Dealers, the Contractor shall remain fully accountable for ensuring that the Dealer complies with the terms of this Contract. In the event the Dealers fail to comply with the terms of this Contract, the Contractor shall remain fully liable. The Contractor shall ensure that Dealers remain current with the Contractor's authorized Commodities and pricing listed in the price sheet(s). The Contractor shall remain responsible for receiving purchase orders and shall remain responsible for invoicing the Customer for payment. All invoices shall remain in the name of the Contractor.

The Contractor may not utilize Dealers until receiving express authorization from the Department. Information regarding the Contractor's addition of Dealers can be found at the following link:

https://www.dms.myflorida.com/business_operations/state_purchasing/vendor_resources/su_bcontractor_dealer_reseller_forms.

4 Holidays

The Contractor shall provide Customers all Commodities during Business Days. The following days are observed as holidays by state agencies in accordance with section 110.117, F.S.:

- New Year's Day
- Birthday of Martin Luther King, Jr., third Monday in January
- Memorial Day
- Independence Day
- Labor Day
- Veterans' Day, November 11
- Thanksgiving Day
- Friday after Thanksgiving
- Christmas Day

If any of these holidays falls on Saturday, the preceding Friday shall be observed as a holiday. If any of these holidays falls on Sunday, the following Monday shall be observed as a holiday. Customers may have additional holiday(s) observed specifically by the Customer which will be detailed in the Customer's order.

5 Routine Communications

Contractor shall send all routine communications and reports related to the Contract to the Department's contract manager. If any information listed on the Vendor Information and Ordering Instructions attachments changes during the life of the Contract, then the Contractor shall update the attachments and submit to the Department's contract manager. Communications relating to a specific order should be addressed to the contact person identified on the order. Communications may be by e-mail, regular mail, or telephone.

6 Contract Reporting

The Contractor shall report information on orders received from Customers associated with this Contract. No revised MSRP lists or price adjustments will be considered for any Contractor who has outstanding reports, or any other documentation required under the Contract. The Contractor shall submit reports in accordance with the following schedule:

Report	Period Covered	Due Date
MFMP Transaction Fee Report	Calendar month	15 calendar days after the end of each month
Quarterly Sales Report	State's Fiscal Quarter	30 calendar days after close of the period
Diversity Report (submitted to the Customer)	State Fiscal Year	30 Business Days after close of the period
Preferred Pricing Affidavit (in accordance with section 3.2.2. of the Special Contract Conditions)	Annual	Contract Anniversary Date

7 MFMP Transaction Fee Report

The Contractor is required to submit monthly MFMP Transaction Fee Reports in the Department's electronic format. Reports are due 15 calendar days after the end of the reporting period. For information on how to submit Transaction Fee Reports online, please reference the detailed fee reporting instructions and vendor training presentations available online at the "Transaction Fee & Reporting" section and "Training for Vendors" subsections under the "Vendors" tab on the MFMP website. Assistance with Transaction Fee Reporting is also available from the MFMP Customer Service Desk by email at: VendorHelp@myfloridamarketplace.com or telephone 866-FLA-EPRO (866-352-3776) from 8:00 a.m. to 6:00 p.m. Eastern Time.

8 Quarterly Sales Reports

The Contractor shall submit a quarterly sales report electronically, in the required format, to the Department's Contract Manager within 30 calendar days after close of each quarter. The quarterly sales report can be found at the following link: https://www.dms.myflorida.com/business_operations/state_purchasing/vendor_resources/quarterly_sales_report_format

Failure to provide the quarterly sales report will result in the imposition of financial consequences and may result in the Contractor being found in default and the termination of the Contract. Initiation and submission of the quarterly sales report are the responsibility of the Contractor without prompting or notification by the Department. Sales will be reviewed on a quarterly basis. If no sales are recorded during the period, the Contractor must submit a report stating that there was no activity. If no sales are recorded in two consecutive quarters, the Contractor may be placed in probationary status or the Department may terminate the Contract.

Quarter 1 – (July-September) – due 30 calendar days after the close of the period
Quarter 2 – (October-December) – due 30 calendar days after the close of the period
Quarter 3 – (January-March) – due 30 calendar days after the close of the period
Quarter 4 – (April-June) due 30 calendar days after the close of the period

9 Diversity Report

The Contractor shall report to each Customer, spend with certified and other minority business enterprises. These reports shall include the period covered, the name, minority code and Federal Employer Identification Number of each minority business utilized during the period, Commodities provided by the minority business enterprise, and the amount paid to each minority business on behalf of each purchasing agency ordering under the terms of this Contract.

10 Ad Hoc Reports

The Department or Customer may require additional Contract information such as copies of purchase orders or ad hoc sales reports. The Contractor shall submit information in response to these specific ad hoc requests for reports within the specified amount of time as requested by the Department or Customer.

11 Purchasing Card

The State has implemented a purchasing card program using the Visa platform. The Contractor may receive payments via the state's Purchasing Card in the same manner as any other Visa purchases. Purchasing Card acceptance for purchase is a mandatory requirement for the Contract but is not the exclusive method of payment. If the State changes its Purchasing Card platform during the term of Contract, the Contractor shall make any necessary changes to accommodate the State 's new Purchasing Card platform within 30 calendar days of notification of such change.

12 Punchout Catalog and Electronic Invoicing

The Contractor is encouraged to provide a MFMP punchout catalog. The punchout catalog provides an alternative mechanism for suppliers to offer the State access to Products awarded under the Contract. The punchout catalog also allows for direct communication between the MFMP eProcurement System and a supplier's Enterprise Resource Planning (ERP) system, which can reflect real-time Product inventory/availability information.

Through utilization of the punchout catalog model, a Florida buyer will "punch out" to a supplier's website. Using the search tools on the supplier's Florida punchout catalog site, the user selects the desired Products. When complete, the user exits the supplier's punchout catalog site and the shopping cart (full of Products) is "brought back" to MFMP. No orders are sent to a supplier when the user exits the supplier's punchout catalog site. Instead, the chosen Products are "brought back" to MFMP as line items in a purchase order. The user can then proceed through the normal workflow steps, which may include adding/editing the Products (i.e., line items) in the purchase order. An order is not submitted to a supplier until the user approves and submits the purchase order, at which point the supplier receives an email with the order details.

The Contractor may supply electronic invoices in lieu of paper-based invoices for those transactions processed through MFMP. Electronic invoices may be submitted to the agency through one of the mechanisms as listed below:

- 1) EDI (Electronic Data Interchange)

This standard establishes the data contents of the Invoice Transaction Set (810) for use within the context of an Electronic Data Interchange (EDI) environment. This transaction set can be used for invoicing via the Ariba Network (AN) for catalog and non-catalog goods and services.

2) PO Flip via AN

This online process allows Contractors to submit invoices via the AN for catalog and non-catalog goods and services. Contractors have the ability to create an invoice directly from their inbox in their AN account by simply "flipping" the PO into an invoice. This option does not require any special software or technical capabilities.

The Contractor warrants and represents that it is authorized and empowered to and hereby grants the State and the third-party provider of MFMP, a State contractor, the right and license to use, reproduce, transmit, distribute, and publicly display within MFMP. In addition, the Contractor warrants and represents that it is authorized and empowered to and hereby grants the State and the third-party provider the right and license to reproduce and display within MFMP the Contractor's trademarks, system marks, logos, trade dress, or other branding designation that identifies the Products made available by the Contractor under the Contract.

The Contractor will work with the MFMP management team to obtain specific requirements for the electronic invoicing if needed

13 Financial Consequences

Financial Consequences will be assessed for failure to timely perform or submit a report as required by the Contract and shall be paid via check or money order in US Dollars, and made out to the Department of Management Services or the specific Customer, where applicable. Financial Consequences will be assessed daily or per occurrence for each individual failure until the performance or submittal is accomplished to the Department's or Customer's satisfaction, unless stated otherwise. For the submissions of reports, financial consequences will apply to each target period beginning with the first full month or quarter of the Contract's performance and each month and quarter thereafter.

Deliverable	Performance Metric	Performance Due Date	Financial Consequence for Non-Performance
Contractor will timely submit complete Quarterly Sales Reports	All Quarterly Sales Reports will be submitted timely with all required information	Completed Quarterly Sales Reports are due on or before the 30 th calendar day after the close of each State fiscal quarter	\$250 per Calendar Day late/not received by the Contract Manager
Contractor will timely submit complete MFMP Transaction Fee Reports	All MFMP Transaction Fee Reports will be submitted timely with all required information	Completed MFMP Transaction Fee Reports are due on or before the 15 th calendar day after the close of each month	\$100 per Calendar Day late/not received by the Contract Manager

Customers may add service level agreement (SLA) performance requirements and additional financial consequences in their statements of work for failing to meet performance

requirements within any negotiated SLA or purchase order.

The Department and Customers reserve the right to, in addition to withholding payment, implementing other appropriate remedies, such as Contract termination or non-renewal.

14 Business Review Meetings

In order to maintain the relationship between the Department and the Contractor, each quarter the Department may request a business review meeting. The business review meeting may include, but is not limited to, the following:

- Successful completion of deliverables
- Review of the Contractor's performance
- Review of minimum required reports
- Addressing of any elevated Customer issues
- Review of continuous improvement ideas that may help lower total costs and/or improve business efficiencies.

15 MSRP List and Product Adjustments

The Contractor shall submit and maintain a current and complete MSRP List for each awarded Group and Manufacturer/Brand. The MSRP List is subject to the Department's approval. The MSRP List shall include the following for each Commodity: Manufacturer/ Brand Model Number, Manufacturer/Brand Product Description (to include Ammunition Specification for Groups 7, 8, and 9), and MSRP. Include a cover page, which shall list the applicable Group, Manufacturer/Brand, and MSRP List date. The Department shall be the final arbiter of MSRPs if a Contractor's pricing differs from the published MSRPs. The Contractor shall be responsible for removing all non-eligible and unacceptable Commodities under the Contract from the Contractor's MSRP List.

The Contractor may add Products to the MSRP List at any time during the life of the Contract by submitting a complete and revised MSRP List. Products added must be from a Group, Manufacturer/Brand, and Ammunition Specification (for Groups 7, 8, and 9) for which the Contractor received an award. The Contractor shall be responsible for removing all non-eligible and unacceptable Commodities under the Contract from the Contractor's MSRP List.

The Contractor may update MSRPs for existing Products on the MSRP List to match the MSRPs published by the Manufacturer no earlier than twelve (12) months after the start date of the Contract and, thereafter, or no earlier than twelve (12) months after the date of the previous MSRP List update for the same purpose. The Contractor may update MSRPs for existing Products on the MSRP List by submitting a complete and revised MSRP List for Department review and approval.

Revised MSRP Lists, regardless of whether the Contractor is adding Products or updating MSRPs for existing Products, must be accompanied by a revised price sheet, as described in the Price Sheet and Price Adjustments section of the Scope of Work, as well as a list of all changes made from the previously submitted version of the MSRP List.

16 Deletions

During the Contract Term, the Department shall have the right to delete Commodities from this agreement by removing them from the Price Sheet(s). Commodities may be removed at the sole discretion of the Department.

17 Price Sheets and Price Adjustments

The Contractor shall submit a complete price sheet to include all Commodities for each Group, Manufacturer/Brand, and Ammunition Specification (for Groups 7, 8, and 9) for which the Contractor received an award. The Commodities listed on the price sheet must match the Commodities listed on the MSRP List. The price sheet is subject to the Department's approval. The price sheet shall be provided in Excel format and include a separate tab for each Group. Each tab shall include, at minimum, the following information for each Commodity offered under that Group:

- Manufacturer/Brand (as shown on the Product Group Discount Sheet);
- Model number or other identifier that Customers can use to locate the Commodity on the Manufacturer's website;
- Description (to include Ammunition Specification for Groups 7, 8, and 9);
- MSRP (as shown on the current MSRP List);
- Discount (as shown on the Product Group Discount Sheet for the Group, Manufacturer/Brand, and, for Groups 7, 8, and 9, Ammunition Specification); and
- Net Price to the Customer.

The discount provided will apply to all Products of a given Manufacturer/Brand and Ammunition Specification (for Groups 7, 8, and 9) within a Group. Prices for new Products added during the Contract period shall be based on the MSRP and the discount shown on the Product Group Discount Sheet for the applicable Group, Manufacturer/Brand, Ammunition Specification (for Groups 7, 8, and 9), and current Contract term (initial or renewal term). All products offered for a Manufacturer/Brand within each awarded Product Group (Groups 1-6) shall be available for purchase by Customers at the applicable discount provided within the Product Group Discount Sheet.

The Contractor may add Products to the price sheet at any time during the life of the Contract by submitting a complete and revised price sheet. Products added must be from a Group, Manufacturer/Brand, and Ammunition Specification (for Groups 7, 8, and 9) for which the Contractor received an award. The Contractor shall be responsible for removing all non-eligible and unacceptable Commodities under the Contract from the Contractor's price sheet.

The Contractor may update MSRPs and Net Prices for existing Products on the price sheet to match the MSRPs published by the Manufacturer no earlier than twelve months after the start date of the Contract and, thereafter, or no earlier than twelve months after the date of the previous MSRP update for the same purpose. The Contractor may update MSRPs and Net Prices for existing Products on the price sheet by submitting a complete and revised price sheet for the Department's review and approval.

Revised price sheets, regardless of whether the Contractor is adding Products or updating MSRPs and Net Prices for existing Products, must be accompanied by a revised MSRP List, as described in the MSRP List and Product Adjustments section, as well as a list of all changes made from the previously submitted version of the price sheet. The Department will not consider any request to decrease the MSRP discount for any awarded Product.

18 E-Verify

Section 13.2 of Attachment B, Special Contract Conditions, is hereby replaced in its entirety with the following:

The Contractor (and its subcontractors) have an obligation to utilize the U.S. Department of Homeland Security's (DHS) E-Verify system for all newly hired employees in accordance with section 448.095, F.S. By executing this Contract, the Contractor certifies that it is registered with, and uses, the E-Verify system for all newly hired employees in accordance with section 448.095, F.S. The Contractor must obtain an affidavit from its subcontractors in accordance with section 448.095(2)(b), F.S., and maintain a copy of such affidavit for the duration of the Contract. In order to implement this provision, the Contractor shall provide a copy of its DHS Memorandum of Understanding (MOU) to the Department's Contract Manager within five days of Contract execution.

This section serves as notice to the Contractor regarding the requirements of section 448.095, F.S., specifically sub-paragraph (2)(c)1, and the Department's obligation to terminate the Contract if it has a good faith belief that the Contractor has knowingly violated section 448.09(1), F.S. If terminated for such reason, the Contractor will not be eligible for award of a public contract for at least one year after the date of such termination. The Department reserves the right to order the immediate termination of any contract between the Contractor and a subcontractor performing work on its behalf should the Department develop a good faith belief that the subcontractor has knowingly violated section 448.09(1), F.S.

19 Document Inspection

In accordance with section 216.1366, F.S., the Department is authorized to inspect the: (a) financial records, papers, and documents of the Contractor that are directly related to the performance of the Contract or the expenditure of state funds; and (b) programmatic records, papers, and documents of the Contractor which the Department determines are necessary to monitor the performance of the Contract or to ensure that the terms of the Contract are being met. The Contractor shall provide such records, papers, and documents requested by the Department within 10 Business Days after the request is made.

SPECIAL CONTRACT CONDITIONS

Exhibit B

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In accordance with Rule 60A-1.002(7), F.A.C., Form PUR 1000 is included herein by reference but is superseded in its entirety by these Special Contract Conditions.

SECTION 1. DEFINITION.

The following definition applies in addition to the definitions in Chapter 287, Florida Statutes (F.S.), and Rule Chapter 60A-1, Florida Administrative Code (F.A.C.):

1.1 Customer.

The agency or eligible user that purchases commodities or contractual services pursuant to the Contract.

SECTION 2. CONTRACT TERM AND TERMINATION.

2.1 Initial Term.

The initial term will begin on the date set forth in the Contract documents or on the date the Contract is signed by all Parties, whichever is later.

2.2 Renewal.

Upon written agreement, the Department and the Contractor may renew the Contract in whole or in part only as set forth in the Contract documents, and in accordance with section 287.057(13), F.S.

2.3 Suspension of Work and Termination.

2.3.1 Suspension of Work.

The Department may, at its sole discretion, suspend any or all activities under the Contract, at any time, when it is in the best interest of the State of Florida to do so. The Customer may suspend a resulting contract or purchase order, at any time, when in the best interest of the Customer to do so. The Department or Customer will provide the Contractor written notice outlining the particulars of the suspension. After receiving a suspension notice, the Contractor must comply with the notice and will cease the performance of the Contract or purchase order. Suspension of work will not entitle the Contractor to any additional compensation. The Contractor will not resume performance of the Contract or purchase order until so authorized by the Department.

2.3.2 Termination for Convenience.

The Contract may be terminated by the Department in whole or in part at any time, in the best interest of the State of Florida. If the Contract is terminated before performance is completed, the Contractor will be paid only for that work satisfactorily performed for which costs can be substantiated. Such payment, however, may not exceed an amount which is the same percentage of the Contract price as the amount of work satisfactorily performed. All work in progress will become the property of the Customer and will be turned over promptly by the Contractor.

2.3.3 Termination for Cause.

If the performance of the Contractor is not in compliance with the Contract requirements or the Contractor has defaulted, the Department may:

- (a) immediately terminate the Contract;
- (b) notify the Contractor of the noncompliance or default, require correction, and specify the date by which the correction must be completed before the Contract is terminated; or
- (c) take other action deemed appropriate by the Department.

SECTION 3. PAYMENT AND FEES.

3.1 Pricing.

The Contractor will not exceed the pricing set forth in the Contract documents.

3.2 Price Decreases.

The following price decrease terms will apply to the Contract:

3.2.1 Quantity Discounts. Contractor may offer additional discounts for one-time delivery of large single orders;

3.2.2 Preferred Pricing. The Contractor guarantees that the pricing indicated in this Contract is a maximum price. Additionally, Contractor's pricing will not exceed the pricing offered under comparable contracts. Comparable contracts are those that are similar in size, scope, and terms. In compliance with section 216.0113, F.S., Contractor must annually submit an affidavit from the Contractor's authorized representative attesting that the Contract complies with this clause.

3.2.3 Sales Promotions. In addition to decreasing prices for the balance of the Contract term due to a change in market conditions, the Contractor may conduct sales promotions involving price reductions for a specified lesser period. The Contractor must submit documentation identifying the proposed: (1) starting and ending dates of the promotion, (2) commodities or contractual services involved, and (3) promotional prices compared to then-authorized prices.

3.3 Payment Invoicing.

The Contractor will be paid upon submission of invoices to the Customer after delivery and acceptance of commodities or contractual services is confirmed by the Customer. Invoices must contain sufficient detail for an audit and contain the Contract Number and the Contractor's Federal Employer Identification Number.

3.4 Purchase Order.

A Customer may use purchase orders to buy commodities or contractual services pursuant to the Contract and, if applicable, the Contractor must provide commodities or contractual services pursuant to purchase orders. Purchase orders issued pursuant to the Contract must be received by the Contractor no later than the close of business on the last day of the Contract's term. The Contractor is required to accept timely purchase orders specifying delivery schedules that extend beyond the Contract term even when such extended delivery will occur after expiration of the Contract. Purchase orders shall be valid through their specified term and performance by the Contractor, and all terms and conditions of the Contract shall survive the termination or expiration of the Contract and apply to the Contractor's performance. The duration of purchase orders for recurring deliverables shall not exceed the expiration of the Contract by more than twelve months. Any purchase order terms and conditions conflicting with these Special Contract Conditions shall not become a part of the Contract.

3.5 Travel.

Travel expenses are not reimbursable unless specifically authorized by the Customer in writing and may be reimbursed only in accordance with section 112.061, F.S.

3.6 Annual Appropriation.

Pursuant to section 287.0582, F.S., if the Contract binds the State of Florida or an agency for the purchase of services or tangible personal property for a period in excess of one fiscal year, the State of Florida's performance and obligation to pay under the Contract is contingent upon an annual appropriation by the Legislature.

3.7 Transaction Fees.

The State of Florida, through the Department of Management Services, has instituted MyFloridaMarketPlace, a statewide eProcurement system pursuant to section 287.057(22), F.S. All payments issued by Customers to registered Vendors for purchases of commodities or contractual services will be assessed Transaction Fees as prescribed by rule 60A-1.031, F.A.C., or as may otherwise be established by law. Vendors must pay the Transaction Fees and agree to automatic deduction of the Transaction Fees when automatic deduction becomes available. Vendors will submit any monthly reports required pursuant to the rule. All such reports and payments will be subject to audit. Failure to comply with the payment of the Transaction Fees or reporting of transactions will constitute grounds for declaring the Vendor in default and subject the Vendor to exclusion from business with the State of Florida.

3.8 Taxes.

Taxes, customs, and tariffs on commodities or contractual services purchased under the Contract will not be assessed against the Customer or Department unless authorized by Florida law.

3.9 Return of Funds.

Contractor will return any overpayments due to unearned funds or funds disallowed pursuant to the terms of the Contract that were disbursed to the Contractor. The Contractor must return any overpayment within forty (40) calendar days after either discovery by the Contractor, its independent auditor, or notification by the Department or Customer of the overpayment.

SECTION 4. CONTRACT MANAGEMENT.

4.1 Composition and Priority.

The Contractor agrees to provide commodities or contractual services to the Customer as specified in the Contract. Additionally, the terms of the Contract supersede the terms of all prior agreements between the Parties on this subject matter.

4.2 Notices.

All notices required under the Contract must be delivered to the designated Contract Manager in a manner identified by the Department.

4.3 Department's Contract Manager.

The Department's Contract Manager, who is primarily responsible for the Department's oversight of the Contract, will be identified in a separate writing to the Contractor upon Contract signing in the following format:

Department's Contract Manager Name

Department's Name
Department's Physical Address
Department's Telephone #
Department's Email Address

If the Department changes the Contract Manager, the Department will notify the Contractor. Such a change does not require an amendment to the Contract.

4.4 Contractor's Contract Manager.

The Contractor's Contract Manager, who is primarily responsible for the Contractor's oversight of the Contract performance, will be identified in a separate writing to the Department upon Contract signing in the following format:

Contractor's Contract Manager Name
Contractor's Name
Contractor's Physical Address
Contractor's Telephone #
Contractor's Email Address

If the Contractor changes its Contract Manager, the Contractor will notify the Department. Such a change does not require an amendment to the Contract.

4.5 Diversity.

4.5.1 Office of Supplier Diversity.

The State of Florida supports its diverse business community by creating opportunities for woman-, veteran-, and minority-owned small business enterprises to participate in procurements and contracts. The Department encourages supplier diversity through certification of woman-, veteran-, and minority-owned small business enterprises and provides advocacy, outreach, and networking through regional business events. For additional information, please contact the Office of Supplier Diversity (OSD) at osdinfo@dms.myflorida.com.

4.5.2 Diversity Reporting.

Upon request, the Contractor will report to the Department its spend with business enterprises certified by the OSD. These reports must include the time period covered, the name and Federal Employer Identification Number of each business enterprise utilized during the period, commodities and contractual services provided by the business enterprise, and the amount paid to the business enterprise on behalf of each agency purchasing under the Contract.

4.6 RESPECT.

Subject to the agency determination provided for in section 413.036, F.S., the following statement applies:

IT IS EXPRESSLY UNDERSTOOD AND AGREED THAT ANY ARTICLES THAT ARE THE SUBJECT OF, OR REQUIRED TO CARRY OUT, THIS CONTRACT SHALL BE PURCHASED FROM A NONPROFIT AGENCY FOR THE BLIND OR FOR THE SEVERELY HANDICAPPED THAT IS QUALIFIED PURSUANT TO CHAPTER 413, FLORIDA STATUTES, IN THE SAME MANNER AND UNDER THE SAME PROCEDURES SET FORTH IN SECTION 413.036(1) AND (2), FLORIDA STATUTES;

AND FOR PURPOSES OF THIS CONTRACT THE PERSON, FIRM, OR OTHER BUSINESS ENTITY CARRYING OUT THE PROVISIONS OF THIS CONTRACT SHALL BE DEEMED TO BE SUBSTITUTED FOR THE STATE AGENCY INsofar AS DEALINGS WITH SUCH QUALIFIED NONPROFIT AGENCY ARE CONCERNED.

Additional information about RESPECT and the commodities or contractual services it offers is available at <https://www.respectofflorida.org>.

4.7 PRIDE.

Subject to the agency determination provided for in sections 287.042(1) and 946.515, F.S., the following statement applies:

IT IS EXPRESSLY UNDERSTOOD AND AGREED THAT ANY ARTICLES WHICH ARE THE SUBJECT OF, OR REQUIRED TO CARRY OUT, THIS CONTRACT SHALL BE PURCHASED FROM THE CORPORATION IDENTIFIED UNDER CHAPTER 946, F.S., IN THE SAME MANNER AND UNDER THE SAME PROCEDURES SET FORTH IN SECTION 946.515(2) AND (4), F.S.; AND FOR PURPOSES OF THIS CONTRACT THE PERSON, FIRM, OR OTHER BUSINESS ENTITY CARRYING OUT THE PROVISIONS OF THIS CONTRACT SHALL BE DEEMED TO BE SUBSTITUTED FOR THIS AGENCY INsofar AS DEALINGS WITH SUCH CORPORATION ARE CONCERNED.

Additional information about PRIDE and the commodities or contractual services it offers is available at <https://www.pride-enterprises.org>.

SECTION 5. COMPLIANCE WITH LAWS.

5.1 Conduct of Business.

The Contractor must comply with all laws, rules, codes, ordinances, and licensing requirements that are applicable to the conduct of its business, including those of federal, state, and local agencies having jurisdiction and authority. For example, the Contractor must comply with section 274A of the Immigration and Nationality Act, the Americans with Disabilities Act, Health Insurance Portability and Accountability Act, if applicable, and all prohibitions against discrimination on the basis of race, religion, sex, creed, national origin, handicap, marital status, or veteran's status. The provisions of subparagraphs 287.058(1)(a)-(c), and (g), F.S., are hereby incorporated by reference.

5.2 Dispute Resolution, Governing Law, and Venue.

Any dispute concerning performance of the Contract shall be decided by the Department's designated Contract Manager, who will reduce the decision to writing and serve a copy on the Contractor. The decision of the Contract Manager shall be final and conclusive. Exhaustion of this administrative remedy is an absolute condition precedent to the Contractor's ability to pursue legal action related to the Contract or any other form of dispute resolution. The laws of the State of Florida govern the Contract. The Parties submit to the jurisdiction of the courts of the State of Florida exclusively for any legal action related to the Contract. Further, the Contractor hereby waives all privileges and rights relating to venue it may have under Chapter 47, F.S., and all such venue privileges and rights it may have under any other statute, rule, or case law, including, but not limited to, those based on convenience. The Contractor hereby submits to venue in the county chosen by the Department.

5.3 Department of State Registration.

Consistent with Title XXXVI, F.S., the Contractor and any subcontractors that assert status, other than a sole proprietor, must provide the Department with conclusive evidence of a certificate of status, not subject to qualification, if a Florida business entity, or of a certificate of authorization if a foreign business entity.

5.4 Suspended, Convicted, and Discriminatory Vendor Lists.

In accordance with sections 287.042, 287.133, and 287.134, F.S., an entity or affiliate who is on the Suspended Vendor List, Convicted Vendor List, or Discriminatory Vendor List may not perform work as a contractor, supplier, subcontractor, or consultant under the Contract. The Contractor must notify the Department if it or any of its suppliers, subcontractors, or consultants have been placed on the Suspended Vendor List, Convicted Vendor List, or Discriminatory Vendor List during the term of the Contract.

5.5 Scrutinized Companies - Termination by the Department.

The Department may, at its option, terminate the Contract if the Contractor is found to have submitted a false certification as provided under section 287.135(5), F.S., or been placed on the Scrutinized Companies with Activities in Sudan List or the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List, or been engaged in business operations in Cuba or Syria, or to have been placed on the Scrutinized Companies that Boycott Israel List or is engaged in a boycott of Israel.

5.6 Cooperation with Inspector General and Records Retention.

Pursuant to section 20.055(5), F.S., the Contractor understands and will comply with its duty to cooperate with the Inspector General in any investigation, audit, inspection, review, or hearing. Upon request of the Inspector General or any other authorized State official, the Contractor must provide any information the Inspector General deems relevant to the Contractor's integrity or responsibility. Such information may include, but will not be limited to, the Contractor's business or financial records, documents, or files of any type or form that refer to or relate to the Contract. The Contractor will retain such records for the longer of five years after the expiration of the Contract, or the period required by the General Records Schedules maintained by the Florida Department of State, at the Department of State's Records Management website. The Contractor agrees to reimburse the State of Florida for the reasonable costs of investigation incurred by the Inspector General or other authorized State of Florida official for investigations of the Contractor's compliance with the terms of this or any other agreement between the Contractor and the State of Florida which results in the suspension or debarment of the Contractor. Such costs will include but will not be limited to: salaries of investigators, including overtime; travel and lodging expenses; and expert witness and documentary fees. The Contractor agrees to impose the same obligations to cooperate with the Inspector General and retain records on any subcontractors used to provide goods or services under the Contract.

SECTION 6. MISCELLANEOUS.

6.1 Subcontractors.

The Contractor will not subcontract any work under the Contract without prior written consent of the Department. The Contractor is fully responsible for satisfactory completion of all its subcontracted work. The Department supports diversity in its procurements and contracts, and requests that the Contractor offer subcontracting opportunities to certified woman-, veteran-, and minority-owned small businesses. The

Contractor may contact the OSD at osdhelp@dms.myflorida.com for information on certified small business enterprises available for subcontracting opportunities.

6.2 Assignment.

The Contractor will not sell, assign, or transfer any of its rights, duties, or obligations under the Contract without the prior written consent of the Department. However, the Contractor may waive its right to receive payment and assign same upon notice to the Department. In the event of any assignment, the Contractor remains responsible for performance of the Contract, unless such responsibility is expressly waived by the Department. The Department may assign the Contract with prior written notice to the Contractor.

6.3 Independent Contractor.

The Contractor and its employees, agents, representatives, and subcontractors are independent contractors and not employees or agents of the State of Florida and are not entitled to State of Florida benefits. The Department and Customer will not be bound by any acts or conduct of the Contractor or its employees, agents, representatives, or subcontractors. The Contractor agrees to include this provision in all its subcontracts under the Contract.

6.4 Inspection and Acceptance of Commodities.

6.4.1 Risk of Loss.

Matters of inspection and acceptance are addressed in section 215.422, F.S. Until acceptance, risk of loss or damage will remain with the Contractor. The Contractor will be responsible for filing, processing, and collecting all damage claims. To assist the Contractor with damage claims, the Customer will: record any evidence of visible damage on all copies of the delivering carrier's bill of lading; report damages to the carrier and the Contractor; and provide the Contractor with a copy of the carrier's bill of lading and damage inspection report.

6.4.2 Rejected Commodities.

When a Customer rejects a commodity, Contractor will remove the commodity from the premises within ten (10) calendar days after notification of rejection, and the risk of loss will remain with the Contractor. Commodities not removed by the Contractor within ten (10) calendar days will be deemed abandoned by the Contractor, and the Customer will have the right to dispose of such commodities. Contractor will reimburse the Customer for costs and expenses incurred in storing or effecting removal or disposition of rejected commodities.

6.5 Safety Standards.

Performance of the Contract for all commodities or contractual services must comply with requirements of the Occupational Safety and Health Act and other applicable State of Florida and federal requirements.

6.6 Ombudsman.

A Vendor Ombudsman has been established within the Department of Financial Services. The duties of this office are found in section 215.422, F.S., which include disseminating information relative to prompt payment and assisting contractors in receiving their payments in a timely manner from a Customer. The Vendor Ombudsman may be contacted at (850) 413-5516.

6.7 Time is of the Essence.

Time is of the essence regarding every obligation of the Contractor under the Contract. Each obligation is deemed material, and a breach of any such obligation (including a breach resulting from untimely performance) is a material breach.

6.8 Waiver.

The delay or failure by the Department or the Customer to exercise or enforce any rights under the Contract will not constitute waiver of such rights.

6.9 Modification and Severability.

The Contract may only be modified by written agreement between the Department and the Contractor. Should a court determine any provision of the Contract is invalid, the remaining provisions will not be affected, and the rights and obligations of the Parties will be construed and enforced as if the Contract did not contain the provision held invalid.

6.10 Cooperative Purchasing.

Pursuant to their own governing laws, and subject to the agreement of the Contractor, governmental entities that are not Customers may make purchases under the terms and conditions contained herein, if agreed to by Contractor. Such purchases are independent of the Contract between the Department and the Contractor, and the Department is not a party to these transactions. Agencies seeking to make purchases under this Contract are required to follow the requirements of Rule 60A-1.045(5), F.A.C.

SECTION 7. LIABILITY AND INSURANCE.

7.1 Workers' Compensation Insurance.

The Contractor shall maintain workers' compensation insurance as required under the Florida Workers' Compensation Law or the workers' compensation law of another jurisdiction where applicable. The Contractor must require all subcontractors to similarly provide workers' compensation insurance for all of the latter's employees. In the event work is being performed by the Contractor under the Contract and any class of employees performing the work is not protected under Workers' Compensation statutes, the Contractor must provide, and cause each subcontractor to provide, adequate insurance satisfactory to the Department, for the protection of employees not otherwise protected.

7.2 General Liability Insurance.

The Contractor must secure and maintain Commercial General Liability Insurance, including bodily injury, property damage, products, personal and advertising injury, and completed operations. This insurance must provide coverage for all claims that may arise from performance of the Contract or completed operations, whether by the Contractor or anyone directly or indirectly employed by the Contractor. Such insurance must include the State of Florida as an additional insured for the entire length of the resulting contract. The Contractor is responsible for determining the minimum limits of liability necessary to provide reasonable financial protections to the Contractor and the State of Florida under the resulting contract.

7.3 Florida Authorized Insurers.

All insurance shall be with insurers authorized and eligible to transact the applicable line of insurance business in the State of Florida. The Contractor shall provide Certification(s) of Insurance evidencing that all appropriate coverage is in place and showing the Department to be an additional insured.

7.4 Performance Bond.

Unless otherwise prohibited by law, the Department may require the Contractor to furnish, without additional cost to the Department, a performance bond or irrevocable letter of credit or other form of security for the satisfactory performance of work hereunder. The Department shall determine the type and amount of security.

7.5 Indemnification.

To the extent permitted by Florida law, the Contractor agrees to indemnify, defend, and hold the Customer and the State of Florida, its officers, employees, and agents harmless from all fines, claims, assessments, suits, judgments, or damages, including consequential, special, indirect, and punitive damages, including court costs and attorney's fees, arising from or relating to violation or infringement of a trademark, copyright, patent, trade secret, or intellectual property right or out of any acts, actions, breaches, neglect, or omissions of the Contractor, its employees, agents, subcontractors, assignees, or delegates related to the Contract, as well as for any determination arising out of or related to the Contract that the Contractor or Contractor's employees, agents, subcontractors, assignees, or delegates are not independent contractors in relation to the Customer. The Contract does not constitute a waiver of sovereign immunity or consent by the Customer or the State of Florida or its subdivisions to suit by third parties. Without limiting this indemnification, the Customer may provide the Contractor (1) written notice of any action or threatened action, (2) the opportunity to take over and settle or defend any such action at Contractor's sole expense, and (3) assistance in defending the action at Contractor's sole expense.

7.6 Limitation of Liability.

Unless otherwise specifically enumerated in the Contract or in the purchase order, neither the Department nor the Customer shall be liable for special, indirect, punitive, or consequential damages, including lost data or records (unless the Contract or purchase order requires the Contractor to back-up data or records), even if the Department or Customer has been advised that such damages are possible. Neither the Department nor the Customer shall be liable for lost profits, lost revenue, or lost institutional operating savings. The Department or Customer may, in addition to other remedies available to them at law or equity and upon notice to the Contractor, retain such monies from amounts due Contractor as may be necessary to satisfy any claim for damages, penalties, costs, and the like asserted by or against them. The State may set off any liability or other obligation of the Contractor or its affiliates to the State against any payments due the Contractor under any contract with the State.

SECTION 8. PUBLIC RECORDS, TRADE SECRETS, DOCUMENT MANAGEMENT, AND INTELLECTUAL PROPERTY.

8.1 Public Records.

8.1.1 Termination of Contract.

The Department may terminate the Contract for refusal by the Contractor to comply with this section by not allowing access to all public records, as defined in Chapter 119, F. S., made or received by the Contractor in conjunction with the Contract.

8.1.2 Statutory Notice.

Pursuant to section 119.0701(2)(a), F.S., for contracts for services with a contractor acting on behalf of a public agency, as defined in section 119.011(2), F.S., the following applies:

IF THE CONTRACTOR HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE CONTRACTOR'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS CONTRACT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT THE TELEPHONE NUMBER, EMAIL ADDRESS, AND MAILING ADDRESS PROVIDED IN THE RESULTING CONTRACT OR PURCHASE ORDER.

Pursuant to section 119.0701(2)(b), F.S., for contracts for services with a contractor acting on behalf of a public agency as defined in section 119.011(2), F.S., the Contractor shall:

- (a) Keep and maintain public records required by the public agency to perform the service.
- (b) Upon request from the public agency's custodian of public records, provide the public agency with a copy of the requested records or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided in Chapter 119, F.S., or as otherwise provided by law.
- (c) Ensure that public records that are exempt or confidential and exempt from public records disclosure are not disclosed except as authorized by law for the duration of the Contract term and following the completion of the Contract if the Contractor does not transfer the records to the public agency.
- (d) Upon completion of the Contract, transfer, at no cost, to the public agency all public records in possession of the Contractor or keep and maintain public records required by the public agency to perform the service. If the Contractor transfers all public records to the public agency upon completion of the Contract, the Contractor shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If the Contractor keeps and maintains public records upon completion of the Contract, the Contractor shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to the public agency, upon request from the public agency's custodian of public records, in a format that is compatible with the information technology systems of the public agency.

8.2 Protection of Trade Secrets or Otherwise Confidential Information.

8.2.1 Contractor Designation of Trade Secrets or Otherwise Confidential Information. If the Contractor considers any portion of materials to be trade secret under section 688.002 or 812.081, F.S., or otherwise confidential under Florida or federal law, the Contractor must clearly designate that portion of the materials as trade secret or otherwise confidential when submitted to the Department. The Contractor will be

responsible for responding to and resolving all claims for access to Contract-related materials it has designated trade secret or otherwise confidential.

8.2.2 Public Records Requests.

If the Department receives a public records request for materials designated by the Contractor as trade secret or otherwise confidential under Florida or federal law, the Contractor will be responsible for taking the appropriate legal action in response to the request. If the Contractor fails to take appropriate and timely action to protect the materials designated as trade secret or otherwise confidential, the Department will provide the materials to the requester.

8.2.3 Indemnification Related to Confidentiality of Materials.

The Contractor will protect, defend, indemnify, and hold harmless the Department for claims, costs, fines, and attorney's fees arising from or relating to its designation of materials as trade secret or otherwise confidential.

8.3 Document Management.

The Contractor must retain sufficient documentation to substantiate claims for payment under the Contract and all other records, electronic files, papers, and documents that were made in relation to this Contract. The Contractor must retain all documents related to the Contract for five (5) years after expiration of the Contract or, if longer, the period required by the General Records Schedules maintained by the Florida Department of State available at the Department of State's Records Management website.

8.4 Intellectual Property.

8.4.1 Ownership.

Unless specifically addressed otherwise in the Contract, the State of Florida shall be the owner of all intellectual property rights to all property created or developed in connection with the Contract.

8.4.2 Patentable Inventions or Discoveries.

Any inventions or discoveries developed in the course, or as a result, of services in connection with the Contract that are patentable pursuant to 35 U.S.C. § 101 are the sole property of the State of Florida. Contractor must inform the Customer of any inventions or discoveries developed or made through performance of the Contract, and such inventions or discoveries will be referred to the Florida Department of State for a determination on whether patent protection will be sought. The State of Florida will be the sole owner of all patents resulting from any invention or discovery made through performance of the Contract.

8.4.3 Copyrightable Works.

Contractor must notify the Department or State of Florida of any publications, artwork, or other copyrightable works developed in connection with the Contract. All copyrights created or developed through performance of the Contract are owned solely by the State of Florida.

SECTION 9. DATA SECURITY.

The Contractor will maintain the security of State of Florida data including, but not limited to, maintaining a secure area around any displayed visible data and ensuring data is stored and secured when not in use. The Contractor and subcontractors will not perform any of the services from outside of the United States, and the Contractor will not allow any State of Florida data to be sent by any medium, transmitted, or accessed outside the United States due to Contractor's action or inaction. In the event of a security breach involving State of Florida data, the Contractor shall give notice to the Customer and the Department within one business day. "Security breach" for purposes of this section will refer to a confirmed event that compromises the confidentiality, integrity, or availability of data. Once a data breach has been contained, the Contractor must provide the Department with a post-incident report documenting all containment, eradication, and recovery measures taken. The Department reserves the right in its sole discretion to enlist a third party to audit Contractor's findings and produce an independent report, and the Contractor will fully cooperate with the third party. The Contractor will also comply with all HIPAA requirements and any other state and federal rules and regulations regarding security of information.

SECTION 10. GRATUITIES, LOBBYING, AND COMMUNICATIONS.

10.1 Gratuities.

The Contractor will not, in connection with this Contract, directly or indirectly (1) offer, give, or agree to give anything of value to anyone as consideration for any State of Florida officer's or employee's decision, opinion, recommendation, vote, other exercise of discretion, or violation of a known legal duty, or (2) offer, give, or agree to give to anyone anything of value for the benefit of, or at the direction or request of, any State of Florida officer or employee.

10.2 Lobbying.

In accordance with sections 11.062 and 216.347, F.S., Contract funds are not to be used for the purpose of lobbying the Legislature, the judicial branch, or the Department. Pursuant to section 287.058(6), F.S., the Contract does not prohibit the Contractor from lobbying the executive or legislative branch concerning the scope of services, performance, term, or compensation regarding the Contract after the Contract is executed and during the Contract term.

10.3 Communications.

10.3.1 Contractor Communication or Disclosure.

The Contractor shall not make any public statements, press releases, publicity releases, or other similar communications concerning the Contract or its subject matter or otherwise disclose or permit to be disclosed any of the data or other information obtained or furnished in compliance with the Contract, without first notifying the Customer's Contract Manager and securing the Customer's prior written consent.

10.3.2 Use of Customer Statements.

The Contractor shall not use any statement attributable to the Customer or its employees for the Contractor's promotions, press releases, publicity releases, marketing, corporate communications, or other similar communications, without first notifying the Customer's Contract Manager and securing the Customer's prior written consent.

SECTION 11. CONTRACT MONITORING.

11.1 Performance Standards.

The Contractor agrees to perform all tasks and provide deliverables as set forth in the Contract. The Department and the Customer will be entitled at all times, upon request, to be advised as to the status of work being done by the Contractor and of the details thereof.

11.2 Performance Deficiencies and Financial Consequences of Non-Performance.

11.2.1 Proposal of Corrective Action Plan.

In addition to the processes set forth in the Contract (e.g., service level agreements), if the Department or Customer determines that there is a performance deficiency that requires correction by the Contractor, then the Department or Customer will notify the Contractor. The correction must be made within a time-frame specified by the Department or Customer. The Contractor must provide the Department or Customer with a corrective action plan describing how the Contractor will address all performance deficiencies identified by the Department or Customer.

11.2.2 Retainage for Unacceptable Corrective Action Plan or Plan Failure.

If the corrective action plan is unacceptable to the Department or Customer, or implementation of the plan fails to remedy the performance deficiencies, the Department or Customer will retain ten percent (10%) of the total invoice amount. The retainage will be withheld until the Contractor resolves the performance deficiencies. If the performance deficiencies are resolved, the Contractor may invoice the Department or Customer for the retained amount. If the Contractor fails to resolve the performance deficiencies, the retained amount will be forfeited to compensate the Department or Customer for the performance deficiencies.

11.3 Performance Delay.

11.3.1 Notification.

The Contractor will promptly notify the Department or Customer upon becoming aware of any circumstances that may reasonably be expected to jeopardize the timely and successful completion (or delivery) of any commodity or contractual service. The Contractor will use commercially reasonable efforts to avoid or minimize any delays in performance and will inform the Department or the Customer of the steps the Contractor is taking or will take to do so, and the projected actual completion (or delivery) time. If the Contractor believes a delay in performance by the Department or the Customer has caused or will cause the Contractor to be unable to perform its obligations on time, the Contractor will promptly so notify the Department and use commercially reasonable efforts to perform its obligations on time notwithstanding the Department's delay.

11.3.2 Liquidated Damages.

The Contractor acknowledges that delayed performance will damage the Department/Customer, but by their nature such damages are difficult to ascertain. Accordingly, the liquidated damages provisions stated in the Contract documents will apply. Liquidated damages are not intended to be a penalty and are solely intended to compensate for damages.

11.4 Force Majeure, Notice of Delay, and No Damages for Delay.

The Contractor will not be responsible for delay resulting from its failure to perform if neither the fault nor the negligence of the Contractor or its employees or agents contributed to the delay, and the delay is due directly to fire, explosion, earthquake, windstorm, flood, radioactive or toxic chemical hazard, war, military hostilities, terrorism, civil emergency, embargo, riot, strike, violent civil unrest, or other similar cause wholly beyond the Contractor's reasonable control, or for any of the foregoing that affect subcontractors or suppliers if no alternate source of supply is available to the Contractor. The foregoing does not excuse delay which could have been avoided if the Contractor implemented any risk mitigation required by the Contract. In case of any delay the Contractor believes is excusable, the Contractor will notify the Department in writing of the delay or potential delay and describe the cause of the delay either (1) within ten (10) calendar days after the cause that created or will create the delay first arose, if the Contractor could reasonably foresee that a delay could occur as a result, or (2) if delay is not reasonably foreseeable, within five (5) calendar days after the date the Contractor first had reason to believe that a delay could result. The foregoing will constitute the Contractor's sole remedy or excuse with respect to delay. Providing notice in strict accordance with this paragraph is a condition precedent to such remedy. No claim for damages will be asserted by the Contractor. The Contractor will not be entitled to an increase in the Contract price or payment of any kind from the Department for direct, indirect, consequential, impact or other costs, expenses or damages, including but not limited to costs of acceleration or inefficiency, arising because of delay, disruption, interference, or hindrance from any cause whatsoever. If performance is suspended or delayed, in whole or in part, due to any of the causes described in this paragraph, after the causes have ceased to exist the Contractor will perform at no increased cost, unless the Department determines, in its sole discretion, that the delay will significantly impair the value of the Contract to the State of Florida or to Customers, in which case the Department may (1) accept allocated performance or deliveries from the Contractor, provided that the Contractor grants preferential treatment to Customers and the Department with respect to commodities or contractual services subjected to allocation, or (2) purchase from other sources (without recourse to and by the Contractor for the related costs and expenses) to replace all or part of the commodity or contractual services that are the subject of the delay, which purchases may be deducted from the Contract quantity, or (3) terminate the Contract in whole or in part.

SECTION 12. CONTRACT AUDITS.

12.1 Performance or Compliance Audits.

The Department may conduct or have conducted performance and/or compliance audits of the Contractor and subcontractors as determined by the Department. The Department may conduct an audit and review all the Contractor's and subcontractors' data and records that directly relate to the Contract. To the extent necessary to verify the Contractor's fees and claims for payment under the Contract, the Contractor's agreements or contracts with subcontractors, partners, or agents of the Contractor, pertaining to the Contract, may be inspected by the Department upon fifteen (15) calendar days' notice, during normal working hours and in accordance with the Contractor's facility access procedures where facility access is required. Release statements from its subcontractors, partners, or agents are not required for the Department or its designee to conduct compliance and performance audits on any of the Contractor's contracts relating to this Contract. The Inspector General, in accordance with section 5.6, the State of Florida's Chief Financial Officer, the Office of the Auditor General also have authority to perform audits and inspections.

12.2 Payment Audit.

Records of costs incurred under terms of the Contract will be maintained in accordance with section 8.3 of these Special Contract Conditions. Records of costs incurred will include the Contractor's general accounting records, together with supporting documents and records of the Contractor and all subcontractors performing work, and all other records of the Contractor and subcontractors considered necessary by the Department, the State of Florida's Chief Financial Officer, or the Office of the Auditor General.

SECTION 13. BACKGROUND SCREENING AND SECURITY.

13.1 Background Check.

The Department or Customer may require the Contractor to conduct background checks of its employees, agents, representatives, and subcontractors as directed by the Department or Customer. The cost of the background checks will be borne by the Contractor. The Department or Customer may require the Contractor to exclude the Contractor's employees, agents, representatives, or subcontractors based on the background check results. In addition, the Contractor must ensure that all persons have a responsibility to self-report to the Contractor within three (3) calendar days any arrest for any disqualifying offense. The Contractor must notify the Contract Manager within twenty-four (24) hours of all details concerning any reported arrest. Upon the request of the Department or Customer, the Contractor will re-screen any of its employees, agents, representatives, and subcontractors during the term of the Contract.

13.2 E-Verify.

The Contractor must use the U.S. Department of Homeland Security's E-Verify system to verify the employment eligibility of all new employees hired during the term of the Contract for the services specified in the Contract. The Contractor must also include a requirement in subcontracts that the subcontractor must utilize the E-Verify system to verify the employment eligibility of all new employees hired by the subcontractor during the Contract term. In order to implement this provision, the Contractor must provide a copy of its DHS Memorandum of Understanding (MOU) to the Contract Manager within five (5) calendar days of Contract execution. If the Contractor is not enrolled in DHS E-Verify System, it will do so within five (5) calendar days of notice of Contract award and provide the Contract Manager a copy of its MOU within five (5) calendar days of Contract execution. The link to E-Verify is <https://www.uscis.gov/e-verify>. Upon each Contractor or subcontractor new hire, the Contractor must provide a statement within five (5) calendar days to the Contract Manager identifying the new hire with its E-Verify case number.

13.3 Disqualifying Offenses.

If at any time it is determined that a person has been found guilty of a misdemeanor or felony offense as a result of a trial or has entered a plea of guilty or nolo contendere, regardless of whether adjudication was withheld, within the last six (6) years from the date of the court's determination for the crimes listed below, or their equivalent in any jurisdiction, the Contractor is required to immediately remove that person from any position with access to State of Florida data or directly performing services under the Contract. The disqualifying offenses are as follows:

- (a) Computer related crimes;
- (b) Information technology crimes;

- (c) Fraudulent practices;
- (d) False pretenses;
- (e) Frauds;
- (f) Credit card crimes;
- (g) Forgery;
- (h) Counterfeiting;
- (i) Violations involving checks or drafts;
- (j) Misuse of medical or personnel records; and
- (k) Felony theft.

13.4 Confidentiality.

The Contractor must maintain confidentiality of all confidential data, files, and records related to the commodities or contractual services provided pursuant to the Contract and must comply with all state and federal laws, including, but not limited to sections 381.004, 384.29, 392.65, and 456.057, F.S. The Contractor's confidentiality procedures must be consistent with the most recent version of the Department security policies, protocols, and procedures. The Contractor must also comply with any applicable professional standards with respect to confidentiality of information.

SECTION 14. WARRANTY OF CONTRACTOR'S ABILITY TO PERFORM.

The Contractor warrants that, to the best of its knowledge, there is no pending or threatened action, proceeding, or investigation, or any other legal or financial condition, that would in any way prohibit, restrain, or diminish the Contractor's ability to satisfy its Contract obligations. The Contractor warrants that neither it nor any affiliate is currently on the Suspended Vendor List, Convicted Vendor List, or the Discriminatory Vendor List, or on any similar list maintained by any other state or the federal government. The Contractor shall immediately notify the Department in writing if its ability to perform is compromised in any manner during the term of the Contract.



ADDITIONAL SPECIAL CONTRACT CONDITIONS EXHIBIT F

A. Special Contract Conditions revisions: the corresponding subsections of the Special Contract Conditions referenced below are replaced in their entirety with the following:

2.2 Renewal.

Upon written agreement, the Department and the Contractor may renew the Contract in whole or in part only as set forth in the Contract documents, and in accordance with section 287.057(14), F.S.

3.7 Transaction Fees.

The State of Florida, through the Department of Management Services, has instituted MyFloridaMarketPlace, a statewide eProcurement system pursuant to section 287.057(24), F.S. All payments issued by Customers to registered Vendors for purchases of commodities or contractual services will be assessed Transaction Fees as prescribed by rule 60A-1.031, F.A.C., or as may otherwise be established by law. Vendors must pay the Transaction Fees and agree to automatic deduction of the Transaction Fees when automatic deduction becomes available. Vendors will submit any monthly reports required pursuant to the rule. All such reports and payments will be subject to audit. Failure to comply with the payment of the Transaction Fees or reporting of transactions will constitute grounds for declaring the Vendor in default and subject the Vendor to exclusion from business with the State of Florida.

5.1 Conduct of Business.

The Contractor must comply with all laws, rules, codes, ordinances, and licensing requirements that are applicable to the conduct of its business, including those of federal, state, and local agencies having jurisdiction and authority. For example, the Contractor must comply with section 274A of the Immigration and Nationality Act, the Americans with Disabilities Act, Health Insurance Portability and Accountability Act, if applicable, and all prohibitions against discrimination on the basis of race, religion, sex, creed, national origin, handicap, marital status, or veteran's status. The provisions of subparagraphs 287.058(1)(a)-(c) and (g), F.S., are hereby incorporated by reference.

Nothing contained within this Contract shall be construed to prohibit the Contractor from disclosing information relevant to performance of the Contract or purchase order to members or staff of the Florida Senate or Florida House of Representatives.

Pursuant to section 287.057(26), F.S., the Contractor shall answer all questions of, and ensure a representative will be available to, a continuing oversight team.

The Contractor will comply with all applicable disclosure requirements set forth in section 286.101, F.S. In the event the Department of Financial Services issues the Contractor a final order determining a third or subsequent violation pursuant to section 286.101(7)(c), F.S., the

Contractor shall immediately notify the Department and applicable Customers and shall be disqualified from Contract eligibility.

5.4 Convicted, Discriminatory, Antitrust Violator, and Suspended Vendor Lists.

In accordance with sections 287.133, 287.134, and 287.137, F.S., the Contractor is hereby informed of the provisions of sections 287.133(2)(a), 287.134(2)(a), and 287.137(2)(a), F.S. For purposes of this Contract, a person or affiliate who is on the Convicted Vendor List, the Discriminatory Vendor List, or the Antitrust Violator Vendor List may not perform work as a contractor, supplier, subcontractor, or consultant under the Contract. The Contractor must notify the Department if it or any of its suppliers, subcontractors, or consultants have been placed on the Convicted Vendor List, the Discriminatory Vendor List, or the Antitrust Violator Vendor List during the term of the Contract.

In accordance with section 287.1351, F.S., a vendor placed on the Suspended Vendor List may not enter into or renew a contract to provide any goods or services to an agency after its placement on the Suspended Vendor List.

A firm or individual placed on the Suspended Vendor List pursuant to section 287.1351, F.S., the Convicted Vendor List pursuant to section 287.133, F.S., the Antitrust Violator Vendor List pursuant to section 287.137, F.S., or the Discriminatory Vendor List pursuant to section 287.134, F.S., is immediately disqualified from Contract eligibility.

5.6 Cooperation with Inspector General and Records Retention.

Pursuant to section 20.055(5), F.S., the Contractor understands and will comply with its duty to cooperate with the Inspector General in any investigation, audit, inspection, review, or hearing. Upon request of the Inspector General or any other authorized State official, the Contractor must provide any information the Inspector General deems relevant. Such information may include, but will not be limited to, the Contractor's business or financial records, documents, or files of any type or form that refer to or relate to the Contract. The Contractor will retain such records for the longer of five years after the expiration or termination of the Contract, or the period required by the General Records Schedules maintained by the Florida Department of State, at the Department of State's Records Management website. The Contractor agrees to reimburse the State of Florida for the reasonable costs of investigation incurred by the Inspector General or other authorized State of Florida official for investigations of the Contractor's compliance with the terms of this or any other agreement between the Contractor and the State of Florida which results in the suspension or debarment of the Contractor. Such costs will include but will not be limited to: salaries of investigators, including overtime; travel and lodging expenses; and expert witness and documentary fees. The Contractor agrees to impose the same obligations to cooperate with the Inspector General and retain records on any subcontractors used to provide goods or services under the Contract.

8.1.1 Termination of Contract.

The Department may terminate the Contract for refusal by the Contractor to comply with this section by not allowing access to all public records, as defined in Chapter 119, F.S., made or received by the Contractor in conjunction with the Contract unless the records are exempt from s. 24(a) of Art. I of the State Constitution and section 119.071(1), F.S.

8.1.2 Statutory Notice.

Pursuant to section 119.0701(2)(a), F.S., for contracts for services with a contractor acting on behalf of a public agency, as defined in section 119.011(2), F.S., the following applies:

IF THE CONTRACTOR HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE CONTRACTOR'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS CONTRACT, CONTACT THE DEPARTMENT'S CUSTODIAN OF PUBLIC RECORDS AT PUBLICRECORDS@DMS.FL.GOV, (850) 487-1082 OR 4050 ESPLANADE WAY, SUITE 160, TALLAHASSEE, FLORIDA 32399-0950.

Pursuant to section 119.0701(2)(b), F.S., for contracts for services with a contractor acting on behalf of a public agency as defined in section 119.011(2), F.S., the Contractor shall:

- (a) Keep and maintain public records required by the public agency to perform the service.
- (b) Upon request from the public agency's custodian of public records, provide the public agency with a copy of the requested records or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided in Chapter 119, F.S., or as otherwise provided by law.
- (c) Ensure that public records that are exempt or confidential and exempt from public records disclosure are not disclosed except as authorized by law for the duration of the Contract term and following the completion of the Contract if the Contractor does not transfer the records to the public agency.
- (d) Upon completion of the Contract, transfer, at no cost, to the public agency all public records in possession of the Contractor or keep and maintain public records required by the public agency to perform the service. If the Contractor transfers all public records to the public agency upon completion of the Contract, the Contractor shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If the Contractor keeps and maintains public records upon completion of the Contract, the Contractor shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to the public agency, upon request from the public agency's custodian of public records, in a format that is compatible with the information technology systems of the public agency.

12.1 Performance or Compliance Audits.

The Department may conduct or have conducted performance and/or compliance audits of the Contractor and subcontractors as determined by the Department. The Department may conduct an audit and review all the Contractor's and subcontractors' data and records that directly relate to the Contract. To the extent necessary to verify the Contractor's fees and claims for payment under the Contract, the Contractor's agreements or contracts with subcontractors, partners, or agents of the Contractor, pertaining to the Contract, may be inspected by the Department upon fifteen (15) calendar days' notice, during normal working hours and in accordance with the Contractor's facility access procedures where facility access is required. Release statements from its subcontractors, partners, or agents are not required for the Department or its designee to conduct compliance and performance audits on any of the Contractor's contracts relating to this Contract. The Inspector General, in accordance with section 5.6, the State of Florida's Chief Financial Officer, and the Office of the Auditor General shall also have authority to perform audits and inspections.

13.2 E-Verify.

The Contractor and its subcontractors have an obligation to utilize the U.S. Department of Homeland Security's (DHS) E-Verify system for all newly hired employees in accordance with section 448.095, F.S. By executing this Contract, the Contractor certifies that it is registered with, and uses, the E-Verify system for all newly hired employees in accordance with section 448.095, F.S. The Contractor must obtain an affidavit from its subcontractors in accordance with paragraph (2)(b) of section 448.095, F.S., and maintain a copy of such affidavit for the duration of the Contract. The Contractor shall provide a copy of its DHS Memorandum of Understanding (MOU) to the Department's Contract Manager within five days of Contract execution.

This section serves as notice to the Contractor regarding the requirements of section 448.095, F.S., specifically sub-paragraph (2)(c)1, and the Department's obligation to terminate the Contract if it has a good faith belief that the Contractor has knowingly violated section 448.09(1), F.S. If terminated for such reason, the Contractor will not be eligible for award of a public contract for at least one year after the date of such termination. The Department will promptly notify the Contractor and order the immediate termination of the contract between the Contractor and a subcontractor performing work on its behalf for this Contract should the Department have a good faith belief that the subcontractor has knowingly violated section 448.09(1), F.S.

B. Special Contract Conditions additions: the following subsection is added to the Special Contract Conditions:

12.3 Document Inspection.

In accordance with section 216.1366, F.S., the Department or a state agency is authorized to inspect the: (a) financial records, papers, and documents of the Contractor that are directly related to the performance of the Contract or the expenditure of state funds; and (b) programmatic records, papers, and documents of the Contractor which the Department or state agency determines are necessary to monitor the performance of the Contract or to ensure that the terms of the Contract are being met. The Contractor shall provide such records, papers, and documents requested by the Department or a state agency within 10 Business Days after the request is made.

EXHIBIT B

SSD INTERNATIONAL QUOTE #KPD-10



MILITARY & LAW ENFORCEMENT SERVICES

1349 South Orange Blossom Trail, Apopka, FL 32703 Tel. 407.410.6914

SALES QUOTATION

QUOTED BY:

Brad Ryan
Account Manager
SSD International Inc.

DATE: 11/27/2023

QUOTE: KPD-10

SELL TO:

Kissimmee Police Department
8 N. Stewart Avenue
Kissimmee, Florida 34741
407-847-0176

SHIP TO:

Kissimmee Police Department
8 N. Stewart Avenue
Kissimmee, Florida 34741
407-847-0176

ITEM #	DESCRIPTION	QTY	PRICE	TOTAL
EOT-CLPO-AI-B	Eotech ClipNV clip-on, med range, WP, ESA, 2376 MIN FOM, optimized w/ day optic 1-12X	4	\$7,999.00	\$31,996.00
EOT-CLPO-DT2-B	Eotech ClipIR Mk 2 clip-on thermal, med range, 12 um, 60 hz, optimized w/ day optic 1-8X	2	\$10,640.00	\$21,280.00
SHIP	SHIPPING	1	\$0.00	\$0.00
			TOTAL	\$53,276.00

TERMS AND CONDITIONS

Prices are in US Dollars.

Quotes are valid for 30 days. Prices are subject to change after 30 days.

Payment Terms: Purchase Order, payable within 30 days of delivery.

Returns: All returns, and cancelled orders are subject to a 25% restocking fee. Return shipments require an RA number before products can be shipped back to the manufacturer or SSD.

Shipment Terms: Delivery to agency. Freight paid on orders over \$5k in value.

Estimated time to shipping: 180-365 days after receipt of signed purchase order.

ITEM 7.J

Emergency Medical Transportation Billing and Collection and Ground Ambulance Data Collection Services Contract

Request

Approval of Contract with Advanced Data Processing, Inc. (ADP) (Contract # #20240234) using account 00135103-503434 (Other Contract Services) and authorization for the City Manager to execute any extensions or amendments of this contract.

Explanation

Since March 1, 2015, the City has contracted with ADP for emergency medical services billing and collection services. This single-source contract seeks to continue ADP's provision of emergency medical services and billing and collection services to the City.

Under this contract, the City will also receive ground ambulance data collection services to comply with newly imposed Centers for Medicare and Medicare Services data collection and reporting requirements. For emergency medical services billing and collection, ADP receives a percentage of net collections or a flat-rate fee for each billing or notification sent. For ground ambulance data collection services, ADP shall receive \$35,000 annually using 00135103-503434 (Other Contract Services).

Financial Information

Account #	Project #	Increase / Decrease	Budget	Actual
00135103-503434		Decrease	\$35,000	\$35,000

Financial Summary:

Funding is budgeted in the Other Contract Services account.

Recommendation

Approval for the Mayor to sign a Contract with Advanced Data Processing, Inc., and authorization for the City Manager to execute any extensions or amendments of this contract.

REQUESTED CITY COMMISSION ACTION:

Approve

Department: Fire
Presenter:

Attachment(s):

City of Kissimmee

1. (s) Kissimmee FL - Single Source Agreement with ADPI 11.22.23 FINAL

**AGREEMENT BETWEEN
CITY OF KISSIMMEE
AND
ADVANCED DATA PROCESSING, INC.**

THIS AGREEMENT is made this _____ day of _____, 2023 (“Agreement”) by and between the **CITY OF KISSIMMEE**, a municipal corporation of the State of Florida, 101 Church Street, Kissimmee, Florida 34741, hereinafter “**CITY**”, and **ADVANCED DATA PROCESSING, INC.**, whose address is 480 Bedford Road, Building 600, 2nd Floor, Chappaqua, NY 10514, hereinafter “**CONSULTANT**”, collectively hereinafter the “**Parties**”, and each represents as follows:

WITNESSETH

WHEREAS, the City is in need of a qualified Consultant to provide professional services to include emergency medical transportation billing and collection services; and

WHEREAS, pursuant to the City’s Purchasing Manual, the City may procure goods and services from a single source when the City selects a vendor for substantial reasons; and

WHEREAS, the City’s Purchasing Manual, states that “continuation of previous work” is an acceptable substantial reason to procure goods or services from a single source; and

WHEREAS, the City and ADP entered into a contract for emergency medical services (hereinafter “**EMS**”) billing and collection services on March 1, 2015 and that contractual relationship has continued through the present date; and

WHEREAS, the Parties have determined that it is economically advantageous and in the best interest of the Parties to enter into contract to provide services related to EMS transportation billing and collection and ground ambulance data collection (hereinafter “**this Agreement**”); and

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

1. **RECITALS.** The foregoing recitals are true and correct and specifically incorporated herein.
2. **THE CONTRACT DOCUMENTS.** The contract documents consist of this Agreement, Exhibit A: the Business Associate Agreement (hereinafter “**BAA**”), Exhibit B: EMS billing and collection services, Exhibit C: Ground Ambulance Data Collection Services (hereinafter (**GADCS**) Description of Services, Exhibit D: City Invoicing Information, and any subsequent duly executed amendments to any of the aforementioned documents. These contract documents form the Agreement, and all are incorporated herein as if set forth in

full. In the event of a conflict between the aforementioned documents, any duly executed amendment to this Agreement will control, followed by this Agreement, the Exhibit A, Exhibit B, and Exhibit C, in that order.

3. **SERVICES.** Consultant must perform all work for the City required by the contract documents including performing the services set forth in the EMS Billing and Collection Services Description of Services set forth in Exhibit B and the GADCS Description of Services set forth in Exhibit C (hereinafter “Services”).
4. **TERM.** The term of this Agreement shall be for sixty (60) months beginning on the date that this Agreement is fully executed. Upon mutual agreement of the Parties, this Agreement may be renewed on an annual basis for two additional two (2) year periods.
5. **PAYMENT.** Consultant shall be compensated in accordance with the Terms and Compensation sections of Exhibits B and C. Consultant shall invoice City detailing all of Consultant’s services, expenses, and any other services utilized by City. Invoices shall be itemized and in accordance with Consultant’s price proposal. Upon review and approval of the Consultant’s invoice and verification that services have been rendered in conformity with this Agreement, the City, shall pay Consultant in accordance with the Local Government Prompt Payment Act, Chapter 218, Part VII, Florida Statutes. Consultant shall not apply any late charges, interest or penalties to any invoice or charges for services until 30 days from the City’s receipt of the invoice. If this Agreement is terminated for convenience for any reason, then the Consultant shall be paid pro rata for all services performed, materials purchased, and administrative costs incurred to the effective date of termination.
6. **CONSULTANT’S REPRESENTATIONS.** In order to induce City to enter into this Agreement, Consultant makes the following representations, upon which the City has actually and justifiably relied:
 - 6.1. That Consultant has examined and carefully studied all applicable documents, and that Consultant has the experience, expertise, and resources to perform all required Services.
 - 6.2. That Consultant has at least a fair representative sample of the Services and is satisfied as to the general and common conditions that may affect cost, progress, performance or furnishing of the Services that may be performed pursuant to this Agreement.
 - 6.3. That Consultant is familiar with and can and shall comply with all federal, state, and local laws and regulations, if any, that may affect cost, progress, performance, and furnishing of the Services to be performed pursuant to this Agreement.

6.4. The Consultant is an entity duly organized and existing in good standing under the laws of the State of Florida with full right and authority to do business within the State of Florida.

6.5. The Consultant has the full right and authority to enter into this Agreement and perform its obligations in accordance with its term.

6.6. The Consultant now 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.

6.7. The Consultant shall, at no additional cost to the City, re-perform those Services which fail to satisfy the foregoing standard of care, the requirements.

7. **INSURANCE.** The Consultant shall, at its sole cost and expense, procure and maintain throughout the term of this Agreement, insurance coverage in such amounts as required and authorized by Florida law, and will provide endorsed certificates of insurance generated and executed by a licensed insurance broker, brokerage or similar licensed insurance professional evidencing such coverage, and naming the City as a named, additional insured, as well as furnishing the City with a certified copy, or copies, of said insurance policies.

Certificates of insurance and certified copies of these insurance policies must accompany this signed Agreement. Said insurance coverages procured by the Consultant as required herein shall be considered, and Consultant agrees that said insurance coverages it procures as required herein shall be considered, as primary insurance over and above any other insurance, or self-insurance, available to the City, and that any other insurance, or self-insurance available to the City shall be considered secondary to, or in excess of, the insurance coverage(s) procured by the Consultant as required herein.

The Consultant is to secure, pay for, and file with the City, prior to commencing any Services under this Agreement, all certificates for workers' compensation, public liability, and property damage liability insurance, and such other insurance coverages as may be required by specifications and addenda thereto, in at least the following minimum amounts with specification amounts to prevail if greater than minimum amounts indicated. Notwithstanding any other provision of the Agreement, the Consultant shall provide the minimum limits of liability insurance coverage as follows:

- Auto Liability \$1,000,000 Combined Single Limit,
- General Liability \$2,000,000 Aggregate, \$2,000,000 Products Aggregate, \$1,000,000 Any One Occurrence, and \$1,000,000 Personal Injury,
- Additional Umbrella Liability \$1,000,000 Occurrence / Aggregate, and
- Professional Liability \$1,000,000 Per Claim / Aggregate.

The Consultant shall furnish an original Certificate of Insurance indicating, and such policy providing coverage to, the City of Kissimmee named as an additional insured on its General Liability and Automobile Liability policies on a PRIMARY and NON- CONTRIBUTORY basis utilizing an ISO standard endorsement at least as broad as CG 2010 (11/85) or its equivalent, (combination of CG 20 10 07 04 and CG 20 37 07 04, providing coverage for completed operations, is acceptable) including a waiver of subrogation clause in favor of the City on all policies. The Consultant will maintain the General Liability and Professional Liability insurance coverages summarized above with coverage continuing in full force, including the additional insured endorsement on the General Liability policy until at least three (3) years beyond completion and delivery of the Services agreed upon herein.

Notwithstanding any other provision of the Agreement, the Consultant shall maintain complete workers' compensation coverage for each and every employee, principal, officer, representative, or agent of the Consultant who is performing any labor, services, or material under the Agreement. Further, with respect to Employers' Liability, the Consultant shall additionally maintain the following minimum limits of coverage:

- Bodily Injury Each Accident \$1,000,000
- Bodily Injury by Disease Each Employee \$1,000,000
- Bodily Injury by Disease Policy Limit \$1,000,000

The Consultant's insurance policies shall be endorsed to give thirty (30) days written notice to the City in the event of cancellation or material change.

The Consultant will comply with any and all safety regulations required by any agency or regulatory body including but not limited to OSHA. The Consultant will notify the City immediately of any accident or injury to anyone that occurs on the Services site and is related to any of the Services being performed by the Consultant.

Nothing herein shall be construed to extend the City's liability beyond that provided in Section 768.28, Florida Statutes.

8. TERMINATION OF AGREEMENT.

8.1 Termination for Cause: In the event the Consultant shall default or otherwise violate any of the terms, obligations, restrictions or conditions of this Agreement, the City shall give the Consultant written notice of the default and that such default shall be corrected within fifteen (15) business days of the date of the written notice. In the event the Consultant fails to correct the condition(s) of the default within the aforementioned timeframe, the City shall have all legal remedies available to it, including but not limited to, termination of this Agreement for cause. Unless the default is corrected within fifteen (15) business days, or within a timeframe agreed to by the City, in such instance, the City may terminate the Agreement for cause by giving notice of

termination to the Consultant, and the Consultant shall immediately cease working for the City and only be paid for all Services properly performed to the date of termination.

8.2 Termination for Convenience of City: The City for any reason may terminate this Agreement at any time by giving at least thirty (30) days written notice to the Consultant. Notwithstanding, the City may terminate this Agreement immediately upon any lapse in the insurance coverage to be retained by the Consultant, or failure to fulfill any of the insurance requirements as provided herein. In this event, Consultant shall be entitled to compensation for any satisfactory Services completed prior to termination in accordance with this Agreement.

8.3 Termination for Convenience of Consultant: This Agreement may be terminated by the Consultant by either: (a) mutual consent of both parties; or (b) upon ninety (90) days written notice delivered by certified mail, return receipt requested to the City.

8.4 Effect of Termination: In the event this Agreement is terminated for any reason, finished or unfinished documents, data, studies, correspondence, reports and other products prepared by or for Consultant under this Agreement shall be made available to and for the exclusive use of the City at no additional cost to the City. The Consultant shall immediately discontinue all affected Services unless a notice directs otherwise. Unless in dispute or subject to the City's remedy, the Consultant shall be paid for Services actually rendered through the date of termination.

8.5 Upon termination or expiration of this Agreement for any reason, the Consultant agrees to provide assistance to the City (or City's designated agent) as provided for in Exhibit B.

9. **BUSINESS ASSOCIATE AGREEMENT.** The Parties shall execute Business Associate Agreement, which is attached hereto and incorporated herein as Exhibit A, prior to commencement of any Work under this Agreement.

10. **INDEPENDENT CONSULTANT.** This Agreement does not create an employee-employer relationship between the City and Consultant. Consultant is an independent Consultant of the City and will maintain complete control of and responsibility for its employees, subconsultants, and agents. Consultant will also be responsible for the means and methods for carrying out the Scope of Services and for the safety of its employees. Nothing in this Agreement is intended to create, nor shall it be construed to create, a fiduciary duty owed by either party to the other Party. As an independent Consultant, Consultant will be solely responsible for payment of all federal, state and local income tax, and self-employment taxes, arising from this Agreement; and Consultant agrees to indemnify and hold harmless the City from any obligations relating to such taxes. The City will not make deductions from payments due, for such taxes, or for social security, unemployment insurance, worker's compensation, or other employment or payroll taxes.

11. **INDEMNIFICATION.** To the fullest extent permitted by law, the each party expressly agrees to indemnify and defend the other party, its officers, directors, agents, and employees (herein called the “indemnitees”) from any third party claims, liabilities, damages, losses and costs, including, but not limited to, reasonable attorney’s fees and court costs to the extent caused by the gross negligence or intentional wrongful misconduct of the indemnifying party, its sub consultants or persons employed or utilized by them in the performance of the Agreement. This indemnification shall continue beyond the date of completion of the Services.

The City’s review, comment and observation of the Consultant’s service and performance of the Services under this Agreement shall in no manner constitute a waiver of the indemnification provisions of this Agreement.

12. **FUNDING.** The obligation of City for payment to the Consultant is limited to the availability of funds appropriated in a current fiscal period, and continuation of any contractual relationship into a subsequent fiscal period is subject to appropriation of funds, unless otherwise authorized by law.
13. **PROHIBITION OF CONTINGENT FEES.** 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 Consultant has not paid or agreed to pay any person, company, corporation, individual, or firm, other than a bona fide employee working solely for the Consultant any fee, commission, percentage, gift, or other consideration contingent upon or resulting from the award or making of this agreement.” For the breach or violation of this provision, the agency shall have the right to terminate the agreement without liability and, at its discretion, to deduct from the Agreement.
14. **STANDARD OF CARE.** The Consultant represents to the City that it has the personnel and experience necessary to perform all Services in a professional and workmanlike manner. The Consultant shall exercise the same degree of care, skill, and diligence in the performance of the Services as provided by a professional of like experience, knowledge and resources, under similar circumstances. The Consultant shall, at no additional cost to the City, re-perform all those Services which fails to satisfy the foregoing standard of care or which otherwise fail to meet the requirements of this Agreement. The Consultant warrants that all Services shall be performed by skilled and competent personnel to the professional standards in the field.
15. **SUBCONSULTANTS.** The City reserves the right to accept the use of a subconsultant or to reject the selection of a particular subconsultant and to inspect all facilities of any subconsultant. If a subconsultant fails to perform or make progress in providing any of the Services, as required by this Agreement, and the Consultant determines it is necessary to

replace the subconsultant to complete any services in a timely fashion, then the Consultant shall promptly do so, subject to the City's right to approve the new subconsultant. The failure of a subconsultant to timely or properly perform any of its obligations to the Consultant shall not relieve the Consultant of its obligations to the Town under this Agreement.

16. **FORCE MAJEURE.** The Consultant shall be temporarily excused from performance if an Event of Force Majeure directly or indirectly causes its nonperformance. An "Event of Force Majeure": 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, earthquake, storm, lightning, epidemic, war, riot, civil disturbance, sabotage, and governmental actions. Within ten (10) days after the occurrence of an Event of Force Majeure, the Consultant shall deliver written notice to the City describing the event in reasonably sufficient detail and how the event has precluded the Consultant from performing its obligations hereunder. The Consultant's obligations, so far as those obligations are affected by the Event of Force Majeure, shall be temporarily suspended during, but no longer than, the continuance of the Event of Force Majeure and for a reasonable time thereafter as may be required for the Consultant to return to normal business operations. If excused from performing any obligations under this Agreement due to the occurrence of an Event of Force Majeure, the Consultant shall promptly, diligently, and in good faith take all reasonable action required for it to be able to commence or resume performance of its obligations under this Agreement. During any such time period the Consultant shall keep the City duly notified of all such actions required for it to be able to commence or resume performance of its obligations under this Agreement.
17. **FEDERAL AND STATE TAXES.** 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.
18. **CITY RESPONSIBILITIES.** The City shall be responsible for providing access to all City project sites, and providing information in the City's possession that the Consultant may reasonably require to perform the Services including existing reports, studies, financial information, and other relevant data that are available in the files of the City.
19. **ACCESS AND AUDITS.** The Consultant shall maintain adequate records to justify all charges and costs incurred in performing the Services for at least three (3) years after completion of this Agreement. The City shall have access to all books, records, and documents that the Consultant must maintain in accordance with this Section 19 for the purpose of inspection or audit during the Consultant's normal business hours at its usual

place of business. If the City determines that the City has overpaid the Consultant because the Consultant has misrepresented its billable time or reimbursable expenses, the Consultant shall deliver the full amount of any overpayment to the City. If the City incurs any fees, costs or expenses to recover the overpayment amount including, but not limited to, administrative accounting and attorneys' fees, costs and expenses, then the Consultant must pay the City the full amount of the same as such fees, costs and expenses come due. All invoices submitted to the City pursuant to this Agreement are subject to audit and demand for refund of overpayment for a time period extending three (3) years beyond the expiration or earlier termination of this Agreement.

20. **TRUTH-IN-NEGOTIATIONS CERTIFICATE.** The Consultant's execution of this Agreement serves as its 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 effective date of this Agreement. The City shall adjust the Consultant's wage rates and costs if the City determines that the wage 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 of any such wages or costs to the Consultant.
21. **OWNERSHIP OF DOCUMENTS.** The Consultant shall be required to cooperate with other City consultants and shall timely provide those consultants any information requested in the specified format. The Consultant shall have and retain sole and exclusive ownership of, and all right, title and interest in, Consultant's respective Intellectual Property, including the Consultant Technology, specifications and documentation that are owned or developed by Consultant or its service providers which relate to the performance of the Services. 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.
22. **LIMITATION OF LIABILITY.** Each party's total cumulative liability under this Agreement, including indemnification obligations, shall be capped at the amounts covered by such party's insurance policies, notwithstanding the failure of essential purpose of any remedy. Additionally, City shall be liable for the fees for all work performed by Consultant under this Agreement. The foregoing cap shall not apply to: (a) claims arising out of a party's, or such party's employees', vendors' or agents' fraud, willful or intentional misconduct; (b) personal bodily injury or death or physical property damage; (c) taxes assessed against one party that are the responsibility of the other party; (d) a party's misappropriation or infringement of the other party's Intellectual Property; and/or (e) the City's payment obligations under this Agreement and/or damages for a wrongful termination of this Agreement. 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 WHETHER BASED IN CONTRACT, COMMON LAW, WARRANTY TORT, STRICT LIABILITY, CONTRIBUTION, INDEMNITY OR OTHERWISE.

23. **DEFAULT AND REMEDY.** If the Consultant materially defaults in its obligations under this Agreement and fails to cure the same within fifteen (15) business 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) business 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.
24. **GOVERNING LAW AND VENUE.** The laws of the State of Florida govern the validity, enforcement, and interpretation of this Agreement. Venue for all actions arising from, related to, or in connection with this Agreement shall be in the state courts of the Ninth Judicial Circuit in and for Osceola County, Florida. If any claim arising from, related to, or in connection with this Agreement must be litigated in Federal court, the exclusive venue for any such lawsuit shall be in the United States District Court or United States Bankruptcy Court for the Middle District of Florida.
25. **NOTICES.** Notice under this Agreement shall be deemed effective when mailed, certified mail return receipt requested or delivered personally at the Parties mailing address below:

Notice to CITY:

Jeremy F. Donovan, Deputy Fire Chief
City of Kissimmee Fire Department
101 N. Church Street
Kissimmee, Florida 34741

Notice to CONSULTANT:

Bryan Andrews
Senior Client Relations Manager
7900 NW 154th Street
Suite 201
Miami Lakes, Florida 33016
bandrews@digitechcomputer.com
(352) 516-1548

With a copy to:
Advanced Data Processing, Inc.
Attention: Chief Executive Officer
480 Bedford Road
Building 600
2nd Floor
Chappaqua, NY 10514
contracts@digitechcomputer.com

26. **PUBLIC RECORDS LAW.** The City is a public agency subject to the Florida Public Records Law expressed in Chapter 19, Florida Statutes. Accordingly, to the extent that it is determined that Consultant is acting on behalf of City as provided under Section 119.011 (2), Consultant agrees to also comply with that law, specifically including to:
1. Keep and maintain public records that ordinarily and necessarily would be required by the City to perform the service.
 2. If the City's Custodian of Records requests records from Consultant, Consultant shall provide the City's Custodian of Records with a copy of the requested records or provide City with access to inspect public records within a reasonable time at a cost that does not exceed the cost charged by the City of Kissimmee, as provided in Chapter 119, Florida Statutes or as otherwise provided by law.
 3. Ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law for the duration of the contract term and following completion of the contract if Consultant does not transfer the records to the City.
 4. Meet all requirements for retaining public records and transfer, at no cost, to the City all public records in possession of the contractor upon termination of the contract and destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. All records stored electronically must be provided to the City in a commercially reasonable format. Upon notice to Consultant of a request to inspect or copy public records relating to a City's contract for services, Consultant shall provide the records to the City or allow the records to be inspected or copied within a reasonable time.
 5. If Consultant does not comply with the City's request for records, such failure shall constitute a material breach and the Contract shall terminate upon notice by the City.
 6. A Consultant who fails to provide the public records to the City within a reasonable time may be subject to penalties under Florida Statutes §119.10.

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

27. **COMPLIANCE WITH LAWS AND REGULATIONS.** In performing under this Agreement, Consultant shall abide by all applicable laws, statutes, ordinances, rules and regulations pertaining to, or regulating the performance set forth herein, including those now in effect and hereafter adopted. Consultant shall be responsible for identifying and obtaining all permits necessary to complete the Services. Consultant shall be responsible for obtaining, at its sole cost and expense, all necessary licenses and other governmental approvals required in order for Consultant to provide the Services required by this Agreement. Any violation of said law, statutes, ordinances, rules, or regulations shall constitute a material breach of this Agreement.

28. **E-VERIFY.** In accordance with Section 448.095, Florida Statutes, Consultant shall register with and utilize the E-Verify System operated by the United States Department of Homeland Security to verify the employment eligibility of all new employees hired during the term of the Agreement and shall expressly require any subconsultants performing work or providing services pursuant to this Agreement to likewise utilize the E-Verify System to verify the employment eligibility of all new employees hired by the subconsultant during the term of this Agreement. If Consultant enters into a contract with a subconsultant performing work or providing services on its behalf, Consultant shall also require the subconsultant to provide an affidavit stating that the subconsultant does not employ, contract with, or subcontract with an unauthorized alien. Information on registration for and use of the E-Verify System can be obtained via the internet at the Department of Homeland Security website: <http://www.dhs.gov/E-Verify>.

Every Consultant shall, upon request provide evidence of compliance with this provision to City. Failure to comply with this provision is a material breach of this Agreement, and City may choose to terminate the Agreement at its sole discretion. Consultant may be liable for all costs associated with City securing the same services, inclusive, but not limited to, higher costs for the same services and rebidding costs (if necessary).

City acknowledges that Consultant may use workers outside the United States, who will not be subject to e-verification.

29. **SCRUTINIZED COMPANIES CERTIFICATION.** By signing this Agreement, Consultant certifies that it is not on the Scrutinized Companies that Boycott Israel List, created pursuant to Section 215.4725, Florida Statutes, or engaged in a boycott of Israel; and, for bids, proposals or contracts for goods or services of one million (\$1,000,000) dollars or more, that it is not on the Scrutinized Companies with Activities in Sudan List or the Scrutinized Companies with

Activities in the Iran Petroleum Energy Sector List, or engaged in business operations in Cuba or Syria, per Section 287.135, Florida Statutes. If City determines, using credible information available to the public, that Consultant has submitted false certification, City shall provide Consultant with written notice of its determination. Consultant shall have 90 days following receipt of the notice to respond in writing and to demonstrate that the determination of false certification was made in error. Failure to comply with this provision is a material breach of this Agreement, and City may choose to terminate the Agreement at its sole discretion.

30. **NONDISCRIMINATION.** Consultant agrees not to discriminate against any citizen, employee or employment applicant on the basis of race, color, religion, national origin, ancestry, sex, sexual orientation, gender, gender identity, marital status or age in the performance of the obligations of this Agreement. Violation of this provision shall be treated as a breach of this Agreement.

31. **FOREIGN GIFTS AND CONTRACTS.** Consultant must comply with any applicable disclosure requirements in Section 286.101, Florida Statutes.

32. **SOCIAL, POLITICAL, OR IDEOLOGICAL FACTORS.** Pursuant to Section 287.05701, Florida Statutes, as may be amended, the City cannot give preference to a Consultant based on the Consultant's social, political, or ideological interest.

33. **PROHIBITED TELECOMMUNICATIONS EQUIPMENT.** Consultant represents and certifies that it and its applicable sub consultants do not and will not use any equipment, system, or service that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system, as such terms are used in 48 CFR Sections 52.204-24 through 52.204-26. By executing this Agreement, Consultant represents and certifies that Consultant and its applicable sub consultants must not provide or use such covered telecommunications equipment, system, or services for any scope of work performed for the City for the entire duration of this Agreement. If Consultant is notified of any use or provisions of such covered telecommunications equipment, system, or services by a subcontractor at any tier or by any other source. Contractor must promptly report the information in 40 CFR Section 52.204-25(d)(2) to the City.

34. **NO WAIVER OF SOVEREIGN IMMUNITY.** Nothing in this Agreement shall be construed as a waiver by the City of its rights to statutory sovereign immunity pursuant to Fla. Stat. §768.28.

35. **ASSIGNMENT.** No assignment by either party to this Agreement of any rights under or interests in this Agreement will be binding on another party hereto without the written consent of the party sought to be bound; and specifically, but without limitation, moneys that may become due and moneys that are due may not be assigned without such consent (except to the extent that the effect of this restriction may be limited by law), and unless specifically stated to the contrary

in any written consent to any assignment, no assignment will release or discharge the assignor from any duty or responsibility under this Agreement.

36. **WAVIER OF JURY TRIAL/AWARD OF ATTORNEY'S FEES.** It is mutually agreed by and between the Parties that each of the Parties do hereby waive trial by jury in any action, proceeding or claim which may be brought by either of the parties hereto against the other on any matters concerning or arising out of this Agreement. In any such action, each party shall be responsible for their own attorney's fees, including those incurred in appellate proceedings.

37. **AMENDMENTS.** This Agreement may be altered, amended, extended, modified and/or revised only by a written instrument subsequently executed by the parties to this Agreement.

38. **SEVERABILITY.** If any one or more of the covenants or provisions of this Agreement shall be held to be contrary to any express provision of law or contrary to the policy of express law, though not expressly prohibited, or against public policy, or shall, for any reason whatsoever, be held invalid, then such covenants or provisions shall be null and void, shall be deemed separable from the remaining covenants or provisions of this Agreement, and shall, in no way, affect the validity of the remaining covenants or provisions of this Agreement.

39. **ENTIRETY OF AGREEMENT.** This Agreement, together with corresponding Exhibits referenced herein and attached hereto, represents the entire and integrated agreement between the Parties and supersedes all prior negotiations, representations, or agreements, either written or verbal.

SIGNATURES ON FOLLOWING PAGE.

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

ADVANCED DATA PROCESSING, INC.

By: [Signature]
Mark Schiowitz

Title: President and CEO

Date: 12/5/23

STATE OF ~~FLORIDA~~ NY)
COUNTY OF Westchester)

Sworn to (or affirmed) and subscribed before me by [CHECK ONE:] means of ☒ physical presence or ☐ online notarization, this 5th day of December, 2023, by Mark Schiowitz, who is [CHECK ONE:] ☒ personally known to me, or ☐ has produced _____ as identification.

(NOTARY SEAL)

Notary Public, State and County aforesaid

Print Name: Amanda Compton

My Commission No.: 01C06382673

My Commission expires: 10/29/2026

[Signature]

AMANDA COMPTON
NOTARY PUBLIC-STATE OF NEW YORK
No. 01C06382673
Qualified in Westchester County
My Commission Expires 10-29-2026

CITY OF KISSIMMEE

By: _____
Olga Gonzalez, Mayor

Date: _____

ATTEST:

Linda Hansell, City Clerk

Approved as to form and legal sufficiency:

Olga Sanchez de Fuentes, City Attorney

EXHIBIT A
“BUSINESS ASSOCIATE AGREEMENT”

MODEL BUSINESS ASSOCIATE AGREEMENT

This BUSINESS ASSOCIATE AGREEMENT (the “BAA”) is made and entered into as of 9/29/23 by and between the City of Kissimmee, a municipal corporation organized under the laws of the State of Florida (“Covered Entity”) and Advanced Data Processing, Inc., a corporation organized under the laws of State of Delaware (“Business Associate”, in accordance with the meaning given to those terms at 45 CFR §164.501). In this BAA, Covered Entity and Business Associate are each a “Party” and, collectively, are the “Parties”.

BACKGROUND

- I. Covered Entity is either a “covered entity” or “business associate” of a covered entity as each are defined under the Health Insurance Portability and Accountability Act of 1996, Public Law 104-191, as amended by the HITECH Act (as defined below) and the related regulations promulgated by HHS (as defined below) (collectively, “HIPAA”) and, as such, is required to comply with HIPAA’s provisions regarding the confidentiality and privacy of Protected Health Information (as defined below);
- II. The Parties have entered into or will enter into one or more agreements under which Business Associate provides or will provide certain specified services to Covered Entity (collectively, the “Agreement”);
- III. In providing services pursuant to the Agreement, Business Associate will have access to Protected Health Information;
- IV. By providing the services pursuant to the Agreement, Business Associate will become a “business associate” of the Covered Entity as such term is defined under HIPAA;
- V. Both Parties are committed to complying with all federal and state laws governing the confidentiality and privacy of health information, including, but not limited to, the Standards for Privacy of Individually Identifiable Health Information found at 45 CFR Part 160 and Part 164, Subparts A and E (collectively, the “Privacy Rule”); and
- VI. Both Parties intend to protect the privacy and provide for the security of Protected Health Information disclosed to Business Associate pursuant to the terms of this Agreement, HIPAA and other applicable laws.

AGREEMENT

NOW, THEREFORE, in consideration of the mutual covenants and conditions contained herein and the continued provision of PHI by Covered Entity to Business Associate under the Agreement in reliance on this BAA, the Parties agree as follows:

1. Definitions. For purposes of this BAA, the Parties give the following meaning to each of the terms in this Section 1 below. Any capitalized term used in this BAA, but not otherwise defined, has the meaning given to that term in the Privacy Rule or pertinent law.

- A.** “Affiliate” means a subsidiary or affiliate of Covered Entity that is, or has been, considered a covered entity, as defined by HIPAA.
- B.** “Breach” means the acquisition, access, use, or disclosure of PHI in a manner not permitted under the Privacy Rule which compromises the security or privacy of the PHI, as defined in 45 CFR §164.402.
- C.** “Breach Notification Rule” means the portion of HIPAA set forth in Subpart D of 45 CFR Part 164.
- D.** “Data Aggregation” means, with respect to PHI created or received by Business Associate in its capacity as the “business associate” under HIPAA of Covered Entity, the combining of such PHI by Business Associate with the PHI received by Business Associate in its capacity as a business associate of one or more other “covered entity” under HIPAA, to permit data analyses that relate to the Health Care Operations (defined below) of the respective covered entities. The meaning of “data aggregation” in this BAA shall be consistent with the meaning given to that term in the Privacy Rule.
- E.** “Designated Record Set” has the meaning given to such term under the Privacy Rule, including 45 CFR §164.501.B.
- F.** “De-Identify” means to alter the PHI such that the resulting information meets the requirements described in 45 CFR §§164.514(a) and (b).
- G.** “Electronic PHI” means any PHI maintained in or transmitted by electronic media as defined in 45 CFR §160.103.
- H.** “Health Care Operations” has the meaning given to that term in 45 CFR §164.501.
- I.** “HHS” means the U.S. Department of Health and Human Services.
- J.** “HITECH Act” means the Health Information Technology for Economic and Clinical Health Act, enacted as part of the American Recovery and Reinvestment Act of 2009, Public Law 111-005.
- K.** “Individual” has the same meaning given to that term in 45 CFR §§164.501 and 160.130 and includes a person who qualifies as a personal representative in accordance with 45 CFR §164.502(g).
- L.** “Privacy Rule” means that portion of HIPAA set forth in 45 CFR Part 160 and Part 164, Subparts A and E.

M. “Protected Health Information” or “PHI” has the meaning given to the term “protected health information” in 45 CFR §§164.501 and 160.103, limited to the information created or received by Business Associate from or on behalf of Covered Entity.

N. “Security Incident” means the attempted or successful unauthorized access, use, disclosure, modification, or destruction of information or interference with system operations in an information system.

O. “Security Rule” means the Security Standards for the Protection of Electronic Health Information provided in 45 CFR Part 160 & Part 164, Subparts A and C.

P. “Unsecured Protected Health Information” or “Unsecured PHI” means any “protected health information” as defined in 45 CFR §§164.501 and 160.103 that is not rendered unusable, unreadable or indecipherable to unauthorized individuals through the use of a technology or methodology specified by the HHS Secretary in the guidance issued pursuant to the HITECH Act and codified at 42 USC §17932(h).

2. Use and Disclosure of PHI.

A. Except as otherwise provided in this BAA, Business Associate may use or disclose PHI as reasonably necessary to provide the services described in the Agreement to Covered Entity, and to undertake other activities of Business Associate permitted or required of Business Associate by this BAA or as required by law.

B. Except as otherwise limited by this BAA or federal or state law, Covered Entity authorizes Business Associate to use the PHI in its possession for the proper management and administration of Business Associate’s business and to carry out its legal responsibilities. Business Associate may disclose PHI for its proper management and administration, provided that (i) the disclosures are required by law; or (ii) Business Associate obtains, in writing, prior to making any disclosure to a third party (a) reasonable assurances from this third party that the PHI will be held confidential as provided under this BAA and used or further disclosed only as required by law or for the purpose for which it was disclosed to this third party and (b) an agreement from this third party to notify Business Associate immediately of any breaches of the confidentiality of the PHI, to the extent it has knowledge of the breach.

C. Business Associate will not use or disclose PHI in a manner other than as provided in this BAA, as permitted under the Privacy Rule, or as required by law. Business Associate will use or disclose PHI, to the extent practicable, as a limited data set or limited to the minimum necessary amount of PHI to carry out the intended purpose of the use or disclosure, in accordance with Section 13405(b) of the HITECH Act (codified at 42 USC §17935(b)) and any of the act’s implementing regulations adopted by HHS, for each use or disclosure of PHI.

D. Upon request, Business Associate will make available to Covered Entity any of Covered Entity’s PHI that Business Associate or any of its agents or subcontractors have in their possession.

E. Business Associate may use PHI to report violations of law to appropriate Federal and State authorities, consistent with 45 CFR §164.502(j)(1).

3. Safeguards Against Misuse of PHI. Business Associate will use appropriate safeguards to prevent the use or disclosure of PHI other than as provided by the Agreement or this BAA and Business Associate agrees to implement administrative, physical, and technical safeguards that reasonably and appropriately protect the confidentiality, integrity and availability of the Electronic PHI that it creates, receives, maintains or transmits on behalf of Covered Entity. Business Associate agrees to take reasonable steps, including providing adequate training to its employees to ensure compliance with this BAA and to ensure that the actions or omissions of its employees or agents do not cause Business Associate to breach the terms of this BAA.

4. Reporting Disclosures of PHI and Security Incidents. Business Associate will report to Covered Entity in writing any use or disclosure of PHI not provided for by this BAA of which it becomes aware and Business Associate agrees to report to Covered Entity any Security Incident affecting Electronic PHI of Covered Entity of which it becomes aware. Business Associate agrees to report any such event within five business days of becoming aware of the event.

5. Reporting Breaches of Unsecured PHI. Business Associate will notify Covered Entity in writing promptly upon the discovery of any Breach of Unsecured PHI in accordance with the requirements set forth in 45 CFR §164.410, but in no case later than 30 calendar days after discovery of a Breach. Business Associate will reimburse Covered Entity for any costs incurred by it in complying with the requirements of Subpart D of 45 CFR §164 that are imposed on Covered Entity as a result of a Breach committed by Business Associate.

6. Mitigation of Disclosures of PHI. Business Associate will take reasonable measures to mitigate, to the extent practicable, any harmful effect that is known to Business Associate of any use or disclosure of PHI by Business Associate or its agents or subcontractors in violation of the requirements of this BAA.

7. Agreements with Agents or Subcontractors. Business Associate will ensure that any of its agents or subcontractors that have access to, or to which Business Associate provides, PHI agree in writing to the restrictions and conditions concerning uses and disclosures of PHI contained in this BAA and agree to implement reasonable and appropriate safeguards to protect any Electronic PHI that it creates, receives, maintains or transmits on behalf of Business Associate or, through the Business Associate, Covered Entity. Business Associate shall notify Covered Entity, or upstream Business Associate, of all subcontracts and agreements relating to the Agreement, where the subcontractor or agent receives PHI as described in section 1.M. of this BAA. Such notification shall occur within 30 (thirty) calendar days of the execution of the subcontract by placement of such notice on the Business Associate's primary website. Business Associate shall ensure that all subcontracts and agreements provide the same level of privacy and security as this BAA.

8. Audit Report. Upon request, Business Associate will provide Covered Entity, or upstream Business Associate, with a copy of its most recent independent HIPAA compliance report (AT-C 315), HITRUST certification or other mutually agreed upon independent standards based third party audit report. Covered entity agrees not to re-disclose Business Associate's audit report.

9. Access to PHI by Individuals.

A. Upon request, Business Associate agrees to furnish Covered Entity with copies of the PHI maintained by Business Associate in a Designated Record Set in the time and manner

designated by Covered Entity to enable Covered Entity to respond to an Individual's request for access to PHI under 45 CFR §164.524.

B. In the event any Individual or personal representative requests access to the Individual's PHI directly from Business Associate, Business Associate within ten business days, will forward that request to Covered Entity. Any disclosure of, or decision not to disclose, the PHI requested by an Individual or a personal representative and compliance with the requirements applicable to an Individual's right to obtain access to PHI shall be the sole responsibility of Covered Entity.

10. Amendment of PHI.

A. Upon request and instruction from Covered Entity, Business Associate will amend PHI or a record about an Individual in a Designated Record Set that is maintained by, or otherwise within the possession of, Business Associate as directed by Covered Entity in accordance with procedures established by 45 CFR §164.526. Any request by Covered Entity to amend such information will be completed by Business Associate within 15 business days of Covered Entity's request.

B. In the event that any Individual requests that Business Associate amend such Individual's PHI or record in a Designated Record Set, Business Associate within ten business days will forward this request to Covered Entity. Any amendment of, or decision not to amend, the PHI or record as requested by an Individual and compliance with the requirements applicable to an Individual's right to request an amendment of PHI will be the sole responsibility of Covered Entity.

11. Accounting of Disclosures.

A. Business Associate will document any disclosures of PHI made by it to account for such disclosures as required by 45 CFR §164.528(a). Business Associate also will make available information related to such disclosures as would be required for Covered Entity to respond to a request for an accounting of disclosures in accordance with 45 CFR §164.528. At a minimum, Business Associate will furnish Covered Entity the following with respect to any covered disclosures by Business Associate: (i) the date of disclosure of PHI; (ii) the name of the entity or person who received PHI, and, if known, the address of such entity or person; (iii) a brief description of the PHI disclosed; and (iv) a brief statement of the purpose of the disclosure which includes the basis for such disclosure.

B. Business Associate will furnish to Covered Entity information collected in accordance with this Section 10, within ten business days after written request by Covered Entity, to permit Covered Entity to make an accounting of disclosures as required by 45 CFR §164.528, or in the event that Covered Entity elects to provide an Individual with a list of its business associates, Business Associate will provide an accounting of its disclosures of PHI upon request of the Individual, if and to the extent that such accounting is required under the HITECH Act or under HHS regulations adopted in connection with the HITECH Act.

C. In the event an Individual delivers the initial request for an accounting directly to Business Associate, Business Associate will within ten business days forward such request to Covered Entity.

12. Availability of Books and Records. Business Associate will make available its internal practices, books, agreements, records, and policies and procedures relating to the use and disclosure of PHI, upon request, to the Secretary of HHS for purposes of determining Covered Entity's and Business Associate's compliance with HIPAA, and this BAA.

13. Responsibilities of Covered Entity. With regard to the use and/or disclosure of Protected Health Information by Business Associate, Covered Entity agrees to:

- A.** Notify Business Associate of any limitation(s) in its notice of privacy practices in accordance with 45 CFR §164.520, to the extent that such limitation may affect Business Associate's use or disclosure of PHI.
- B.** Notify Business Associate of any changes in, or revocation of, permission by an Individual to use or disclose Protected Health Information, to the extent that such changes may affect Business Associate's use or disclosure of PHI.
- C.** Notify Business Associate of any restriction to the use or disclosure of PHI that Covered Entity has agreed to in accordance with 45 CFR §164.522, to the extent that such restriction may affect Business Associate's use or disclosure of PHI.
- D.** Except for data aggregation or management and administrative activities of Business Associate, Covered Entity shall not request Business Associate to use or disclose PHI in any manner that would not be permissible under HIPAA if done by Covered Entity.

14. Data Ownership. Business Associate's data stewardship does not confer data ownership rights on Business Associate with respect to any data shared with it under the Agreement, including any and all forms thereof.

15. Term and Termination.

- A.** This BAA will become effective on the date first written above, and will continue in effect until all obligations of the Parties have been met under the Agreement and under this BAA.
- B.** Covered Entity may terminate immediately this BAA, the Agreement, and any other related agreements if Covered Entity makes a determination that Business Associate has breached a material term of this BAA and Business Associate has failed to cure that material breach, to Covered Entity's reasonable satisfaction, within 30 days after written notice from Covered Entity. Covered Entity may report the problem to the Secretary of HHS if termination is not feasible.
- C.** If Business Associate determines that Covered Entity has breached a material term of this BAA, then Business Associate will provide Covered Entity with written notice of the existence of the breach and shall provide Covered Entity with 30 days to cure the breach. Covered Entity's failure to cure the breach within the 30-day period will be grounds for immediate termination of the Agreement and this BAA by Business Associate. Business Associate may report the breach to HHS.

D. Upon termination of the Agreement or this BAA for any reason, all PHI maintained by Business Associate will be returned to Covered Entity or destroyed by Business Associate. Business Associate will not retain any copies of such information. This provision will apply to PHI in the possession of Business Associate's agents and subcontractors. If return or destruction of the PHI is not feasible, in Business Associate's reasonable judgment, Business Associate will furnish Covered Entity with notification, in writing, of the conditions that make return or destruction infeasible. Upon mutual agreement of the Parties that return or destruction of the PHI is infeasible, Business Associate will extend the protections of this BAA to such information for as long as Business Associate retains such information and will limit further uses and disclosures to those purposes that make the return or destruction of the information not feasible. The Parties understand that this Section 14.D. will survive any termination of this BAA.

16. Effect of BAA.

A. This BAA is a part of and subject to the terms of the Agreement, except that to the extent any terms of this BAA conflict with any term of the Agreement, the terms of this BAA will govern.

B. Except as expressly stated in this BAA or as provided by law, this BAA will not create any rights in favor of any third party.

17. Regulatory References. A reference in this BAA to a section in HIPAA means the section as in effect or as amended at the time.

18. Notices. All notices, requests and demands or other communications to be given under this BAA to a Party will be made via either first class mail, registered or certified or express courier, or electronic mail to the Party's address given below:

A. If to Covered Entity, to:

City of Kissimmee
Attn: KFD Deputy Chief of Administration
T: (407)518-2222
E: jeremy.donovan@kissimmee.gov

B. If to Business Associate, to:

Advanced Data Processing, Inc.
Attn: Amanda Mihalick, Compliance Officer
T: 914-339-2236
E: compliance@digitechcomputer.com

19. Amendments and Waiver. This BAA may not be modified, nor will any provision be waived or amended, except in writing duly signed by authorized representatives of the Parties. A waiver with respect to one event shall not be construed as continuing, or as a bar to or waiver of any right or remedy as to subsequent events.

20. HITECH Act Compliance. The Parties acknowledge that the HITECH Act includes significant changes to the Privacy Rule and the Security Rule. The privacy subtitle of the HITECH Act sets forth provisions that significantly change the requirements for business associates and the agreements between business associates and covered entities under HIPAA and these changes may be further clarified in forthcoming regulations and guidance. Each Party agrees to comply with the applicable provisions of the HITECH Act and any HHS regulations issued with respect to the HITECH Act. The Parties also agree to negotiate in good faith to modify this BAA as reasonably necessary to comply with the HITECH Act and its regulations as they become effective but, in the event that the Parties are unable to reach agreement on such a modification, either Party will have the right to terminate this BAA upon 30-days' prior written notice to the other Party.

[The remainder of this page intentionally left blank; signatures on the following page]

In light of the mutual agreement and understanding described above, the Parties execute this BAA as of the date first written above.

By: _____
Name:
Title:

By: 
Name: Mark Schiowitz
Title: President and CEO

EXHIBIT B

EMS BILLING AND COLLECTION SERVICES

DESCRIPTION OF SERVICES

The Consultant selected under this Agreement shall provide billing and collection services for emergency medical services (EMS) transport, on a case by case basis, for the purpose of recovering fees owed to the City by patients, carriers or third-party payers with an emphasis on an accelerated turnaround between services provided and payments received, using a billing system that conforms to generally accepted accounting principles (GAAP). These services shall include, but not be limited to:

1. Functional Requirements

- A. The Consultant must provide a dedicated Account Manager to assist the City with the handling of day to day billing activities and addressing patient/payer concerns.
- B. The Consultant must have the ability to download patient care reports (PCR's) from the City's emergency medical services data collection system. The City currently uses ESO.
- C. The Consultant must provide training to appropriate City personnel regarding the gathering of necessary information and proper completion of PCR's.
- D. The Consultant shall comply with all applicable federal, state and local laws as they apply to the services being provided, such as, but not limited to, the federal debt collection practices law. This further includes all requirements to maintain confidentiality for all medical and patient information as related to insurance and local laws or rules and regulations, such as, but not limited to, the Health Insurance Portability and Accountability Act (HIPAA).
- E. The Consultant must have ability to negotiate, arrange, and agree to modified payment schedules for individuals unable to pay the full amount when billed. The Consultant shall receive prior approval from the City before negotiating any lower amounts.
- F. The Consultant must maintain any and all documentation, records and patient information in a safe and secure manner and must provide proper security of confidential information, as required under applicable law, and proper shredding of all disposed materials containing confidential information. Consultant shall retain appropriate records in accordance with Florida records retention requirements.
- G. The Consultant must maintain a working arrangement with all of the hospitals serviced by City and request that the hospitals provide a copy of patient fact sheets or be provided with insurance information. It is the responsibility of the Consultant to contact the receiving facility for any additional information required.
- H. The Consultant shall attend, at a minimum, one face-to-face meeting annually with the City at a mutually agreed upon specific location.

I. The Consultant shall establish a process to validate patient information and handle returned mail and bad addresses. Contractor shall provide skip tracing through a nationally recognized change of address system.

J. Any procedures described in this description of services represents a minimum effort required by the Consultant and shall not limit the Consultant's use of its proprietary accounts receivable and billing and collection systems, including modifications as required by major provider groups, or its usual and customary practices.

K. The Consultant shall provide electronic claims processing for Medicare, Medicaid and any private insurance, which accepts electronic claims, in order to expedite payment.

L. The Consultant shall provide customer service to assist patients and/or other third party payees in all billing inquiries in a timely fashion, in accordance with City policies and provide documented interaction between parties if requested by the City. Customer calls will be facilitated through a toll free number provided by the Consultant.

N. The Consultant shall have the capabilities to respond promptly to the City, patients, and patient representatives regarding any information or records request.

O. The Consultant shall use the most current best practices for coding procedures, assigning diagnostic codes and proper preparation of electronic along with paper insurance filings to ensure compliance with Federal, State and local regulations.

2. Data Management

A. The Consultant shall grant the City electronic access to all records on file regarding the City, including, but not limited to billing records and correspondence regarding accounts. The City shall also have access to ad hoc reports on billing performance. The City will provide workstations, servers, and Internet services; and the City will install the free Citrix client to access Consultant's Ambulance Commander program.

B. The Consultant may designate a specific operating system, software platform, and/or required domain knowledge necessary to perform electronic functions. In the event that web access is provided by the Consultant, training on the use of access is required on an as-needed basis.

C. The Consultant shall provide monthly billing and collection reports and electronic access to previous months Explanation of Benefits (EOBs) for all insurance related payments and adjustments made by Medicare and other insurance providers.

D. The Consultant shall ensure that all required documentation and agreements with payers (e.g. Medicare, Medicaid, etc.) are filed and maintained, and that the City is apprised of important changes to industry regulations.

- E. The Consultant shall provide monthly comprehensive reports facilitating all required aspects of monitoring, evaluating, auditing and managing the services provided.
- F. The Consultant shall provide patient access to billing information through a secure web site to allow patients to review their billing information, add insurance information and request corrections to expedite recovery.
- G. The Consultant shall provide an online patient survey questionnaire at the City's request.
- H. The Consultant shall provide copies of all user manuals, system overviews, technical manuals, reports on controls such as internal/external audits or regulatory authority reports when requested to do so by the City.
- G. The Consultant shall have established disaster safeguards and a data recovery plan.
- J. The Consultant shall submit all monthly reports to the City no later than the 10th business day of the following month.

3. Collection

- A. The Consultant shall provide prompt submission of Medicare, Medicaid and insurance claims after receiving PCRs, which will be the Consultant's notice to commence the billing/collection process, including keeping logs confirming all electronic submissions. Secondary insurance provider claims will be submitted after the primary insurance provider has paid. The Consultant will monitor for probate and bankruptcy cases for City's EMS patients and submit information to the City for filing. The Consultant will respond to City's requests and post payments/adjustments related to probate and bankruptcy proceedings.
- B. The Consultant shall have well established procedures for payment arrangements.
- C. The Consultant shall provide a reconciliation of the number of transports collected with those transmitted to the Consultant, and contact the City to report any discrepancies.
- D. The Consultant shall provide collection services for unpaid invoices in accordance with City policy.

4. Monies Received

- A. The Consultant shall maintain appropriate accounting procedures and provide for reconciling all payments, bank deposits, receivables, billings, patient accounts, adjustments and refunds between the Consultant's billing system and City's records.
- B. The Consultant shall work with the City and its designated bank lockbox facility for the handling of patient and insurance correspondence and physical and electronic payments.

C. Medicare and other insurance carriers shall be instructed to deposit payments via ACH directly into the City's dedicated EMS bank account. The Consultant shall instruct payers paying by physical check to mail payments to the City's dedicated EMS bank lockbox account as-needed. The Consultant shall submit invoices for collection services monthly.

D. The Consultant shall safeguard all payments held in Consultant's possession pending deposit and Consultant shall be liable for the replacement of any funds lost or stolen while in the possession of the Consultant.

E. The Consultant shall provide the City with copies of supporting documentation for refunds to be made by the City the month following the payment posting date.

F. The Consultant shall post payment and return items the same date as the bank deposit posting date. All postings shall be current and all items reconciled by end of the business month. Any irreconcilable items are to be reported timely to the City for direction and resolution.

5. Transition Specifics

A. Consultant, upon termination or expiration of the Agreement for any reason, agrees to provide the following assistance to the City or to the City's designated agent in order to transfer information, records and responsibilities collected:

- Data Specifications: Patient information will be provided via a secure FTP method mutually agreed upon. Detailed specifications will be provided to the City or the City's designated agent.
- Technical and Operational Contacts: Support contacts shall be provided to answer questions regarding the data and technical specifications and operational requirements. Questions may be presented by the City or the City's designated agent.
- The electronic data will include all debit and credit balance accounts residing in the active Accounts Receivable. Zero balance accounts will be provided up to the age of two (2) years (based on the date the account was placed in the system). Patient demographic and transaction information shall be included.

TERM AND COMPENSATION

The Parties agree to the following fee schedule, which includes all expenses of Consultant, including but not limited to, stationary, enclosures, forms, envelopes, phone facilities, and postage, all labor additional materials, equipment and transportation as necessary and/or required to execute all of the EMS billing and collections services as described by this Exhibit.

EMS BILLING SERVICES	
DESCRIPTION	RATE (percentage of net collections)
BASE FEE OF NET COLLECTIONS	4.55%
- The Base Fee of Net Collections shall be a fixed percentage rate based on actual net collections excluding Florida Medicaid account claims. - Net Collections is defined as total cash collections less refunds and is billed monthly on the basis of collections for the prior month. - The percentage rate shall be fixed during the entire term of the agreement. - The Consultant submitting the lowest fixed percentage rate shall receive the maximum points within the 'Fee Schedule' Evaluation Criteria. Points awarded in the 'Fee Schedule' Evaluation Criteria shall only be based on percentage rates submitted.	

EMS BILLING SERVICES	
DESCRIPTION	RATE (per Medicaid billing)
BASE BILLING FEE FOR MEDICAID CLAIMS	\$ 11.00
- The Base Billing Fee For Medicaid Claims shall be shown as a flat rate (<u>not</u> percentage) for performing any billing as required by Florida law. - Billing is defined as a separate and initial paper or electronic transaction to recover costs from Medicare of Florida Medicaid and any and all follow-up or secondary filing associated with an ambulance run on that specific date of service. - The flat rate shall be fixed during the entire term of the agreement.	

ADDITIONAL SERVICES	
DESCRIPTION	RATE (per notification)
Health Insurance Portability and Accountability Act Mail Notice Billing	\$ 1.95
The Health Insurance Portability and Accountability Act Mail Notice Billing shall be shown as a flat rate per notification for providing billed patient privacy notice.	

EXHIBIT C
“GROUND AMBULANCE DATA COLLECTION SERVICES”

DESCRIPTION OF SERVICES

CONSULTANT will commit to the following activities:

- 1) CONSULTANT will work with CITY finance and operations teams to collect all data for the submission. During the project kickoff call, CONSULTANT will walk through the data request and ensure that teams are equipped to provide source data needed for completion of the GADCS instrument.
- 2) CONSULTANT will comb through expenditure data, including labor, facility, vehicle, and other cost information to establish classifications for the GADCS instrument.
- 3) CONSULTANT will create working files, as necessary, to process expenditure data. Throughout the analysis of expenditures and other data elements, CONSULTANT will incorporate automated checks as one of the first steps in the Quality Assurance (“QA”) process.
- 4) CONSULTANT will collect and analyze computer-aided dispatch (“CAD”) data in order to develop appropriate cost allocation methodologies. CONSULTANT will analyze the CITY’s data and determine the optimal approach to allocation of costs.
- 5) CONSULTANT will prepare all working files and present a draft survey submission to CITY stakeholders.
- 6) Following the presentation of the working files and draft survey, CONSULTANT will solicit feedback from the CITY and make revisions necessary to finalize the submission package.
- 7) CONSULTANT will enter all data into the GADCS instrument, upload required supporting documentation (if applicable), and prepare the survey for certification from the CITY.
- 8) CONSULTANT will promptly respond to audit requests from Centers for Medicare & Medicaid Services (“CMS”).
- 9) In the unlikely event that the desk review or audit results require further action, CONSULTANT will incorporate revisions as needed into the survey to certify and submit final information.
- 10) CONSULTANT will present results of any CMS audits to CITY stakeholders. CONSULTANT want to address any of the CITY’s questions or concerns prior to submission of the survey to CMS, but if there are any issues that arise during the audit process, CONSULTANT will keep CITY appropriately engaged.

CITY will commit to the following activities:

- 1) CITY will identify and assemble the internal project team. The type of data requested may require participation from finance, operations, maintenance, human resources, and other business units in the CITY's parent agency. CITY will identify who needs to be involved in the GADCS data collection and in the review processes.
- 2) CITY will respond to CONSULTANT data request for the GADCS project.
- 3) CITY will review and provide CONSULTANT feedback of working files and GADCS portal inputs.
- 4) While CONSULTANT staff will serve in the "Data Submitter" role for purposes of entering data into the CMS portal, the CITY will need to register for the portal and serve in the "Data Certifier" role.
- 5) CITY will communicate with CONSULTANT regarding CMS inquiries. If CMS requests additional information regarding the CITY's GADCS submission, CONSULTANT anticipates that the CITY will approve any communications or supporting documentation developed by CONSULTANT in order to respond to CMS.

TERM AND COMPENSATION

CONSULTANT will provide CITY with scope of services listed above for each GADCS collection and reporting period that falls within the term of the Agreement.

CONSULTANT will invoice CITY for services performed a fee of **\$35,000 per year**. CONSULTANT will not invoice CITY for any portion of the fee until the GADCS report has been submitted to CMS.

EXHIBIT D
CITY INVOICING INFORMATION

Mailing Address:	101 Church Street Kissimmee, FL 34741
Email Address (General):	FINANCE@KISSIMMEE.GOV
Email Address (Invoicing):	FINANCE@KISSIMMEE.GOV
A/P Contact Name:	Stefanie Natarajan
A/P Contact Phone Number:	407-518-2221
Tax ID:	59-6000348

ITEM 7.K

Re-allocation of HOME Funds for the Acquisition of the Super 8 Motel

Request

Approval of the re-allocation of HOME funds used to purchase the property known as the Super 8 Motel.

Explanation

On June 6, 2023, the City allocated \$576,117 of HOME funds to be applied towards the purchase of the property located at 1815 W Vine Street and 1515 Hollywood Street, also known as the Super 8 Motel. However, after doing a reconciliation exercise with Osceola County, which is the HOME Consortium Lead Agency, it was established the HOME funds should be reallocated across outstanding project years. The total allocation is unchanged.

Financial Information

Account #	Project #	Increase / Decrease	Budget	Actual
11325108508282	HUD-OTHR OPER-AIDS PRIV 11318	Decrease		270,763
11325108508282	HUD-OTHR OPER-AIDS PRIV 11319	Decrease		13,006
11325108508282	HUD-OTHR OPER-AIDS PRIV 11320	Decrease		57,038
11325108508282	HUD-OTHR OPER-AIDS PRIV HOME2022	Decrease		235,310

Financial Summary:

There is no fiscal impact on the General Fund.

Recommendation

Approve the re-allocation of HOME funds to purchase the property known as the Super 8 Motel.

REQUESTED CITY COMMISSION ACTION:

Approve

Department: Development Services

Presenter:

Attachment(s):

None

City of Kissimmee

ITEM 7.L

Budget Transfer For Airport Security Enhancement Project

Request

Approval to transfer Airport funds from Fund 461 to Fund 470 for a Security Enhancement Project (AP2103), due to overage that is not eligible for state grant reimbursement in the amount of \$7,141.26.

Explanation

The Airport Security Enhancement Project has additional costs not eligible for grant reimbursement allocated in Airport Fund 461 and is required to be transferred to Fund 470. This project upgraded the access control system for all the entry gates at the airport.

Financial Information

Account #	Project #	Increase / Decrease	Budget	Actual
46170100-509276	AP2103	Decrease	7,142	7,142
47070106-506393	AP2103	Increase	7,142	7,142

Financial Summary:

Portions of this project are funded by the Florida Department of Transportation and the Kissimmee Gateway Airport. The total project amount is \$444,479.08 with each agency funding the following amounts.

FDOT-PTGA (FM No.: 4492651-94-01) - \$355,583.26

Kissimmee Gateway Airport: AP2102 - \$88,895.82

Recommendation

Approval to transfer Airport Funds from Fund 461 to Fund 470 for a Security Enhancement Project (AP2103) in the amount of \$7,142.00.

REQUESTED CITY COMMISSION ACTION:

Approve

Department: Airport

Presenter:

Attachment(s):

None

City of Kissimmee

ITEM 7.M

Lakefront Park Security Improvements

Request

Approval of an agreement with Miller Electric, Inc. (Contract # 20240233) to install close-circuit cameras and the required infrastructure within Lakefront Park.

Explanation

As part of the City Commission's goal to provide for a safe and livable community, the City has continued to make investments in the necessary infrastructure to support the expansion of its camera system at various parks, venues, and buildings.

This project would expand the existing infrastructure within the park to support the installation of closed-circuit cameras that can be used to help keep visitors and staff safe while providing better situational awareness during events. The project was designed to add safety elements to the park while maintaining the visual esthetics of the amenities and park elements.

The infrastructure and cameras added as part of this project will connect to the City's existing system, further leveraging previous investments and providing for a common operating platform.

Financial Information

Account #	Project #	Increase / Decrease	Budget	Actual
00110706-506393	SSEM002C	Decrease	\$156,515	\$156,514.14

Financial Summary:

The City has engaged Miller Electric, Inc. as the vendor to purchase and install all necessary hardware for the project. The procurement and pricing for the project is based on a piggyback agreement (Contract # 20240233) for an awarded contract issued by the Osceola County Board of County Commissioners under RFP-21-12227-TP. The current agreement is valid until April 30, 2024.

Recommendation

Approve the contract with Miller Electric, Inc. to install close-circuit cameras and the required infrastructure within Lakefront Park.

REQUESTED CITY COMMISSION ACTION:

Approve

Department: City Manager

Presenter:

City of Kissimmee

Attachment(s):

1. Miller Electric Co. Proposal (Redacted)



MILLER ELECTRIC COMPANY
Powering the Possibilities

For:
Austin Blake
City Of Kissimmee

Lakefront Park Camera Project
02/09/2024

Proposal: 29156

Presented By: Melissa Haynie

6805 Southpoint Pkwy
Jacksonville, FL 32216

The data contained in all pages of this proposal has been submitted in confidence and contains trade secrets and/or privileged or confidential commercial or financial information. Such data shall be used or disclosed only for evaluation purposes, provided that if a contract is awarded to this proposer as a result of or in connection with the submission of this proposal, the Customer shall have the right to use or disclose the data herein to the extent provided in the contract. This restriction does not limit the Customer's right to use or disclose data obtained without restriction from any source, including the proposer.



Project Scope

This quote is for the installation of cameras at the Lakefront Park, as follows:

- Installation of [REDACTED] enclosures at locations near [REDACTED]
[REDACTED]
- Enclosure to receive 1-2" conduit from pull box and 1-1" conduit for KUA to provide power, 1-15amp breaker and 1 single gang receptacle
- Fiber will be run from [REDACTED] and terminated on both ends
- Wall mount rack to installed inside the electrical room [REDACTED]
[REDACTED]
- 12 Port Patch panel to be installed inside each enclosure
- 2 Inch conduit will be run from each enclosure location to each pole where cameras will be mounted. A new pull box will be insatalled at each pole where a camera will be located
- Underground CAT6 will be run in the new underground conduit to each pole
- Flex conduit will be used inside the pole to run cable to camera height
- Black camera mounts and camera covers will be used for each camera location
[REDACTED] will be mounted at [REDACTED]

Electrical permit has been included, along with labor for shop drawings

All underground conduit will be bored, using a subcontractor

All work to be performed during normal business hours M-F 7a-5p



Proposal: 29156

Date: 02/09/2024

Bill of Materials

Lakefront Park Camera Project

Underground Conduits and Boring

QTY	Part	Description	Unit Price	Ext. Price
1.00	Boring		\$21,850.00	\$21,850.00
1.00	Conduits to/from pull boxes, pull boxes at camera locations, concrete pads, breakers		\$37,260.00	\$37,260.00
1.00	Permit		\$2,484.00	\$2,484.00

Labor Hrs.	Labor Type	Labor Sell	Extended Labor
40.00 hrs	Osceola - Project Manager	\$115.00	\$4,600.00
80.00 hrs	SCES/Osceola/St. Augustine - Install Helper	\$95.00	\$7,600.00
80.00 hrs	SCES/Osceola/St. Augustine - Install Tech	\$105.00	\$8,400.00
40.00 hrs	SCES/St. Augustine - Draftsman/CADD Tech	\$95.00	\$3,800.00

Material Sub-Total	\$61,594.00
Labor Sub Total	\$24,400.00
Applicable Tax	\$0.00
Underground Conduits and Boring Total	\$85,994.00

Lakefront Park Camera Project

Cameras

QTY	Part	Description	Unit Price	Ext. Price



Labor Hrs.	Labor Type	Labor Sell	Extended Labor
40.00 hrs	Osceola - Project Manager	\$115.00	\$4,600.00
24.00 hrs	SCES/Osceola/St. Augustine - Application Engineer	\$115.00	\$2,760.00
80.00 hrs	SCES/Osceola/St. Augustine - Install Helper	\$95.00	\$7,600.00
80.00 hrs	SCES/Osceola/St. Augustine - Install Tech	\$105.00	\$8,400.00

Material Sub-Total	\$25,300.98
Labor Sub Total	\$23,360.00
Applicable Tax	\$0.00
Cameras Total	\$48,660.98

Lakefront Park Camera Project

Fiber and Enclosures

QTY	Part	Description	Unit Price	Ext. Price



■	■		■	■
■	■	■	■	■

Labor Hrs.	Labor Type	Labor Sell	Extended Labor
8.00 hrs	Osceola - Project Manager	\$115.00	\$920.00
32.00 hrs	SCES/Osceola/St. Augustine - Install Helper	\$95.00	\$3,040.00
32.00 hrs	SCES/Osceola/St. Augustine - Install Tech	\$105.00	\$3,360.00

Material Sub-Total	\$14,539.16
Labor Sub Total	\$7,320.00
Applicable Tax	\$0.00
Fiber and Enclosures Total	\$21,859.16

Lakefront Park Camera Project Total

Material Sub-Total	\$101,434.14
Labor Sub-Total	\$55,080.00
Applicable Tax	\$0.00
Lakefront Park Camera Project Total	\$156,514.14

**Total Proposal Amount**

Material Sub-Total	\$101,434.14
Labor Sub-Total	\$55,080.00
Applicable Tax	\$0.00
Grand Total	\$156,514.14



Quote Options



Conditions and Clarifications

	Include	Exclude		Include	Exclude
System Shop Drawings		X	Cable D-rings/ harnessess		X
Submittals		X	Door Locking Hardware		X
Permits		X	Door Frame Preparation		X
System Training by MECO		X	Patching and Painting		X
Structured Cabling		X	Core Drilling		X
120VAC Power		X	Wall Penetrations/sleeves		X
Conduit Stub-Ups		X	Fire Stopping		X
Device Back-Boxes		X	Network Switches		X
Raceway & Rough-in		X	Personnel Lift Equipment		X
Surge Protection		X	Grounding and Bonding		X

Clarifications

Any custom millwork and fabrication provided by others

Conduit raceway, unless specifically included in this proposal scope, is provided by others and must be properly sized per NEC and include a pull string

Any required lighting, emergency lighting or signage provided by others

Any required scaffolding provided by others

Any cable to be installed as part of this project scope is assumed to be installed prior to the installation of the ceiling grid or framing. Raceways must be provided above inaccessible ceiling spaces.

All hazardous materials abatement and removal by others

Any AHJ requirements to bring the building or portion of the building up to code is excluded from this scope of work

Miller Electric labor is provided during normal business hours Monday through Friday from 8:00 AM – 5:00 PM. Overtime is not included and may be charged additionally.

Deliveries will be made during normal business hours. Overtime delivery is not included.

Maintenance of the network, firewalls, antivirus and defending the integrity of the network against cyber attack is provided by others

Software maintenance, version upgrades and other administrative data entry (i.e. entry of cardholder data) are excluded unless specifically included in the proposal scope.

Taxes are excluded unless specifically shown as included in pricing summary lines.

Miller Electric will dispose of Miller Electric created trash daily within Jobsite provided containers.

Final testing and system delivery are included as per the project schedule only

System control code will be turned over after the final payment is received

The current market for commodities is very volatile. All copper, aluminum, PVC, and steel pricing is based on current market pricing for commodities. This proposal is based on current market pricing for commodity materials as of the date of this proposal, and no contingency is carried for commodities market pricing escalation. Additional costs will apply in the event of market-based commodity materials pricing escalation. Copper is currently at \$_____/pound.



Proposal: 29156

Date: 02/09/2024

Acceptance

Proposal: Lakefront Park Camera Project

The following documents in this proposal are considered binding: Scope of Work, Bill Of Materials, Terms and Conditions Where Applicable

Default payment terms are 50% down with monthly progress billings until the project is complete, unless otherwise negotiated or stated in this proposal.

Proposal Accepted: Miller Electric Company is authorized to proceed with the work as proposed. This proposal is valid for 30 days from 02/09/2024.

Purchaser _____

Seller Miller Electric Company

By _____

By Melissa Haynie

Title _____

Signature _____

Signature _____

Date _____

Date _____

PO# _____

The above persons represent that they are authorized to sign and execute this binding agreement. This acceptance indicates understanding of the complete proposal, including clarifications, design, programming, drawings, ownership, software licenses, and the Warranty.

ITEM 7.N

Airport Administrative, Operational and Asset Management Software Agreement

Request

Approval to award EPIC Engineering & Consulting Group, LLC, (Contract #20240174) in the amount of \$84,495 for Simplify i3 Software Services to digitally manage airport operational, administrative, and asset data programs for a 5-year term.

Explanation

EPIC has designed a software program tailored to assist managing the Kissimmee Gateway Airport's daily operational duties. The software will assist and record daily airfield safety/security inspections, maintenance programs, lease management, safety training programs and other data management. This is a five (5) year program and EPIC will provide technical support services and customize the program as necessary to meet demand.

Support Period	Date From/To	List Price	Discount Amount	Payment Amount Due
Year 1	10/01/2023 -09/30/2024	\$40,000	\$24,400	\$15,600
Year 2	10/01/2024 -09/30/2025	\$41,600	\$25,376	\$16,224
Year 3	10/01/2025 -09/30/2026	\$43,264	\$26,291	\$16,873
Year 4	10/01/2026 -09/30/2027	\$44,995	\$27,447	\$17,548
Year 5	10/01/2027 -09/30/2028	\$46,795	\$28,545	\$18,250

Financial Information

Account #	Project #	Increase / Decrease	Budget	Actual
46170103-505455		Decrease	84,495	84,495

Financial Summary:

Funding has been budgeted for this project in the Airport Fund.

Recommendation

Approval to award EPIC Engineering & Consulting Group, LLC, in the amount of \$84,495 for Simplify i3 Software Services to digitally manage airport operational, administrative, and asset data programs for a 5-year term.

REQUESTED CITY COMMISSION ACTION:

Approve

City of Kissimmee

Department: Airport

Presenter:

Attachment(s):

1. (S) Epic Agreement Munis Contract No. 20240174 Airport 46170103-505455



Statement of Work for

Simplify i3®

Airport Digital Transformation Solution for

Kissimmee Gateway Airport

Submitted by



1049 Willa Springs Drive, Suite 1001, Winter Springs, FL 32708
407.381.3742 • www.epicgroupllc.com

September 27, 2023

Shaun Germolus, A.A.E.
Director of Aviation
Kissimmee Gateway Airport
401 Dyer Blvd, Kissimmee, FL 34741

Re: Simplify i3® Airport Digital Transformation Solution for Kissimmee Gateway Airport

Dear Mr. Germolus,

EPIC Engineering & Consulting Group, LLC (EPIC) is pleased to submit our proposal for providing the Simplify i3® Airport Digital Transformation Solution for the Kissimmee Gateway Airport (ISM). The Simplify i3® Digital Transformation solution will provide ISM with a robust and scalable platform for managing airport operational, administrative and asset datasets. This solution is specifically designed to grow with your business needs and deliver operational efficiencies to ISM staff.

Project Scope

The Kissimmee Gateway Airport leadership has identified the need for a Digital Transformation solution for managing and tracking their Part-139 Inspections, operational inspections, training, lease management and other data management for the airport. As a part of this scope, EPIC will configure and provide the Simplify i3® Airport Digital Transformation Solution to ISM for ongoing use. EPIC will provide the following services under the project scope:

Task 1: Simplify i3® (Software as a Service) software configuration, initial data migration and training

As a part of this task, EPIC will provide configuration services to set up the following modules of the Simplify i3® Airport Digital Transformation Solution:

- i. Part-139 Inspections
- ii. Operational inspections
- iii. Wild Life Inspections
- iv. Lease Management
- v. Other Administrative Data Management

After configuration of the modules, available historical data will be migrated into the Simplify i3® application. It is assumed that the historical data is available in electronic format that can be

imported into the i3 database using data migration scripts. Manual data migration from paper-based records is not included in this task.

Subsequent to the configuration and data migration tasks, EPIC will provide training to end users of the Simplify i3® application. A total of three (3) training sessions are included in the task budget. This includes one Administrator training and two end user trainings. The training will be planned using the Train the Trainer approach.

Subsequent to the configuration and deployment of the ISM Simplify i3® solution, EPIC will provide post Go Live support to the ISM staff to facilitate the use of the system.

Task 2: Annual Subscription for Simplify i3 (Software as a Service) software license for ISM

EPIC will provide secure online access to the Simplify i3® Airport Digital Transformation solution (Software as a Service) for the authorized ISM staff for a period of 5 years from the notice to proceed. The subscription is renewable on an annual basis.

The subscription includes the following items:

- a. Access for up to 25 users for the following modules:
 - Part-139 Inspections
 - Operational inspections
 - Training Management
 - Lease Management
- b. The access to GIS functionalities is limited to 7 users. Additional users can be granted the GIS map access by purchasing additional Esri licenses.
- c. Testing of the system prior to Go Live
- d. Technical support services: EPIC will provide technical support to ISM staff to resolve application errors and other programmatic issues that impair the use of the application
- e. Enhancements: EPIC continuously enhances the Simplify i3® application to add new functionality to support our customer requirements. The enhancements made to the Simplify i3® modules licensed by ISM will be made available to the users at no additional cost over the duration of the subscription.
 - Custom enhancements that are specifically requested by ISM will be evaluated on a case-by-case basis and EPIC will provide a scope and fee estimate to ISM project manager for review and approval.

Exhibit A

The Simplify i3® Software as a Service Agreement is included as Exhibit A. The agreement includes the terms and conditions of the SaaS license.

Software Fee Schedule

The fee schedule for the Simplify i3® Airport Digital Transformation Solution is shown below. The fee is due at the beginning of each support period.

Support Period	Date From/To	List Price	Discount Amount	Payment Amount Due
Year 1	10/01/2023 - 09/30/2024	\$40,000	\$24,400	\$15,600
Year 2	10/01/2024 - 09/30/2025	\$41,600	\$25,376	\$16,224
Year 3	10/01/2025 - 09/30/2026	\$43,264	\$26,291	\$16,873
Year 4	10/01/2026 - 09/30/2027	\$44,995	\$27,447	\$17,548
Year 5	10/01/2027 - 09/30/2028	\$46,795	\$28,545	\$18,250

EPIC greatly values our partnership with Kissimmee Gateway Airport. We are excited to be part of this important project for your organization that will bring tremendous efficiency and value to the ISM Digital Transformation activities. Please feel free to contact me with any questions. We greatly appreciate this opportunity to provide our product and services to the Kissimmee Gateway Airport.

Sincerely,



Prasad Chittaluru, Ph.D., P.E, PMP, GISP
Principal, EPIC Engineering & Consulting Group, LLC

Exhibit A

Simplify i3® Scope of Services

Exhibit A

Simplify i3® Software-as-a-Service Agreement

This Software-as-a-Service (SaaS) Agreement (the “Agreement”) is made between EPIC Engineering & Consulting Group, LLC, a Florida Limited Liability Company, with address at 1049 Willa Springs Drive, Suite 1001, Winter Springs, FL 32708 (“EPIC”), and the Kissimmee Gateway Airport, 401 Dyer Blvd., Kissimmee, FL 34741, (“CUSTOMER”), hereinafter referred to as “the parties”, to enable online access to certain software products property of EPIC, currently offered by EPIC as the Simplify i3® Product Suite, in conjunction with associated documentation and support services (“Simplify i3® Software Services”), as described in the Agreement. Subject to the terms (“Terms”) provided herein, the Agreement is made effective upon the delivery of the Simplify i3® Software Services to the CUSTOMER (“Effective Date”).

Article 1 – Agreement and Language

- 1.1 Agreement.** The term Agreement herein refers to an all-encompassing document, comprised by a main document, Addendums, and if applicable, Exhibits incorporated by reference:
- Simplify i3® Software-as-a-Service Agreement (this main document)
 - Addendum 1 – Simplify i3® Software Product Agreement;
 - Addendum 2 – Simplify i3® Service Level and Fee Agreement; and
 - Addendum 3 – Third Party Acknowledgement Agreement
- 1.2 Plain Meaning.** Unless defined otherwise in the Agreement, the words used herein will be construed according to their plain meaning in the English language.
- 1.3 Definitions.** The following definitions apply to clarify the meaning of specific technical terminology used in the Agreement:
- “Authorization Code” shall mean any combination of numbers, symbols, or letters that serve as a Login credential to access the Simplify i3® Software Services, including the software, associated software documentation, and Online Services. This includes, but shall not be limited to, a token, account user and password, or other access mechanism or combination thereof.
 - “Custom Applications” shall mean any scripts, user interfaces, reports or program code created by EPIC, CUSTOMER, Simplify i3® implementation partners, or other authorized third-party entities. It does not include specific software modifications made to the Simplify i3® Software Services that provide a specific functionality uniquely designed for the CUSTOMER. Any Custom Applications developed for delivery to CUSTOMER shall NOT become part of the Simplify i3® Software Services, and are sold separately, unless otherwise specified in **Addendum 1**.
 - “Documentation” shall mean documents provided by EPIC to CUSTOMER to facilitate the use of Simplify i3® Software Services.
 - “Internal Use” shall mean use by individuals (“users”) who are employees of CUSTOMER, or third-party individuals who are authorized by the CUSTOMER and EPIC to access the Simplify i3® Software Services, as per **Addendum 3**, subject to the Terms of the Agreement.
 - “Simplify i3® Software Services” shall mean the portion of the Simplify i3® Product Suite, documentation and associated services CUSTOMER has purchased access to, as described in **Addendum 1**. Simplify i3® Software Services shall include any updates that EPIC, at its discretion, may deliver to CUSTOMER, as defined in Section 4 of **Addendum 1**.
 - EPIC may license third party software or products (“Ancillary Products”) to enable or enhance the Simplify i3® Software Services. These items shall be considered part of

Simplify i3® Software Services, and EPIC shall be responsible for the cost of such product licenses, subject to the exceptions below:

- (1) *ESRI® licenses and other excluded ancillary products (“Excluded Ancillary Products”) that are not part of Simplify i3® Software Services shall be licensed and purchased by CUSTOMER independently from the Agreement, as specified in **Addendum 1**. CUSTOMER will be responsible for the cost of all Excluded Ancillary Products, which will be in addition to the cost of Simplify i3® Software Services purchased under the Agreement.*
- f. “Login” shall mean the permission given to a single authorized named end user (“Authorized User”) to access the Simplify i3® Software Services hosted by EPIC or its licensors as part of Online Services (otherwise defined as a license of an Authorized User having the option to download the software into a computer or mobile device under separate license agreement.)
 - g. “Online Services” shall mean any Internet-based system, including infrastructure, applications and associated APIs (application program interfaces), hosted by EPIC or its licensors, for storing, managing, publishing, and using the Simplify i3® Software Services, including the Simplify i3® software, documentation, CUSTOMER data and other information.
 - h. “Service Packs” are a collection of files that enhance or correct the software in the hosted environments, or made available to CUSTOMER for download, where applicable.
 - i. “Software” shall mean the specific Simplify i3® Product Suite, scripts, interfaces and custom code identified in **Addendum 1**. The software will be hosted by EPIC or its licensors, as part of the Online Services provided under the Agreement.
 - j. “Software delivery” shall mean the provision of access to the Simplify i3® Software Services to Authorized Users via Authorization Codes. The Simplify i3® software will be hosted by EPIC or its licensors as part of Online Services and accessed by Authorized Users via the Internet, as described in **Addendum 1**. In the event software is provided to CUSTOMER via download for use on computers or mobile devices, the software will be provided under separate agreement, as specified in Section II of **Addendum 1**.
 - k. “Software as a Service” (SaaS) is the methodology to deliver software applications over the Internet using a web browser. On premise deployment of software is not needed. Authorized users are granted access to the application using a secure authentication process.

Article 2 – Intellectual Property

2.1 Ownership.

- a. All Simplify i3® software and copies thereof, as well as accompanying documentation, are intellectual property of EPIC and are protected by applicable United States state and federal laws, and by international laws, treaties, and conventions, affording protection to intellectual property, including but not limited to copyright, trade secret, patent, and trademark laws.
- b. Access to Online Services purchased by CUSTOMER for Authorized Users under the Agreement, is delivered as a SaaS offering, and as such, EPIC does not transfer licenses or any ownership rights of Simplify i3® software and other intellectual property of EPIC and its licensors to CUSTOMER, its Authorized Users, agents or any third party.
- c. If, under a separate agreement, CUSTOMER purchases software licenses from EPIC as specified in Section II of **Addendum 1**, to download Simplify i3® software into Authorized Users’ computer’s or mobile devices, the licenses will not transfer intellectual property ownership rights to CUSTOMER, Authorized Users or third parties, and any right thereby transferred shall not survive Termination of the Agreement.

2.2 Agreement to Protect.

- a. CUSTOMER agrees to use reasonable means to protect EPIC's intellectual property, including, but not limited to EPIC's software source and object code, algorithms, techniques, methods, user interface, images, video, audio, music, text, and other proprietary material incorporated or associated with the Simplify i3® Software Services. This protection shall extend to the unauthorized use, reproduction, distribution or publication by CUSTOMER and third parties under the control of CUSTOMER and its agents of EPIC intellectual property, contrary to the Terms of the Agreement.
 - b. Subject to applicable law, CUSTOMER, may not, and may not permit or cause any CUSTOMER'S employee or third party under control of CUSTOMER to, reverse engineer, decompile, translate, or disassemble the Simplify i3® software and other proprietary material incorporated or associated with the Simplify i3® Software Services, or otherwise determine or attempt to determine any source code, algorithms, methods, or techniques used or embodied in the Simplify i3® software and other proprietary material incorporated or associated with the Simplify i3® Software Services.
- 2.3 **CUSTOMER's Data.** EPIC shall have no ownership rights in the data entered into the Simplify i3® software by CUSTOMER's Authorized Users, which shall remain the sole property of CUSTOMER. Such data shall be protected by EPIC from unauthorized third-party disclosure, by using data encryption, and user authentication with role-based security. CUSTOMER authorizes EPIC to use CUSTOMER's anonymized data and system performance statistics for enhancing the performance and functionality of EPIC's Simplify i3® Software Services and delivery. Provided EPIC is not in default of this Agreement, during the Agreement Term CUSTOMER grants EPIC the right to include the CUSTOMER's name in EPIC's customer lists, website, and marketing materials.

Article 3 – Grant of Access

- 3.1 **Simplify i3® Software Services.** Subject to the Terms of the Agreement, and as stated in Article 4, EPIC grants CUSTOMER's Authorized Users, for internal use, the non-exclusive, non-transferable right to access the Simplify i3® Software Services, as described in **Addendum 1** and **Addendum 2**, during Agreement Term, in exchange for the Software Services Fees described in **Addendum 2**.
- 3.2 **Third Party Use.** CUSTOMER may allow third party consultants or contractors to access the Simplify i3® Software Services, subject to Article 4 and the Terms of the Agreement, provided that CUSTOMER and third parties agree to and are bound by the Agreement and execute and deliver the **Addendum 3** agreement to EPIC.
- 3.3 **Agreement Term.** Subject to the Terms of the Agreement and the renewal and payment terms detailed in **Addendum 2**, Authorized User access to Simplify i3® Software Services shall be in effect from Effective Date until Termination ("Agreement Term").
- 3.4 **Delivery.** Unless otherwise stated in the Agreement, EPIC shall deliver the Simplify i3® Software Services to CUSTOMER by providing access via electronic link, Authorization Code, or any similar access method or methods, at the discretion of EPIC ("Delivery").
- 3.5 **Reservation of Rights.** EPIC reserves all rights not specifically granted in the Agreement, such as the right to modify the Simplify i3® Software Services, including the name of the software, as provided in **Addendum 1**.

Article 4 – Scope of Use

- 4.1 Subject to the Terms of the Agreement,
- a. **CUSTOMER may:**
 - i) access and use the Simplify i3® Software Services solely for internal use and for legitimate business purposes;
 - ii) make or request archival copies of the CUSTOMER data entered in Simplify i3® Software Services;

- iii) utilize the Simplify i3® Software Services in a test environment for training and testing purposes; and
 - iv) use, copy, or prepare derivative works of the documentation supplied to CUSTOMER by EPIC in digital or printed format and reproduce, display, and redistribute the customized documentation solely to Authorized Users, unless otherwise required by the applicable law, to include without limitation the Florida Public Records Law, to provide copies of any such documentation to third parties. This authorization extends solely for CUSTOMER's own internal use and shall not survive Termination of the Agreement. CUSTOMER shall include the following copyright attribution notice acknowledging the proprietary rights of EPIC and its licensors: "Portions of this document include intellectual property of EPIC Engineering & Consulting Group, LLC and its licensors and is used herein under license. Copyright © [*CUSTOMER will insert the actual copyright date(s) from the source materials*] EPIC Engineering & Consulting Group, LLC and its licensors. All rights reserved."
- b. **CUSTOMER may not:**
 - i) share user login accounts to increase the number and type of users beyond those authorized under the Agreement;
 - ii) distribute or redistribute Authorization Codes to unauthorized users for any purpose;
 - iii) copy, or prepare derivative works, of the documentation supplied to CUSTOMER by EPIC in digital or printed format and reproduce, display, and redistribute the documentation or customized documentation to unauthorized users and third parties, unless otherwise required by applicable law, to include without limitation the Florida Public Records Law, to provide copies of any such documentation to third parties;
 - iv) sell, rent, lease, sublicense, lend, assign, redistribute, or time-share Simplify i3® Software Services and associated materials and services, including Online Services;
 - v) allow non-authorized users to access or use the Simplify i3® Software Services in any manner;
 - vi) act as a service bureau or Commercial Application Service Provider;
 - vii) profit through direct or indirect methods from the access and use to Simplify i3® Software Services, or cause others to do the same;
 - viii) reverse engineer, decompile, or disassemble Simplify i3® software;
 - ix) circumvent the access controls to Simplify i3® Software Services;
 - x) use Simplify i3® Software Services and associated materials and services, including Online Services, in violation of laws, regulations and third-party rights, or solely to intentionally and maliciously inflict injury, physical, economic, or other to any person or entity;
 - xi) remove or obscure any EPIC (or its licensors') intellectual property notices or legends contained in or affixed to any Simplify i3® Software Services display, associated Licensed Product, materials, output, metadata file, or attribution page of any data or documentation, whether in online, digital or printed form;
 - xii) unbundle or independently use individual components of the Simplify i3® Software Services and associated materials and services, including Online Services;
 - xiii) incorporate any portion of the Simplify i3® Software Services into a third-party product, whether competing or not;
 - xiv) publish the results of benchmark tests run on Simplify i3® Software Services, without the prior written permission of EPIC; and
 - xv) use the Simplify i3® Software Services in a manner in which it will cause them, in whole or in part, to become public domain.

Article 5 – Termination

- 5.1 **Termination.** CUSTOMER may terminate the Agreement with or without cause at any time upon thirty (30) days written notice to EPIC, or as soon as reasonably possible. Either party may terminate the Agreement for a material breach that is not cured within thirty (30) days of written notice to the breaching party, except that termination is immediate for a material breach that is impossible to cure.
- 5.2 **Termination for Convenience.** Unless otherwise specified in the Agreement, if the Agreement is terminated for convenience, the CUSTOMER will only be liable for payment required under **Addendum 2** for Simplify i3® Software Services, and for other services if applicable, delivered to CUSTOMER by EPIC prior to the Termination Date.
- 5.3 **Effect of Termination.** Upon termination of the Agreement all access and Authorization Codes granted hereunder will expire. Upon termination, CUSTOMER will, with at least a minimum of thirty (30) days written notice: (i) cease access and use of Simplify i3® Software Services; (ii) clear any CUSTOMER data cache; and (iii) if applicable, uninstall, remove, and destroy all copies, except for one (1) archival copy, of ancillary products, and documentation in CUSTOMER's (and third parties, if applicable) possession or control, including any modified versions, in any form, and deliver evidence of such actions to EPIC through a letter on the CUSTOMER's letterhead sent to EPIC at the address listed in section 9.18 below. Likewise, upon termination, EPIC will, within thirty (30) days of receiving written notice, to provide to the CUSTOMER a copy of applicable CUSTOMER data exported from Simplify i3® to a CSV, Excel, or equivalent format. EPIC and the CUSTOMER will arrange for all CUSTOMER documents and files stored in cloud storage to be transferred to the CUSTOMER. Depending on the amount of records stored in the database and the number of documents in the file repository, EPIC may request a one (1) time fee to perform the data migration and delivery. The fee will be corroboratively determined by EPIC and CUSTOMER.
- 5.4 **Ancillary Licenses.** Termination of the Agreement shall terminate ancillary product licenses as follows:
- a. Termination of the Agreement shall terminate all ancillary product licenses held by EPIC and transferred to CUSTOMER to enable delivery and use of Simplify i3® Software Services.
 - b. Termination of the Agreement does not terminate licenses that CUSTOMER obtains independently from third parties, which are not part of Simplify i3® Software Services, including, but not limited to, the independently licensed products listed in **Addendum 1**. CUSTOMER shall be solely responsible for the termination of such independent licenses and the cost associated with their termination.

Article 6 – Limited Warranties and Liability Disclaimers

- 6.1 **Limited Warranties.** EXCEPT AS OTHERWISE PROVIDED IN THIS ARTICLE 6, EPIC WARRANTS, FOR THE TERM OF THE AGREEMENT, THAT THE SERVICES WILL SUBSTANTIALLY CONFORM TO THE DOCUMENTATION, UNDER NORMAL USE AND SERVICE. EPIC WARRANTS THAT TECHNICAL SUPPORT PROVIDED PURSUANT TO ADDENDUM 2 SHALL BE PERFORMED IN A PROFESSIONAL AND WORKMAN-LIKE MANNER. EPIC WILL USE COMMERCIALY REASONABLE EFFORTS TO PROVIDE CORRECTIONS TO TECHNICAL ISSUES OR PROVIDE A WORKAROUND, BUT EPIC CANNOT GUARANTEE THAT ALL TECHNICAL ISSUES CAN BE FIXED OR RESOLVED.
- 6.2 **Internet Disclaimer.** THE PARTIES EXPRESSLY AGREE THAT (I) THE INTERNET IS NOT A SECURE INFRASTRUCTURE; (II) THE PARTIES HAVE NO CONTROL OVER THE INTERNET; AND (III) NONE OF THE PARTIES SHALL BE LIABLE FOR DAMAGES UNDER ANY THEORY OF LAW RELATED TO THE PERFORMANCE OR DISCONTINUANCE OF OPERATION OF ANY PORTION OF THE INTERNET OR POSSIBLE REGULATION OF THE INTERNET THAT MIGHT RESTRICT OR PROHIBIT THE OPERATION OF SERVICES PROVIDED BY EPIC HEREINUNDER.
- 6.3 **General Disclaimer.** EXCEPT FOR THE ABOVE EXPRESS LIMITED WARRANTIES, EPIC DISCLAIMS ALL OTHER WARRANTIES OR CONDITIONS OF ANY KIND, WHETHER EXPRESS

OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, WARRANTIES, OR CONDITIONS OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, SYSTEM INTEGRATION AND NON-INFRINGEMENT OF INTELLECTUAL PROPERTY RIGHTS. EPIC DOES NOT WARRANT THAT CUSTOMER'S OPERATION OF THE SAME WILL BE UNINTERRUPTED, ERROR FREE, FAULT-TOLERANT, OR FAIL-SAFE; OR THAT ALL NONCONFORMITIES CAN OR WILL BE CORRECTED. SIMPLIFY I3® SOFTWARE SERVICES ARE NOT DESIGNED, MANUFACTURED, OR INTENDED FOR USE IN ENVIRONMENTS OR APPLICATIONS THAT MAY LEAD TO DEATH, PERSONAL INJURY, PHYSICAL PROPERTY DAMAGE OR ENVIRONMENTAL DAMAGE. CUSTOMER SHOULD NOT FOLLOW ANY SUGGESTIONS OR INSTRUCTIONS THAT APPEAR TO BE HAZARDOUS, UNSAFE, OR ILLEGAL. ANY SUCH USE SHALL BE AT THE CUSTOMER'S OWN RISK AND COSTS.

- 6.4 **Disclaimer of Certain Types of Liability.** EPIC, ITS AUTHORIZED DISTRIBUTORS (IF ANY), AND ITS LICENSORS SHALL NOT BE LIABLE TO CUSTOMER FOR COSTS OF PROCUREMENT OF SUBSTITUTE GOODS OR SERVICES; LOST PROFITS, LOST SALES, OR BUSINESS EXPENDITURES; INVESTMENTS; BUSINESS COMMITMENTS; LOSS OF ANY GOODWILL; OR ANY INDIRECT, SPECIAL INCIDENTAL, OR CONSEQUENTIAL DAMAGES ARISING OUT OF OR RELATED TO THIS LICENSE AGREEMENT OR USE OF SIMPLIFY I3® SOFTWARE SERVICES, HOWEVER CAUSED ON ANY THEORY OF LIABILITY, WHETHER OR NOT EPIC OR ITS LICENSORS HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGE.
- 6.5 **Force Majeure.** EPIC SHALL NOT BE IN DEFAULT UNDER THE AGREEMENT FOR ITS FAILURE OR DELAY IN PERFORMING ANY OBLIGATION UNDER THE AGREEMENT (INCLUDING ANY OF ITS ADDENDUMS AND EXHIBITS) RESULTING FROM NATURAL OR MAN-MADE DISASTERS INCLUDING BUT NOT LIMITED TO FIRE, FLOOD, EARTHQUAKE, STRIKE OR LABOR DISPUTES, WAR (DECLARED OR UNDECLARED), EMBARGO, BLOCKAGE, LEGAL PROHIBITION OR GOVERNMENTAL ACTION, RIOT, INSURRECTION, SERVICE DISRUPTIONS FROM CLOUD INFRASTRUCTURE PROVIDERS (MICROSOFT AZURE, AMAZON WEB SERVICES), DISRUPTIONS RESULTING FROM THE INTERNET SERVICE PROVIDERS, DAMAGE DESTRUCTION OR ANY OTHER CAUSE BEYOND THE CONTROL OF EPIC OR ANY OF ITS LICENSORS OR CONTRACTORS, PROVIDED THAT EPIC SHALL PERFORM ITS OBLIGATIONS IMMEDIATELY UPON THE TERMINATION OF SUCH CAUSE PREVENTING OR DELAYING EPIC'S PERFORMANCE.

Article 7 – Limitation of Liability and Remedies

- 7.1 **Exclusive Remedy.** SUBJECT TO CUSTOMER'S DELIVERY OF PROMPT NOTICE TO EPIC OF ANY BREACH AND FULL COOPERATION OF CUSTOMER WITH EPIC'S EFFORTS TO CURE, CUSTOMER'S EXCLUSIVE REMEDY AND EPIC'S ENTIRE LIABILITY FOR BREACH OF THE WARRANTIES SET FORTH IN ARTICLE 6 SHALL BE LIMITED, AT EPIC'S SOLE DISCRETION, TO: (I) REPAIR, CORRECTION, OR A WORKAROUND FOR THE SIMPLIFY I3® SOFTWARE SERVICES, SUBJECT TO ADDENDUM 2; (II) REVISION OF THE SOFTWARE DOCUMENTATION, IF APPLICABLE; OR (III) REFUND OF THE FEES PAID BY CUSTOMER TO EPIC DURING THE CURRENT TERM, FOR SIMPLIFY I3® SOFTWARE SERVICES AND ASSOCIATED SERVICES THAT DO NOT MEET EPIC'S LIMITED WARRANTY, PROVIDED THAT CUSTOMER UNINSTALLS, REMOVES, DESTROYS ALL COPIES OF SIMPLIFY I3® SOFTWARE SERVICES SOFTWARE (FOR MOBILE SOFTWARE LICENSED UNDER SEPARATE AGREEMENT), RETURNS ALL DOCUMENTATION TO EPIC, AS APPLICABLE; CEASES USING THE SIMPLIFY I3® SOFTWARE SERVICES AND ASSOCIATED DOCUMENTATION AND SERVICES; AND DELIVERS EVIDENCE OF SUCH ACTIONS TO EPIC, THROUGH A LETTER ON THE CUSTOMER'S LETTERHEAD SENT TO EPIC AT THE ADDRESS LISTED IN SECTION 9.18 OF THE AGREEMENT, RESULTING IN TERMINATION OF THE AGREEMENT.
- 7.2 **General Limitation of Liability.** EXCEPT AS PROVIDED IN ARTICLE 8, THE TOTAL CUMULATIVE LIABILITY OF EPIC AND ITS AUTHORIZED DISTRIBUTOR(S) HEREUNDER, FROM ALL CAUSES OF ACTION OF ANY KIND, INCLUDING, BUT NOT LIMITED TO,

CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY, BREACH OF WARRANTY, MISREPRESENTATION, OR OTHERWISE, SHALL NOT EXCEED THE FEES ACTUALLY PAID BY CUSTOMER DURING THE CURRENT SUPPORT PERIOD, OR THE INSURANCE LIMITS OF EPIC COVERING THE PARTICULAR LOSS, IF COVERAGE IS AVAILABLE UNDER THE CURRENT EXISTING INSURANCE POLICY, WHICHEVER IS GREATER, AND WHICH IS FOR THE PRODUCTS OR SERVICES THAT GIVE RISE TO THE CAUSE OF ACTION.

7.3 **Applicability of Disclaimers and Limitations.** CUSTOMER AGREES THAT THE LIMITATIONS OF LIABILITY AND DISCLAIMERS SET FORTH IN THE AGREEMENT WILL APPLY REGARDLESS OF WHETHER CUSTOMER HAS ACCEPTED SIMPLIFY i3® SOFTWARE SERVICES OR ANY OTHER PRODUCT OR SERVICE DELIVERED BY EPIC. THE PARTIES AGREE THAT EPIC HAS SET ITS FEES AND ENTERED INTO THE AGREEMENT IN RELIANCE ON THE DISCLAIMERS AND LIMITATIONS SET FORTH HEREIN, THAT THE SAME REFLECT AN ALLOCATION OF RISK BETWEEN THE PARTIES, AND THAT THE SAME FORM AN ESSENTIAL BASIS OF THE BARGAIN BETWEEN THE PARTIES.

7.4 LIMITATIONS IN ARTICLES 6 AND 7 SHALL APPLY NOTWITHSTANDING ANY FAILURE OF ESSENTIAL PURPOSE OF ANY LIMITED REMEDY.

THE FOREGOING WARRANTIES, LIMITATIONS, AND EXCLUSIONS MAY NOT BE VALID IN SOME JURISDICTIONS AND APPLY ONLY TO THE EXTENT PERMITTED BY APPLICABLE LAW IN CUSTOMER'S JURISDICTION. CUSTOMER MAY HAVE ADDITIONAL RIGHTS UNDER LAW THAT MAY NOT BE WAIVED OR DISCLAIMED. EPIC DOES NOT SEEK TO LIMIT CUSTOMER'S WARRANTY OR REMEDIES TO ANY EXTENT NOT PERMITTED BY LAW.

Article 8 – Infringement Indemnity

8.1 EPIC shall defend, indemnify, and hold CUSTOMER harmless from and against any loss, liability, cost, or expense, including reasonable attorney's fees, arising out any claims, actions, or demands by a third party legally proving that CUSTOMER's use of Simplify i3® Software Services infringe a US patent, copyright, or trademark, provided that:

- a. CUSTOMER provides notice to EPIC in writing no later than seven (7) days of the claim;
- b. CUSTOMER provides EPIC with documentation reasonably describing the allegations of infringement;
- c. EPIC has sole control of the defense of any legal action and negotiation related to the defense or settlement of any claim; and
- d. CUSTOMER reasonably cooperates in the defense of any claim at EPIC's request and expense.

8.2 If Simplify i3® Software Services, or any component thereof, are found to infringe a US patent, copyright, or trademark, EPIC, at its own expense, may either (i) obtain rights for CUSTOMER to continue using the Simplify i3® Software Services; or (ii) modify the allegedly infringing elements of Simplify i3® Software Services, while maintaining substantially similar functionality. If neither alternative is commercially reasonable, access to Simplify i3® Software Services shall terminate, CUSTOMER's Authorized Users shall cease accessing and using the infringing Simplify i3® Software Services documentation and materials, and CUSTOMER shall uninstall any software (if applicable) and return to EPIC any infringing item(s). EPIC's entire liability shall be limited to the indemnification of CUSTOMER, pursuant to Section 8.1 of this article and to the refund of the unused portion of the Software Services Fees CUSTOMER has paid to EPIC, prorated for the current Support Period.

8.3 EPIC shall have no obligation to defend CUSTOMER or to pay any resultant costs, damages, or attorneys' fees for any claim or demands alleging direct or contributory infringement, to the extent that it arises from (i) the combination of integration of Simplify i3® Software Services with a product, process, or system not supplied by EPIC or specified by EPIC in the documentation provided to CUSTOMER; (ii) material alteration of Simplify i3® Software Services by anyone other than EPIC or its subcontractors; (iii) use of unmodified Simplify i3®

Software Services after modifications have been provided by EPIC to avoid infringement, or use after a return or cease of use is ordered by EPIC under Section 8.2 of this article; or (iv) use by CUSTOMER inconsistent with the authorized use afforded by the Agreement, including CUSTOMER's unauthorized use of Simplify i3® Software Services in combination with other third-party tools.

- 8.4 THE FOREGOING STATES THE ENTIRE OBLIGATION OF EPIC WITH RESPECT TO INFRINGEMENT OR ALLEGATION OF INFRINGEMENT OF INTELLECTUAL PROPERTY RIGHTS OF ANY THIRD PARTY.

Article 9 – General Provisions

- 9.1 **Future Updates and Renewals.** Simplify i3® Software Services updates and renewals will be accessed under the Terms of the Agreement, and as detailed in **Addendum 2**.
- 9.2 **Export Control Regulations.** CUSTOMER expressly acknowledges and agrees that CUSTOMER shall not export, re-export, import, transfer, or release access to Simplify i3® Software Services or any products associated with Simplify i3® Software Services, in whole or in part, to (i) any US embargoed country; (ii) any person on the US Treasury Department's list of Specially Designated Nationals; (iii) any person or entity on the US Commerce Department's Denied Persons List, Entity List, or Unverified List; or (iv) any person or entity or into any country where such export, re-export, or import violates any US, local, or other applicable import/export control laws or regulations including, but not limited to, the terms of any import/export license or license exemption and any amendments and supplemental additions to those import/export laws as they may occur from time to time.
- 9.3 **Fees and Taxes.** Fees and applicable taxes for Simplify i3® Software Services are as represented in Section 3 of **Addendum 2**.
- 9.4 **No Implied Waivers.** The failure of either party to enforce any provision of the Agreement, including Addendums and Exhibits, shall not be deemed a waiver of the provisions or of the right of such party thereafter to enforce that or any other provision. The making or acceptance of a payment by either party with the knowledge of the other party's existing default or breach of this Agreement shall not waive such default or breach, or any subsequent default or breach of this Agreement, and shall not be construed as doing so.
- 9.5 **Severability.** The parties agree that if any provision of the Agreement is held to be unenforceable for any reason, such provision shall be reformed only to the extent necessary to make the intent of the language enforceable.
- 9.6 **Successors and Assigns.** CUSTOMER shall not assign, sublicense (if applicable), or transfer CUSTOMER's rights or delegate CUSTOMER's obligations under the Agreement without EPIC's prior written consent, and any attempt to do so without consent shall be void. This Agreement shall be binding on the respective successors and assigns of the parties.
- 9.7 **Survival.** The provisions of Articles 2, 5, 6, 7, 8, and 9 of the Agreement, and the provisions of Sections 5 and 6 of Addendum 2, shall survive the termination of the Agreement.
- 9.8 **Reserved.**
- 9.9 **US Government Customer.** The Simplify i3® Software Services are commercial items, developed at private expense, provided to CUSTOMER subject to the Terms of the Agreement. If CUSTOMER is a US government entity or US government contractor, EPIC will authorize access of the Simplify i3® Software Services to CUSTOMER in accordance with the Agreement, subject to Federal Acquisition Regulations (or equivalent federal regulations) applicable to SaaS. This Agreement strictly governs CUSTOMER's use, reproduction, or disclosure of Simplify i3® Software Services. EPIC's Simplify i3® and related software source code is unpublished, and all rights to Simplify i3® Software Services as a whole, or its individual components, are reserved by EPIC and its licensors. If any court, arbitrator, or administrative board holds that CUSTOMER has rights higher than those afforded by the Agreement, under applicable procurement law, such rights shall extend solely to the portions of the Agreement affected by such decision, if legally binding.

- 9.10 **Governing Law, Dispute Resolution.** This Agreement shall be governed by and construed in accordance with the laws of the State of Florida, without reference to conflict of laws principles, except that US federal law shall govern in matters of intellectual property. Any dispute arising out of or relating to the Agreement or the breach thereof shall be resolved in the following order before filing legal suit with a court of competent jurisdiction:
- Negotiation in good faith; and
 - If resolution is unattained by negotiation in good faith, mediation by a mutually acceptable mediator chosen by the parties, which cost shall be shared equally.
- 9.11 **Support Services.** Technical support and maintenance services for qualifying Simplify i3® Software Services are described in **Addendum 2**.
- 9.12 **Feedback.** EPIC may freely use any feedback, suggestions, or requests for Simplify i3® Software Services' improvements that CUSTOMER provides to EPIC. Regardless of the source of any feedback or suggestions, any improvements to Simplify i3® Software Services, including Simplify i3® software, documentation, services, and any related intellectual property resulting of such feedback, are solely owned by EPIC.
- 9.13 **Patents and Copyrights.** CUSTOMER may not seek and may not permit Authorized Users or third parties to seek a patent, copyright, or similar right worldwide that is based on or incorporates any proprietary EPIC technology, product or service. Subject to the Terms of this Agreement, Termination of the Agreement immediately terminates all CUSTOMER user rights to access Simplify i3® Software Services, including rights under any license that may have been transferred to CUSTOMER for use and access to the Simplify i3® Software Services from a mobile or computer device during the Agreement Term, as per Section II of **Addendum 1**.
- 9.14 **Entire Agreement.** Access to Simplify i3® Software Services and associated services is granted under the Terms of the Agreement. The Agreement, including its incorporated documents, addendums, and exhibits, as applicable, constitutes the sole and entire agreement of the parties as to the subject matter set forth in herein and supersedes any previous agreements, understandings, and arrangements between the parties relating to such subject matter, including any agreement requiring user acceptance by electronic acknowledgement. The Terms of the Agreement will prevail over conflicting terms set forth in any purchase orders, invoices, or other standard form documents exchanged during the ordering process (other than product descriptions, quantities, pricing, and delivery instructions), unless otherwise stated in the Agreement. Any modification(s) or amendment(s) to the Agreement must be in writing and signed by each party.
- 9.15 **Audits.** EPIC hereby authorizes CUSTOMER and CUSTOMER hereby authorizes EPIC or its agent(s) to conduct reasonable audits, as needed, to assess compliance with the Agreement; including audits performed to address security or Department of Homeland Security issues or concerns. The cost of the audit(s) (if any) will be borne by EPIC, unless EPIC identifies a discrepancy with the authorized use of Simplify i3® Software Services. In no event shall any such audit be conducted more frequently than once every twelve (12) months. The audit results shall be jointly reviewed by the parties. In the event CUSTOMER and EPIC identify use of the Simplify i3® Software Services during the applicable audit period in excess of that for which CUSTOMER is licensed, the parties shall reconcile such excess use at CUSTOMER's then-existing discounted rate structure and without penalty or premium of any sort.
- 9.16 **Counterparts.** This Agreement and Addendums may be executed in any number of counterparts, each of which when executed and delivered shall constitute a duplicate original, but all counterparts together shall constitute a single agreement. A valid duplicate may be transmitted through electronic means, such as fax or email, and it must reflect the signing of the document by any party. Duplicates are binding, even if an original paper document bearing each party's original signature is not delivered.
- 9.17 Nothing stated in the documents comprising the Agreement shall limit the parties' obligations to comply in all respects with Florida's public records laws, including but not limited to, the requirements stated in Fla. Stat. 119.0701, and failure to so comply shall

constitute grounds for termination of the Agreement. If the CUSTOMER is required by law to disclose records containing information that EPIC maintains is confidential or exempt as a trade secret or for any other reason, the CUSTOMER shall, to the extent allowed under applicable law, give notice to EPIC of this circumstance. EPIC shall be solely responsible at its sole cost for taking any necessary actions, including seeking a judicial determination, in order to establish that such information is legally protected from disclosure as confidential or exempt, as provided by Florida law, and such action shall be commenced within fourteen (14) business days of receiving notice.

9.18 **Notice.** All notices and applicable payments must be sent to the addresses provided below. Notices must be sent via certified mail with copy via e-mail.

For CUSTOMER:

Shaun Germolus, A.A.E.
Director of Aviation
Kissimmee Gateway Airport
401 Dyer Blvd, Kissimmee, FL 34741
Phone: 407-847-4600
Email: shaun.germolus@kissimmee.gov

For EPIC:

Prasad Chittaluru, PhD, PE
EPIC Engineering & Consulting Group, LLC
Address: 1049 Willa Springs, Suite 1049, Winter Springs, FL 32708
Email: prasad@epicgroupllc.com
Tel. 407-381-3742

IN WITNESS HEREOF, the parties hereto have caused the Agreement to be executed and made effective by their respective representatives as of Effective Date.

EPIC Engineering & Consulting Group, LLC ("EPIC") Kissimmee Gateway Airport ("CUSTOMER")

By:  By: _____

Name: Prasad Chittaluru, Ph.D., PE., PMP

Name: _____

Title: CEO

Title: _____

Date: 2/7/2024

Date: _____

ADDENDUM 1

Simplify i3® Software Product Selection Agreement

This addendum is part of the Agreement made between the CUSTOMER and EPIC Engineering & Consulting Group, LLC (EPIC) and is incorporated to the Agreement by reference. EPIC will provide CUSTOMER's Authorized Users with access to selected Simplify i3® Software Services, as per the terms of this addendum and subject to the Terms of the Agreement, unless otherwise stated herein.

I. Option Selection for Simplify i3® Product Suite SaaS Access

The CUSTOMER hereby requests Authorized User access to the Simplify i3® Software Services for the option selected below. Option selection can be modified as per Section C.1. of this addendum:

X Option A _____ CUSTOMER's initials

____ Option B _____ CUSTOMER's initials

Option Description Simplify i3® Product Suite SaaS Access

A. Option A: Enterprise Access

1. Scope. This option includes Simplify i3® Software Services access for Authorized Users to the entire set of software modules and components of the Simplify i3® Product Suite. The included modules and components are:

- a. Service Requests (SR) Module
- b. Work Orders (WO) Module
- c. Inspections (IN) Module
- d. Asset Management (AM) Module
- e. Construction Management (CoM) Module
- f. Maps Module (GIS)*
- g. Lease Module (LM)
- h. Training Module (TM)
- i. Technician Mobile App (Native applications for Android and iOS)
- j. Document Repository
- k. Contacts Module
- l. Funds Module
- m. Scheduling Component (Integrated with Project Management and Project Execution Modules)
- n. Dashboards Module
- o. Reports Module
- p. APIs

* Requires additional licenses purchase from ESRI according to the planned usage (See Section 2).

B. Option B: Module-Level Access

1. Scope. This option provides for Simplify i3® Software Services access to Authorized Users for a set of specific modules and components of the Simplify i3® Product Suite that the CUSTOMER selects under the Terms of the Agreement. The selected list of modules and components available for access under this option are:

- a. Service Requests (SR) Module
- b. Work Orders (WO) Module
- c. Inspections (IN) Module
- d. Asset Management (AM) Module
- e. Project Management (PrM)Module
- f. Construction Management (CoM)Module
- g. Maps Module (GIS)*
- h. Technician Mobile App (Native applications for Android and iOS)
- i. Document Repository for SR, WO, AM, IN, PrM, and CoM modules
- j. Funds Module (included with PrM and/or CoM) Modules
- k. Scheduling Component (Integrated with Project Management and Project Execution Modules)
- l. Dashboards Module
- m. Reports Module
- n. API for GIS

C. Other Terms Applicable to Option A and Option B Access

1. Option Selection and Fees

- a. Options selected herein can be upgraded within sixty (60) days of Effective Date, or can otherwise be modified prior to the commencement of the next Support Period, as described in **Addendum 2**.
- b. Fees for Simplify i3® Software Services available to CUSTOMER are reflected in **Addendum 2**.

2. Ancillary Software

- a. **INCLUDED with Simplify i3® Software Services is listed below:**
 - i. Four (4) ArcGIS Online Lite User Licenses
 - ii. Three (3) ArcGIS Online Basic User Licenses
- b. **NOT INCLUDED with Simplify i3® Software Services is listed below:**
 - i. RESERVED.

3. Additional Users. Additional Authorized Users may be added to the Agreement, upon CUSTOMER request, after CUSTOMER submits a qualified Purchase Order and payment for applicable Software Services Fees, as described in **Addendum 2**.

4. Updates

- a. Subject to the Terms of the Agreement, updates may consist of subsequent releases of the Simplify i3® Software Services software for the option selected by CUSTOMER for Authorized User access, including upgrades and service packs, which EPIC may generally make available online as part of the Simplify i3® Software Services, as detailed under **Addendum 2**.
- b. Occasionally, EPIC may update, change the name of its software, or modify applicable documentation, as part of its ongoing product and business development process. In this case, EPIC will provide software services with functionality that is similar to, or with substantially the same or greater functionality of, the original software services, as well

as applicable updated documentation, provided that CUSTOMER has complied with the Agreement, including the timely payment of all fees due under the Agreement.

- c. Updates may not always include any future software services features, components, or modules that EPIC may develop and sell separately from the Agreement. These new features or offerings will be provided to CUSTOMER at the discretion of EPIC. EPIC is under no obligation to develop and provide any updates, new programs or new functionality of Simplify i3® Software Services.
 - d. Any Simplify i3® Software Services update(s) made available to CUSTOMER will be deployed first in a test environment, and upon approval of the CUSTOMER, will be made available in the production environment.
5. **“Software-as-a-Service” (SaaS) Offering.** Access to the software products listed in this addendum is offered as part of a “Software-as-a-Service” (SaaS) offering, where EPIC will provide online access to the software described in the option selected by CUSTOMER in conjunction with Online Services, technical support services and maintenance, during one or more specified Support Periods, as described in **Addendum 2**.

II. Third Party Integrations, Customizations and Other Services

Third-party integrations, custom applications, as well as other software, software uses, services and related software licensing not addressed in the Agreement, are not part of the Agreement and will be negotiated in a separate agreement.

THIS ADDENDUM IS PART OF THE AGREEMENT BETWEEN THE PARTIES AND IS SUBJECT TO ALL THE TERMS OF THE AGREEMENT, UNLESS OTHERWISE STATED. IF ANY TERM IN THIS ADDENDUM CONFLICTS WITH ANY TERMS IN THE AGREEMENT, THE ADDENDUM’S TERM WILL PREVAIL OVER THE CONFLICTING TERM OF THE AGREEMENT, WITHOUT VOIDING ANY OTHER TERMS OF THE AGREEMENT, EXCEPT THAT IF TERMS INCLUDED IN ANY ADDENDUM OF THE AGREEMENT CONFLICT WITH EACH OTHER, THE TERMS IN THE AGREEMENT’S MAIN DOCUMENT WILL PREVAIL.

Parties Initials and Date: _____

ADDENDUM 2

Service Level and Fee Agreement

This Service Level and Fee Agreement (“Service Agreement”) addendum is part of the Agreement made between the CUSTOMER and EPIC Engineering & Consulting Group, LLC (EPIC) and is incorporated to the Agreement by reference. EPIC will hereby provide technical support and maintenance services, as needed, as part of the Software-as-a-Service (SaaS) offering for Simplify i3® Software Services, subject to the Terms of the Agreement and this addendum, unless otherwise stated herein.

1. Software Services

EPIC will provide Simplify i3® Software Services as part of a SaaS offering to CUSTOMER for the Support Periods and in exchange for the payment of Software Services Fees specified in Section 7.2 of this addendum. Simplify i3® Software Services, for the option selected by CUSTOMER in **Addendum 1**, will consist of the following: Software access via Online Services, maintenance, and technical support. Unless otherwise stated herein, subject to the Terms of the Agreement, software updates will be provided as described in Section C.4. of **Addendum 1**.

- 1.1 EPIC will ensure upward compatibility for the selected Simplify i3® Software Services applications within a commercially reasonable timeframe for minor ESRI® ArcGIS and Simplify i3® supported database revisions. EPIC will not ensure upward compatibility for Simplify i3® Software Services software applications when there are major ESRI® ArcGIS revisions (for example, from rev 10.x to 11.x). However, EPIC will make all commercially reasonable efforts to provide upward compatibility.
- 1.2 Subject to Section 3.4 below, during the Support Periods and receipt of required Purchase Order(s) and Software Service Fees identified in Section 7.2 of this addendum, EPIC shall provide the following:
 - a. Software Access. EPIC will provide CUSTOMER’s Authorized Users with online access to the Simplify i3® Software Services software for the selected option in **Addendum 1**.
 - b. Software Updates. EPIC will provide software updates as defined in Section 4 of **Addendum 1**.
 - c. Technical Support. EPIC will provide Telephone Support, Email Support, and Web Support, during normal business hours, 8 AM to 5 PM Eastern Standard Time, Monday through Friday (excepting Federal Holidays). EPIC will also provide an After-Hours Emergency Support Line, and other support deemed appropriate by EPIC (as set forth in Section 2 of this addendum). EPIC’s support will apply to the following activities: troubleshooting issues, software modification, software optimization, error correction, and removal of discarded features; and
- 1.3 Exclusions. The following services are specifically excluded under this Service Agreement, unless otherwise specified as a separate service in the Agreement:
 - a. Support for user computers or electronic devices, including, but not limited to, for example, applying or installing updates on user computers;
 - b. Assistance with individual user questions related to third party software, computer hardware, networking, and other products or services not provided by EPIC;
 - c. Assistance with computer operating system questions not directly pertinent to the Simplify i3® Software Services software;

- d. CUSTOMER data debugging or correcting, except to the extent the error is a result of a deficiency related to the Simplify i3® Software Services and in that event, EPIC will classify such deficiency in accordance with the procedures for accessing technical support as listed in Section 2 of this Addendum;
 - e. Services requested as a result of CUSTOMER's conduct not pre-approved by EPIC, including, but not limited to, neglect, abuse, unauthorized modifications, unauthorized updates, and actions arising from conduct other than the ordinary and reasonable use by the CUSTOMER of the Simplify i3® Software Services;
 - f. Consulting regarding customizations created by CUSTOMER or third parties to function with Simplify i3® Software Services, unless specifically identified in **Addendum 1**;
 - g. Assistance with applications which are not part of a standard life cycle, such as preview, beta, or candidate releases; and
 - h. Questions such as software configuration, implementation, and walk-throughs.
- 1.4 Renewable Support Periods. Support Periods are designated in Section 7.2 of this addendum and are renewable, unless terminated as provided in Section 4 of this addendum. Renewals will include the provision of Simplify i3® Software Services as set forth in Section 1 of this addendum.
- 1.5 Authorized Callers. CUSTOMER may designate a limited number of Authorized Callers, up to five (5) to contact EPIC for Technical Support. CUSTOMER may replace Authorized Callers at any time by notifying EPIC in writing. Authorized Callers may be designated via email at the e-mail address provided by EPIC to CUSTOMER for this purpose. EPIC may limit the total number of Authorized Callers as may be reasonably necessary and may request an updated list of Authorized Callers.

2. Procedures for Accessing Technical Support

- 2.1 Technical Support. EPIC will provide Telephone Support, Email Support, and Web Support, during normal business hours, 8 AM to 5 PM Eastern Standard Time, Monday through Friday (excepting Federal Holidays). EPIC will also provide an After-Hours Emergency Support Line, and other support deemed appropriate by EPIC (as set forth in Section 2 of this addendum). EPIC's support will apply to the following activities: troubleshooting issues, software modification, software optimization, error correction, and removal of discarded features; and will comply with the timeframe for resolution of technical support issues as set forth in the table shown below.

Priority	Description	Response Goal	Resolution Goal
1 - Urgent	A support issue is categorized as Urgent when it causes a Complete System Failure, resulting in a complete work stoppage	Within 60 minutes of the issue being reported. The goal is to develop a resolution plan within 24 hours.	While resolution times vary depending on the exact issue and customer environment, Simplify i3® has a stated goal to resolve an urgent issue within 24 hours or provide a resolution plan with urgent issues within 24 hours of being reported. A resolution plan will detail the steps necessary to understand and possibly resolve the issue. The resolution of Urgent and Critical bugs will be taken up as the highest priority for the technical team. The Non-Critical and Minor issues will be resolved within the next one of two build cycles.
2 - Critical	A support issue shall be considered Critical when a critical failure in operations occurs due to the non performance of a critical process within the software, preventing the continuation of basic operations. Critical problems do not have a workaround. This classification does not apply to intermittent problems.	Within two hours of the issue being reported. The goal is to develop a resolution plan within five (5) business days.	
3 - Non-Critical	A support issue shall be considered Non-Critical when a non-critical failure in operations occurs; meaning the Solution is not performing one or more non-critical processes, but the system is still usable for its intended purpose or there is a workaround available for the reported problem.	Within four hours of the issue being reported. The goal is to develop a resolution plan within ten (10) business days.	
4 - Minor	A support issue will be considered Minor when the issue causes minor disruptions in the way tasks are performed, but does not affect workflow or operations. This may include cosmetic issues, general questions, and how to use certain features of the system.	Within 24 hours of the issues being reported. The goal is to develop a resolution plan within twenty (20) business days.	

- 2.2 Targeted Response Time: “Notification” means a communication to Simplify i3®’s help desk by means of: (i) Simplify i3® Web Support; (ii) Email Support; (iii) the placement of a telephone call.
- 2.3 Support Terms. Beginning on the Effective Date and continuing for twelve (12) months thereafter (“Initial Support Term”), Simplify i3® shall provide the ongoing Support Services described herein for the corresponding Fees outlined in Addendum 1. Upon expiration of the Initial Support Term, ongoing Support Services shall automatically renew, with customer paying for additional annual support periods, each a (“Renewal Support Term”). This renewal will continue until termination of this Agreement.

With respect to Simplify i3® support obligations, EPIC will use diligent, commercially reasonable efforts to respond to Notifications from CUSTOMER relating to the Solution identified in the Order in accordance with the following guidelines with the time period to be measured beginning with the first applicable “Telephone Support” hour occurring during EPIC’s receipt of the Notification. The targets for response timed and resolution times for items of varying priority are summarized in the table below.

3. Software Services Fees

- 3.1 Fees Amount. For Simplify i3® Software Services hereunder, CUSTOMER shall pay EPIC annual Software Services Fees as set forth in Section 7.2 below. The annual Software Services Fees for each twelve (12) month Support Period detailed in Section 7.2 shall be paid thirty (30) days prior to the start of each Support Period, unless otherwise specified by EPIC.
- 3.2 Software Services Fees Increase. Upon sixty (60) days written notice to CUSTOMER, EPIC may increase Software Services Fees for the Support Periods listed in Section 7.2 subsequent to the third Support Period; provided, however, that this increase shall not be

more than the lesser of the Cost of Living Index (CI) or 6% of the Software Services Fees for the previous Support Period.

- 3.3 Taxes. Software Services Fees are exclusive of any and all taxes, including, but not limited to, sales tax, use tax, value-added tax (VAT), customs, duties, or tariffs, and shipping and handling charges. If applicable, CUSTOMER shall pay taxes that may be imposed by law on the Software Services Fees and other fees due under the Agreement. EPIC acknowledges that CUSTOMER may be exempted from tax liability under applicable law and, if so, that CUSTOMER hereby does not subject itself to such liability as part of the Agreement.
- 3.4 Simplify i3® Software Services Renewal or Expiration. EPIC will provide CUSTOMER with a Notice of Expiration sixty (60) days before a Support Period expires and will provide an invoice to CUSTOMER for renewal at least forty-five (45) days prior to expiration. Simplify i3® Software Services will renew or expire as follows:
- a. Automatic Renewal. Unless modified, the current terms to access the Simplify i3® Software Services will auto-renew for another Support Period, upon receipt of the corresponding Software Services Fees payment prior to expiration of the current Support Period, as described in Section 7.2 below.
 - b. Renewal with Modifications. CUSTOMER shall notify EPIC of its intent to renew with modifications by providing a Purchase Order with such modifications to EPIC and issuing payment for the corresponding Software Services Fees prior to expiration of the current Support Period, as described in Section 7.2 below.
 - c. Expiration. If CUSTOMER does not renew, or EPIC does not receive a Purchase Order or payment for Software Services Fees as required, EPIC will continue to provide Simplify i3® Software Services until the current Support Period's expiration date. All access to Simplify i3® Software Services, including Online Services, maintenance and technical support, will cease with the expiration and non-renewal of the current Support Period. Simplify i3® Software Services may be reinstated under Section 3.5 below.
- 3.5 Reinstatement Fees. Subject to the Terms of the Agreement and this addendum, for a lapse in Support Period renewal, and if CUSTOMER account is current, EPIC will, at CUSTOMER's request, reinstate Simplify i3® Software Services as follows:
- a. Renewal Grace Period. For no additional fees, upon receipt of a Purchase Order and corresponding Software Services Fees payment from CUSTOMER, within thirty (30) days from the prior Support Period expiration date. The renewed Support Period will begin from the date EPIC receives the Purchase Order and payment for the corresponding Software Service Fees described in Section 7.2 below ("Reinstatement Date").
 - b. Reinstatement Fees. If CUSTOMER requests reinstatement after thirty (30) days from Support Period expiration date, Software Services Fees for reinstating Simplify i3® Software Services will be measured from the prior Support Period's expiration date. The new Support Period term will run from the date of the expiration of the prior Support Period. EPIC will reinstate Simplify i3® Software Services upon receipt from CUSTOMER of a Purchase Order and Software Services Fees described in Section 7.2 below.

4. Term and Termination

- 4.1 Agreement Term. The Agreement Term shall be subject to Section 3.3 of the Agreement.
- a. The Effective Date of the Agreement shall be upon the Delivery of Simplify i3® Software Services to the CUSTOMER, as per Section 3.4 of the Agreement. Delivery

date shall be as stated here 10/1/2023 or, if left blank, shall be as reflected in the CUSTOMER's first Purchase Order received by EPIC.

- b. The initial term of the Services Agreement in this addendum will begin on the date set forth in section 4.1(a) above for the first Support Period, and it will continue for twelve (12) consecutive months. Subject to the Agreement Terms, CUSTOMER may renew for subsequent Support Periods, as detailed in Sections 3.4 and 7.2 in this addendum.

4.2 Termination. Termination of this Service Agreement is subject to Article 5 of the Agreement.

5. Warranty, Disclaimer Remedy, and Limitation of Liability

All warranties, disclaimer remedies, and limitations of liability applicable to this Software Services Agreement are provided in and subject to Articles 6, 7 and 8 of the Agreement.

6. Miscellaneous

- 6.1 **Force Majeure.** EPIC shall not be held in default for its failure to perform, or its delay in performing, any obligation under the Agreement if this failure or delay arises from a Force Majeure event, as per Section 6.6 of the Agreement. Subject to Section 4 of this addendum, EPIC will accept a deferred payment of fees due in the event that EPIC is prevented from providing Simplify i3® Software Services to CUSTOMER as a result of a Force Majeure event.
- 6.2 **Notice.** All notices and applicable payments relevant to the Agreement, including addendums and exhibits, shall be issued as stated in Section 9.18 of the Agreement.
- 6.3 **Governing Law, Dispute Resolution.** Applicable law and dispute resolution terms relevant to this Services Agreement shall be as described in Section 9.10 of the Agreement.
- 6.4 **Intellectual Property and Data Confidentiality.** Subject to applicable law and Article 2 of the Agreement, EPIC will take reasonable measures to protect CUSTOMER data, sensitive, or confidential information provided to EPIC by CUSTOMER from inappropriate access by or distribution to third parties. CUSTOMER data may be loaded onto EPIC servers or employee computers for the purpose of testing the Simplify i3® Software Services software, database structure or database values, and related ESRI® software to resolve database or software performance issues, software enhancements and software defects. At no time will CUSTOMER data be distributed to individuals or organizations who are not EPIC employees, licensors or agents, without first receiving written approval from CUSTOMER. Upon written request by CUSTOMER, EPIC will delete all data provided by CUSTOMER Authorized Users.

7. CUSTOMER Contact Information and Software Services Fees

7.1 CUSTOMER Contact Information

CUSTOMER contact information, solely for the purpose of providing Simplify i3® Software Services and not for Notice, shall be entered below, if different from the information set forth for Notice in Section 9.18 of the Agreement.

CUSTOMER Name: Kissimmee Gateway Airport

CUSTOMER Contact: Shaun Germolus

Number and Street: 401 Dyer Blvd
City/State/Zip/Country: Kissimmee, FL 34741
Phone: 407-847-4600
Email: shaun.germolus@kissimmee.gov

7.2 Software Services Fees and Payment Schedule

Software Services Fees are due thirty (30) days prior to the onset of the first Support Period, and for each Support Period thereafter, thirty (30) days prior to the expiration date of the current Support Period, subject to the following schedule:

Support Period	Date From/To	List Price	Discount	Payment Amount Due
Year 1	10/01/2023 - 09/30/2024	\$40,000	\$24,400	\$15,600
Year 2	10/01/2024 - 09/30/2025	\$41,600	\$25,376	\$16,224
Year 3	10/01/2025 - 09/30/2026	\$43,264	\$26,291	\$16,873
Year 4	10/01/2026 - 09/30/2027	\$44,995	\$27,447	\$17,548
Year 5	10/01/2027 - 09/30/2028	\$46,795	\$28,545	\$18,250

THIS ADDENDUM IS PART OF THE AGREEMENT BETWEEN THE PARTIES AND IS SUBJECT TO ALL THE TERMS OF THE AGREEMENT, UNLESS OTHERWISE STATED. IF ANY TERM IN THIS ADDENDUM CONFLICTS WITH ANY TERMS IN THE AGREEMENT, THE ADDENDUM'S TERM WILL PREVAIL OVER THE CONFLICTING TERM OF THE AGREEMENT, WITHOUT VOIDING ANY OTHER TERMS OF THE AGREEMENT, EXCEPT THAT IF TERMS INCLUDED IN ANY ADDENDUM OF THE AGREEMENT CONFLICT WITH EACH OTHER, THE TERMS IN THE AGREEMENT'S MAIN DOCUMENT WILL PREVAIL.

Parties Initials and Date: _____

ADDENDUM 3

Third Party Acknowledgement Agreement

If CUSTOMER engages any third party as a contractor or consultant and desires to grant access to this individual to use the Simplify i3® Software Services as an Authorized User, this right may be granted subject to the Terms of the Agreement and the following conditions:

1. All use by a third party shall be in accordance with the Terms of the Agreement (including all addendums and exhibits therein);
2. The third-party user shall be considered an Authorized User of the Simplify i3® Software Services only after EPIC has granted such access;
3. Before accessing the Simplify i3® Software Services, or any component thereof, the third party shall agree in writing that: (a) the Simplify i3® Software Services software, and any other Simplify i3® Software Services component accessed, shall be used solely in accordance with the Terms of the Agreement and solely for CUSTOMER's benefit; and (b) the third party shall be liable to EPIC for any and all damages resulting from third party breach of the Agreement or any portion thereof;
4. Any breach of the Agreement by any third party will be deemed to be a breach by CUSTOMER;
5. CUSTOMER hereby agrees and acknowledges that any breach of the Agreement by any third party will be deemed to be a breach by CUSTOMER, and it will be liable for any and all actions or omissions of the third party with respect to the access and use of the Simplify i3® Software Services, as if such actions or omissions were the CUSTOMER's; however, this provision does not preclude CUSTOMER from seeking additional rights and obligations directly from the third party regarding the access and use of Simplify i3® Software Services;
6. Upon expiration or termination of the Agreement or any portion thereof, the rights transferred to any third party herein, including any licensing rights transferred for downloaded software, if applicable, shall immediately terminate;
7. Use of the Simplify i3® Software Services by each third-party Authorized User on CUSTOMER's behalf will require that CUSTOMER purchase access for each individual third-party user;
8. CUSTOMER will ensure third party compliance with the Terms of the Agreement, as it shall do with any other CUSTOMER Authorized User; and
9. Third party must sign a copy of this addendum, acknowledging that it has a copy of and has read the Agreement, including all addendums and exhibits, and agrees to the Terms.
10. CUSTOMER shall provide a signed copy of this addendum to each third party it grants access to use the Simplify i3® Software Services.
11. Executing this addendum does not automatically grant additional user access under the Agreement. CUSTOMER must formally agree to and request additional Authorized Users be added, as provided in Section C.3. of Addendum 1, and by submitting a copy of this addendum, signed by both, CUSTOMER and the third party, to EPIC at contracts@epicgroupllc.com.
12. This addendum may be executed by CUSTOMER and the third party in counterparts under the terms provided in Section 9.16 of the Agreement.

THIS ADDENDUM IS PART OF THE AGREEMENT BETWEEN THE PARTIES AND IS SUBJECT TO ALL THE TERMS OF THE AGREEMENT, UNLESS OTHERWISE STATED. IF ANY TERM IN THIS ADDENDUM CONFLICTS WITH ANY TERMS IN THE AGREEMENT, THE ADDENDUM'S TERM

WILL PREVAIL OVER THE CONFLICTING TERM OF THE AGREEMENT, WITHOUT VOIDING ANY OTHER TERMS OF THE AGREEMENT, EXCEPT THAT IF TERMS INCLUDED IN ANY ADDENDUM OF THE AGREEMENT CONFLICT WITH EACH OTHER, THE TERMS IN THE AGREEMENT'S MAIN DOCUMENT WILL PREVAIL.

By signing below, CUSTOMER and Third-Party hereby agree to comply with the Terms of the Agreement (including any and all addendums and exhibits).

FOR THIRD PARTY:

Third Party Name (Print)

Third Party Organization (If Applicable) (Print)

By:_____
Authorized Signature

Date:_____

FOR CUSTOMER:

CUSTOMER Representative's Name (Print)

By:_____
Authorized Signature

Date:_____

ITEM 7.O

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, junked or scrapped 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

Staff recommends Commission 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. February 2024 Asset Disposal

City of Kissimmee
Surplus Property Auction List
Feb-24 GIDEON AUCTIONEERS

AUCT#	ITEM & DESCRIPTION	MODEL	SERIAL #	CITY #
PR239	2012 FORD F150 PR239		1FTFX1CFXCFB87373	22051
PR264	2014 TORO WORKMAN PR264		314000576	23197
PD388	2006 FORD CROWN VIC PD388		2FAHP71W06X156615	19752
POLICE	MISC ITEMS FROM PD388			N/A
PD494	2009 FOR CROWN VIC PD494		2FAHP71V19X134277	24835
POLICE	MISC ITEMS FROM PD494			N/A
AIRPORT	COPIER - RICO AFICIO C2050		V971500844	22143
AIRPORT	COPIER - KONICA MINOLTA 16-1124163			23999
DEV SERV	PLOTTER - HP DESIGN JET T2500 15-1118649		CN4AV9H00J	23116
PARKS	COPIER - KONICA MINOLTA		A5C4011123498	23742
PARKS	COPIER - KONICA MINOLTA		A5C4011123495	23743
PARKS	POWERHEART AED		4329675	20460
PARKS	POWERHEART AED		5114190	N/A
PARKS	POWERHEART AED		4445948	25728
PARKS	POWERHEART AED		4445998	24406
PW-FACILITIES	4 - A/C UNITS CENTRAL SERVICES			N/A
PW-FACILITIES	4 - AIR HANDLERS			N/A

City of Kissimmee
Surplus Property Auction List
Feb-24 JUNKED

AUCT#	ITEM & DESCRIPTION	MODEL	SERIAL #	CITY #
CITY MANAGER	SCANNER - FUJITSU FI 613		420715	22308
CITY MANAGER	LARGE METAL COFFEE MAKER			N/A
HR	SMALL GRAY FILING CABINET			N/A
PW/FACILITIES	CITY HALL BREAKROOM MICROWAVE			N/A

City of Kissimmee
Surplus Property Auction List
Feb-24 SCRAP

AUCT#	ITEM & DESCRIPTION	MODEL	SERIAL #	CITY #
AIRPORT	STEEL BEAMS - OLD CINDER BLOCK HANGARS			N/A

ITEM 7.P

Mill Slough waterway debris removal contract award

Request

Approval to award the contract for the removal of debris along the Mill Slough waterway to Crowder Gulf (Contract #20230037) for \$218,000.

Explanation

On August 18, 2023, the City was awarded a \$266,067.29 grant from the United States Department of Agriculture (USDA), Natural Resources Conservation Service (NRCS) Emergency Watershed Protection Program. The City has a match of non-federal Funds of \$80,140.75.

On January 16, 2024, the City accepted the award of the grant. Due to the time constraints of the grant, staff is requesting to use the Disaster Recovery and Debris Management contract with Crowder Gulf (Contract #20230037) for this project to meet the May 31, 2024, completion of the tasked deadline set by the NRCS grant (Contract #20240222). The contractor will remove Hurricane Ian debris from two main locations along Mill Slough waterway, which will include an estimated 20 fallen/dead trees and debris. The task also includes the hauling and the disposal along with any fees associated with the work.

Financial Information

Account #	Project #	Increase / Decrease	Budget	Actual
15045206-506393	SW24XX	Decrease	\$346,208.04	\$218,000

Financial Summary:

Adequate funds are available in the Stormwater Utility Fund to cover the cost of the project.

Recommendation

Approval to award the removal of debris along the Mill Slough waterway to Crowder Gulf in the amount not to exceed \$218,000.

REQUESTED CITY COMMISSION ACTION:

Approve

Department: Public Works & Engineering
Presenter:

Attachment(s):

1. Proposal - Kissimmee - Mill Slough 01092024
City of Kissimmee

2. Work Order

Nagel Altrui, CFM
Street and Stormwater Manager
City of Kissimmee Public Works & Engineering
nagel.altrui@kissimmee.gov

January 9, 2024

RE: Proposal for debris removal – Mill Slough

Nagel,

Please accept the following proposal to complete debris removal from two locations on Mill Slough.

Location 1: Mill Slough Park – Behind 1452 Oak Leaf Lane – Approx. eight fallen trees
Location 2: Intersection of Mill Run Blvd, and Eldra Drive – Approx. eight fallen trees and one root ball.

Total Lump Sum Price: \$218,000.00

Price includes removal of trees and debris, hauling to disposal location, and disposal fees.
Quote is based on removal of up to 20 trees.

Please review the rates and sign below. If you have any questions, please feel free to contact Reid Loper, 678-477-3755 or rloper@crowdergulf.com.

Best Regards,



Reid Loper
Vice President
CrowderGulf, LLC.

Sign: _____ Date: _____
Signed and Accepted / City of Kissimmee, FL.



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

Work Order #:1

Purchase Order#:

12/22/2023

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

DESCRIPTION OF ASSIGNMENT:

Removal of debris from Hurricane Ian from two main location along Mill Slough. The removal will include an estimated 20 fallen/dead trees and debris along the waterway. The task also includes the hauling and the disposal along with any fees associated with work.

FORM OF COMPLETED DELIVERABLES:

Complete of the debris removal from Hurricane Ian.

BASIS OF PAYMENT: Services shall be made on the basis of Lump Sum method in accordance with the Scope of Services, the total not to exceed \$ 218,000.00 without further authorization from the City of Kissimmee.

ESTIMATED DATE OF COMPLETION: This assignment shall be completed within 152 calendar days from the receipt of the official Notice to Proceed from the City.

TASK	FEE
1) Debris removal – Mill Slough	\$218,000.00
2)	
3)	
4)	
5)	
	\$218,000.00
Contract Dollars:	\$218,000.00
NET Dollars for this Work Order/Addendum (Addition/Subtraction):	\$0.00
CONTRACT TOTAL DOLLARS:	\$218,000.00

Accepted By: Reid Loper

(Signature)

Requested By: Nagel Altru

(Signature)

Title/Position: Vice President

Approved By: Nikunj Datta

Engineer Manager

(Signature)

City Commission Approval Date:

(If Required)

Approved By: Ashley L. Willey

Director, PW&E

(Signature)

Public Works and Engineering

101 Church Street, Suite 301 | Kissimmee, Florida 34741 | 407.518.2170 | Fax 407.518.2165

ITEM 7.Q

Consent to Sub-Lease Between Sunstate Aviation Holdings, LLC and Sunstate Aviation Flight School, LLC

Request

Approval of Consent to Sub-Lease between Sunstate Aviation Holdings, LLC and Sunstate Aviation Flight School, LLC

Explanation

Sunstate Aviation Holdings, LLC, has a current ground rental lease at the Kissimmee Gateway Airport to operate limited commercial aviation services. One such service is flight instruction. Sunstate Aviation Holdings, LLC, created a separate organization for these services and has registered the business as Sunstate Aviation Flight School, LLC. Sunstate Aviation Holdings, LLC recently sold Sunstate Aviation Flight School, LLC, to the Academy of Aviation and will continue offering flight instruction d/b/a Sunstate Aviation Flight School, LLC. Attached is an introductory letter from President/Owner Christopher Richards.

Recommendation

Approval of Consent to Sub-Lease between Sunstate Aviation Holdings, LLC and Sunstate Aviation Flight School, LLC

REQUESTED CITY COMMISSION ACTION:

Approve

Department: Airport

Presenter:

Attachment(s):

1. (S) Sunstate Consent to Sub-Lease Munis Contract No. 20240223
2. AOA Letter of Intent 2024

AGREEMENT FOR CONSENT TO SUBLEASE

THIS AGREEMENT, dated as of this 8th day of December, 2023, by and between the City of Kissimmee, a municipal company, hereinafter called "City", SunState Aviation Holdings LLC hereinafter referred to as "Lessee," and SunState Aviation Flight School LLC, hereinafter referred to as "Sublessee".

WITNESSETH:

WHEREAS, Lessee and Sublessee have entered into a sublease agreement, subject to City's approval, under which Sublessee would occupy certain space currently under lease from City to Lessee; and

WHEREAS, pursuant to applicable provisions of that certain Lease Agreement dated February 9th, 2010 between the City and Lessee, hereinafter referred to as "Primary Lease", City is willing to grant approval of the proposed sublease, provided that Sublessees' use and occupancy of such space shall be subject to all of the terms, conditions, and limitations of Lessee's Agreement with City and to the terms and conditions hereinafter stated;

NOW, THEREFORE, in consideration of the premises and other good and valuable considerations, the receipt of which each of the parties hereto hereby acknowledges, City hereby grants its approval Lessee to enter into that certain sublease agreement by and between it and Sublessee, a copy of which is attached hereto as Exhibit "A", hereinafter referred to as "sublease", conditioned upon the acceptance by Lessee and Sublessee (as evidenced by their execution hereof) of the following terms and conditions:

1. That Lessee does hereby agree that, notwithstanding this approval of the Sublease, Lessee shall remain fully liable to City for all of its obligations under the Primary Lease (an any and all addenda and amendments thereto) with respect to the space being subleased to Sublessee under the Sublease, such space being hereinafter referred to as the "Subleased Space".
2. That Sublessee shall be bound by and that its use and occupancy shall be subject to all applicable terms and conditions of the Primary Lease, as the same may be amended from time to time, and that the terms, conditions and limitations contained in said Primary Lease shall supersede any and all provisions of the Sublease between Lessee and Sublessee which are now or may hereafter be in conflict therewith. Sublessee acknowledges that it has received a copy of the Primary Lease, and that it has reviewed the same prior to its execution hereof.

3. That Sublessee's use and occupancy of the Subleased Space shall at all times be subject also to all of the terms, conditions and limitations of Lessee's Agreement with City. The Sublessee shall comply with all the laws, rules, regulations, of any Federal, State, County, and local jurisdiction.
4. That any violation by Sublessee of the terms and provisions of this Agreement, of the Primary Lease between City and Lessee or of Sublessee's Agreement with Lessee shall constitute a default by Sublessee under this Agreement in which event City may terminate forthwith both this Agreement and the Sublease approved hereunder, with or without the consent of Lessee, by giving written notice thereof to the Sublessee and Lessee. A default of the Primary Lease by the Lessee shall likewise constitute a default of the Sublease Agreement. Except as otherwise expressly provided herein, Sublessee hereby waives any notice of default from Lessee or City as a prerequisite to surrender of possession of the subleased Space, including, without limitation, the three-day notice provided for under Section 83.20 Florida Statutes. Upon a default the sublessee shall become a tenant of sufferance.
5. That Lessee and Sublessee agree that, notwithstanding any provisions to the contrary contained in the sublease, the term of the Sublease shall automatically terminate upon the earlier of (i) the expiration of prior termination or the Primary Lease (including any extensions thereof), or (ii) the termination of this Agreement. Sublessee shall have no right to pledge or assign its interest in or to further sublet any portion of, the subleased Premises.
6. Waiver of Jury Trial: Attorney's Fees. It is mutually agreed by and between Transferee and Transferor that each of the parties do hereby waive trial by jury in any action, proceeding or claim which may be brought by either of the parties hereto against the other on any matters concerning or arising out of this Agreement. Venue of all actions shall be Osceola County, Florida. In any such action the prevailing party shall be entitled to an award of attorney's fees, including those incurred in appellate proceedings.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their duly authorized officers as of the day and year first above written.

CITY OF KISSIMMEE

Mayor-Commissioner

ATTEST:

City Clerk



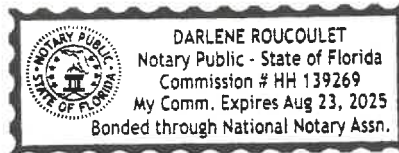
LESSEE Signature

Steve Graham

Printed Name

Managing Member

Title



Corporate Seal


Notary Seal (unincorporated only)

Approved as to Form and Legality
This ____ day of _____, 20____

By: _____
City Attorney



SUBLESSEE Signature

Christopher Richards

Printed Name

Managing Member

Title

Corporate Seal


Notary Seal (unincorporated only)

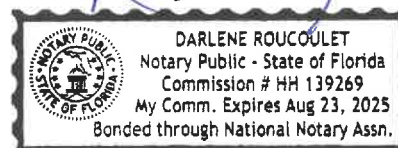


EXHIBIT A
SUB-LEASE

KISSIMMEE GATEWAY AIRPORT
SUBLEASE AGREEMENT

THIS KISSIMMEE GATEWAY SUBLEASE AGREEMENT (the "**Sublease**") is made this 8th day of December, 2023 (the "**Commencement Date**") by and between **SUNSTATE AVIATION HOLDINGS, LLC** a limited liability company existing by and under the authority of the laws of the State of Florida, whose business address is 3008 W. Patrick Street, Kissimmee, FL 34741 (the "**Lessee**" or "**Tenant**") and **SUNSTATE AVIATION FLIGHT SCHOOL, LLC**, a limited liability corporation existing by and under the authority of the laws of the State of Florida (the "**Sub-Lessee**").

WITNESSETH

WHEREAS, the Lessee has entered into that certain Lease Agreement (hereinafter "**Primary Lease**") dated February 9, 2010, **Exhibit "A"** with the City of Kissimmee, a municipal corporation of the State of Florida (hereinafter the "**City**"), for property at the Kissimmee Gateway Airport, (hereinafter the "**Leased Premises**"); and

WHEREAS, the CITY is willing to grant approval of Sublease Agreements, provided that Sublessees' use and occupancy of such space shall be subject to all of the terms, conditions, and limitations of Lessee's Primary Lease Agreement with CITY and those terms and conditions are a binding part of this Sublease Agreement.

NOW THEREFORE, in consideration of the premises and of the mutual covenants contained herein and for other good and valuable consideration, the parties hereto agree as follows:

ARTICLE 1
LEASED PREMISES

The Lessee hereby subleases to the Sublessee and the Sublessee subleases from the Lessee the Leased Premises more particularly described in **Exhibit "B"** which is attached hereto and made a part hereof by reference.

Sublessee acknowledges that the City reserves the right to reduce or otherwise adjust the area included in the Leased Premises as determined by the for construction of Airport Projects, including, but not limited to the future Air Traffic Control Tower construction. If the rent is based on the area of the Leased Premises, then the rent shall be reduced in proportion to the reduction of the total area.

Sublessee acknowledges that it is accepting the Leased Premises and the improvements located thereon "as is" and that the Lessee has made no representations or warranties respecting the suitability thereof for Sublessees purposes and that, except as specifically provided herein, the Lessee has no obligation whatsoever to repair, maintain, renovate or otherwise incur any cost or expense with respect to the Leased Premises, any leasehold improvements, or fixtures, furnishings or equipment installed or used on the Leased Premises. Lessee does not warrant the availability of any utilities nor when they might be available.

ARTICLE 2

USE

The Leased Premises and the Facility shall be used by Sublessee for the purpose of conducting Categories "B," "D," "E" and "F" activities in strict accordance with the City's Minimum Aeronautical Service Standards for Aeronautical Sublessees at Kissimmee Airport. Storage of boats, watercraft, recreational vehicles, campers, and non-aviation materials/equipment/vehicles, unless approved by the Director of Aviation, is not allowed.

ARTICLE 3

TERM

This Sublease term shall commence on December 8th, 2023, and terminate on February 9th, 2040 (the "**Term**").

Sublessee is hereby granted an exclusive first option to renew this Sublease upon all the existing terms and conditions, excluding rent for ground and improvements for one (1) additional term of ten (10) years (the "**Option Term**"). This Option Term shall be exercised by written notice to the Lessee not less than one hundred twenty (120) days prior to expiration of the existing Term.

In the event Sublessee shall continue to occupy the Leased Premises beyond the Term of this Sublease after Lessee gives written notice to vacate, such holding over shall not constitute a renewal of this Sublease but shall be month-to-month tenancy only. The amount of rent to be paid during this holdover period shall equal one and a half (1-1/2) times the normal monthly rent chargeable at the termination of the Sublease.

ARTICLE 4

RENT

4.1. Base Rent; Late Charge; Sales Tax. Commencing on the Commencement Date, Sublessee agrees to pay Lessee \$16,500 per month as base rent (the "**Base Rent**") for the first year of the Sublease. The Base Rent is due on or before the first day of each and every month during the Term of the Sublease, plus the prorated amount of Base Rent for any partial month if the Commencement Date of this Sublease is other than the first day of the month. In addition, Sublessee shall, during the entire Term of the Sublease, and any renewal terms, be responsible for the payment of Operating Expensesⁱ (the Base Rent and Operating Expenses shall be considered Rent as that term is used in Florida Statute Chapter 83 and shall sometimes be collectively referred to as the "**Rent**"). Unless otherwise expressly provided, all monetary obligations of Sublessee to Lessee under this Sublease, of any type or nature, other than Base Rent, shall be designated as "**Additional Rent**."

In the event the monthly Rent payment is not paid within five (5) days after it is due, Sublessee agrees to pay a late charge of five (5%) percent of the amount of the payment due. Sublessee further agrees that the late charge imposed is fair and reasonable, complies with all laws, regulations and statutes, and constitutes an agreement between Lessee and Sublessee as to the estimated compensation for costs and administrative expenses incurred by Lessee due to the late payment of Rent by Sub lessee. Sub lessee further agrees that the late charge assessed pursuant

to this Sublease is not interest, and the late charge assessed does not constitute a lender or borrower/creditor relationship between Lessee and Sublessee and may be treated by Lessee as Additional Rent owed by Sublessee. The late charge is not intended to cover Lessee's attorneys' fees and costs relating to delinquent Rent. Acceptance of any late charge shall not constitute a waiver of Sublessee's default with respect to such late payment by nor prevent Lessee from exercising any other rights or remedies available to Lessee under this Sublease. Sublessee shall, together with each payment of Rent, pay to Lessee all sales, use or other taxes pertaining to the Rent which shall be remitted by Lessee to the Florida Department of Revenue or other appropriate taxing authority. No security or guaranty which may now or hereafter be furnished to Lessee for the payment of Rent due hereunder or for the performance by Sublessee of the other terms of this Sublease shall in any way be a bar or defense to any of Lessee's remedies under this Sublease or at law. Sublessee's covenant to pay Rent and all other amounts due under this Sublease (including, without limitation, Base Rent and Additional Rent) is independent of all other covenants contained in this Sublease.

4.2. Ownership, operation, management and maintenance of the Building and Property. By way of explanation and clarification, but not by way of limitation, Operating Expenses will include the costs and expenses incurred for the following: Real Estate Taxes. The term "Real Estate Taxes" shall mean all ad valorem and non-ad valorem taxes, assessments, and other charges by any governmental authority, including real and personal property taxes, transit and other special district taxes, franchise taxes, and solid waste assessments that are imposed on the Building on the Leased Premises or on any part or all of the Leased Premises. If a tax shall be levied against Lessee in substitution in whole or in part for the Real Estate Taxes or otherwise as a result of the ownership of the Leased Premises, then the other tax shall be deemed to be included within the definition of "Real Estate Taxes." "Real Estate Taxes" shall also include all costs incurred by Lessee in contesting the amount of the assessment of the Building or Property made for Real Estate Tax purposes, including attorneys', consultants', and appraisers' fees; trash and garbage removal (including dumpster rental) and recycling; security; repairs, maintenance, and alterations of the Leased Premises; amounts paid under easements or other recorded agreements affecting the Leased Premises; improvements required by law; improvements in security systems; landscaping, including fertilization and irrigation supply and maintenance; parking garage and surface parking area maintenance and supply; all utilities servicing the Leased Premises; service and maintenance contracts for the Leased Premises; legal, accounting, and administrative costs; maintenance, repair and replacement of the HVAC systems; and a fuel flowage fee for each gallon of aviation fuel delivered to the Leased Premises each calendar month.

4.3. Base Rental Adjustment. Lessee and Sublessee 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. Commencing on the first anniversary of the Commencement Date (provided such anniversary date falls on the first day of the month, otherwise on the first day of the following month) and each and every anniversary thereafter, the Base Rent shall increase in the same proportion as said price index has increased when compared with the price index with the previous year to the then current year, including the Option Term, if exercised. In no event, however, shall the Annual Rent increase be more than ten percent (10%) on any Adjustment Year.

4.4 Payment Without Notice or Demand. The Rent called for in this Sublease shall be paid to Lessee without notice or demand, and without counterclaim, offset, deduction, abatement, suspension, deferment, diminution or reduction. Sublessee hereby waives all rights now or hereafter conferred by statute or otherwise to quit, terminate or surrender this Sublease or the Leased Premises or any party thereof, or to any offset, deduction, abatement, suspensions, deferment, diminution or reduction of the Rent on account of any such circumstances or concurrence.

4.5 Place of Payment of Rent. All payments of Rent shall be made and paid by Sublessee to Lessee at 3008 Patrick Street Kissimmee, FL 34741 or at such other place as Lessee may, from time to time, designate in writing to Sublessee. All Rent shall be payable in current legal tender of the United States, as the same is then by law constituted. Any extension, indulgence, or waiver granted or permitted by Lessee in the time, manner or mode of payment of Rent, upon anyone (1) or more occasions, shall not be construed as a continuing extension, indulgence or waiver, and shall not preclude Lessee from demanding strict compliance herewith.

ARTICLE 5 OBLIGATIONS OF SUBLESSEE

5.1 Taxes, Assessments and Fees. Sublessee shall, at its own expense and at all times during the term of this Sublease, pay all lawful taxes and assessments and fees levied against the Leased Premises as well as all taxes and assessments levied against the personal property used by Sublessee in its operation on the Leased Premises. None of the terms, covenants or conditions of the Sublease shall be construed as a release or waiver on the part of the Lessee of the right to assess, levy or collect any license, personal, intangible, occupation or other tax which shall be lawfully imposed on the business or property of Sublessee.

5.2 Maintenance and Repair. Sublessee shall be solely responsible, at its own cost and expense, for performing all maintenance, repair and replacement of the Leased Premises and all improvements located on the Leased Premises (including all paved areas, whether now existing or hereinafter constructed) required to keep the same in attractive, safe and sanitary condition, and all such maintenance, repair and replacement shall be of quality at least equal to the original in materials and workmanship. All exterior paint colors shall be subject to the prior written approval of the Lessee.

5.3 Utilities. Sublessee shall be solely responsible for and pay all charges for utilities to the Leased Premises, including but not limited to all charges pertaining to the providing of sewer, water, gas, electric, and telephone service.

5.3 Trash and Garbage Removal. Sublessee shall maintain the Leased Premises in a safe, neat and slightly condition and 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 of the airport property. Sublessee shall provide a complete and proper arrangement for the adequate sanitary handling and disposal, of all trash, garbage and other refuse caused as a result of its operation. Sublessee shall provide and use suitable- covered metal receptacles located in an area designated by Lessee 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.

5.4 Access. Sublessee and their employees and invitees shall, subject to the reasonable rules and regulations of the Lessee and the City, have the right to access, ingress and egress to and from the Leased Premises.

5.5 Security. Sublessee has control access to the Leased Premises and is responsible for limiting access to authorized individuals only. All Sublessee employees and invited persons will ensure gates are secured at all times, to include blocking automatic gates, upon egress and ingress, until the gates are securely closed. Sublessee will comply with all reasonable Lessee requests to preserve and ensure airport perimeter security.

5.6 Minimum Standards/Rules and Regulations. Sublessee covenants and agrees to observe and comply with all Minimum Standards for the Airport as the same may now exist and as they hereinafter be amended or revised, and with all reasonable rules and regulations of the Lessee which now exist or may hereinafter promulgated from time-to-time governing safe conduct on and operations at the Airport and the safe use of its facilities. Sublessee shall be responsible for all expenses in connection with the use of the Leased Premises and exercise of the operating rights granted.

5.7 Non-Discrimination. The Sublessee for itself, its personal representatives, successors in interest, and assigns, as a part of the consideration thereof, does hereby covenant and agree that (1) no person on the grounds of race, creed, color, national origin, sex, age, or handicap shall 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 therein, no person on the grounds of race, creed, color, national origin, sex, age, or handicap shall be excluded from participation in, denied the benefits of or otherwise be subjected to discrimination; (3) that the Sublessee shall use the Leased Premises in compliance with all other requirements imposed by or pursuant to Title 49, Code of Federal Regulations, Department of Transportation, Subtitle A, Office of the Secretary, Part 21, Non-Discrimination in Federally- assisted programs of the Department of Transportation Effectuation of Title VI of the Civil Rights Act of 1964 and as said Regulations may be amended.

The Sublessee agrees to furnish service on a fair, equal, and nondiscriminatory basis to all users thereof and to charge fair, reasonable, and not unjustly discriminatory prices for each unit or service, provided that the Sublessee may be allowed to make reasonable and nondiscriminatory discounts, rebates or other similar types of price reductions to volume purchasers.

5.8 Handling and Storage of Petroleum Products and Other Materials By Sublessee. Sublessee shall handle, use, store and dispose of fuel petroleum products, and all other materials (including but not limited to hazardous materials) owned or used by it in accordance with all applicable federal, state, local, Lessee, statutes, 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 Sublessee, the Sublessee shall be responsible for the cleanup, containment and otherwise abatement of such contamination at Sublessee's sole cost and expense. Further, Sublessee shall notify the Lessee and appropriate governmental agency of such occurrence immediately. Should the Sublessee fail to do so, the Lessee may take any reasonable and appropriate action in the Sublessee's stead. The cost of such remedial action by the Lessee shall be paid by the Sublessee.

5.9 Indemnity and Insurance By Sublessee. Sublessee further covenants and agrees that Sublessee shall indemnify and save forever harmless the Lessee from any and all claims for damages of any kind or nature which may hereafter be made against Lessee on account of any personal injuries (including wrongful death) or property damage resulting from the use of the Leased Premises, and for his purpose Sublessee shall procure and maintain in effect for the term of this Sublease, with insurance carriers acceptable to Lessee, Workers Compensation Insurance as required by the statutes of the State of Florida, or adequate Employee's Liability Insurance; Public Liability; Property Damage covering all of Sublessee's activities and the Leased Premises. Policy limits will be as set forth in the Minimum Aeronautical Service Standards for Aeronautical Sublessees at Kissimmee Gateway Airport. The Sublessee shall maintain such insurance with insurance underwriters authorized to do business in the State of Florida satisfactory to the Lessee. Coverage is to be written on the broadest liability form including but not limited to products liability, hangar keepers' liability, blanket contractual, independent contractors and aviation non-ownership. All policies shall include the Lessee as an additional insured as its interests appear. Sublessee shall furnish Lessee with a Certificate of Insurance from the Sublessee's carrier indicating that there is such insurance coverage as hereinbefore provided, and if requested by the Lessee, shall submit to the Lessee, a true copy of the above insurance coverage. Said Certificate of Insurance shall provide that the policy of policies cannot be canceled or materially modified except upon thirty (30) days advance written notice by registered or certified mail to the Lessee. The dollar amount of liability insurance coverage shall be reviewed on a periodic basis and modified, if necessary, based upon escalating costs and limits for the uses as provided in this Sublease as compared to similar airports.

5.10 Compliance With Law, Rules, and Regulations. Sublessee shall, at its sole expense, observe and comply with the statutes, rules and regulations of all governmental authorities applicable to the conduct of Sublessee's business and in addition, those rules, ordinances, and regulations of the Lessee not inconsistent with the provisions of this Sublease. Any penalties and costs levied as a result of the Sublessee's breach of any of the above shall be borne by the Sublessee.

ARTICLE 6 OBLIGATIONS OF LESSEE

6.1 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 the U.S. Government under the Federal Airport Act.

6.2 Entry and Inspection. Lessee and City shall have the right to enter upon and inspect the Leased Premises at any reasonable time during the term hereof for any purpose necessary, incidental to or connected with the performance of its obligations hereunder or in the exercise of its governmental functions and, upon reasonable notice to Sublessee. The Lessee shall not, during the course of any such inspection, unreasonably interfere with the Sublessees use and enjoyment of the Leased Premises.

6.3 Maintenance By Lessee. Sublessee will maintain and keep the Leased Premises in good repair except for the maintenance obligations of Sublessee as set forth in this Sublease. In no event, however, shall Lessee be required to maintain or repair damage caused by the negligent or willful act of Sublessee, its agents, servants, invitees or customers. However, if due to any negligent or willful act by the Sublessee, its agents, servants, invitees or customers, there is a need for maintenance or repair of damage, then Sublessee shall do such maintenance or repair in a prompt, reasonable manner.

ARTICLE 7 DAMAGE OR DESTRUCTION OF LEASED PREMISES

If the Leased Premises shall be partially damaged by fire, flood, lightning, windstorm or other force of the elements or by the public enemy or from any cause not brought about by the Sublessee so as to adversely affect the Sublessee's use of its exclusive space therein even though not rendering such space unleaseable, such damage shall be promptly repaired with due diligence by the Sublessee at its own cost and expense. If damage caused shall be so extensive as to render the Sublessee's exclusive space unleaseable, but nevertheless capable of being repaired and made unleaseable within a period of sixty (60) days, the Sublessee shall repair the damage with due diligence at its own cost and expense. In case the Leased Premises are completely destroyed or so damaged that it will and does remain unleaseable for a period of more than sixty (60) days, either party shall have the right to terminate this Sublease upon written notice to the other within sixty (60) days from the date of such damage or destruction. Nothing in this Article shall apply to damages to the Leased Premises caused by the acts of the Sublessee, and Sublessee shall, at its own most and expense, promptly repair with due diligence all such damages resulting from its act of said character.

ARTICLE 8 TERMINATION OF SUBLEASE ASSIGNMENT AND TRANSFERS

8.1 Termination. This Sublease shall terminate without action by either party at the end of the Term or any renewal term.

8.2 Termination By Sublessee. Sublessee may terminate this Sublease after the happening of one or more of the following events: The default by Lessee in the performance of any covenant of the Primary Lease required to be performed by Lessee and the failure of Lessee to remedy such default for a period of sixty (60) days after receipt from Sublessee or written notice to remedy the same.

8.3 Exercising Sublessee's Rights of Termination. Sublessee may exercise such right of termination by written notice to Lessee at any time after the occurrence of any such events and the Sublease shall terminate as of the date notice is received by the Lessee.

- 8.4 Termination By Lessee. Lessee may terminate this Sublease in the event Sublessee shall:
- A. Be in arrears in the payment of the whole or any part of the rent or other payments required for a period of thirty (30) days after the time such payments become due;
 - B. Make a general assignment for the benefit of creditors;
 - C. Filing a voluntary or involuntary petition in bankruptcy;
 - D. Abandon the Leased Premises;
 - E. Default in the performance of any of the covenants and conditions required herein (except rental payments) to be kept and performed by Lessee, and such default continues for a period of thirty (30) days after receipt of written notice from Lessee or City of said default;
 - F. Appointment of receiver for Lessee; or
 - G. Violation of City or Lessee rules and regulations not inconsistent with the provisions of this Sublease and such default continues for a period of thirty (30) days after receipt of written notice from Lessee of said default.

8.5 Waiver of Statutory Notice to Quit. In the event Lessee exercises its option to terminate this Sublease upon the occurrence of any of the events set forth in this Article 8, a notice of termination shall be sufficient to terminate this Sublease. Upon such termination, Lessee agrees that it will forthwith surrender possession of the Leased Premises to Lessee. In this connection, Lessee expressly waives the receipt of any notice to quit or notice of termination which would otherwise be given by Lessee.

8.6 Subletting and Assignment. Except for the maintenance and storage of aircraftⁱⁱ, Lessee may not rent or sublease the Leased Premises.

ARTICLE 9 RIGHTS UPON TERMINATION

9.1 Leased Premises. It is the intent of this Sublease that the Leased Premises shall be and remain the property of Lessee during the entire term of this Sublease and thereafter.

9.2 Removal of Personal Property. At the termination of the Sublease for any reason, after payment of all rents and charges, Sublessee shall have the right, within thirty (30) days thereafter to remove any of its fixtures, furniture, machinery, equipment, and signs installed on the Leased Premises by Sublessee but shall repair at its own expense all damage caused by such removal. On termination of this Sublease, from whatever cause, the Lessee shall have the right, upon thirty (30) days notice, to require the Sublessee at the Sublessee's own expense to remove any of its fixtures, structures, additions and improvements, as well as all furniture, machinery, equipment and signs installed on the Leased Premises and the Sublessee shall repair at the Sublessee's own expense all damage to the Leased Premises caused by such removal. Any such personal property not removed by the Sublessee within such time shall become the property of the Lessee.

ARTICLE 10
GENERAL PROVISIONS

10.1 Lessee 's Reserved Rights.

- A. Lessee at its sole discretion reserves the right to further develop or improve the aircraft operating area of the Airport as it sees fit and to take any action it considers necessary to protect the aerial approaches of the Airport against obstructions, together with the right to prevent Sublessee from erecting or permitting to be erected, any building or other structure on the Airport which, in the opinion of Lessee would limit the usefulness of the Airport or constitute a hazard to aircraft.
- B. This Sublease shall be subordinate to the provisions of the existing Primary Lease between the Lessee and the City, and any existing or future lease between Lessee, the City and the United States, relative to the operation or maintenance of the Airport, the terms and execution of which have been or may be required as a condition precedent to the expenditure or reimbursement to Lessee for federal funds for the development of the Airport.
- C. Non-interference With Operation of Airport. Sublessee by accepting this Sublease expressly agrees for itself, 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 City and Lessee reserve the right to enter upon the Leased Premises and cause the abatement of such interference at the expense of Sublessee.
- D. Lessee 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 Sublessee in this regard.

10.3 Non-Exclusive Right. Nothing contained in this Sublease shall be construed to grant or authorize the granting of an exclusive right to provide aeronautical services to the public as prohibited by section 308 (a) of the Federal Aviationⁱⁱⁱ Act of 1958, as amended, and the Lessee reserves the right to grant to others the privilege and right of conducting any or all activities of an aeronautical nature.

10.4 Waiver of Jury Trial. Attorney's Fees and Costs. It is mutually agreed by and between Sublessee and Lessee 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 Sublease. In any such action the prevailing party shall be entitled to an award of attorney's fees and costs, including those incurred in appellate proceedings.

10.5 Taxes, Licenses, and Permits. Sublessee shall pay all personal property taxes which may be assessed against equipment, merchandise, or other personal property belonging to the Sublessee 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 Sublease, such taxes shall be paid by Sublessee. Sublessee shall obtain and pay for all licenses, permits, fees, or other authorization or charges as required under federal, state or local laws and regulations insofar as they are necessary to comply with the requirements of this Sublease and the privileges extended hereunder.

10.6 Paragraphs and Headings. The paragraphs and headings are for convenience in reference and are not intended to define or limit the scope of any provision of this Sublease.

10.7 Notice. Whenever any notice is required by this Sublease to be made, given or transmitted to the parties, such notice shall be served by Certified Mail, Registered Mail, Federal Express, with return receipt, addressed to:

To Lessee:

Sunstate Aviation Holdings, LLC
Attention: Mr. Steven Graham
3008 W. Patrick Street
Kissimmee, FL 34741

With Copy To:

Michele Diglio-Benkiran, Esquire
Legal Counsel, P.A.
13330 W. Colonial Dr. #110
Winter Garden, FL 34787
Michele@LegalCounselPA.com

To Sublessee:

Sunstate Aviation Flight School, LLC
Attention: Mr. Christopher Richards
3008 Patrick Street
Kissimmee, FL 34741

10.8 Florida Law & Venue. This Sublease shall be interpreted in accordance with the laws of the State of Florida.

10.9 Successors and Assigns. All terms, covenants and conditions contained in this Sublease shall be binding upon and shall inure to the benefit of the successors and assigns of the parties hereto.

10.10 Time Is Of The Essence. Time is of the essence in the performance of all terms, covenants and conditions set forth in this Sublease.

ARTICLE 11
ENVIRONMENTAL MATTERS

11.1 Storage Tanks.

- A. Sublessee agrees to comply with all applicable federal, state and local government regulations regarding above and underground storage tanks effective on the date of execution of this Sublease and as hereafter may be enacted or amended. Specifically, Sublessee 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 appropriate federal, state 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, Sublessee agrees to properly record, maintain and reconcile all inventory records required by appropriate federal, state, and local regulations and to make sure records available for inspection at the Leased Premises at all times during normal business hours.
- B. Sublessee shall comply with the financial responsibility requirements set forth in 40 U.S.C. S280 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 Sublessee on or adjacent to the Leased Premises. Such insurance must be maintained in effect during the entirety of the term of this Sublease and proof of such insurance must be provided to Lessee prior to the operation or installation of any regulated above or underground petroleum storage tank on 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.

11.2 Indemnification. Sublessee agrees to indemnify and hold the Lessee, and the members, officers, employees and agents of each, harmless from and against all liabilities, claims, judgment, costs, damages, fines penalties and expenses, including those which arise as the result of administrative action, which may accrue against, be charged to or recovered from the foregoing by reason or on account of damages to or destruction of the property of the Lessee, or the property of, injury to or death of any person, resulting or arising from Sublessee's use, occupancy, operation or maintenance of the Leased Premises, including the work, acts or omissions of its officers, agents, employees, contractors, subcontractors, operators and sublessees, except when proximately caused by the Lessee's negligence or by the joint negligence of the Lessee and any person other than Sublessee, its officers, agents, employees, contractors, subcontractors, operators or sublessees. Lessee will refer to Sublessee, promptly upon notice thereof, any claim made, or suit instituted against it which, in any way, affects Sublessee or its insurer, and Sublessee or its insurer shall have the right to compromise and defend the same to the extent of its interest. Sublessee shall pay all attorney fees and costs incurred by the Lessee in its defense of any such

action and in the recovery of all amounts owed by Sublessee to the Lessee under this Sublease. Any final judgment rendered against the Lessee for any cause for which Sublessee is liable hereunder shall be conclusive against Sublessee as to liability and amount.

11.3 Hazardous Materials Covenants. Sublessee hereby represents and warrants to and for the benefit of the Lessee that the Leased Premises will not be used or operated in any manner that will result in the storage use, treatment, manufacture, or disposal of any Hazardous Materials (hereinafter defined) upon the Leased Premises or any portion thereof or which will result in Hazardous Materials Contamination (hereinafter defined). For 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. S6901 et sea.), 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, S6901 et sea.) ("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 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 of, the buildings, facilities, soil, surface water ground water, air, or other elements on, or of, any other property as a result of Hazardous Materials at any time emanating from the Leased Premises.

In addition to and without limiting the generality of any other provisions of this Sublease, Sublessee shall and hereby does indemnify and hold the 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, attorney 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 Sublessee or Sublessee employees, agents, delegees, invitees, licensees, concessionaires, contractors or representatives, of any Hazardous Materials, or (ii) any occurrence of Hazardous Materials Contamination affecting the Leased Premises. The provisions of this Section shall survive any acquisition of the premises by the Lessee, and such provisions shall remain in full force and effect as long as the possibility exists that the Lessee may suffer or incur any such losses, damages, expenses, fees, claims, demands, causes of action, judgments, costs and liabilities.

ARTICLE 12
MISCELLANEOUS PROVISIONS

12.1 The City may from time to time be required by the United States Government, or its agencies, to adopt additional or amended provisions including non-discrimination provisions, concerning the use and operation of the Kissimmee Gateway Airport ("Airport"), and Sublessee agrees that it will adopt any such requirement as a part of this Sublease.

12.2 If Sublessee shall furnish any services to the public at Airport, it shall furnish said services on a fair, equal and not unjustly discriminatory basis to all users thereof and shall charge fair, reasonable and not unjustly discriminatory prices for each unit of service, providing that Sublessee shall be allowed to make reasonable and non-discriminatory discounts, rebates or other similar types of price reductions to volume purchases, if any.

12.3 Notwithstanding anything herein contained that may be or appear to the contrary, it is expressly understood and agreed that, except as to Sublessee's exclusive possession of the Leased Premises, the rights granted under this Sublease are nonexclusive.

12.4 Sublessee shall comply with all applicable regulations of the Federal Aviation Administration relating to Airport security and shall control the Leased Premises so as to prevent or deter unauthorized persons from obtaining access to the air operations area of Airport.

12.5 The Airport reserves unto itself, its successors and assigns, for the use and benefit of the public, a right of flight for the passage of aircraft in the airspace above the surface of the Leased Premises, for navigation or flight in the said airspace for landing on, taking off from or operating on the Airport.

12.6 Sublessee expressly agrees for itself, its successors and assigns, to restrict the height of structures, objects of natural growth and other obstructions on the Leased Premises to such a height so as to comply with Federal Aviation Regulations, Part 77.

12.7 Sublessee agrees to require any lights on the Leased Premises to be constructed, focused or arranged in a manner that will prevent them from casting their beams in an upward direction so as to interfere with the vision of pilots in aircraft landing or taking off from Airport.

12.8 Sublessee expressly agrees for itself, its successors and assigns, to prevent any use of the Leased Premises which would interfere with or otherwise constitute an airport hazard.

12.9 Sublessee agrees that it will not exercise or grant any right or privilege which would operate to prevent any person, firm, or corporation operating aircraft on the Airport from performing any service on its own aircraft with its own employees (including but not limited to maintenance and repair) that it may choose to perform.

12.9 Except as otherwise provided herein, the provisions of this Sublease shall bind and inure to the benefit of the successors and assigns of the parties hereto.

12.10 Force Majure. Neither party shall be liable for any failure or delay in performance of their obligations under this Sublease to the extent such failure or delay is caused by circumstances beyond their reasonable control, including, but not limited to, acts of God, war, terrorism, civil unrest, strikes, lockouts, fire, flood, or other natural disasters. In the event of any such delay or failure, the affected party shall promptly notify the other party of the circumstances and the expected duration of the delay or failure, and the parties shall use reasonable efforts to mitigate the impact of the delay or failure. If the delay or failure continues for a period of more than thirty (30) consecutive days, either party may terminate this Sublease upon written notice to the other party without liability.

12.11 Dispute Resolution. Any dispute arising out of or related to this Sublease shall be resolved through mediation in accordance with the rules of the American Arbitration Association. If the dispute cannot be resolved through mediation, then the parties agree to submit to binding arbitration in accordance with the rules of the American Arbitration Association. The arbitration shall be conducted in the State of Florida and the arbitrator's decision shall be final and binding on both parties. The prevailing party in any such dispute shall be entitled to recover its reasonable attorneys' fees and costs incurred in connection with the dispute.

12.12 Severability. Severability. If any provision of this Sublease is held to be invalid or unenforceable by a court of competent jurisdiction, such invalidity or unenforceability shall not affect the validity or enforceability of the remaining provisions of this Sublease, which shall remain in full force and effect.

12.13 Entire Agreement. This Sublease constitutes the entire agreement between the parties hereto and supersedes all prior negotiations, understandings, and agreements between the parties relating to the subject matter hereof. This Sublease may not be amended or modified except in writing executed by both parties. Any waiver of a breach of any term or provision of this Sublease shall not be construed as a waiver of any subsequent breach. This Sublease shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, executors, administrators, successors, and assigns.

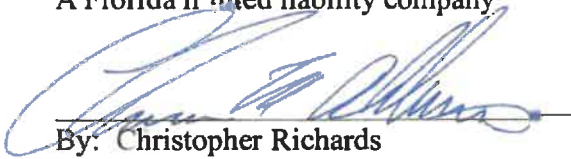
12.14 Amendment. This Sublease may be amended or modified only by a written instrument executed by both parties. Any amendment or modification shall be effective only to the extent specifically set forth in such instrument and shall not otherwise affect the terms and conditions of this Sublease.

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IN WITNESS WHEREOF, witness our hand and seal on the date first written above.

LESSEE:

Sunstate Aviation Flight School, LLC,
A Florida limited liability company



By: Christopher Richards
Its: CEO

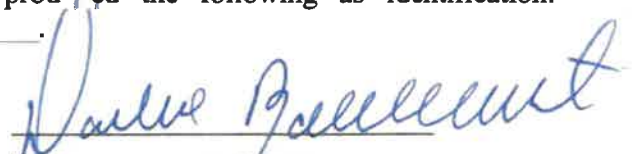
Witnesses:

Signature Witness 1: 
Print Name Witness 1: Shawn Germelus

Signature Witness 2: 
Print Name Witness 2: Erica Garcia

STATE OF FLORIDA)
COUNTY OF OSCEOLA)

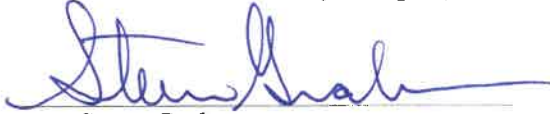
The foregoing was acknowledged before me by means of () online notarization or () physical presence on this day of January 2024 by Christopher Richards, CEO of Sunstate Aviation Flight School, LLC, a Florida limited liability company, on behalf of said limited liability company. He is (☒) personally known to me or () produced the following as identification:


Notary Public- State of Florida



LESSOR:

Sunstate Aviation Holdings, LLC
A Florida limited liability company



By: Steve Graham
Its: MGM

Signature Witness 1: 
Print Name Witness 1: Shawn Carmolus

Signature Witness 2: 
Print Name Witness 2: Erika Garcia

STATE OF FLORIDA)
COUNTY OF OSCEOLA)

The foregoing was acknowledged before me by means of () online notarization or () physical presence on this day of January 2024 by Steven Graham, CEO of Sunstate Aviation Holdings, LLC, a Florida limited liability company, on behalf of said limited liability company. He is (☒) personally known to me or () produced the following as identification:


Notary Public- State of Florida

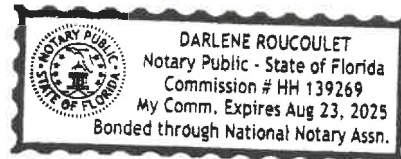


EXHIBIT A

**ADDENDUM TO ORIGINAL LEASE AGREEMENT
WITH SUNSTATE AVIATION HOLDINGS LLC**

This Agreement, made and entered into this 5th day of March, 2013 by and between the City of Kissimmee, a Municipal Corporation of the State of Florida, located at 101 N. Church Street, Kissimmee, FL 34741, hereinafter referred to as the "Lessor" or "City" and Sunstate Aviation Holdings LLC, hereinafter referred to as "Lessee," a limited liability company organized and existing under the laws of the State of Florida located at 3008 Patrick St., Kissimmee, FL 34741.

WITNESSETH:

WHEREAS, the City of Kissimmee and the Lessee, Sunstate Aviation Holdings LLC, heretofore executed an indenture of lease dated hereinafter referred to as "Original Lease" on the 9th day of February, 20 10, pursuant to which the City leased unto the Lessee certain real property located at Kissimmee Gateway Airport, such real property shall hereinafter be referred to as the "Premises"; and

WHEREAS, Lessee wishes to renovate portions of the Premises of the Original Lease and the City of Kissimmee wishes to allow and provide the terms for same.

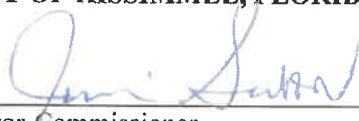
NOW, THEREFORE, in consideration of the premises and of the mutual covenants hereinafter contained, the parties hereto do hereby agree as follows:

1. Renovations. A description of the renovations to the Premises is more particularly described, attached, and hereby incorporated by reference as Exhibit "A."
2. Extension of Lease Term for Premises: The lease term for the Premises, shall be reset to a term of 35 years plus an additional 10 year option, commencing upon the date of issuance of a Certificate of Occupancy for Hangar I (to certify completion of all repairs to building intended by this Addendum).

Permits will be required, per the terms of the original lease. A copy of all As-Built plans, invoices and all other construction documents, etc. for the completed renovation work will be provided to the Lessor upon completion of work.

3. Except as hereby amended, the Original Lease shall remain in full effect and binding on the Lessor and the Lessee. Specifically, all other terms and clauses of the Original Lease shall remain the same and will continue to be in force as to the Premises, as expanded by this Addendum
4. The effective date of this Addendum shall be the 5th day of March, 2013.

CITY OF KISSIMMEE, FLORIDA



Mayor-Commissioner

ATTEST:


City Clerk: Linda S. Hansell

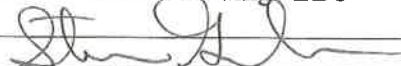
Approved as to form and legality
This 8th day of March, 2013.



City Attorney

LESSEE

Sunstate Aviation Holdings LLC

By: 

As: member

ATTEST:

Witness: _____

Witness: _____

State of: Florida
County of: Osceola



ERIKA GARCIA
MY COMMISSION # EE 189713
EXPIRES: April 16, 2016
Bonded Thru Budget Notary Services



The foregoing instrument was acknowledged before me on this 13 day of February, 2013, by Steve Graham. He/She is personally known to me, or has produced his/her driver's license, or his/her dx as identification, and did/did not take an oath.

From: Steve Graham [mailto:sgraham@sunstateaviation.com]
Sent: Thursday, January 17, 2013 4:51 AM
To: TERRY LLOYD
Subject: 3010 Patrick Rehab

Terry:

Current cost of repairs to building

\$ 40,500.00	replace roof and insulation by Britt
6,500.00	replace AC by Accent Air
10,000.00	Lighting and electrical improvements to building
11,000.00	Paint steel structure and building
2,500.00	Landscaping by Forrest Hill
25,500.00	Interior repairs of termite damage
2,200.00	CCTV, WIFI and phone
4,500.00	flooring
\$102,700.00	Total

On the lease what I would like to see would reset the date to February 2013 with a forty year term with a ten year renew. Also a review of lease cost based on current market values and rental rates for the area. What the airport and city get in return is a first building and the economic benefits to the community.

Your thoughts?

Steve Graham

Kissimmee Airport (ISM)

Winter Haven Airport (GIF)

Tel: 407-944-3592 . Toll Free: 800-963-4359 . Fax: 407-944-3596

SunStateAviation.com . facebook.com/SunStateAviation

**ADDENDUM TO ORIGINAL LEASE AGREEMENT
WITH SUNSTATE AVIATION, INC.**

This Agreement, is made and entered into this 13th day of September, 2011 by and between the City of Kissimmee, a municipal corporation of the State of Florida, hereinafter referred to as the "Lessor" or "City" and **Sunstate Aviation Holdings LLC**, hereinafter referred to as "Lessee," a limited liability company organized and existing under the laws of the State of Florida.

WITNESSETH:

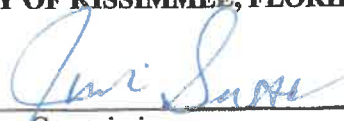
WHEREAS, the City and the Lessee, heretofore executed an indenture of lease dated February 9, 2010 hereinafter referred to as "Original Lease" pursuant to which the City leased unto the Lessee certain real property located at Kissimmee Gateway Airport, such real property shall hereinafter be referred to as the "Premises"; and

WHEREAS, Lessee wishes to further develop the Premises of the original lease under the terms of the original lease and the City of Kissimmee wishes to allow for same.

NOW, THEREFORE, in consideration of the premises and of the mutual covenants hereinafter contained, the parties hereto do hereby agree as follows:

1. Substitution of Lessee: Sunstate Aviation Holdings LLC, a Florida limited liability company is hereby substituted for Sunstate Aviation, Inc. as Lessee under the Original Lease. All notices required to be sent under the Original Lease to the Lessee shall be delivered to Sunstate Aviation Holdings LLC at 3008 Patrick Street, Kissimmee, Florida 34741, Attn: Steve Graham.
2. Amendment of Article 3, Term: . The reference to October 1, 2010 in Article 3 of the Original Lease is hereby amended to read October 1, 2012.
3. Except as hereby amended, the Original Lease shall remain in full effect and binding on the Lessor and the Lessee. Specifically, all other terms and clauses of the existing lease shall remain the same and will continue to be in force as to the Premises, as expanded by this Addendum.
4. The effective date of this Addendum shall be September 13, 2011.

CITY OF KISSIMMEE, FLORIDA

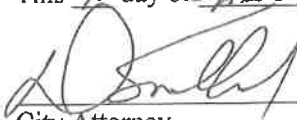


Mayor-Commissioner

ATTEST:


City Clerk: Desiree Matthews

Approved as to form and legality
This 15 day of September, 2011.



City Attorney

LESSEE

SUNSTATE AVIATION HOLDINGS LLC, a
Florida limited liability company

Print Name: _____

Print Name: _____

By: 

STEVE GRAHAM, Managing Member

(COMPANY SEAL)

This instrument was prepared by:
Name: Philip L. Logas, Esq.
Address: Philip L. Logas, P.A.
121 S. Orange Avenue
Suite 1470
Orlando, Florida 32801

FOR USE BY RECORDING OFFICE

MEMORANDUM OF LEASE

THIS MEMORANDUM OF LEASE is made and entered into this 13th day of September, 2011, by and between **THE CITY OF KISSIMMEE**, a municipal corporation of the State of Florida, whose address is 101 N. Church Street, Kissimmee, Florida 34741 ("Landlord"), and **SUNSTATE AVIATION HOLDINGS LLC**, a Florida limited liability company, whose address is 3008 Patrick Street, Kissimmee, Florida 34741 ("Tenant").

1. This Memorandum is intended to evidence the fact that Landlord and Tenant entered into that certain Lease Agreement (the "Lease") dated February 9, 2010 as modified by that certain First Amendment To Lease dated September ____, 2011, wherein Landlord leased to Tenant and Tenant leased from Landlord that certain real property described in Exhibit "A" attached hereto and incorporated herein by this reference (the "Leased Property").

2. Term of Lease. The term of the Lease commenced February 9, 2010 and shall expire on February 9, 2040, unless sooner terminated pursuant to the terms of the Lease. Tenant has the option to renew the term of the Lease for an additional ten year term.

3. Other Information. For further details pertaining to the Lease, interested persons may contact either Landlord or Tenant at the addresses set forth above.

4. Limitation of Memorandum. Nothing contained herein is intended to limit, modify or otherwise alter the respective rights and responsibilities of Landlord and Tenant under the Lease.

IN WITNESS WHEREOF, the parties have executed this Memorandum of Lease on the date first set forth above.

Signed, sealed and delivered
in the presence of:

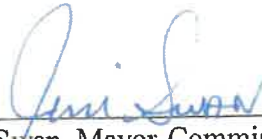
LANDLORD:

THE CITY OF KISSIMMEE, a municipal
corporation of the State of Florida


Print Name: Linda S. Hansell


Print Name: Kevin M. Gentry

(CORPORATE SEAL)

By: 
Jim Swan, Mayor-Commissioner

Attest: 
Desiree Matthews, City Clerk

TENANT:

SUNSTATE AVIATION HOLDINGS LLC, a
Florida limited liability company

Print Name: _____

Print Name: _____

By: 
STEVE GRAHAM, Managing Member

(COMPANY SEAL)

**STATE OF FLORIDA
COUNTY OF:**

THIS INSTRUMENT WAS ACKNOWLEDGED before me this 15th day of September, 2011, by Jim Swan and Desiree Matthews as Commissioner-Mayor and City Clerk, respectively, of **THE CITY OF KISSIMMEE**, a Florida municipal corporation. They:

☒ are personally known to me

☐ produced a Florida Driver's License as identification

☐ produced NA as identification;
and did not take an oath.



Linda S. Hansell
Print Name: Linda S. Hansell
Notary Public, State of Florida
My Commission Expires: 1/15/2012

**STATE OF FLORIDA
COUNTY OF:**

THIS INSTRUMENT WAS ACKNOWLEDGED before me this 7th day of September, 2011, by **STEVE GRAHAM**, as Managing Member of **SUNSTATE AVIATION HOLDINGS LLC**, a Florida limited liability company. He:

☒ is personally known to me

☐ produced a Florida Driver's License as identification

☐ produced _____ as identification;
and did not take an oath.

Glenda M. Roig
Print Name: Glenda M. Roig
Notary Public, State of Florida
My Commission Expires: 12/22/2014



GLEND A. M. ROIG
MY COMMISSION # EE 051119
EXPIRES: December 22, 2014
Bonded Thru Budget Notary Services

**KISSIMMEE GATEWAY AIRPORT
LEASE AGREEMENT**

SUNSTATE AVIATION

**KISSIMMEE GATEWAY AIRPORT
LEASE AGREEMENT**

THIS AGREEMENT is made this 9th day of February, 2010 by and between the City of Kissimmee, State of Florida, a municipal corporation existing by and under the authority of the laws of the State of Florida, hereinafter referred to as the "City" and Sunstate Aviation, Inc. hereinafter referred to as "Lessee" a corporation organized and existing under the laws of the State of Florida.

WITNESSETH

NOW THEREFORE, in consideration of the premises and of the mutual covenants contained herein and for other good and valuable consideration, the parties hereto agree as follows:

**ARTICLE 1
LEASED PREMISES**

The "City" hereby leases to the Lessee and the Lessee leases from the "City" the Premises approximately 4.18 acres, more particularly described in Exhibit "A" which is attached hereto and made a part hereof by reference. In the event of any discrepancy between a legal description and a graphic depiction of the Premises, the legal description shall control.

"City" reserves the right to reduce or otherwise adjust the area included in the Premises for construction of Airport projects. If the rent is based on the area of the Premises, then the rent shall be reduced in proportion to the reduction of the total area.

Lessee acknowledges that a future Air Traffic Control Tower is planned to be located in the immediate vicinity on Patrick Street and agrees to relinquish, if required, unspecified certain amount of leased area to be determined at that time which will be needed to facilitate the construction of the control tower. The airport will be responsible for paying for any lessee constructed improvements on the reclaimed leasehold property. The value of these improvements will be reimbursed at Fair Market Value, based on the average of two appraisals to be obtained by Lessor at that time.

Lessee acknowledges that it is accepting the Leased Premises and the improvements located thereon "as is" and that the City has made no representations or warranties respecting the suitability thereof for Lessees purposes and that, except as specifically provided herein, the City has no obligation whatsoever to repair, maintain, renovate or otherwise incur any cost or expense with respect to the Leased Premises, any leasehold improvements, or fixtures, furnishings or equipment installed in or used on the Leased Premises.

City does not warrant the availability of any utilities nor when they might be available. The Lessee will be permitted to install a private septic system to serve the premises up until the City provides for sewer and wastewater system within 200' of the property. At that time,

connection to the City system will be required within 120 days of notification to Lessee by City, at Lessee's expense.

ARTICLE 2 USE

The Leased Premises and the Facility shall be used by Lessee for the purpose of conducting Categories "B," "D," "E" and "F" activities in strict accordance with the City's Minimum Aeronautical Service Standards for Aeronautical Tenants at Kissimmee Airport as they do now and may hereinafter exist, for the renting or leasing of automobiles in connection therewith, and for such other uses incidental thereto as the City may from time to time approve in writing but for no other purpose.

ARTICLE 3 TERM

The term of this Agreement shall be for a period of thirty (30) years; provided, however, that if Lessee has not, during the first twenty four (24) months of the term of this Lease, completed construction of new improvements on the Leased Premises at a cost of at least Five Hundred Thousand Dollars (\$500,000.00), in accordance with the schedule provided herein, then the term of this Lease shall expire on October 1, 2010.

If construction of Hangar 2 commences within two (2) years of obtaining the Certificate of Occupancy of Hangar 1 and is completed within one (1) year of construction start date; then both facilities will be re-settled to a thirty-five (35) year lease which shall begin on the date that the Certificate of Occupancy for Hangar 2 is issued, so long as, Lessee is not in default of any term of the Lease Agreement.

Lessee is hereby granted an exclusive first option to renew this Agreement upon all the existing terms and conditions, excluding rent for ground and improvements for one (1) additional term of ten (10) years. This option shall be exercised by written notice to the City not less than one hundred twenty (120) days prior to expiration of the existing term.

Hanger Two Site - lessee will have right of first refusal at \$500 per acre, per year measured from Certificate of Occupancy of Hangar One, in accordance with the City's right of first refusal policy. (Exhibit B)

In the event Lessee 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 month-to-month tenancy only. The amount of rent to be paid during this hold over period shall equal one and a half (1-1/2) times the normal monthly rent chargeable at the termination of the Lease.

ARTICLE 4
RENT

Rent is due the first day of each month, without further demand. Net rent under this Lease for the Premises is \$19,239.15 per year ("Annual Rent") payable monthly in advance in the amount of \$1,603.26 ("monthly payment").

The annual rent payable by Lessee to the City for its use of the Leased Premises during the term of this Lease Agreement shall be as follows:

2.241 acres at \$.05 per square foot, per year beginning with the start of Certificate of Occupancy of Building (front of the Building Restriction Line)

1.991 acres at \$.17 per square foot, per year beginning with the start of Certificate of Occupancy of Building (behind of the Building Restriction Line)

Lessee shall also be liable to remit as rent the applicable sales tax.

INTERIM RENT - Effective March 10, 2010 until receipt of Certificate of Occupancy for Hangar I, Lessee will pay the City the same amount currently paid to Signature Flight Support in effect as of January 1st, 2010.

CONSTRUCTION OF AIRCRAFT STORAGE HANGAR: As a condition of leasing such real property from City as described in this agreement, Lessee specifically agrees to construct an aircraft storage hangar of a size no less than 10,000 square feet upon the Premises. Funding for this hangar will be borne by Lessee as outlined in the Memorandum of Understanding which was entered into previously.

TIME AND PLACE OF PAYMENT - Effective on March 10th, 2010 – all payments are to be made to the Finance Director, City of Kissimmee, 101 N. Church Street, or such other place as the City may direct Lessee in writing.

DELINQUENT RENT - A late fee of 5% of the amount due will be charged on the 16th of the month. A separate late fee shall be charged for every month that Lessees monthly payment is past due. The City shall charge no interest upon that portion of any debt that, in good faith, is in dispute. Receipt of the late fee is not a waiver of the default, but is additional costs incurred by the City for the Lessees failure to perform.

RENT ADJUSTMENTS - City 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. Beginning three years from the execution date and every third year thereafter ("Adjustment Year"), the parties hereto will compare the price index for said year with the price index for 2009 and the Annual Rent payments shall be increased in the same proportion as said price index has increased when compared with the price index for 2009. In no event, however, shall the Annual Rent increase be more than ten percent (10%) on any Adjustment Year.

FEB
2010

ARTICLE 5
OTHER FEES AND CHARGES

FUEL DUMPAGE FEES - In addition to the rent and other charges payable hereunder, Lessee shall, on or before the twentieth (20th) day of each calendar month during the term hereof; pay to the City, without further demand, a fuel dumpage fee for each gallon of aviation fuel delivered to the Leased Premises during the preceding calendar month. The fee established by the City is currently \$.05 per gallon.

AUTOMOBILE RENTAL FEES - In consideration for the right to operate an automobile rental concession from the Leased Premises in connection with its fixed base operation, Lessee further agrees to pay to the City, on or before the fifteenth (15th) day of each calendar month during the term hereof, without further demand, an amount equal to five percent (5%) of all gross revenues derived by any person or entity from the renting or leasing of automobiles or other ground transportation vehicles from the Leased Premises, including, but not limited to, all charges for vehicular and medical insurance coverage, but excluding any state or federal sales or use taxes; provided, however, the amount of such payment shall be reduced by the amount of sums paid to the Lessor directly by any such person or entity other than Lessee on account of such renting or leasing. Each such payment hereunder shall be accompanied by a statement, signed by an officer of Lessee, which sets forth the total amount of revenues so derived in such form and with such particularity as the Lessor may reasonably request.

ARTICLE 6
OBLIGATIONS OF LESSEE

TAXES AND ASSESSMENTS & FEES - Lessee shall, at its own expense and at all times during the term of this Lease, pay all lawful taxes and assessments and fees levied against the Leased Premises and/or facility as well as all taxes and assessments levied against the personal property used by Lessee in its operation on the Leased Premises. None of the terms, covenants or conditions of the agreement shall be construed as a release or waiver on the part of the City of the right to assess, levy or collect any license, personal, intangible, occupation or other tax which shall be lawfully imposed on the business or property of Lessee.

MAINTENANCE AND REPAIR - Lessee shall be solely responsible, at its own cost and expense, for performing all maintenance, repair and replacement of the Facility and all other improvements located on the Leased Premises (including all paved areas, whether now existing or hereinafter constructed) required to keep the same in attractive, safe and sanitary condition, and all such maintenance, repair and replacement shall be of quality at least equal to the original in materials and workmanship. All exterior paint colors shall be subject to the prior written approval of the City.

UTILITIES - Lessee shall be solely responsible for and pay all charges for utilities to the Leased Premises and the Facility, including but not limited to all charges pertaining to the providing of sewer, water, gas, electricity and telephone service.

TRASH AND GARBAGE REMOVAL Lessee shall maintain the Leased Premises including all improvements at all times in a safe, neat and slightly condition and 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 of the airport property. Lessee shall provide a complete and proper arrangement for the adequate sanitary handling and disposal, of all trash, garbage and other refuse caused as a result of its operation. Lessee shall provide and use suitable-covered metal receptacles located in an area designated 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.

ACCESS - Lessee and its employees and invitees shall, subject to the reasonable rules and regulations of the City, have the right to access, ingress and egress to and from the Leased Premises.

SECURITY -- Lessee has control access to the leased premises and is responsible for limiting access to authorized individuals only. All Lessee employees and invited persons will ensure gates are secured at all times, to include blocking automatic gates, upon egress and ingress, until the gates is securely closed. Lessee will comply with all reasonable Lessor requests to preserve and ensure airport perimeter security.

MINIMUM STANDARDS/RULES AND REGULATIONS - Lessee covenants and agrees to observe and comply with all Minimum Standards for the Airport as the same may now exist and as they hereinafter be amended or revised, and with all reasonable rules and regulations of the City which now exist or may hereinafter promulgated from time to time governing safe conduct on and operations at the Airport and the safe use of its facilities.

- I. Lessee shall be responsible for all expenses in connection with the use of the leased premises and exercise of the operating rights granted.

NONDISCRIMINATION The Lessee for itself, its personal representatives, successors in interest, and assigns, as a part of the consideration thereof, does hereby covenant and agree that (1) no person on the grounds of race, creed, color, national origin, sex, age, or handicap shall 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 therein, no person on the grounds of race, creed, color, national origin, sex, age, or handicap shall be excluded from participation in, denied the benefits of or otherwise be subjected to discrimination; (3) that the Lessee shall use the Leased Premises in compliance with all other requirements imposed by or pursuant to Title 49, Code of Federal Regulations, Department of Transportation, Subtitle A, Office of the Secretary, Part 21, Non-Discrimination in Federally-assisted programs of the Department of Transportation-Effectuation of Title VI of the Civil Rights Act of 1964 and as said Regulations may be amended.

The Lessee agrees to furnish service on a fair, equal, and nondiscriminatory basis to all users thereof and to charge fair, reasonable, and not unjustly discriminatory prices for each unit or service, provided that the Lessee may be allowed to make reasonable and

nondiscriminatory discounts, rebates or other similar types of price reductions to volume purchasers.

HANDLING AND STORAGE OF PETROLEUM PRODUCTS AND OTHER MATERIAL BY LESSEE. Lessee shall handle, use, store and dispose of fuel petroleum products, and all other materials (including but not limited to hazardous materials) owned or used by it in accordance with all applicable federal, state, local, city, statutes, 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 cleanup, containment and otherwise abatement of such contamination at Lessee's sole cost and expense. Further, Lessee shall notify the "City" and appropriate governmental agency of such occurrence immediately. Should the Lessee fail to do so, the "City" may take any reasonable and appropriate action in the Lessee's stead. The cost of such remedial action by the "City" shall be paid by the Lessee.

INDEMNITY AND INSURANCE BY LESSEE Lessee further covenants and agrees that Lessee shall indemnify and save forever harmless the City from any and all claims for damages of any kind or nature which may hereafter be made against City on account of any personal injuries (including wrongful death) or property damage resulting from the use of the Leased premises, and for his purpose Lessee shall procure and maintain in effect for the term of this Agreement, with insurance carriers acceptable to City, Workers Compensation Insurance as required by the statutes of the State of Florida, or adequate Employee's Liability Insurance; Public Liability; Property Damage covering all of Lessee's activities and the Leased Premises. Policy limits will be as set forth in the Minimum Aeronautical Service Standards for Aeronautical Tenants at Kissimmee Gateway Airport. The Lessee shall maintain such insurance with insurance underwriters authorized to do business in the State of Florida satisfactory to the City. Coverage is to be written on the broadest liability form including but not limited to products liability, hangar keepers liability, blanket contractual, independent contractors and aviation non-ownership. All policies shall include the City as an additional insured as its interests appear. Lessee shall furnish City with a Certificate of Insurance from the Lessee's carrier indicating that there is such insurance coverage as hereinbefore provided, and if requested by the City, shall submit to the City, a true copy of the above insurance coverage. Said Certificate of Insurance shall provide that the policy or policies cannot be canceled or materially modified except upon thirty (30) days advance written notice by registered or certified mail to the City. The dollar amount of liability insurance coverage shall be reviewed on a periodic basis and modified, if necessary, based upon escalating costs and limits for the uses as provided in this Agreement as compared to similar airports.

COMPLIANCE WITH LAW, RULES AND REGULATIONS Lessee shall, at its sole expense, observe and comply with the statutes, rules and regulations of all governmental authorities applicable to the conduct of Lessee's business and in addition, those rules, ordinances, and regulations of the City not inconsistent with the provisions of this Agreement. Any penalties and costs levied as a result of the Lessee's breach of any of the above shall be borne by the Lessee.

ARTICLE 7
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 U.S. 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 during the term hereof for any purpose necessary, incidental to or connected with the performance of its obligations hereunder or in the exercise of its governmental functions and, upon reasonable notice to Lessee. The City shall not, during the course of any such inspection, unreasonably interfere with the Lessees use and enjoyment of the Leased Premises.

C. **MAINTENANCE BY CITY** City will maintain and keep the Leased Premises in good repair except for the maintenance obligations of Lessee as set forth in this Agreement. In no event, however, shall City be required to maintain or repair damage caused by the negligent or willful act of Lessee, its agents, servants, invitees or customers. However, if due to any negligent or willful act by the Lessee, its agents, servants, invitees or customers, there is a need for maintenance or repair of damage, then Lessee shall do such maintenance or repair in a prompt, reasonable manner.

ARTICLE 8
DAMAGE OR DESTRUCTION OF PREMISES

If the Leased Premises shall be partially damaged by fire, flood, lightning, windstorm or other force of the elements or by the public enemy or from any cause not brought about by the Lessee so as to adversely affect the Lessee's use of its exclusive space therein even though not rendering such space untenable, such damage shall be promptly repaired with due diligence by the City at its own cost and expense. If damage caused shall be so extensive as to render the Lessee's exclusive space untenable, but nevertheless capable of being repaired and made tenable within a period of sixty (60) days, the City shall repair the damage with due diligence at its own cost and expense, and the rent payable shall be proportionately paid up to the time of such damage, but shall thenceforth cease until such time as such building and space shall be restored. In case the Leased Premises are completely destroyed or so damaged that it will and does remain untenable for a period of more than sixty (60) days, either party shall have the right to terminate this Lease upon written notice to the other within sixty (60) days from the date of such damage or destruction. Nothing in this Article shall apply to damages to the Leased premises caused by the acts of the Lessee, and Lessee shall, at its own cost and expense, promptly repair with due diligence all such damages resulting from its act of said character. City shall not be obligated to expend more on repair or restoration than the amount of any Insurance proceeds received by City.

ARTICLE 9
TERMINATION OF AGREEMENT, ASSIGNMENT AND TRANSFERS

A. **TERMINATION** This Agreement shall terminate without action by either party at the end of the initial term or any renewal term.

B. **TERMINATION BY LESSEE** Lessee may terminate this Agreement after the happening of one or more of the following events:

The default by City in the performance of any covenant or agreement herein required to be performed by City and the failure of City to remedy such default for a period of sixty (60) days after receipt from Lessee or written notice to remedy the same.

C. **EXERCISING LESSEE'S RIGHTS OF TERMINATION** Lessee may exercise such right of termination by written notice to City at any time after the occurrence of any such events and the Agreement shall terminate as of the date notice is received by the City.

D. **TERMINATION BY CITY** City 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 payments required for a period of thirty (30) days after the time such payments become due;
2. Make a general assignment for the benefit of creditors;
3. Filing 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 (except rental payments) to be kept and performed by Lessee, and such default continues for a period of thirty (30) days after receipt of written notice from City of said default;
6. Appointment of receiver for Lessee;
7. Violation of City rules and regulations not inconsistent with the provisions of this lease and such default continues for a period of thirty (30) days after receipt of written notice from City of said default.

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 C of this Article (Termination by City), a notice of termination shall be sufficient to terminate

this agreement. Upon such termination, Lessee agrees that it will forthwith surrender up possession of the Leased Premises to City. In this connection, Lessee expressly waives the receipt of any notice to quit or notice of termination which would otherwise be given by City.

F. SUBLETTING AND ASSIGNMENT Except for the maintenance and storage of aircraft, Lessee may not rent or sublease the Leased Premises without the prior written consent of the City.

Lessee may, with the prior written consent of City, assign this Agreement; in such event, Lessee shall remain liable to City for the remainder of the term of the Agreement to pay to City any portion of the rental and fees not paid by the assignee when due. The assignee shall not assign the Agreement except with the prior written consent of the City, and any assignment by the Lessee shall contain a provision to this effect. Further, any assignee of the lease shall be bound by the terms and conditions of this Agreement.

ARTICLE 10 **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 Lease and thereafter.

B. REMOVAL OF PERSONAL PROPERTY At the termination of the Lease for any reason, after payment of all rents and charges, Lessee shall have the right, within thirty (30) days thereafter to remove any of its fixtures, furniture, machinery, equipment and signs installed on the Leased Premises by Lessee, but shall repair at its own expense all damage caused by such removal. On termination of this Agreement, from whatever cause, the City shall have the right, upon thirty (30) days notice, to require the Lessee at the Lessee's own expense to remove any of its fixtures, structures, additions and improvements, as well as all furniture, machinery, equipment and signs installed on the Leased Premises and the Lessee shall repair at the Lessee's own expense all damage to the Leased Premises caused by such removal. Any such personal property not removed by Lessee within such time shall become the property of the City.

C. LANDLORD LIEN If the Lessee has not fully paid all the rents and charges pursuant to this Agreement, then the City shall be entitled to a landlord lien for the purpose of securing the payment of all rents and charges. City shall have the right to liquidation of such personal property to satisfy any obligations of the Lessee and the costs incurred to perfect this landlord lien. Any excess funds from this liquidation shall be turned over to the Lessee.

ARTICLE 11 **GENERAL PROVISIONS**

A. CITY'S RESERVED RIGHTS

1. City at its sole discretion reserves the right to further develop or improve the aircraft operating area of the Airport as it sees fit and to take any action it

considers necessary to protect the aerial approaches of the Airport against obstructions, together with the right to prevent Lessee from erecting or permitting to be erected, any building or other structure on the Airport which, in the opinion of City would limit the usefulness of the Airport or constitute a hazard to aircraft.

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 and execution of which have been or may be required as a condition precedent to the expenditure or reimbursement to City for federal funds for the development of the Airport.
3. Additional row for Patrick Street and Control Tower Development.

B. NON-INTERFERENCE WITH OPERATION OF AIRPORT Lessee by accepting this Agreement expressly agrees for itself, 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 City reserves the right to enter upon the Leased Premises and cause the abatement of such interference at the expense of Lessee.

City 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 Nothing contained in this Agreement shall be construed to grant or authorize the granting of an exclusive right to provide aeronautical services to the public as prohibited by section 308 (a) of the Federal Aviation Act of 1958, as amended, and the City reserves the right to grant to others the privilege and right of conducting any or all activities of an aeronautical nature.

D. WAIVER OF JURY TRIAL; ATTORNEY FEES It is mutually agreed by and between Lessee and City that each of the parties do hereby waive trial by jury in any action, proceeding or claim which may be brought by either of the parties hereto against the other on any matters concerning or arising out of this Agreement. In any such action the prevailing party shall be entitled to an award of attorney's fees, including those incurred in appellate proceedings.

E. TAXES, LICENSES AND PERMITS Lessee shall pay all personal property taxes which may be assessed against equipment, merchandise, or other personal property belonging to the Lessee located on the Leased Premises, 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 licenses, permits, fees, or other authorization or charges as required under federal, state or local laws and regulations insofar as they are necessary to comply with the requirements of this Agreement and the privileges extended hereunder.

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 to the parties, such notice shall be served by Certified or Registered Mail with return receipt, addressed to:

Director of Aviation
Kissimmee Gateway Airport
301 N. Dyer Boulevard, Suite 101
Kissimmee, FL 324741-4613

and notices, consents and approvals to Lessee addressed to:

Sunstate Aviation
3008 Patrick Street
Kissimmee, FL 34741

or such other addresses as the parties may designate to each other in writing.

H. FLORIDA LAW /VENUE 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. TIME IS OF THE ESSENCE Time is of the essence to this Lease.

ARTICLE 12 **ENVIRONMENTAL MATTERS**

A STORAGE TANKS

1. Lessee agrees to comply with all applicable federal, state and local government regulations regarding above and underground storage tanks effective on the date of execution of this Agreement and as hereafter may be enacted or amended. Specifically, Lessee agrees that all regulated above or underground storage tanks owned or operated by it and located on the premises or which might discharge on or under the premises, shall be registered with the appropriate federal, state 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 records

required by appropriate federal, state and local regulations and to make such records available for inspection at the Premises at all times during normal business hours.

2. Lessee shall comply with the financial responsibility requirements set forth in 40 U.S.C. S280 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 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 City prior to the operation or installation of any regulated above or underground petroleum storage tank on the Premise. 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

1. Lessee agrees to indemnify and hold the City, and the members, officers, employees and agents of each, harmless from and against all liabilities, claims, judgment, costs, damages, fines penalties and expenses, including those which arise as the result of administrative action, which may accrue against, be charged to or recovered from the foregoing by reason or on account of damages to or destruction of the property of the City, or the property of, injury to or death of any person, resulting or arising from Lessee's use, occupancy, operation or maintenance of the Leased Premises, including the work, acts or omissions of its officers, agents, employees, contractors, subcontractors, operators and sublessees, except when proximately caused by the City's negligence or by the joint negligence of the City and any person other than Lessee, its officers, agents, employees, contractors, subcontractors, operators or sublessees. City will refer to Lessee, promptly upon notice thereof, any claim made or suit instituted against it 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 attorney fees and costs incurred by the City in its defense of any such action and in the recovery of all amounts owed by Lessee to the City under this Agreement. Any final judgment rendered against the City for any cause for which Lessee is liable hereunder shall be conclusive against Lessee as to liability and amount.

C. HAZARDOUS MATERIALS COVENANTS

1. Lessee hereby represents and warrants to and for the benefit of the City that the Premises will not be used or operated in any manner that will result in the storage use, treatment, manufacture or disposal of any Hazardous Materials (hereinafter defined) upon the Premises or any portion thereof or which will result in Hazardous Materials Contamination (hereinafter defined). For

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. S6901 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, S6901 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 Premises is prohibited by any applicable environmental laws or regulations ("Laws") or by any other legal requirements affecting the 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 Premises. The term "Hazardous Materials Contamination": shall mean and refer to the contamination of the Premises, soil, surface water, ground water, air, or other elements on, or of, the buildings, facilities, soil, surface water ground water, air, or other elements on, or of, any other property as a result of Hazardous Materials at any time emanating from the Premises.

2. In addition to and without limiting the generality of any other provisions of this Lease, 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, attorney 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 employees, agents, delegees, invitees, licensees, concessionaires, contractors or representatives, of any Hazardous Materials, or (ii) any occurrence of Hazardous Materials Contamination affecting the Premises. The provisions of this Section shall survive any acquisition of the premises by the City, and such provisions shall remain in full force and effect as long as the possibility exists that the City may suffer or incur any such losses, damages, expenses, fees, claims, demands, causes of action, judgments, costs and liabilities.

ARTICLE 13 **MISCELLANEOUS PROVISIONS**

- A. The Airport may from time to time be required by the United States Government, or its agencies, to adopt additional or amended provisions including non-discrimination provisions, concerning the use and operation of Airport, and Lessee agrees that it will adopt any such requirement as a part of this Agreement.
- B. If Lessee shall furnish any services to the public at Airport, it shall furnish said

services on a fair, equal and not unjustly discriminatory basis to all users thereof and shall charge fair, reasonable and not unjustly discriminatory prices for each unit of service, providing that Lessee shall be allowed to make reasonable and non-discriminatory discounts, rebates or other similar types of price reductions to volume purchases, if any.

C. Notwithstanding anything herein contained that may be or appear to the contrary, it is expressly understood and agreed that, except as to Lessee's exclusive possession of the Leased Premises, the rights granted under this Agreement are nonexclusive.

D. Lessee shall comply with all applicable regulations of the Federal Aviation Administration relating to Airport security and shall control the Leased Premises so as to prevent or deter unauthorized persons from obtaining access to the air operations area of Airport.

E. The Airport reserves unto itself, its successors and assigns, for the use and benefit of the public, a right of flight for the passage of aircraft in the airspace above the surface of the Leased Premises, for navigation or flight in the said airspace for landing on, taking off from or operating on the Airport.

F. Lessee expressly agrees for itself, its successors and assigns, to restrict the height of structures, objects of natural growth and other obstructions on the Leased Premises to such a height so as to comply with Federal Aviation Regulations, Part 77.

G. Lessee agrees to require any lights on the Leased Premises to be constructed, focused or arranged in a manner that will prevent them from casting their beams in an upward direction so as to interfere with the vision of pilots in aircraft landing or taking off from Airport.

H. Lessee expressly agrees for itself, its successors and assigns, to prevent any use of the Leased Premises which would interfere with or otherwise constitute an Airport hazard.

I. Lessee agrees that it will not exercise or grant any right or privilege which would operate to prevent any person, firm, or corporation operating aircraft on the Airport from performing any service on its own aircraft with its own employees (including but not limited to maintenance and repair) that it may choose to perform.

J. Except as otherwise provided herein, the provisions of this Lease shall bind and inure to the benefit of the successors and assigns of the parties hereto.

The parties now sign this Agreement this 9th day of February, 2010.

CITY OF KISSIMMEE, FLORIDA

By: [Signature]
Mayor-Commissioner

ATTEST:

[Signature]
City Clerk

Witness [Signature]
Witness [Signature]

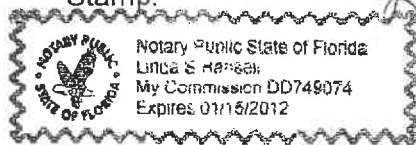
Approved as to form and legality.

[Signature]
City Attorney

STATE OF FLORIDA
COUNTY OF OSCEOLA

The foregoing instrument was acknowledged before me this 11th day of February, 2010 by Jim Swan, who is the Mayor-Commissioner of City of Kissimmee, who is personally known to me or who has produced N/A as identification and who did/did not take an oath.

Notary Name Printed: Linda S. Hansell
Stamp: [Signature]



SUNSTATE AVIATION, INC.

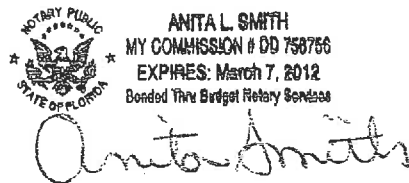
By: [Signature]
Title: President

STATE OF FLORIDA
COUNTY OF OSCEOLA

The foregoing instrument was acknowledged before me this 2nd day of February, 2010 by Steven Graham, who is the President of Sunstate Aviation, who is personally known to me or who has

FCDL
produced GV65078530590 as identification and who did/did not take an oath.

Notary Name Printed: Anita Smith -
Stamp:



KISSIMMEE AIRPORT
First Right of Refusal to Lease Property
APPLICATION

1. Applicant's legal name: Sunstate Aviation
2. Applicant's business address: 3008 Patrick Street
Kissimmee, FL 34741
3. Applicant's primary business: Flight training
4. The applicant must present a preliminary conceptual site plan of the proposed leasehold showing all planned improvements and phasing. The site plan should include the following:
 - a. A statement outlining how you intend to utilize the land and/or facilities that you are requesting a First Right of Refusal on. Please be as specific as possible and address the services which are intended to be provided to the public.
 - b. The applicant's estimate of development cost for the improvements.
 - c. The applicant's schedule for commencement of lease term, operation and construction of leasehold improvements.



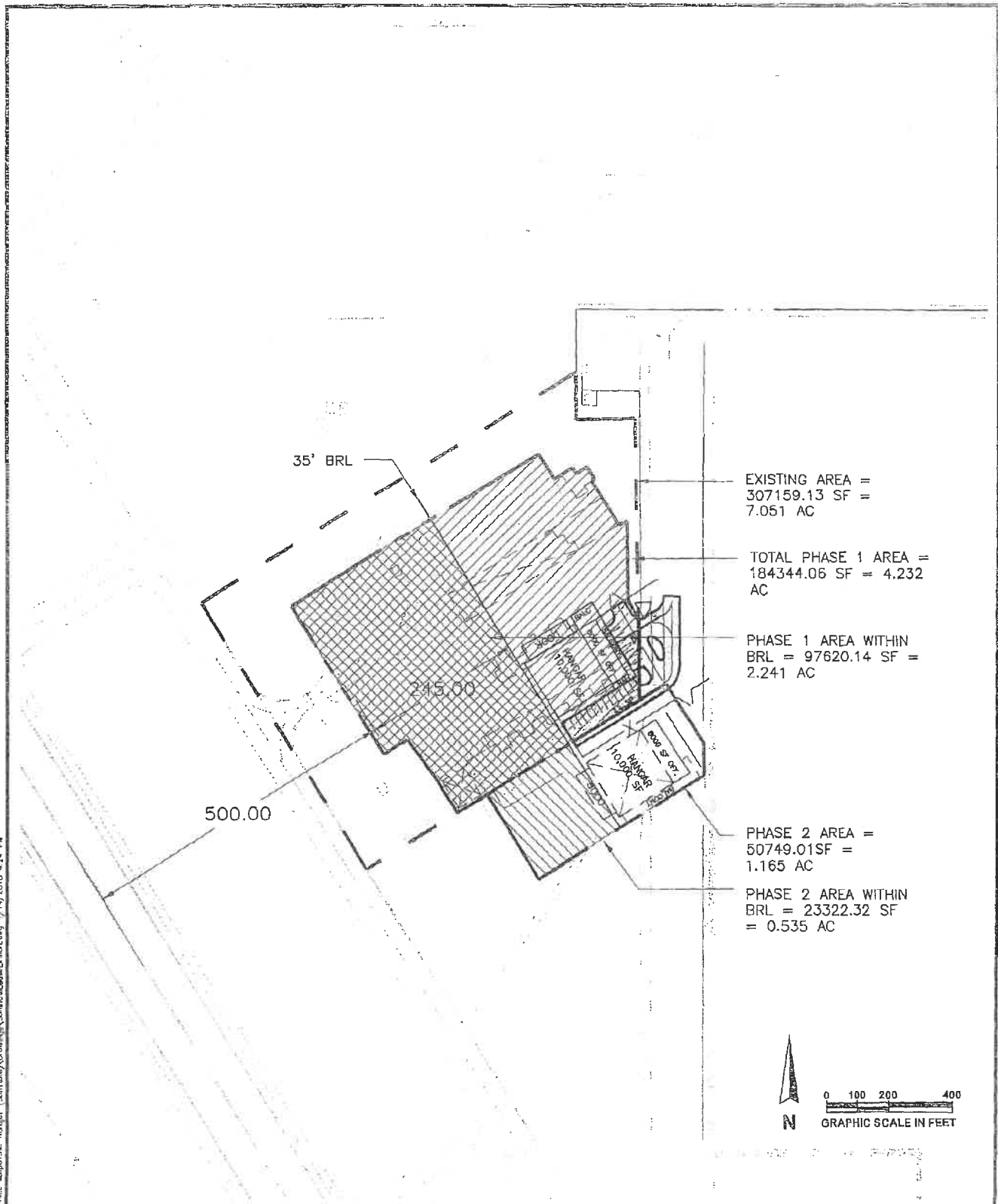
Signature

Feb. 9, 2010

Date

For Staff Use: Date received _____ By _____ Approved _____ Denied _____ Date _____

V:\2009\2009 161.03 - Kestermee Corporate Center (Sunstate)\Drawings\Sunstate\phaseE\shel.dwg 1/14/2010 4:14 PM



AVCON, INC.
ENGINEERS & PLANNERS
5555 E. MICHIGAN ST., SUITE 200
ORLANDO, FL. 32822-2779
OFFICE: (407) 599-1122
FAX: (407) 599-1133

SUNSTATE FBO LEASEHOLD

A

TITLE

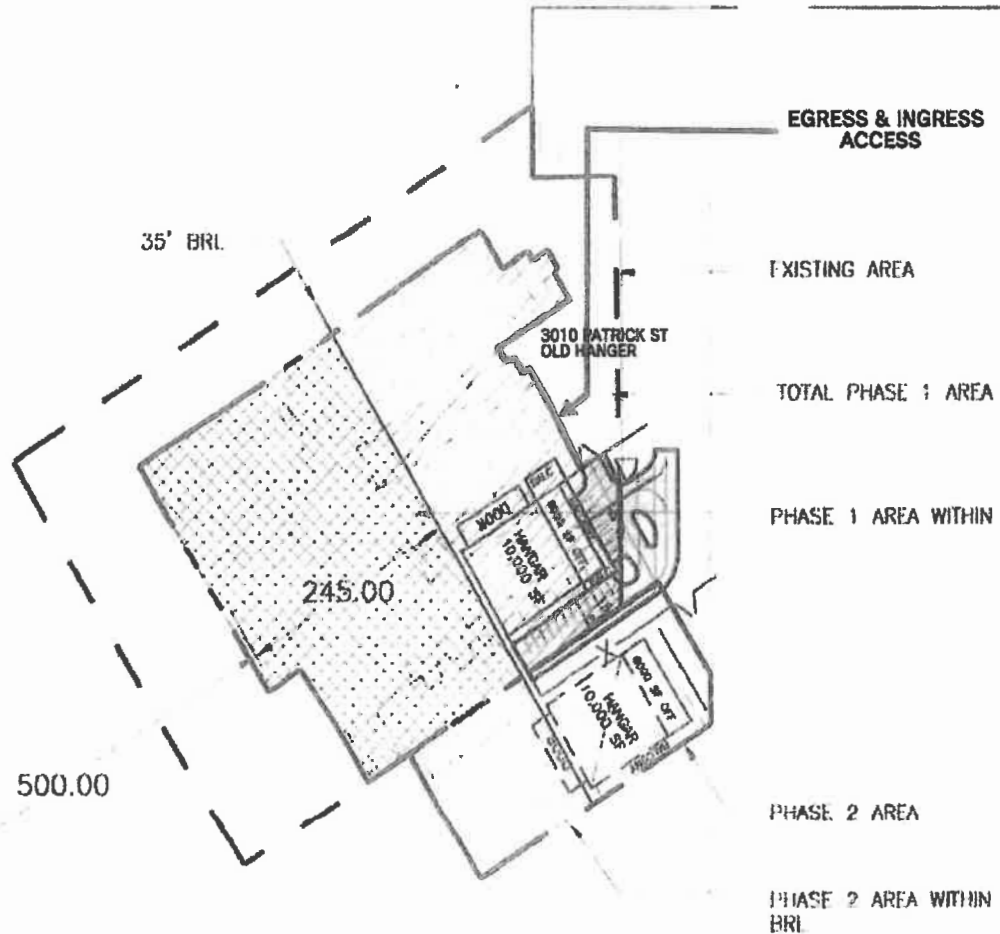
EXHIBIT

SCALE: GRAPHIC

DATE: 01/13/10

FILENAME: 01/13/10

EXHIBIT B



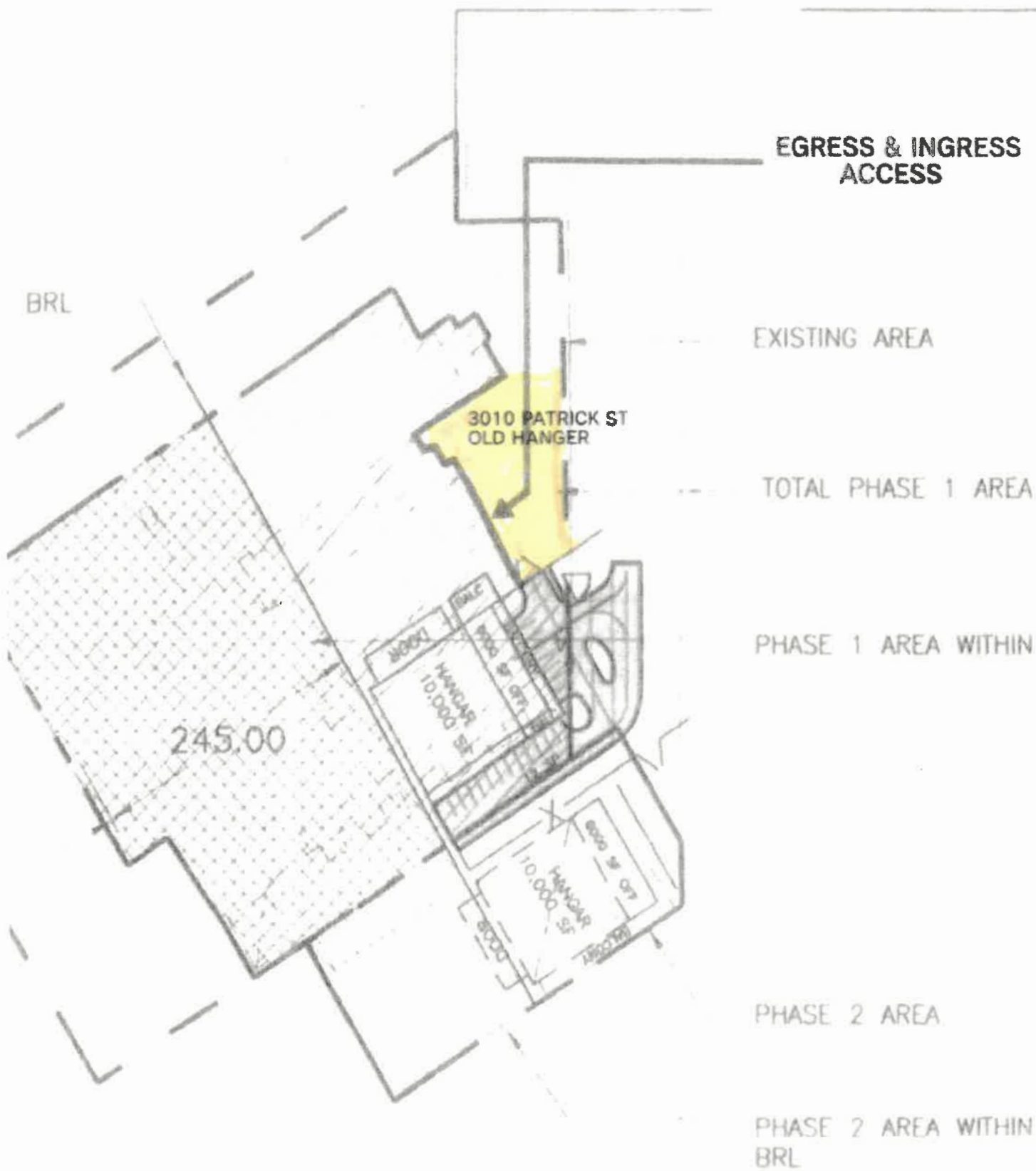
AVCON, INC.
ENGINEERS & PLANNERS
 5555 E MICHIGAN ST., SUITE 200
 ORLANDO, FL 32822-2770

SUNSTATE FBO LEASEHOLD

TITLE

B

EXHIBIT



B
Exhibit



January 25, 2024

Mr Shaun Germolous
Kissimmee Gateway Airport
401 Dyer Blvd
Kissimmee, FL 34741

Dear Shaun and all at Kissimmee Gateway Airport,

It's exciting for us to be writing this letter of intent and introduction of us as Academy of Aviation and discuss our exciting future at the Kissimmee Gateway Airport.

Academy of Aviation is a flight school which has its roots in Long Island, NY, where I started the flight school more than 25 years ago as the initial sole employee, instructor and operator. Aviation and flight training has become a passion of mine, and with years of life dedicated to being an instructor I realized that my passion needed growth. Academy of Aviation was born with a simple understanding that is best described by our motto 'You have the dream. We give it wings.' It's simply about helping share the passion of aviation with future aviators. It's about a commitment to a passion industry. It's about securing the future of flying for all of those that wish to embrace it.

Our growth has been significant, especially in recent years, as we have secured numerous financial aid and financing opportunities for our students to achieve the dream. In cooperation with Sallie Mae, we have seen unprecedented growth in reaching students and being able to offer so many students the opportunity to be airline pilots, by finding a way to help those students fund their training. As we know, funding is one of the biggest obstacles in flight training.

From multiple bases in New York, to the Charlotte market, to the Atlanta market, we have grown significantly and grown and flight training network along the east coast. We now are excited to add Kissimmee (Orlando market) to our portfolio as the jewel in our crown. We have experience ourselves in operating FBOs at one of our bases. We also have extensive experience with maintenance and are proud of our 145, Heavy Metal Air, and all that it accomplishes throughout the East Coast.



Our future at Kissimmee is one that is truly exciting. We initially intend to maintain and grow the flight training operations that is Sunstate on the south side of the field. In homage to the heritage that is Sunstate, we are maintaining the Sunstate name, powered by Academy of Aviation. We look to opportunities in the future to grow the beautiful facility, potentially look at investing in hotel and housing on the field. We also look at the potential to grow an FBO operation at Kissimmee. We see all the potential that exists here and are extremely excited that our varied backgrounds pair so amazingly with all the potential that exists here in Kissimmee.

Once again, we are truly excited to be working and to be an active part of the Kissimmee Gateway Airport. We are always available to discuss anything further and to embrace any potential opportunities. We look forward to Having the dreams of countless central Floridians get wings with Sunstate powered by Academy of Aviation in Kissimmee. We are committed to be a positive and active part of the Kissimmee Gateway Airport flight community.

With Sincerest Regards,

Christopher Richards
President/Owner
Academy of Aviation
Chris@AoA.edu
(631) 777-7772

ITEM 7.R

Aston Square Easements

Request

Approval of several easements to effectuate completion of water and sewer line connection and a lift station for the Aston Square project and City property currently leased by the Osceola Chamber of Commerce. The easements include: a Utility Easement between the City, Toho Water Authority, and the Chamber of Commerce; a Sanitary Sewer Easement between the City, the Developer and the Chamber of Commerce; and a Water Main Easement between the City and the Developer.

Explanation

The City owns certain real property located at 1425 E. Vine Street, (the Osceola County Chamber of Commerce Property). Park Square MF, LLC, and its affiliate, Aston Square Kissimmee MF, LLC, are currently developing the adjacent property known as Aston Square (DRC#18-00145), which includes retail, commercial, and residential uses. The City Commission approved a Temporary Construction Easement in November 2023 that allowed the Developer to commence site work while awaiting further review from Toho Water Authority (TWA) regarding the construction of water main lines and a lift station, designed to benefit both the Ashton Square project and the City-owned property.

The Utility Easement and the Sanitary Sewer Easement relate to the installation and connection of certain sanitary sewer facilities to be situated on both the City Property and the Park Square MF Property. There are existing sanitary sewer facilities situated on the City Property, but neither TWA nor Park Square MF, LLC have an easement to utilize such facilities. The lift station (which is to be conveyed to TWA), situated on the adjacent property owned by Park Square MF, LLC, will connect to the sanitary sewer facilities situated on the City Property. As such, both Park Square MF and TWA require an easement to connect to and utilize the facilities.

The Water Main Easement Agreement relates to the installation and connection of certain water mains from the property owned by Aston Square Kissimmee MF, LLC, through Tract C (as set forth on the Plat of Pebble Creek) and into the existing water main situated within Sand Run Road. Since the City owns both Sand Run Road and Tract C (as set forth on the Plat of Pebble Creek), Aston Square Kissimmee MF, LLC is requesting an easement over said areas so that it can provide water main connections to the multifamily project situated directly to the South of Sand Run Road.

Recommendation

Approval of the Utility Easement, Sanitary Sewer Easement and the Water Main Easement associated with the Aston Square project.

REQUESTED CITY COMMISSION ACTION:

Approve

Department: City Attorney

Presenter:

Attachment(s):

1. (S) Water Main Easement Agreement (City to Aston Square)
2. (S) Easement (City to TOHO) -- Park Square
3. (S) Sanitary Sewer Easement Agreement (Park Square MF and City)

City of Kissimmee

This instrument prepared by and
after recording return to:

Matthew W. McMurtrey, Esq.
Lowndes, Drosdick, Doster, Kantor & Reed, P.A.
215 N. Eola Ave
Orlando, FL 32801

-----{SPACE ABOVE THIS LINE FOR RECORDING DATA}-----

WATER MAIN EASEMENT AGREEMENT

THIS WATER MAIN EASEMENT AGREEMENT (“Agreement”) is made and entered into as of February __, 2024 (**“Effective Date”**), by and between the **CITY OF KISSIMMEE**, Florida, a municipal corporation, whose address is 101 Church Street, Kissimmee, FL 34741 (the **“City”**), and **ASTON SQUARE KISSIMMEE MF, LLC**, a Delaware limited liability company, whose address is 5200 Vineland Road, Suite 200, Orlando, FL 32811 (**“Aston Square”**). The City and Aston Square are sometimes hereinafter referred to individually as a **“Party”** and collectively as the **“Parties”**).

RECITALS

WHEREAS, the City owns certain real property located in Osceola County, Florida, as more particularly described on **Exhibit “A”** attached hereto (the **“City Property”**); and

WHEREAS, Aston Square owns certain real property situated adjacent to the City Property, as more particularly described on **Exhibit “B”** attached hereto (the **“Aston Square Property,”** and collectively with the City Property, the **“Properties”**); and

WHEREAS, Aston Square intends to develop the Aston Square Property as a development containing residential uses (**“Project”**); and

WHEREAS, in connection with the development of the Project, Aston Square has, or will, construct and install certain Water Main Improvements (as defined herein), within a portion of the City Property; and

WHEREAS, the Parties desire to enter into this Agreement for the purposes of establishing the rights and obligations of the Parties related to the Water Main Improvements and the granting of a non-exclusive perpetual easement in connection therewith; and

NOW, THEREFORE, for and in exchange of good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the City and Aston Square do hereby agree and state as follows:

AGREEMENT

1. **Recitals.** The foregoing recitals are incorporated herein by reference as though fully set forth below.

2. **Water Main Easement.** The City hereby grants, creates, conveys and establishes a perpetual, non-exclusive utility easement (the “**Water Main Easement**”), on, over, across, under and through the City Property, to and in favor of Aston Square, as an appurtenance to the Aston Square Property, for the use and benefit of the Parties and its successors, assigns, agents, invitees and licensees for purposes of the operation, use, maintenance, repair and replacement of a water main and associated improvements (the “**Water Main Improvements**”).

3. **Aston Square Insurance.** Prior to Aston Square or its agents, contractors, subcontractors, agents, suppliers, materialman, consultants, employees, invitees or licensees (the “**Aston Square Parties**”) entry onto any portion of the City Property, Aston Square shall maintain or cause to be maintained, at Aston Square’s expense, a policy of commercial general liability insurance, with a combined single limit of not less than \$1,000,000.00 per occurrence and \$2,000,000.00 general aggregate, insuring Aston Square and the City, as an additional insured, against injuries or damages to persons or property that may result from or are related to (i) the Aston Square Parties’ entry upon the City Property, and (ii) any construction, maintenance, repair or other activities conducted by the Aston Square Parties thereon, and in such forms and with an insurance company reasonably acceptable to the City. Aston Square shall deliver a copy of such insurance policy or certificate evidencing such policy to the City prior to the Aston Square Parties’ first entry on the City Property.

4. **City Indemnity.** Only to the extent of the monetary limitations for which the City may be liable under section 768.28, Florida Statutes, as it may be amended from time to time, and without otherwise waiving the sovereign immunity of the City, the City agrees to indemnify, save, pay, defend and hold harmless Aston Square from and against all claims, damages, losses and expenses arising out of or resulting from the negligent acts or omissions of the City and its agents, contractors, and employees (the “**Users**”) in the User’s use of the easements herein granted or the undertaking of any activities as provided herein. Thus, the maximum liability and recovery against the City under this provision shall be the monetary limits of liability established under Section 768.28(5), Florida Statutes, regardless of the type or basis of claim, loss, judgment, injury or demand at issue. Nothing in this Agreement shall be nor construed as a waiver or avoidance of any common law or statutory sovereign immunity or of any other defenses, privileges and immunities enjoyed by the City and its elected and appointed officers, employees and agents under the law.

5. **Aston Square Indemnity.** Aston Square shall, and hereby agrees to, indemnify save, pay, defend and hold harmless from and against and reimburse City for any and all loss, damage, cost and expense, including, without limitation, reasonable attorneys’ fees at both trial and all appellate levels (but specifically excluding any punitive, incidental and consequential damages, for which Aston Square shall have no liability) asserted against the City, which is occasioned by or results from any construction, relocation, maintenance or repair activities conducted by Aston Square or any of the Aston Square Parties upon any portion of the City Property.

6. **Assignment of Agreement to Third Party.** In the event all or a portion of the Aston Square Property is submitted to the condominium form of ownership, Aston Square may assign its rights and obligations hereunder to a non-profit condominium association created for the purpose of administrating, operating and maintaining such condominium.

7. **Estoppel Certificates.** Each Party hereby shall, within fifteen (15) days after the written request of any other Party, issue to such other Party or to any prospective mortgagee or purchaser of such Party's property, an estoppel certificate stating: (a) whether the Party to whom the request has been directed knows of any default under this Agreement and if there are known defaults specifying the nature thereof, (b) whether, to its knowledge, this Agreement has been assigned, modified or amended in any way (and if it has, then stating the nature thereof), (c) whether, to the Party's knowledge, this Agreement as of that date is in full force and effect, and (d) such other information as may reasonably be requested.

8. **Standard for Installation and Repairs.** Any Party making any repairs, replacements or installation required under this Agreement shall make them in a good and workmanlike manner, in accordance with all applicable laws, rules and ordinance applicable thereto, free of licensor claims for same.

9. **Notices.** Any notice pursuant to this Agreement shall be given in writing by (a) personal delivery, (b) reputable overnight delivery service with proof of delivery, or (c) United States Mail, postage prepaid, registered or certified mail, return receipt requested, sent to the intended addressee at the address on file at the Osceola County Property Appraiser's Office for such Party's Property, or to the registered agent of such Party on file at the Florida Secretary of State's Office, or such other address or to the attention of such other person as the addressee shall have designated by written notice sent in accordance herewith. Any notice so given shall be deemed to have been given upon receipt or refusal to accept delivery.

10. **Binding Effect; Enforcement.** This Agreement shall run with the Properties, shall be binding upon the Properties and inure to the benefit of the Properties, the respective owners of such properties and their heirs, grantees, successors and assigns. The easements and rights contained herein may be enforced by Aston Square, its successors or assigns through any available means under law.

11. **Applicable Law.** This Agreement shall be construed in accordance with Florida law (exclusive of choice of law rules) and shall not be amended, modified or terminated unless in writing executed by the City and Aston Square, or their respective successors and assigns, and recorded in the Public Records of Osceola County, Florida. Venue for any action arising hereunder shall lie exclusively in the state courts of Osceola County, Florida.

12. **No Waiver.** The failure of any Party to exercise any right created hereunder or to insist upon strict compliance with any term, condition, or covenant specified herein shall not constitute a waiver of such right or the right to insist upon strict compliance with any such term, condition or covenant under this Agreement at any future time.

13. **Entire Agreement; Severability.** This Agreement contains the sole and entire agreement between the Parties with respect to the matters set forth herein and no representation,

inducement, promise, or agreement, oral or written, between the Parties which is not set forth herein shall be of any force or effect. If any term, covenant, or condition of this Agreement or the application thereof to any person or circumstance shall to any extent be invalid or unenforceable, such term, covenant or condition or such application shall be deemed severable, and the application of such term, covenant or condition to persons or circumstances other than those as to which it was held invalid or unenforceable, and the remainder of this Agreement, shall not be affected thereby, and the remainder of this Agreement shall be valid and enforceable to the fullest extent permitted by law.

14. **Attorneys' Fees**. Should any Party be required or elect to enforce the provisions of this Agreement by legal action, the reasonable attorneys' fees, other professionals' fees and costs incurred, whether or not judicial proceedings are involved, including the attorneys' fees, other professionals' fees and costs incurred on appeal of such judicial proceedings and those incurred in all bankruptcy and probate proceedings, shall be collectible from the breaching Party.

[Signatures on the following pages]

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed and delivered on the day and year first above written.

Signed, sealed and delivered in the presence of:

“CITY”

THE CITY OF KISSIMMEE, a political subdivision of the State of Florida

Print Name

Address: _____

By: _____

Name: _____

Title: _____

(Seal)

Date of Execution: February ____, 2024

Print Name

Address: _____

STATE OF FLORIDA
COUNTY OF _____

The foregoing instrument was acknowledged before me by means of ☐ physical presence or ☐ online notarization this ____ day of February, 2024, by _____, as _____ of **THE CITY OF KISSIMMEE**, a political subdivision of the State of Florida, on behalf of the city. Said person (check one) ☐ is personally known to me or ☐ produced _____ as identification.

Notary Stamp

Print Name: _____

Notary Public, State of Florida

Commission No.: _____

My Commission Expires: _____

Signed, sealed and delivered in the presence of:


Jonathan Prystasz
Print Name
Address: 5200 Vineland Rd
Orlando, FL 32811

Mariana Morell
Mariana Morell
Print Name
Address: 5200 Vineland Road
Orlando, FL 32811

ASTON SQUARE KISSIMMEE MF, LLC,
a Delaware limited liability company

By: Aston Square Kissimmee Development, LLC,
a Delaware limited liability company, its
Manager

By: Aston Square Partners, LLC, a Florida
limited liability company, its Manager

By: Kimaya, LLC, a Delaware
limited liability company, its
Manager

By: Vishaal Gupta
Name: Vishaal Gupta
Title: Manager

Date of Execution: January 30, 2024

STATE OF FLORIDA
COUNTY OF ORANGE

The foregoing instrument was acknowledged before me by means of ☒ physical presence
or ☐ online notarization this 30 day of January, 2024, by Vishaal Gupta, as Manager of
Kimaya, LLC, a Delaware limited liability company, its Manager of Aston Square Partners, LLC,
a Florida limited liability company, its Manager of Aston Square Kissimmee MF, LLC, a Delaware
limited liability. Said person (check one) ☒ is personally known to me or ☐ produced
_____ as identification.



Mariana Morell
Notary Public
State of Florida
Comm# HH111077
Expires 3/29/2025

Mariana Morell
Notary Stamp
Print Name: Mariana Morell
Notary Public, State of Florida
Commission No.: HH111077
My Commission Expires: 3/29/2025

EXHIBIT "A"
City Property

Tract C, as set forth on the Plat of Pebble Creek, recorded in Book 4, Page 178, Public Records of Osceola County, Florida

AND

Sand Run Road, as set forth on the Plat of Pebble Creek, recorded in Book 4, Page 178, Public Records of Osceola County, Florida

EXHIBIT "B"

Aston Square Property

Lot 3A, Aston Square, according to the plat thereof, as recorded in Plat Book 30, Pages 153 and 154 of the Public Records of Osceola County, Florida

This document prepared by,
or under the direction of, and
after recording return to:

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

Parcel ID No.: 14-25-29-00U0-0303-0000

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

EASEMENT

THIS EASEMENT is made and granted this ____ day of _____ 2024, by **CITY OF KISSIMMEE**, Florida, a municipal corporation, whose address is 101 Church Street, Kissimmee, Florida 34741, hereinafter the “Grantor”, to the **TOHOPEKALIGA 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”, and joined by **KISSIMMEE/OSCEOLA COUNTY CHAMBER OF COMMERCE, INC.**, a Florida not-for-profit corporation, whose address is 1425 E. Vine Street, Kissimmee, FL 34744 (“Lessee”).

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 to TOHO, its successors and assigns, a non-exclusive utility easement across a parcel of real property in Osceola County, Florida, as more particularly described in Exhibit A appended hereto and incorporated herein for the purpose of ingress and egress to and installing, maintaining, repairing, refiguring, or reconstructing water and wastewater utilities and associated facilities within the easement.

Grantor may continue to use the surface of the easement areas for any lawful purposes that do not unreasonably interfere with the easement rights granted herein including the right to improve the easement areas, which improvements may include parking, paving, sidewalks, lighting, landscaping, green spaces, recreational areas, and drive aisles for motor-vehicles upon notice to and written approval from TOHO.

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

Grantee will, at its sole cost and expense, restore the surface of all disturbed areas on the utility easement to its original condition as near as is reasonably practicable, the damage or disturbance to which shall have been occasioned by the maintenance, operation, repair, inspection,

the easement area of trees, limbs, vegetation, or other physical objects which endanger or interfere with the safe or efficient installation, operation, or maintenance of facilities existing within the easement.

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

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

[SIGNATURES APPEAR ON FOLLOWING PAGE]

IN WITNESS WHEREOF, the Grantor has authorized and caused the execution of this instrument as of the date first above written.

WITNESSES:

GRANTOR:

CITY OF KISSIMMEE, Florida, a
Municipal corporation

Witness #1
Print Name: _____
Address: _____

By: _____
Printed Name: _____
Title: _____

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 _____ 2024, by _____, as _____ of City of Kissimmee, Florida, a municipal corporation on behalf of the corporation. He/She [] is personally known to me or [] has produced _____ as identification.

(Seal)

Signature of Notary Public

Name of Notary Typed, Printed or Stamped

JOINDER AND CONSENT OF LESSEE

The undersigned, **KISSIMMEE/OSCEOLA COUNTY CHAMBER OF COMMERCE, INC.**, a Florida not-for-profit corporation ("**Lessee**"), being the owner and holder of the leasehold interest in the City Property by virtue of that certain Lease Agreement dated November 7, 1989, and recorded January 19, 1990 in in Book 953, Page 997, and recorded September 20, 2005 in Book 2091, Page 2795, all in the Public Records of Osceola County, FL, hereby agrees and consents to the terms, covenants, conditions and provisions of the Easement to which this Joinder and Consent is attached.

Signed in the presence of:

"LESSEE"

V. McGregor
Witness
Print Name: VICTORIA MCGREGOR
Address: 8801 LATREC AVE APT 302
ORLANDO, FL 32819

Susan E. Riney
Witness
Print Name: SUSAN E. RINEY
Address: 3164 CRESTED CIRCLE
ORLANDO FL 32837

KISSIMMEE/OSCEOLA COUNTY CHAMBER OF COMMERCE, INC., a Florida not-for-profit corporation

By: J. Newstreet
Name: J. Newstreet
Title: President / CEO

Date of Execution: Jan. 29, 2024

STATE OF FLORIDA
COUNTY OF _____

The foregoing instrument was acknowledged before me by means of ☒ physical presence or ☐ online notarization this 29 day of Jan, 2024, by J. Newstreet, as President / CEO **KISSIMMEE/OSCEOLA COUNTY CHAMBER OF COMMERCE, INC.**, a Florida not-for-profit corporation, on behalf of the corporation. He/she is personally known to me or produced _____ as identification.

[NOTARY SEAL]

Cindy Lewis
Notary Public Signature

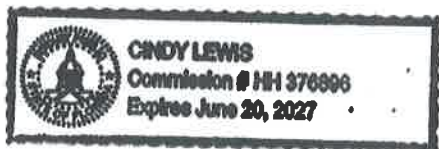


EXHIBIT A

SKETCH AND DESCRIPTION

(THIS IS NOT A SURVEY)

20.00' FORCE MAIN EASEMENT

THE NEO AT KISSIMMEE
KISSIMMEE, OSCEOLA COUNTY, FLORIDA

LEGAL DESCRIPTION

A PORTION OF THE LANDS DESCRIBED IN OFFICIAL RECORDS BOOK 317, PAGE 557, PUBLIC RECORDS OF OSCEOLA COUNTY, FLORIDA, BEING A PORTION OF THE SOUTHEAST 1/4 OF THE SOUTHWEST 1/4 OF SECTION 14, TOWNSHIP 25 SOUTH, RANGE 29 EAST, OSCEOLA COUNTY, FLORIDA, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGIN AT THE SOUTHEAST CORNER OF LOT 2, ASTON SQUARE, ACCORDING TO THE PLAT THEREOF, AS RECORDED IN PLAT BOOK 30, PAGES 153 AND 154 OF THE PUBLIC RECORDS OF OSCEOLA COUNTY, FLORIDA, SAID POINT BEING THE SOUTHWEST CORNER OF THE LANDS DESCRIBED IN OFFICIAL RECORDS BOOK 317, PAGE 557, PUBLIC RECORDS OF OSCEOLA COUNTY, FLORIDA; THENCE RUN N 01°36'06" E ALONG THE WEST LINE OF SAID LANDS A DISTANCE OF 400.00 FEET TO THE NORTHWEST CORNER THEREOF; THENCE RUN S 88°24'40" E, ALONG THE NORTH LINE OF SAID LANDS A DISTANCE OF 200.00 FEET TO THE NORTHEAST CORNER THEREOF; THENCE RUN S 01°36'06" W, ALONG THE EAST LINE OF SAID LANDS A DISTANCE OF 20.00 FEET; THENCE DEPARTING SAID EAST LINE RUN N 88°24'40" W, A DISTANCE OF 180.00 FEET; THENCE RUN S 01°36'06" W, A DISTANCE OF 380.00 FEET TO A POINT ON THE NORTH RIGHT-OF-WAY LINE OF U.S. HIGHWAY No. 192/441; THENCE RUN N 88°24'40" W ALONG SAID NORTH RIGHT-OF-WAY LINE A DISTANCE OF 20.00 FEET TO THE POINT OF BEGINNING.

CONTAINING 11,600 SQUARE FEET MORE OR LESS.

SURVEYOR'S NOTES

- 1) NOT VALID WITHOUT THE SIGNATURE AND ORIGINAL RAISED SEAL OF A FLORIDA LICENSED SURVEYOR AND MAPPER.
- 2) THE LANDS SHOWN HEREON WERE NOT ABSTRACTED FOR RIGHTS-OF-WAY, EASEMENTS, OWNERSHIP, OR OTHER INSTRUMENTS OF RECORD BY THIS FIRM.
- 3) BEARINGS SHOWN HEREON ARE BASED ON THE EAST LINE OF LOT 2, ASTON SQUARE, PLAT BOOK 30, PAGES 153 AND 154, HAVING A BEARING OF S 01°36'06" W PER THE RECORD PLAT.

PROJECT: 22075

SEE SHEET 2 FOR SKETCH
11/13/2023
SHEET 1 OF 2

PREPARED BY:

I CERTIFY THAT THIS MEETS OR EXCEEDS THE STANDARDS OF PRACTICE SET FORTH BY THE FLORIDA BOARD OF PROFESSIONAL SURVEYORS AND MAPPERS IN CHAPTER 5J-17, FLORIDA ADMINISTRATIVE CODE, PURSUANT TO SECTION 472, FLORIDA STATUTES.

DAVID M. McDERMOTT

FLORIDA REGISTERED SURVEYOR AND MAPPER CERTIFICATE No. 4779

Associated Land Surveying & Mapping, Inc.

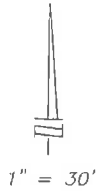
1681 POWELL STREET, LONGWOOD, FLORIDA 32750
PH (407) 869-5002, FAX (407) 869-8393
CERTIFICATE OF AUTHORIZATION # LB 6767

SKETCH AND DESCRIPTION

(THIS IS NOT A SURVEY)

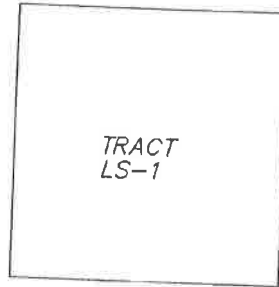
20.00' FORCE MAIN EASEMENT

THE NEO AT KISSIMMEE
KISSIMMEE, OSCEOLA COUNTY, FLORIDA



1" = 30'

LOT 2
ASTON SQUARE
PLAT 30, PAGES 153 AND 154



TRACT
LS-1

POINT OF
BEGINNING

SE CORNER
LOT 2
ASTON SQUARE
PLAT 30, PAGES 153 AND 154 AND

SW CORNER LANDS
DESCRIBED IN
ORB 317, PG 557

LINE TABLE

LINE	BEARING	LENGTH
L1	N01°36'06"E	400.00'
L2	S88°24'40"E	200.00'
L3	S01°36'06"W	20.00'
L4	N88°24'40"W	180.00'
L5	S01°36'06"W	380.00'
L6	N88°24'40"W	20.00'

LOT 3A
ASTON SQUARE
PLAT 30, PAGES 153 AND 154

NE CORNER LANDS
DESCRIBED IN
ORB 317, PG 557

N LINE LANDS DESCRIBED
IN ORB 317, PG 557

L2

L4

LANDS DESCRIBED IN OFFICIAL
RECORDS BOOK 317, PAGE 557

(NOT PLATTED)

E LINE LOT 2
W LINE LANDS DESCRIBED
IN ORB 317, PG 557

L1

L5

E LINE LANDS DESCRIBED
IN ORB 317, PG 557

MILL SLOUGH

L6

N RIGHT-OF-WAY LINE

U.S. HIGHWAY NO. 192/441
184' RIGHT OF WAY

ORB-OFFICIAL RECORDS BOOK
PG-PAGE

SEE SHEET 1 FOR DESCRIPTION
11/13/2023
SHEET 2 OF 2

PROJECT: 22075

Associated Land Surveying
& Mapping, Inc.

1881 POWELL STREET, LONGWOOD, FLORIDA 32750
PH (407) 869-5002, FAX (407) 869-8393
CERTIFICATE OF AUTHORIZATION # LB 6767

This instrument prepared by and
after recording return to:

Matthew W. McMurtrey, Esq.
Lowndes, Drosdick, Doster, Kantor & Reed, P.A.
215 N. Eola Ave
Orlando, FL 32801

-----{SPACE ABOVE THIS LINE FOR RECORDING DATA}-----

SANITARY SEWER EASEMENT AGREEMENT

THIS SANITARY SEWER EASEMENT AGREEMENT (“Agreement”) is made and entered into as of _____, 2024 (**“Effective Date”**), by and between the **CITY OF KISSIMMEE**, Florida, a municipal corporation, whose address is 101 Church Street, Kissimmee, FL 34741 (the **“City”**), **PARK SQUARE MF, LLC**, a Florida limited liability company, whose address is 5200 Vineland Road, Suite 200, Orlando, FL 32811 (**“Park Square,”** the City and Park Square are sometimes hereinafter referred to individually as a **“Party”** and collectively as the **“Parties”**), and joined by **KISSIMMEE/OSCEOLA COUNTY CHAMBER OF COMMERCE, INC.**, a Florida not-for-profit corporation, whose address is 1425 E. Vine Street, Kissimmee, FL 34744 (**“Lessee”**).

RECITALS

WHEREAS, the City owns certain real property located in Osceola County, Florida, as more particularly described on Exhibit “A” attached hereto (the **“City Property”**); and

WHEREAS, Park Square owns certain real property situated adjacent to the City Property, as more particularly described on Exhibit “B” attached hereto (the **“Park Square Property,”** and collectively with the City Property, the **“Properties”**); and

WHEREAS, Park Square intends to develop the Park Square Property as a mixed-use development potentially containing retail, commercial and residential uses (**“Project”**); and

WHEREAS, in connection with the development of the Project, Park Square has constructed and installed certain Sanitary Sewer Improvements (as defined herein), including, but not limited to a sanitary sewer line stub-out, a sanitary sewer force main and other associated improvements over a portion of both the City Property and Park Square Property, which Sanitary Sewer Improvements shall serve both of the Properties; and

WHEREAS, the Parties desire to enter into this Agreement for the purposes of establishing the rights and obligations of the Parties related to the sharing of the Sanitary Sewer Improvements and the granting of perpetual easements in connection therewith; and

WHEREAS, Lessee holds a leasehold interest in the City Property by virtue of that certain Lease Agreement dated November 7, 1989 and recorded January 19, 1990 in Book 953, Page 997, and recorded September 20, 2005 in Book 2901, Page 2795, all in the Public Records of Osceola

County, Florida (the “**Lease**”), and in such capacity has been requested to join in and consent to the terms hereof and agree to be bound thereby so long as it holds a leasehold interest in the City Property.

NOW, THEREFORE, for and in exchange of good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the City and Park Square do hereby agree and state as follows:

AGREEMENT

1. **Recitals.** The foregoing recitals are incorporated herein by reference as though fully set forth below.

2. **Lift Station.**

(a) **Grant of Easement.** The City and Park Square hereby grant, create, convey and establish a perpetual, non-exclusive utility easement (the “**Sanitary Sewer Easement**”), on, over, across, under and through that portion of the Properties which it owns that is included within the area more particularly described on **Exhibit “C”** attached hereto (the “**Sanitary Sewer Easement Area**”), to and in favor of each Party, as an appurtenance to the City Property and the Park Square Property, for the use and benefit of the Parties and their successors, assigns, agents, invitees and licensees for purposes of the: (i) the operation, use, maintenance, repair and replacement of a 6” force main situated within the Sanitary Easement Area (the “**Force Main**”), and (ii) the operation, use, maintenance, repair and replacement of one (1) sanitary sewer line stub-out situated in such a way as to allow for the connection of the City Property to the Force Main (“**Stub-out**,” collectively with the Force Main, the “**Sanitary Sewer Improvements**”).

(b) **Construction, Maintenance and Restoration.** Should the City or its Lessee wish to connect to the Stub-out, either of them may do so, at no expense to Park Square. Subject to the obligations of the Tohopekaliga Water Authority, an independent special district of the State of Florida (“**TOHO**”) pursuant to separate agreements with the Parties, each Party shall be responsible for the operation, maintenance, repair and replacement of the Sanitary Sewer Improvements situated on that portion of the Properties which it owns. In the event it should be necessary for Park Square to perform any subsequent installations, repairs, maintenance or replacement of any portion of the Sanitary Sewer Improvements situated on the City Property, Park Square shall restore such portion of the Sanitary Sewer Easement Area substantially to its pre-existing state and condition.

3. **Park Square Insurance.** Prior to Park Square or its agents, contractors, subcontractors, agents, suppliers, materialman, consultants, employees, invitees or licensees (the “**Park Square Parties**”) entry onto any portion of the Sanitary Sewer Easement Area located on the City Property, Park Square shall maintain or cause to be maintained, at Park Square’s expense, a policy of commercial general liability insurance, with a combined single limit of not less than \$1,000,000.00 per occurrence and \$2,000,000.00 general aggregate, insuring Park Square and the City, as an additional insured, against injuries or damages to persons or property that may result from or are related to (i) the Park Square Parties’ entry upon the City Property, and (ii) any

construction, maintenance, repair or other activities conducted by the Park Square Parties thereon, and in such forms and with an insurance company reasonably acceptable to the City. Park Square shall deliver a copy of such insurance policy or certificate evidencing such policy to the City prior to the Park Square Parties' first entry on the City Property.

4. **City Indemnity.** Only to the extent of the monetary limitations for which the City may be liable under section 768.28, Florida Statutes, as it may be amended from time to time, and without otherwise waiving the sovereign immunity of the City, the City agrees to indemnify, save, pay, defend and hold harmless Park Square from and against all claims, damages, losses and expenses arising out of or resulting from the negligent acts or omissions of the City and its agents, contractors, and employees (the "Users") in the User's use of the easements herein granted or the undertaking of any activities as provided herein. Thus, the maximum liability and recovery against the City under this provision shall be the monetary limits of liability established under Section 768.28(5), Florida Statutes, regardless of the type or basis of claim, loss, judgment, injury or demand at issue. Nothing in this Agreement shall be nor construed as a waiver or avoidance of any common law or statutory sovereign immunity or of any other defenses, privileges and immunities enjoyed by the City and its elected and appointed officers, employees and agents under the law.

5. **Park Square Indemnity.** Park Square shall, and hereby agrees to, indemnify save, pay, defend and hold harmless from and against and reimburse City for any and all loss, damage, cost and expense, including, without limitation, reasonable attorneys' fees at both trial and all appellate levels (but specifically excluding any punitive, incidental and consequential damages, for which Park Square shall have no liability) asserted against the City, which is occasioned by or results from any construction, relocation, maintenance or repair activities conducted by Park Square or any of the Park Square Parties upon any portion of the Sanitary Sewer Easement Area existing on the City Property.

6. **Assignment of Agreement to Third Party.** In the event all or a portion of the Park Square Property is submitted to the condominium form of ownership, Park Square may assign its rights and obligations hereunder to a non-profit condominium association created for the purpose of administering, operating and maintaining such condominium.

7. **Estoppel Certificates.** Each Party hereby shall, within fifteen (15) days after the written request of any other Party, issue to such other Party or to any prospective mortgagee or purchaser of such Party's property, an estoppel certificate stating: (a) whether the Party to whom the request has been directed knows of any default under this Agreement and if there are known defaults specifying the nature thereof, (b) whether, to its knowledge, this Agreement has been assigned, modified or amended in any way (and if it has, then stating the nature thereof), (c) whether, to the Party's knowledge, this Agreement as of that date is in full force and effect, and (d) such other information as may reasonably be requested.

8. **Standard for Installation and Repairs.** Any Party making any repairs, replacements or installation required under this Agreement shall make them in a good and workmanlike manner, in accordance with all applicable laws, rules and ordinance applicable thereto, free of licensor claims for same.

9. **Notices.** Any notice pursuant to this Agreement shall be given in writing by (a) personal delivery, (b) reputable overnight delivery service with proof of delivery, or (c) United States Mail, postage prepaid, registered or certified mail, return receipt requested, sent to the intended addressee at the address on file at the Osceola County Property Appraiser's Office for such Party's Property, or to the registered agent of such Party on file at the Florida Secretary of State's Office, or such other address or to the attention of such other person as the addressee shall have designated by written notice sent in accordance herewith. Any notice so given shall be deemed to have been given upon receipt or refusal to accept delivery.

10. **Binding Effect; Enforcement.** This Agreement shall run with the Properties, shall be binding upon the Properties and inure to the benefit of the Properties, the respective owners of such properties and their heirs, grantees, successors and assigns. The easements and rights contained herein may be enforced by Park Square, its successors or assigns through any available means under law.

11. **Applicable Law.** This Agreement shall be construed in accordance with Florida law (exclusive of choice of law rules) and shall not be amended, modified or terminated unless in writing executed by the City and Park Square, or their respective successors and assigns, and recorded in the Public Records of Osceola County, Florida. Venue for any action arising hereunder shall lie exclusively in the state courts of Osceola County, Florida.

12. **No Waiver.** The failure of any Party to exercise any right created hereunder or to insist upon strict compliance with any term, condition, or covenant specified herein shall not constitute a waiver of such right or the right to insist upon strict compliance with any such term, condition or covenant under this Agreement at any future time.

13. **Entire Agreement; Severability.** This Agreement contains the sole and entire agreement between the Parties with respect to the matters set forth herein and no representation, inducement, promise, or agreement, oral or written, between the Parties which is not set forth herein shall be of any force or effect. If any term, covenant, or condition of this Agreement or the application thereof to any person or circumstance shall to any extent be invalid or unenforceable, such term, covenant or condition or such application shall be deemed severable, and the application of such term, covenant or condition to persons or circumstances other than those as to which it was held invalid or unenforceable, and the remainder of this Agreement, shall not be affected thereby, and the remainder of this Agreement shall be valid and enforceable to the fullest extent permitted by law.

14. **Attorneys' Fees.** Should any Party be required or elect to enforce the provisions of this Agreement by legal action, the reasonable attorneys' fees, other professionals' fees and costs incurred, whether or not judicial proceedings are involved, including the attorneys' fees, other professionals' fees and costs incurred on appeal of such judicial proceedings and those incurred in all bankruptcy and probate proceedings, shall be collectible from the breaching Party.

[Signatures on the following pages]

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed and delivered on the day and year first above written.

Signed, sealed and delivered in the presence of:

“CITY”

THE CITY OF KISSIMMEE, a political subdivision of the State of Florida

Print Name

Address: _____

By: _____

Name: _____

Title: _____

(Seal)

Date of Execution: _____, 2024

Print Name

Address: _____

STATE OF FLORIDA
COUNTY OF _____

The foregoing instrument was acknowledged before me by means of ☐ physical presence or ☐ online notarization this ____ day of _____, 2024, by _____, as _____ of **THE CITY OF KISSIMMEE**, a political subdivision of the State of Florida, on behalf of the city. Said person (check one) ☐ is personally known to me or ☐ produced _____ as identification.

Notary Stamp

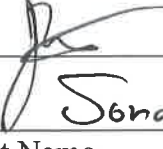
Print Name: _____

Notary Public, State of Florida

Commission No.: _____

My Commission Expires: _____

Signed, sealed and delivered in the presence of:


Print Name Jonathan Prystasz
Address: 5200 Vineland Rd
Orlando, FL 32811

"PARK SQUARE"

PARK SQUARE MF, LLC,
a Florida limited liability company

By: 
Name: Vishal Gupta
Title: Manager

Date of Execution: January 30 2024


Print Name Mariana Morell

Address: 5200 Vineland Road
Orlando, FL 32811

STATE OF FLORIDA
COUNTY OF ORANGE

The foregoing instrument was acknowledged before me by means of ☒ physical presence or ☐ online notarization this 30 day of January, 2024, by Vishal Gupta as manager of **PARK SQUARE MF, LLC**, a Florida limited liability company, on behalf of the company. Said person (check one) ☒ is personally known to me or ☐ produced _____ as identification.



Mariana Morell
Notary Public
State of Florida
Comm# HH111077
Expires 3/29/2025


Notary Stamp
Print Name: Mariana Morell
Notary Public, State of Florida
Commission No.: HH111077
My Commission Expires: 3/29/2025

JOINDER AND CONSENT OF LESSEE

The undersigned, **KISSIMMEE/OSCEOLA COUNTY CHAMBER OF COMMERCE, INC.**, a Florida not-for-profit corporation ("Lessee"), being the owner and holder of the leasehold interest in the City Property by virtue of that certain Lease Agreement dated November 7, 1989, and recorded January 19, 1990 in in Book 953, Page 997, and recorded September 20, 2005 in Book 2091, Page 2795, all in the Public Records of Osceola County, FL, hereby agrees and consents to the terms, covenants, conditions and provisions of the Agreement to which this Joinder and Consent is attached.

Signed in the presence of:

"LESSEE"

V. McGregor
VICTORIA MCGREGOR
Print Name

Address: 8801 LATREC AVE
APT 302 ORLANDO, FL 32819

Susan E. Ring
SUSAN E. RING
Print Name

Address: 3164 CRESTED CIRCLE
ORLANDO FL 32837

KISSIMMEE/OSCEOLA COUNTY CHAMBER OF COMMERCE, INC., a Florida not-for-profit corporation

By: J. Newstreet
Name: J. Newstreet
Title: President / CEO

Address: 1425 E. Vine St., Kissimmee, FL 34744

Date of Execution: Jan. 29, 2024

STATE OF FLORIDA
COUNTY OF _____

The foregoing instrument was acknowledged before me by means of ☒ physical presence or ☐ online notarization this 29 day of January, 2024, by John Newstreet as KISSIMMEE/OSCEOLA COUNTY CHAMBER OF COMMERCE, INC., a Florida not-for-profit corporation, on behalf of the corporation. He/she is personally known to me or produced _____ as identification.

[NOTARY SEAL]

Cindy Lewis
Notary Public Signature



EXHIBIT "A"
City Property

From the Intersection of the North Right of Way line of U. S. Highway 441-192 and the East Right of Way Line of Michigan Avenue, run S 88°43'20" E, along said North Right of Way Line, 1509.43 feet, to the Point of Beginning; continue S 88°43'20" E, 200.00 feet; run thence N 01°16'40" E, 400.0 feet; run thence N 88°43'20" W, 200.0 feet; run thence S 01°16'40" W, 400.0 feet, to the Point of Beginning, of Section 14, Township 25 South, Range 29 East, Osceola County, Florida.

EXHIBIT "B"

Park Square Property

Lot 2, Aston Square, according to the plat thereof, as recorded in Plat Book 30, Pages 153 and 154 of the Public Records of Osceola County, Florida

EXHIBIT "C"

Sanitary Sewer Easement Area

SKETCH AND DESCRIPTION

(THIS IS NOT A SURVEY)

UTILITY EASEMENT

THE NEO AT KISSIMMEE
KISSIMMEE, OSCEOLA COUNTY, FLORIDA

LEGAL DESCRIPTION

A PORTION OF LOT 2, ASTON SQUARE, ACCORDING TO THE PLAT THEREOF, AS RECORDED IN PLAT BOOK 30, PAGES 153 AND 154 OF THE PUBLIC RECORDS OF OSCEOLA COUNTY, FLORIDA, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCE AT THE SOUTHEAST CORNER OF LOT 2, ASTON SQUARE, ACCORDING TO THE PLAT THEREOF, AS RECORDED IN PLAT BOOK 30, PAGES 153 AND 154 OF THE PUBLIC RECORDS OF OSCEOLA COUNTY, FLORIDA; THENCE RUN N 01°36'06" E ALONG THE EAST LINE OF SAID LOT 2 A DISTANCE OF 35.46 FEET TO THE POINT OF BEGINNING; THENCE CONTINUE N 01°36'06" E ALONG SAID EAST LINE A DISTANCE OF 20.00 FEET; THENCE DEPARTING SAID EAST LINE RUN N 88°23'54" W, A DISTANCE OF 13.35 FEET TO A POINT ON THE EAST LINE OF TRACT LS-1, SAID ASTON SQUARE; THENCE RUN S 01°36'06" W, ALONG SAID EAST LINE, A DISTANCE OF 15.44 FEET TO THE SOUTHEAST CORNER OF SAID TRACT LS-1; THENCE ALONG THE SOUTH LINE OF SAID TRACT LS-1 RUN N 88°23'54" W, A DISTANCE OF 24.07 FEET; THENCE DEPARTING SAID SOUTH LINE RUN S 28°22'54" E, A DISTANCE OF 5.26 FEET; THENCE RUN S 88°23'54" E, A DISTANCE OF 34.79 FEET TO THE POINT OF BEGINNING.

CONTAINING 371 SQUARE FEET MORE OR LESS.

SURVEYOR'S NOTES

- 1) NOT VALID WITHOUT THE SIGNATURE AND ORIGINAL RAISED SEAL OF A FLORIDA LICENSED SURVEYOR AND MAPPER.
- 2) THE LANDS SHOWN HEREON WERE NOT ABSTRACTED FOR RIGHTS-OF-WAY, EASEMENTS, OWNERSHIP, OR OTHER INSTRUMENTS OF RECORD BY THIS FIRM.
- 3) BEARINGS SHOWN HEREON ARE BASED ON THE EAST LINE OF LOT 2, ASTON SQUARE, PLAT BOOK 30, PAGES 153 AND 154, HAVING A BEARING OF S 01°36'06" W PER THE RECORD PLAT.

SEE SHEET 2 FOR SKETCH
07/13/2023
SHEET 1 OF 2

PROJECT: 22075

PREPARED BY:

I CERTIFY THAT THIS MEETS OR EXCEEDS THE STANDARDS OF PRACTICE SET FORTH BY THE FLORIDA BOARD OF PROFESSIONAL SURVEYORS AND MAPPERS IN CHAPTER 5J-17, FLORIDA ADMINISTRATIVE CODE, PURSUANT TO SECTION 472, FLORIDA STATUTES.

DAVID M. McDERMOTT 7-14-23
FLORIDA REGISTERED SURVEYOR AND MAPPER CERTIFICATE No. 4779

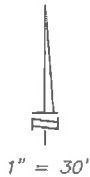
Associated Land Surveying & Mapping, Inc.

1681 POWELL STREET, LONGWOOD, FLORIDA 32750
PH (407) 869-5002, FAX (407) 869-8593
CERTIFICATE OF AUTHORIZATION # LB 6767

SKETCH AND DESCRIPTION

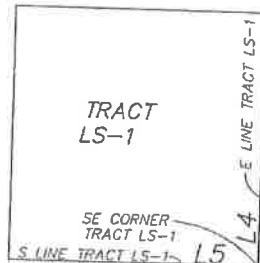
(THIS IS NOT A SURVEY)
UTILITY EASEMENT

THE NEO AT KISSIMMEE
KISSIMMEE, OSCEOLA COUNTY, FLORIDA



LINE TABLE		
LINE	BEARING	LENGTH
L1	N01°36'06"E	35.46'
L2	N01°36'06"E	20.00'
L3	N88°23'54"W	13.35'
L4	S01°36'06"W	15.44'
L5	N88°23'54"W	24.07'
L6	S28°22'54"E	5.26'
L7	S88°23'54"E	34.79'

LOT 2



ASTON SQUARE
PLAT 30, PAGES 153 AND 154

NOT PLATTED

POINT OF BEGINNING

POINT OF COMMENCEMENT

SE CORNER
LOT 2
ASTON SQUARE
PLAT 30, PAGES 153 AND 154

U.S. HIGHWAY NO. 192/441
184' RIGHT OF WAY

N RIGHT-OF-WAY LINE

SEE SHEET 1 FOR DESCRIPTION
07/13/2023
SHEET 2 OF 2

PROJECT: 22075

**Associated Land Surveying
& Mapping, Inc.**

1681 POWELL STREET, LONGWOOD, FLORIDA 32750
PH (407) 869-5002, FAX (407) 869-8393
CERTIFICATE OF AUTHORIZATION # LB 6767

SKETCH AND DESCRIPTION

(THIS IS NOT A SURVEY)
UTILITY EASEMENT
THE NEO AT KISSIMMEE
KISSIMMEE, OSCEOLA COUNTY, FLORIDA

LEGAL DESCRIPTION

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CONTAINING 425 SQUARE FEET MORE OR LESS.

SURVEYOR'S NOTES

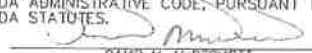
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SEE SHEET 2 FOR SKETCH
07/13/2023
SHEET 1 OF 2

PROJECT: 22075

PREPARED BY:

I CERTIFY THAT THIS MEETS OR EXCEEDS THE STANDARDS OF PRACTICE SET FORTH BY THE FLORIDA BOARD OF PROFESSIONAL SURVEYORS AND MAPPERS IN CHAPTER 5J-17, FLORIDA ADMINISTRATIVE CODE, PURSUANT TO SECTION 472, FLORIDA STATUTES.

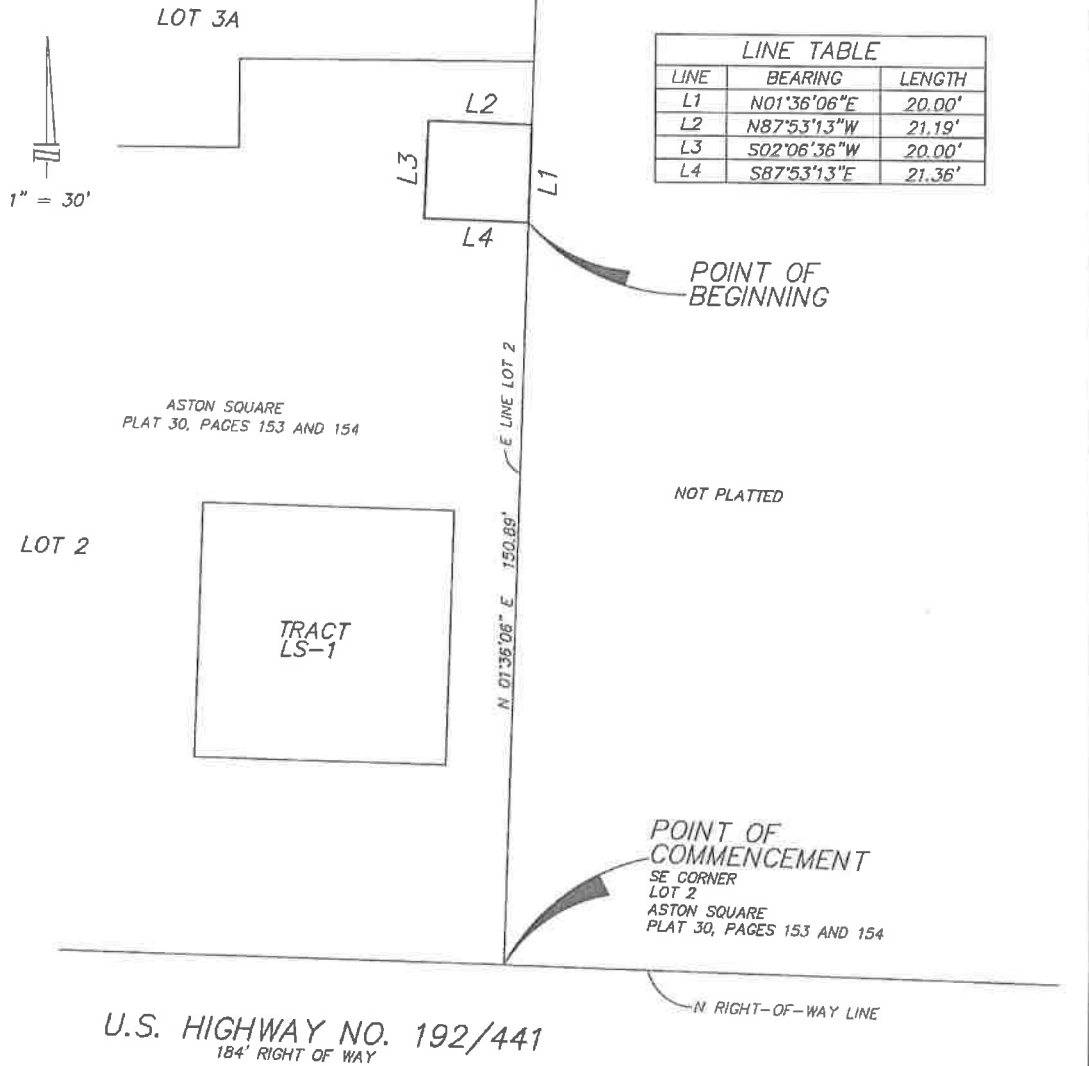

DAVID M. McDERMOTT
FLORIDA REGISTERED SURVEYOR AND MAPPER CERTIFICATE No. 4779

Associated Land Surveying & Mapping, Inc.

1681 POWELL STREET, LONGWOOD, FLORIDA 32750
PH (407) 869-5002, FAX (407) 869-8393
CERTIFICATE OF AUTHORIZATION # LB 6767

SKETCH AND DESCRIPTION

(THIS IS NOT A SURVEY)
UTILITY EASEMENT
THE NEO AT KISSIMMEE
KISSIMMEE, OSCEOLA COUNTY, FLORIDA



SEE SHEET 1 FOR DESCRIPTION
07/13/2023
SHEET 2 OF 2

PROJECT: 22075

**Associated Land Surveying
& Mapping, Inc.**

1661 POWELL STREET, LONGWOOD, FLORIDA 32750
PH (407) 869-5002, FAX (407) 869-8393
CERTIFICATE OF AUTHORIZATION # LB 6767

SKETCH AND DESCRIPTION

(THIS IS NOT A SURVEY)

20.00' FORCE MAIN EASEMENT

THE NEO AT KISSIMMEE
KISSIMMEE, OSCEOLA COUNTY, FLORIDA

LEGAL DESCRIPTION

A PORTION OF THE LANDS DESCRIBED IN OFFICIAL RECORDS BOOK 317, PAGE 557, PUBLIC RECORDS OF OSCEOLA COUNTY, FLORIDA, BEING A PORTION OF THE SOUTHEAST 1/4 OF THE SOUTHWEST 1/4 OF SECTION 14, TOWNSHIP 25 SOUTH, RANGE 29 EAST, OSCEOLA COUNTY, FLORIDA, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGIN AT THE SOUTHEAST CORNER OF LOT 2, ASTON SQUARE, ACCORDING TO THE PLAT THEREOF, AS RECORDED IN PLAT BOOK 30, PAGES 153 AND 154 OF THE PUBLIC RECORDS OF OSCEOLA COUNTY, FLORIDA, SAID POINT BEING THE SOUTHWEST CORNER OF THE LANDS DESCRIBED IN OFFICIAL RECORDS BOOK 317, PAGE 557, PUBLIC RECORDS OF OSCEOLA COUNTY, FLORIDA; THENCE RUN N 01°36'06" E ALONG THE WEST LINE OF SAID LANDS A DISTANCE OF 400.00 FEET TO THE NORTHWEST CORNER THEREOF; THENCE RUN S 88°24'40" E, ALONG THE NORTH LINE OF SAID LANDS A DISTANCE OF 200.00 FEET TO THE NORTHEAST CORNER THEREOF; THENCE RUN S 01°36'06" W, ALONG THE EAST LINE OF SAID LANDS A DISTANCE OF 20.00 FEET; THENCE DEPARTING SAID EAST LINE RUN N 88°24'40" W, A DISTANCE OF 180.00 FEET; THENCE RUN S 01°36'06" W, A DISTANCE OF 380.00 FEET TO A POINT ON THE NORTH RIGHT-OF-WAY LINE OF U.S. HIGHWAY No. 192/441; THENCE RUN N 88°24'40" W ALONG SAID NORTH RIGHT-OF-WAY LINE A DISTANCE OF 20.00 FEET TO THE POINT OF BEGINNING.

CONTAINING 11,600 SQUARE FEET MORE OR LESS.

SURVEYOR'S NOTES

- 1) NOT VALID WITHOUT THE SIGNATURE AND ORIGINAL RAISED SEAL OF A FLORIDA LICENSED SURVEYOR AND MAPPER.
- 2) THE LANDS SHOWN HEREON WERE NOT ABSTRACTED FOR RIGHTS-OF-WAY, EASEMENTS, OWNERSHIP, OR OTHER INSTRUMENTS OF RECORD BY THIS FIRM.
- 3) BEARINGS SHOWN HEREON ARE BASED ON THE EAST LINE OF LOT 2, ASTON SQUARE, PLAT BOOK 30, PAGES 153 AND 154, HAVING A BEARING OF S 01°36'06" W PER THE RECORD PLAT.

SEE SHEET 2 FOR SKETCH
11/13/2023
SHEET 1 OF 2

PROJECT: 22075

PREPARED BY:

I CERTIFY THAT THIS MEETS OR EXCEEDS THE STANDARDS OF PRACTICE SET FORTH BY THE FLORIDA BOARD OF PROFESSIONAL SURVEYORS AND MAPPERS IN CHAPTER 5J-17, FLORIDA ADMINISTRATIVE CODE, PURSUANT TO SECTION 472, FLORIDA STATUTES.

DAVID M. McDERMOTT

FLORIDA REGISTERED SURVEYOR AND MAPPER CERTIFICATE No. 4779

Associated Land Surveying & Mapping, Inc.

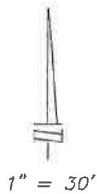
1681 POWELL STREET, LONGWOOD, FLORIDA 32750
PH (407) 869-5002, FAX (407) 869-8393
CERTIFICATE OF AUTHORIZATION # LB 6767

SKETCH AND DESCRIPTION

(THIS IS NOT A SURVEY)

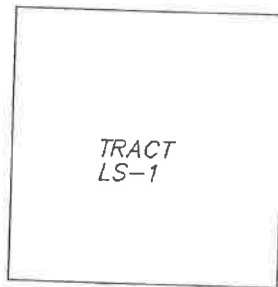
20.00' FORCE MAIN EASEMENT

THE NEO AT KISSIMMEE
KISSIMMEE, OSCEOLA COUNTY, FLORIDA



1" = 30'

LOT 2
ASTON SQUARE
PLAT 30, PAGES 153 AND 154



TRACT
LS-1

POINT OF
BEGINNING
SE CORNER
LOT 2
ASTON SQUARE
PLAT 30, PAGES 153 AND 154 AND
SW CORNER LANDS
DESCRIBED IN
ORB 317, PG 557

LOT 3A
ASTON SQUARE
PLAT 30, PAGES 153 AND 154

NW CORNER LANDS
DESCRIBED IN
ORB 317, PG 557

NE CORNER LANDS
DESCRIBED IN
ORB 317, PG 557

N LINE LANDS DESCRIBED
IN ORB 317, PG 557

LANDS DESCRIBED IN OFFICIAL
RECORDS BOOK 317, PAGE 557

(NOT PLATTED)

MILL SLOUGH

L6

N RIGHT-OF-WAY LINE

U.S. HIGHWAY NO. 192/441
184' RIGHT OF WAY

LINE TABLE

LINE	BEARING	LENGTH
L1	N01°36'06"E	400.00'
L2	S88°24'40"E	200.00'
L3	S01°36'06"W	20.00'
L4	N88°24'40"W	180.00'
L5	S01°36'06"W	380.00'
L6	N88°24'40"W	20.00'

ORB-OFFICIAL RECORDS BOOK
PG-PAGE

SEE SHEET 1 FOR DESCRIPTION
11/13/2023
SHEET 2 OF 2

PROJECT: 22075

Associated Land Surveying
& Mapping, Inc.

1681 POWELL STREET, LONGWOOD, FLORIDA 32750
PH (407) 869-5002, FAX (407) 869-8393
CERTIFICATE OF AUTHORIZATION # LB 6767

ITEM 8.A

Freebee presentation and contract renewal

Request

Request approval to renew a contract with Freebee for a microtransit service from March 2024 through March 2025 under contract # 20230057 at a cost of \$405,390.

Explanation

In September 2022, the City Commission voted to replace the fixed-route Kissimmee Circulator bus service with a point-by-point microtransit service, Freebee. Freebee services began on March 13, 2023, and the first full month (April 2023) resulted in 394 passengers and the last full month of service (December 2023) yielded 1,446 passengers, meaning there has been a 267% increase in ridership since the start of the service. In less than a year, Freebee ridership has exceeded the last month of the Kissimmee Circulator, which was in place for three years, by 18%.

Due to the success of this program, staff is requesting approval of a contract to continue the service from March 2024 through March 2025.

Staff will provide a presentation to update the Commission on the service provided over the first year of operation.

Financial Information

Account #	Project #	Increase / Decrease	Budget	Actual
00125103-503434		Decrease	\$405,390	\$405,390

Financial Summary:

There is adequate funding budgeted for the Freebee contract. There is no cost increase from the previous year.

Recommendation

Recommending City Commission approval to renew the contract for the Freebee service from March 2024 through March 2025.

REQUESTED CITY COMMISSION ACTION:

Approve

Department: Development Services
Presenter: Ashley Cornelison

City of Kissimmee

Attachment(s):

1. CC Presentation 02.20.2024
2. Freebee Service Area
3. (S) Freebee Contract (Revised Date)
4. RES 28-2022 Delegating Authority Freebie Contract Amendments (12-06-2022)

Freebee Update February 2024



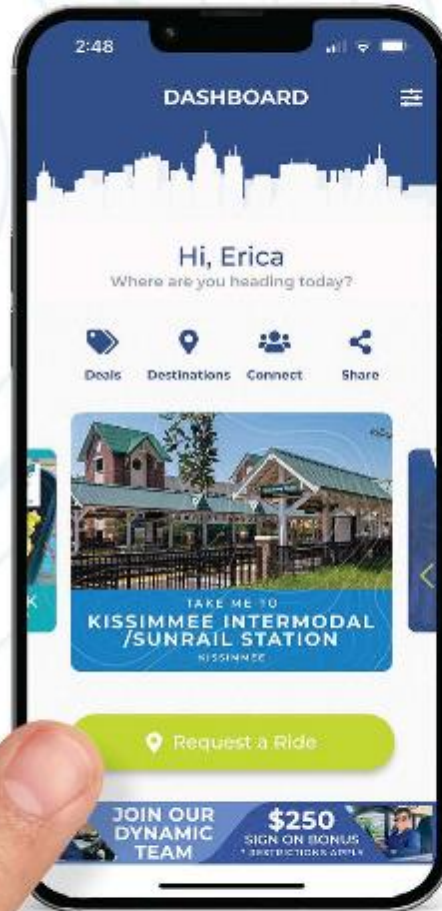
FREEBEE

- “Last Mile” from the Kissimmee Intermodal/SunRail Station to major employers/destinations.
- On-demand, point-by-point service.
- Monday through Friday, 6:00 AM to 9:00 PM.
- Interactive Application (app).
 - Also the option to call in to a toll-free number.



HOW IT WORKS

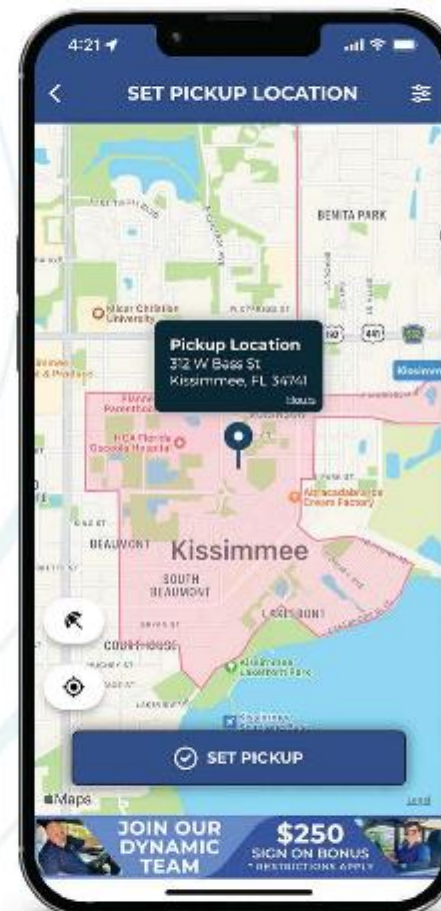
1



Request A Ride

Tap the "Request a Ride" button on the home screen of the Ride Freebee app.

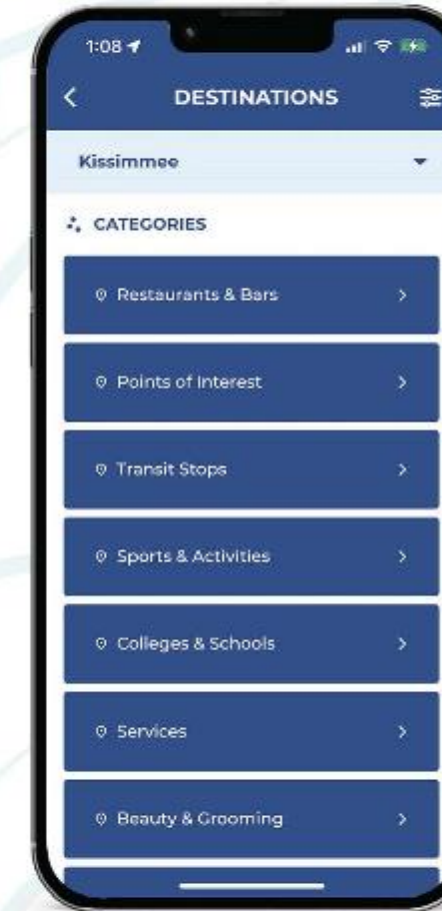
2



Set Your Pick-Up Location

Drop your pin exactly where you would like to be picked up.

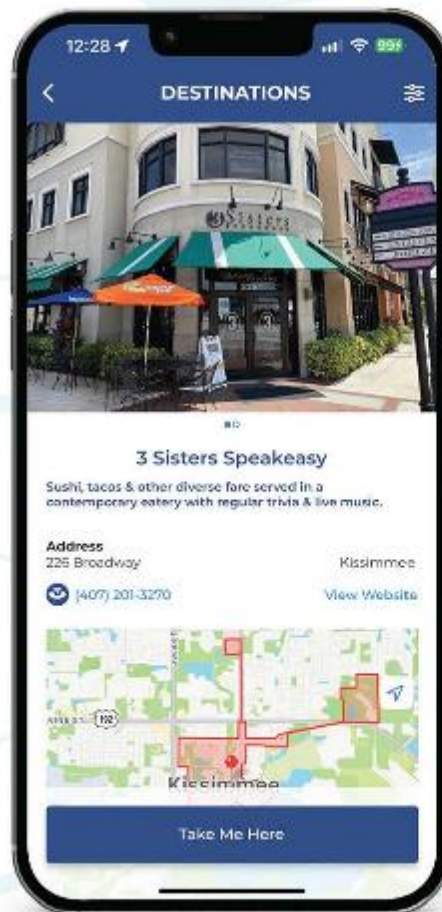
3



Browse Local Destinations

Search your destination by category and find the perfect spot with an awesome Freebee deal!

4



Select Your Destination

Lock in your selection and let us know where you'd like to go!

5



Enjoy The Ride

Snap some photos of your experience and share them to the app.

6



Redeem Your Freebee Deal!

Once you've reached your destination, present your app deal to the manager on duty. "Mark Offer As Used" to redeem!

SERVICE HOURS

Monday - Friday:
6am - 9pm

Saturday - Sunday:
No Service

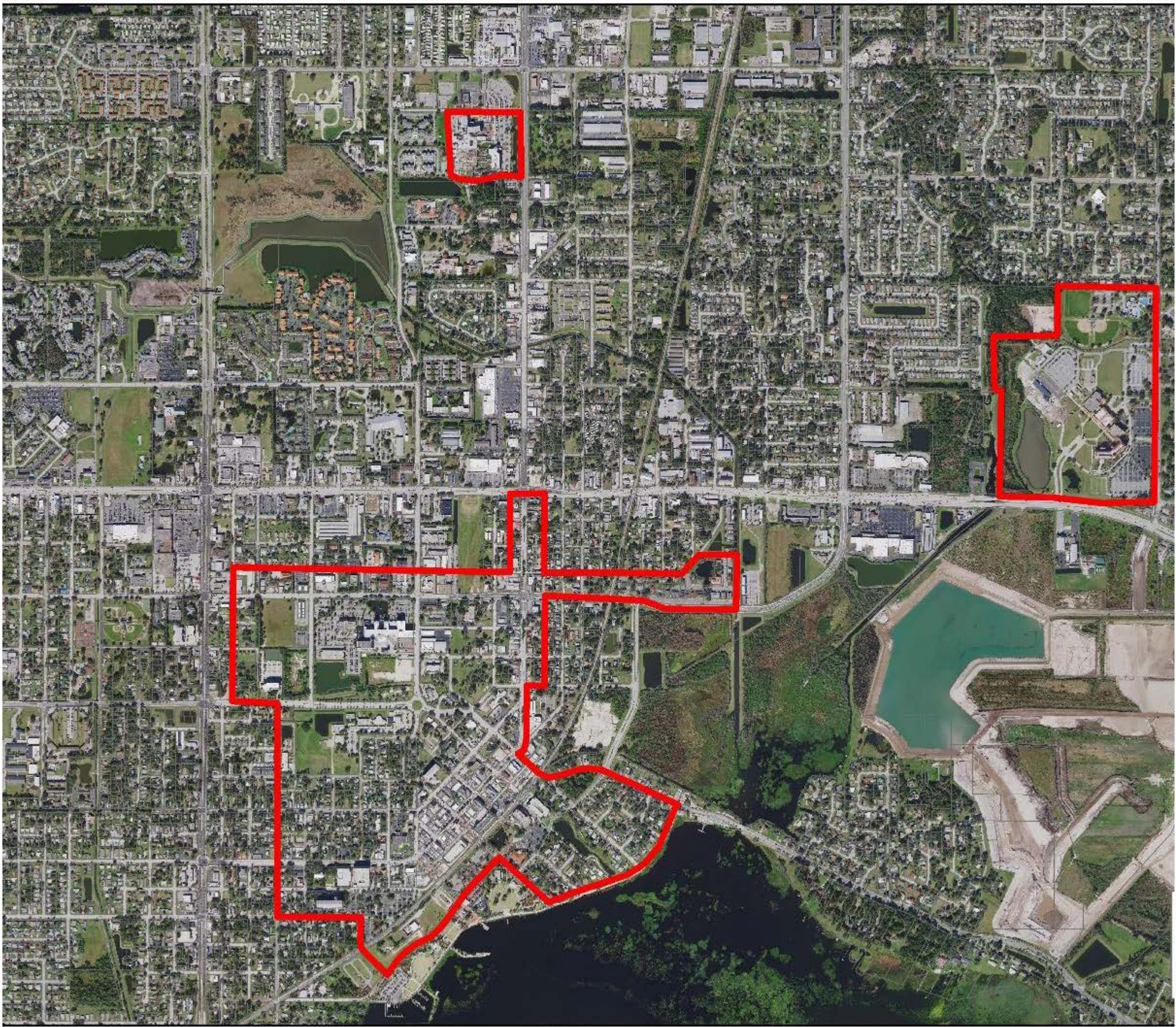
FREEBEE INFORMATION

- Freebee is a FREE, door-to-door, on-demand transportation service, brought to you by the City of Kissimmee.
- Freebee vehicles are 100% electric, and emission-free!
- Your Freebee guide will share with you the latest and greatest happenings in Kissimmee.
- Freebee caters to any and all ages, from children to seniors, and all types of pets.
- Freebee provides booster seats as appropriate for children who exceed the size requirements to travel in a car seat.
- Smaller children and infants are required to be secured in a federally approved car seat, provided by their parent or guardian.
- Freebee will direct you to a safe pickup location and will not stop in the middle of traffic.

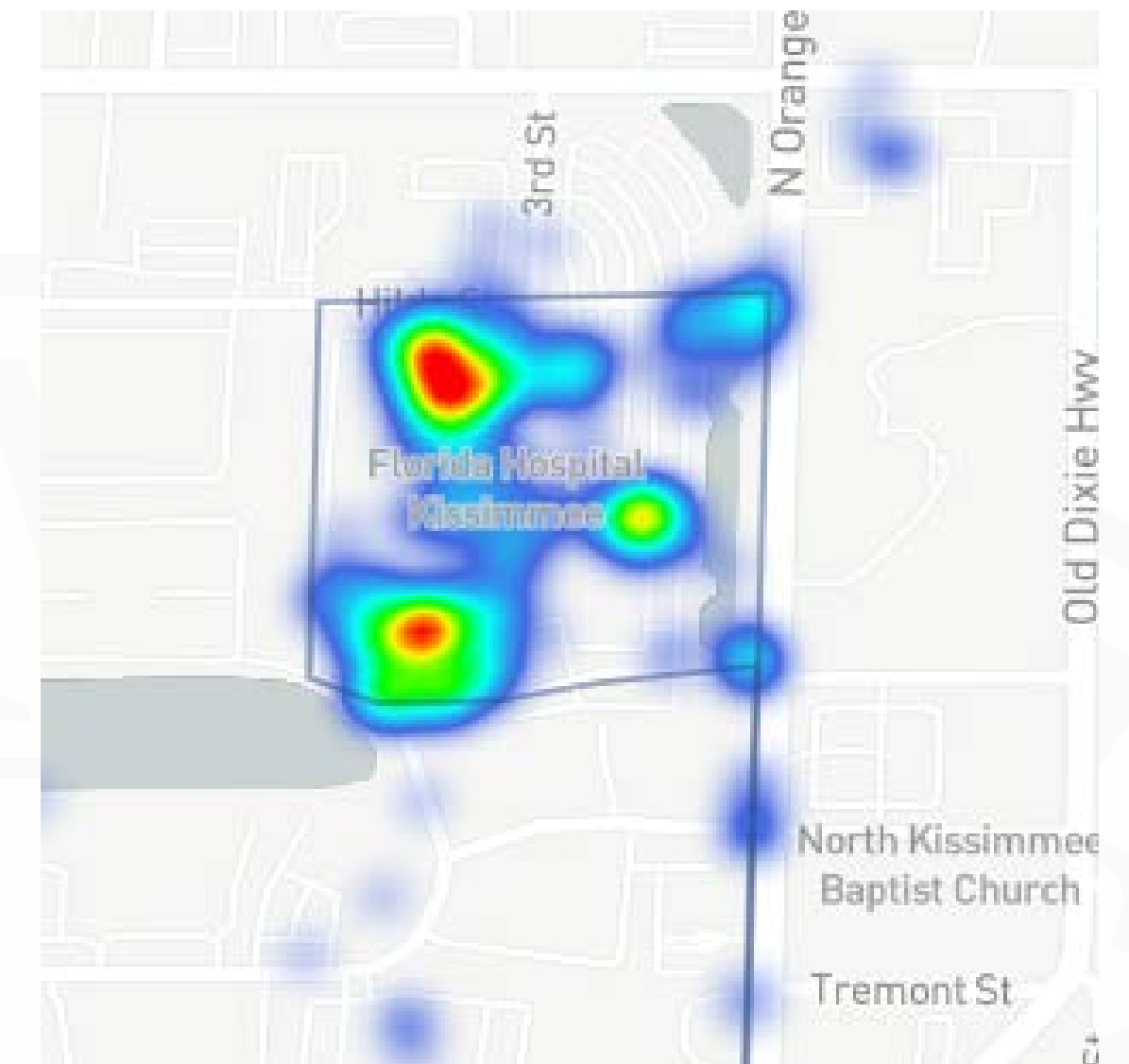
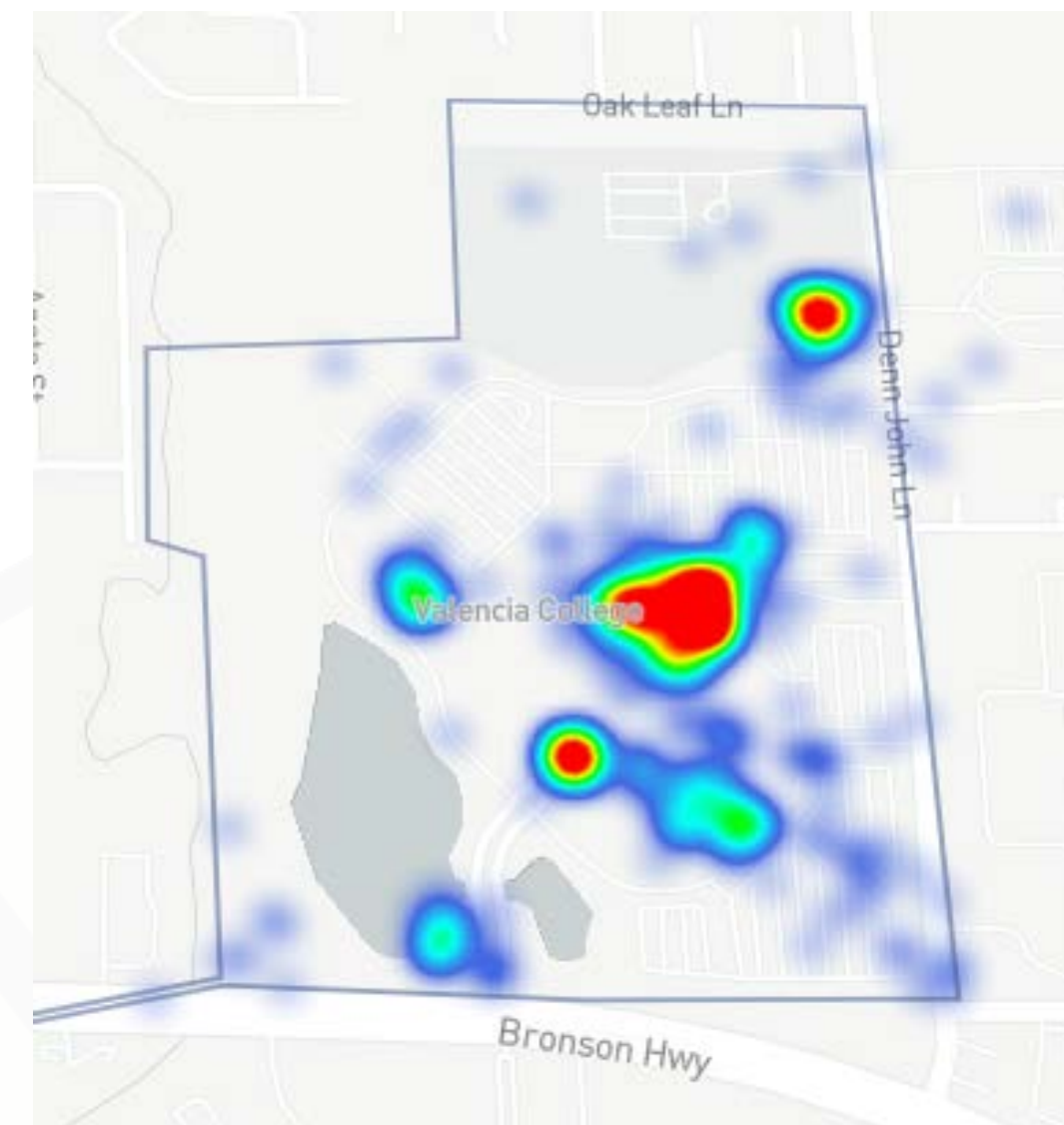
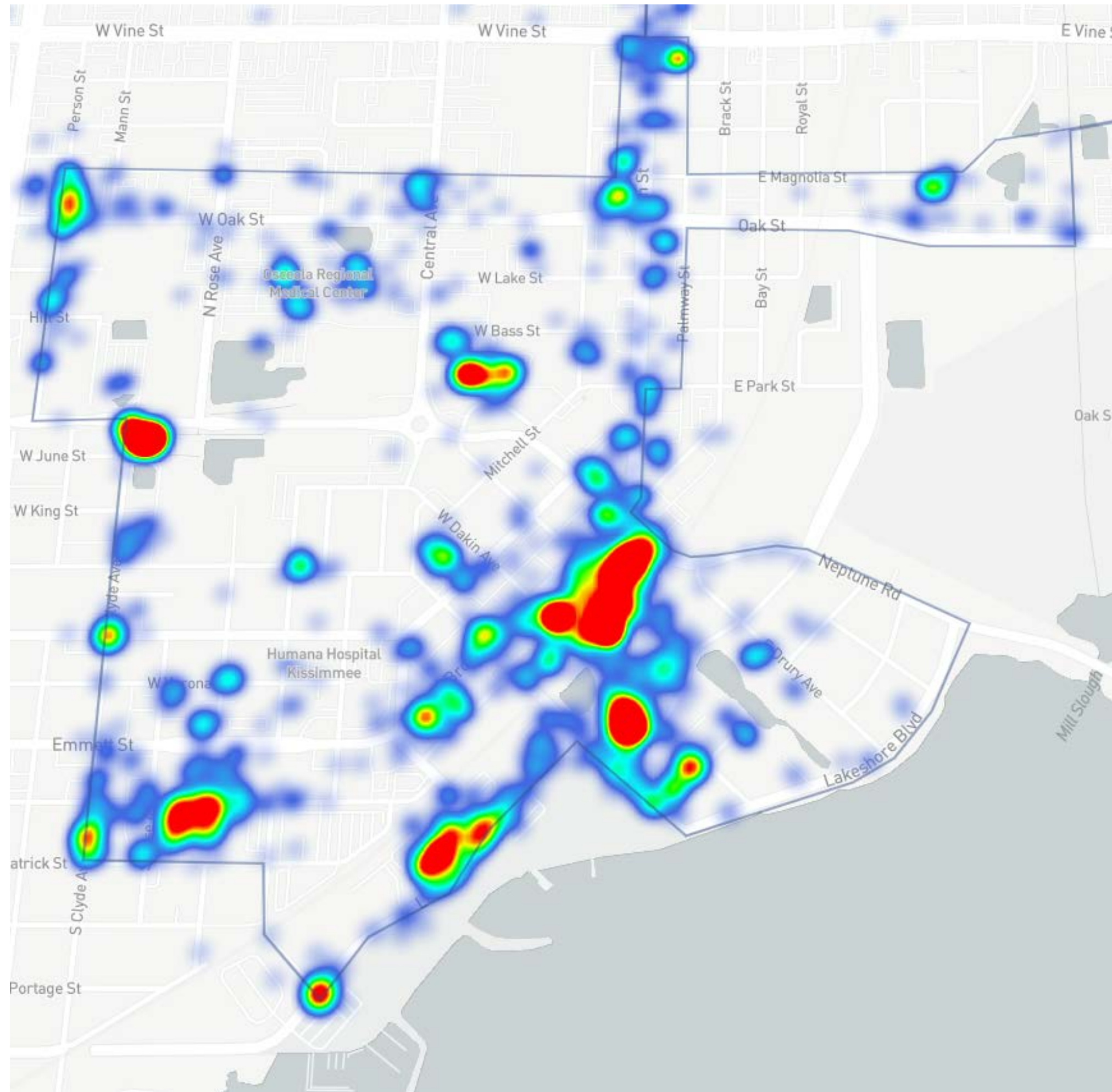
facebook.com/ridefreebee
@ridefreebee
Info@ridefreebee.com
Support@ridefreebee.com

If you do not have a smart phone, or would like to request additional accessibility accommodations, please call 855-918-3733

CURRENT SERVICE AREA



LAST MILE



- “Hotspot” locations: Lakefront Park, SunRail Station, Courthouse, Advent Health, and Valencia.

MARKETING EFFORTS

- Talked with Main Street, downtown businesses, both hospitals, Valencia College.
- Called 31 different businesses in the Medical Arts district.
 - Also sent emails with promotional materials.
- Businesses within the service area allowed free marketing on the app.
- Reached out to larger downtown developments (Mosaic).
- In the process of installing banners/signage at the SunRail Station.

RIDERSHIP

- April 2023 (first full month of service) = 394 passengers
- January 2024 (latest full month of service) = 1,550 passengers
- 293% increase

Kissimmee Circulator

- Last month of the service (September 2022) = 1,225 passengers
- 26% increase
- Total 10,279 passengers in 2023!

ENVIRONMENTAL PROTECTION AGENCY'S CLIMATE POLLUTION REDUCTION GRANT (CPRG)

- There is a regional effort to apply for the CPRG for projects that reduce pollutants (hazardous air/greenhouse gas) and/or projects that provide transportation services, particularly within low income and disadvantaged communities.
- In this effort, the region has a spotlight on Kissimmee's Freebee program and identified it as a model for similar services within Central Florida.

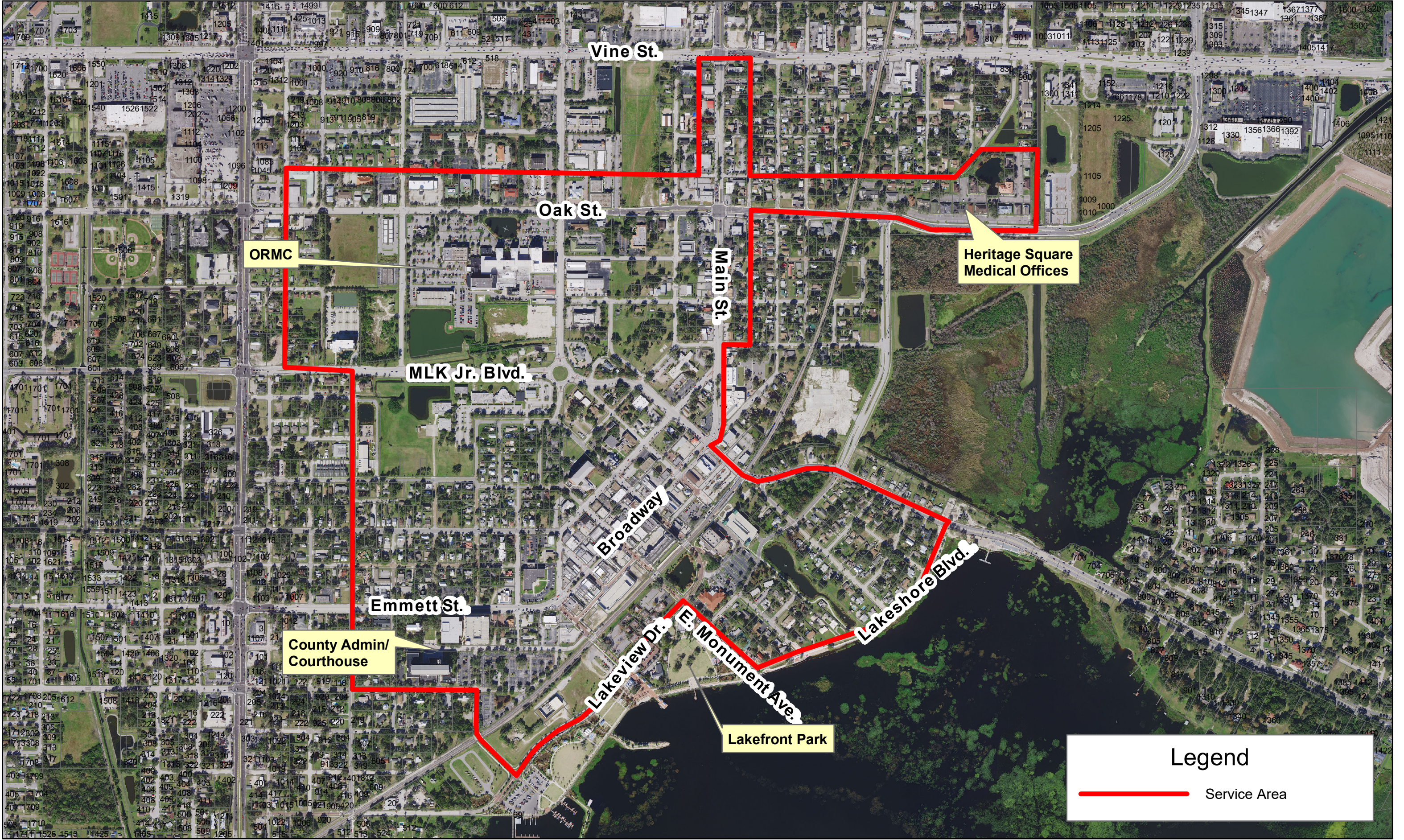


Thanks!



| @CityofKissimmee

Proposed Microtransit Service Map



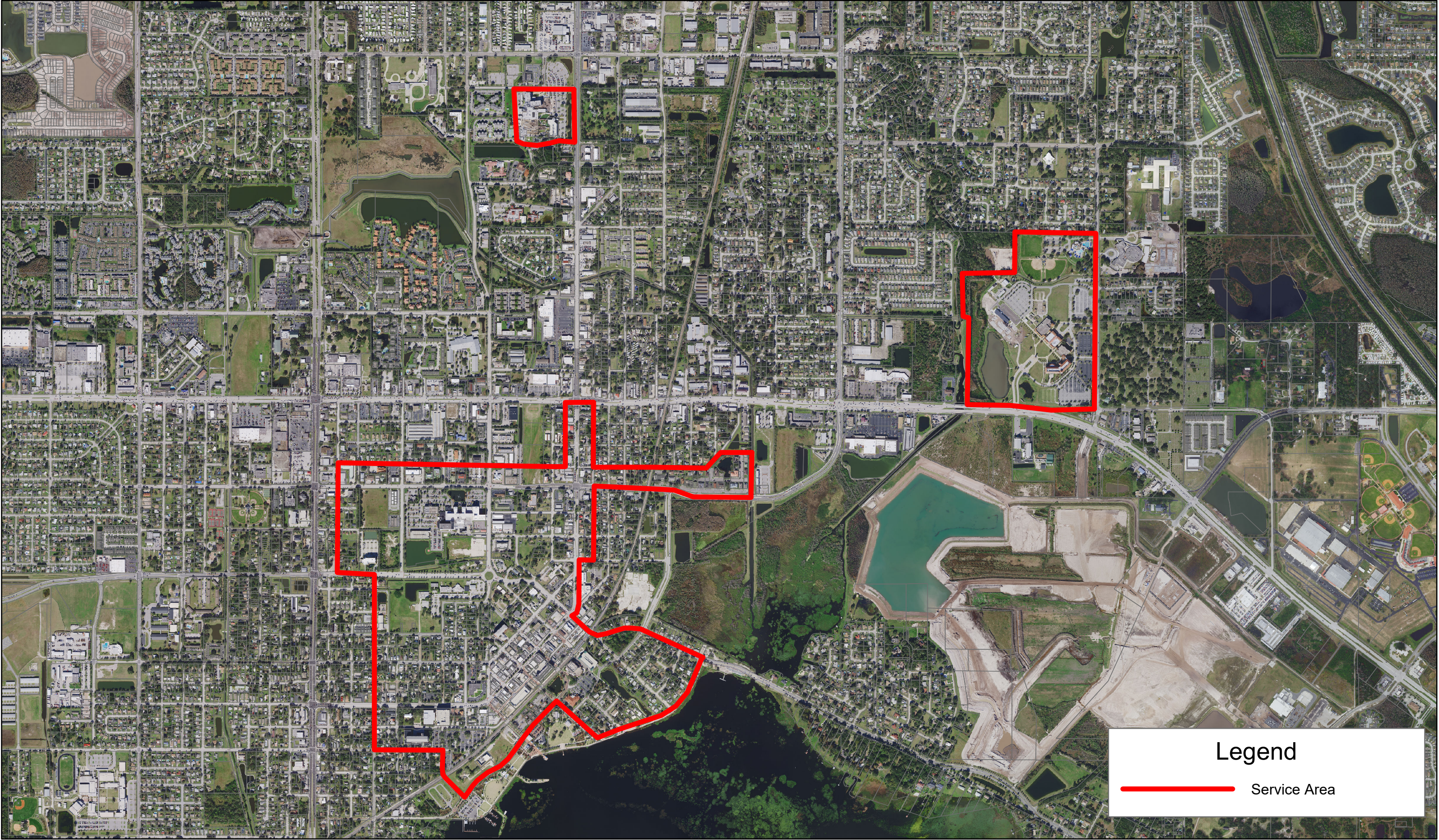
Proposed Microtransit Service Map



Legend

— Service Area

Proposed Microtransit Service Map



Legend

Service Area

AGREEMENT between CITY OF KISSIMMEE

and

BEEFREE, LLC, d/b/a/ FREEBEE

THIS AGREEMENT is made this 20th day of February, 2024 by and between the CITY OF KISSIMMEE, a municipal corporation of the State of Florida, 101 Church Street, Kissimmee, Florida 34741, hereinafter “CITY” and Beefree, LLC, d/b/a/ Freebee whose address is 371 NE 61st St, Miami, FL 33137 hereinafter “CONTRACTOR” and each represents as follows:

WITNESSETH

WHEREAS, CITY is in need of professional services of CONTRACTOR to provide competitive pricing for the provision of in-city busing services; and

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

WHEREAS, pursuant to 4.3.1.1 of the CITY’s Purchasing Code, CITY may procure goods and services from bids or proposals from any government subdivisions when it proves to be in the best interest of the CITY of Kissimmee; and

WHEREAS, pursuant to a competitive bidding and selection process of the City of Aventura, Florida, as the Lead Public Agency, entered into the “**Agreement Between CITY OF AVENTURA and BEEFREE LLC**” (the “Master Agreement”), adopted by Resolution on February 2, 2021, with CONTRACTOR, as the lowest, responsive bidder in accordance with said Master Agreement attached hereto as **Exhibit “A”** and a made a binding part hereof; and

WHEREAS, CITY has determined that the specifications in the Master Agreement are similar in nature to the services required by CITY, and therefore it is economically advantageous and in the best interest of the CITY to enter into this Agreement with CONTRACTOR, who is certified and qualified to provide the necessary services required by CITY.

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

1. **RECITALS.** The foregoing recitals are true and correct and specifically incorporated herein.

2. **MASTER AGREEMENT.** The Parties hereto agree that the terms and conditions of the “**Agreement Between CITY OF AVENTURA and BEEFREE LLC**” entered into by City of Aventura, Florida and CONTRACTOR on February 2, 2021, are binding to the Parties hereto, unless otherwise agreed to herein, by this Agreement. The portions of the Master Agreement not expressly modified by this Agreement shall have full force and effect upon the Parties hereto. As such, the following modifications to the Master Agreement shall apply:
- a. “City of Aventura” or “City” in the Master Agreement shall refer to the CITY.
 - b. Section 3.0 of the Master Agreement is rescinded in its entirety.
 - c. EXHIBIT “A” of the Master Agreement “**BEEFREE, LLC d/b/a FREEBEE “RATES AND SERVICES ADDENDUM”**” shall be rescinded and replaced in its entirety with the attached Exhibit “B,” attached hereto and incorporated by reference.
 - d. ARTICLE 5 (CONTRACTOR’S INSURANCE) of the Master Agreement shall be rescinded and replaced with the following insurance provisions: CONTRACTOR is required to submit to the CITY Certificates of Insurance naming the CITY of Kissimmee as an additional insured. During the term of this Agreement and any renewals, CONTRACTOR at their sole cost and expenses shall maintain insurance coverage as follows:
 - A. **Workers Compensation:** CONTRACTOR will provide Worker’s Compensation coverage for all of CONTRACTOR’s employees at the site location and shall be in accordance with Chapter 440, Florida Statutes, and any other applicable law requiring workers’ compensation.
 - B. **Comprehensive General Liability:** CONTRACTOR will provide coverage for all owned and non-owned vehicles utilized for the provision of services hereunder for limits of not less than \$1,000,000.00.
 - C. **Comprehensive Automobile Liability:** CONTRACTOR will provide coverage for all owned and non-owned vehicles utilized for the provision of services hereunder for limits of not less than \$1,000,000.00.
 - E. **Business Automobile Liability:** CONTRACTOR shall maintain Business Automobile Liability Insurance with a limit not less than \$1,000,000.00 each accident for owned, non-owned and hired automobiles utilized for the provision of services hereunder.
 - e. ARTICLE 13 (CONTRACT DOCUMENTS), Subsection 14.3 (RECORDS) of the Master Agreement shall be rescinded and replaced with the following:

1. CONTRACTOR acknowledges CITY's obligations under Article I, Section 24, of the Florida Constitution and under Chapter 119, Florida Statutes, to release public records to members of the public upon request and that the constitutional and statutory provisions control over the terms of this Agreement. As such, CONTRACTOR shall keep and maintain public records required by the CITY to perform the service.
 - a. **If CONTRACTOR has questions regarding the application of Chapter 119, Florida Statutes, to CONTRACTOR's duty to provide public records relating to this Agreement, contact the Custodian of Public Records at 407-518-2308, cityclerkemail@kissimmee.gov and 101 Church Street, Kissimmee, Florida 34741.**
 - b. If CITY's Custodian of Records requests records from CONTRACTOR, CONTRACTOR shall provide the City's Custodian of Records with a copy of the requested records or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the cost charged by CITY, as provided in Chapter 119, Florida Statutes or as otherwise provided by law.
 - c. CONTRACTOR shall ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law for the duration of the agreement term and following completion of the agreement if the CONTRACTOR does not transfer the records to CITY.
 - d. Upon completion of the contract, CONTRACTOR shall transfer, at no cost, to CITY all public records in possession of CONTRACTOR or keep and maintain public records required by CITY to perform the service for a period of four (4) years following completion of the contract. If CONTRACTOR transfers all public records to CITY upon completion of the Agreement, CONTRACTOR shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If CONTRACTOR keeps and maintains public records upon completion of the Agreement, CONTRACTOR shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to the CITY, upon request from the CITY's custodian of public records, in a format that is compatible with the information technology systems of CITY. Unless otherwise directed by CITY, all records will be transferred at the conclusion of the Agreement.
 - e. Upon notice to CONTRACTOR of a request to inspect or copy public records relating to CITY's agreement for services, CONTRACTOR shall provide the records to CITY or allow the records to be inspected or copied within a reasonable time.

- f. If CONTRACTOR does not comply with CITY's request for records, such failure shall constitute a material breach and the Agreement shall terminate upon notice by the CITY.
 - g. If the CONTRACTOR fails to provide the public records to CITY within a reasonable time may be subject to penalties under Florida Statutes §119.1
 - h. Notwithstanding any of the foregoing, CITY shall maintain the confidentiality of any records or information that constitutes CONTRACTOR's trade secrets or proprietary information and is exempt from disclosure, pursuant to Section 815.045, Florida Statutes. In the event CITY determines that the exemption from disclosure does not apply or that it is required by law or court order to disclose any records which may contain CONTRACTOR's trade secrets or proprietary information, CITY will provide written notice to CONTRACTOR of its determination and the legal basis for its determination prior to disseminating or publicly disclosing such records.
- f. Section 14.6 of the Master Agreement is amended to reflect the following CITY and CONTRACTOR representatives for purposes of Notice:

City: Craig Holland
Development Services Director
City of Kissimmee, FL
101 Church Street
Kissimmee, FL 34741

Copy To: City Attorney's Office
City of Kissimmee, FL
101 Church Street
Kissimmee, FL 34741

Contractor: Beefree, LLC d/b/a Freebee
Attn: Jason Spiegel
371 NE 61st St
Miami, FL 33137

Copy to: Bradley F. Zappala, Esq.
407 Lincoln Road, PH SE
Miami Beach, FL 33139

3. **ADDITIONAL OBLIGATIONS OF CONTRACTOR.** Obligations of CONTRACTOR shall include, but not be limited to, the following:

A. PURCHASE ORDERS. CITY may issue subsequent modifications to the Purchase Order(s) for additional work that was not known or included in the Scope of Services that is found to be needed during the work to be performed and above the anticipated Agreement amount. CONTRACTOR shall not be obligated to perform additional work pursuant to a modification to the Purchase Order unless and until it has executed a copy of such modification. CONTRACTOR must seek approval from the CITY before performing any additional work. CITY must provide the CONTRACTOR written documentation of the modification to the Purchase Order within three (3) business days of verbal approval. CONTRACTOR is not obligated to perform additional work until written modification has been received from CITY and executed by CONTRACTOR, but may commence work based upon a reasonable assumption that written modification will be issued. Incidental additional work performed by the CONTRACTOR without CITY consent will be evaluated and considered for payment based upon the work's merit. If CITY determines the incidental additional work was not included in the original Scope of Services and are required for the CONTRACTOR's uninterrupted performance in fulfillment of this Agreement, then CITY will approve the CONTRACTOR's request for payment for incidental additional work.

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

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

(Signature page to follow)

IN WITNESS WHEREOF, the Parties hereto, by their duly authorized representatives,
have executed this Agreement effective 6th day of February, 2024.

BEEFREE LLC, d/b/a FREEBEE

By: [Signature]
Title: Managing Partner Beefee LLC
Date: 1-22-24

STATE OF FLORIDA)
COUNTY OF MIAMI-DADE)

The foregoing instrument was acknowledged before me this 22 day of January, 2024,
by means of ☒ physical presence or ☐ online notarization, by Jason Spiegel, as
Managing Partner for Beefree LLS, d/b/a Freebee, a Florida corporation, who is
personally known to me OR has produced driver's license as identification.

Notary Seal:



KATHERINA ALI
Notary Public
State of Florida
Comm# HH289661
Expires 7/19/2026

Notary: Katherina Ali
Print Name: KATHERINA ALI
My Commission Expires: 7/19/2026

CITY OF KISSIMMEE

By: _____
Mayor - Commissioner
Date: _____

ATTEST:

Linda Hansel, City Clerk

Approved as to form and legal sufficiency:

City Attorney

EXHIBIT "A"
MASTER AGREEMENT

FIRST AMENDMENT TO AGREEMENT

CITY OF AVENTURA

AND

BEEFREE, LLC D/B/A FREEBEE

THIS FIRST AMENDMENT TO AGREEMENT (this "**First Amendment**") is entered into this 12th day of July, 2022, by and between the **CITY OF AVENTURA, FLORIDA**, a Florida municipal corporation (hereinafter the "City"), and **BEEFREE, LLC D/B/A FREEBEE**, a Florida limited liability company (hereinafter the "Contractor").

WHEREAS, the City and the Contractor entered into that certain Agreement dated February 2, 2021 (the "Agreement"), for the operation of a mobile-based, on-demand transportation service for the City (the "Services"); and

WHEREAS, on August 25, 2021, the City entered into an Interlocal Agreement for the Provision of On-demand Services (the "ILA") with Miami-Dade County (the "County") governing the provision of the Services within the City; and

WHEREAS, the ILA requires, among other things, the City's Contractor to: insure the City and the County, indemnify the City and the County, provide a blanket fidelity bond for the benefit of the City and the County, collect updated ridership reporting requirements, and comply with requirements that on-demand trips not exceed more than five (5) miles in length; and

WHEREAS, the term of the Agreement covered the period beginning on the effective date, February 2, 2021, through February 2, 2022; and

WHEREAS, the City desires to amend the Agreement to incorporate the requirements of the ILA; and

WHEREAS, the City and the Contractor desires to retroactively extend the term of the Agreement through February 2, 2023, with the option to renew the term of the Agreement for two additional one-year periods; and

WHEREAS, the City further desires to modify the scope of services for the Agreement by replacing Exhibits "A" and "B" to the Agreement to provide for the provision of two (2) "Freebee" XL Van vehicles and four (6) Tesla Model X vehicles and enlarge the designated service area map to encompass the entirety of the City's jurisdiction, among other things; and

WHEREAS, the City also desires to modify compensation for the Services to \$733,434.00 per year (\$122,239.00 per Tesla Model Vehicle); and \$322,953.80 per year (\$161,476.40 per XL Van)

WHEREAS, the City and Contractor desire to modify the terms of the Agreement in accordance with the terms and conditions set forth in this First Amendment.

NOW, THEREFORE, for and in consideration of the mutual promises set forth herein, the parties do hereby agree as follows:

1. **Recitals Adopted.** The above recitals are true and correct and are incorporated herein by this reference. All initially capitalized terms used but not otherwise defined herein shall have the meaning ascribed thereto in the Agreement.
2. **Rates and Services Addendum.** Exhibit "A" of the Agreement is hereby deleted and replaced with the Rates and Services Addendum attached hereto as Exhibit "A" and incorporated herein by this reference.
3. **Designated Service Area Map.** Exhibit "B" of the Agreement is hereby deleted and replaced with the Designated Services Area Map attached hereto as Exhibit "B" and incorporated herein by this reference.
4. **Contractor's Insurance.** Section 5.1 of the Agreement is hereby deleted in its entirety and replaced as follows:

5.1 The CONTRACTOR shall purchase and maintain, in full force and effect for the life of the Agreement, at CONTRACTOR'S sole expense, the following insurance policies:

1. A business automobile policy which covers any vehicles used in connection with this Agreement, regardless of whether the vehicle is owned, rented, hired or borrowed by the CONTRACTOR. Minimum limits for bodily/property damage liability shall be one million dollars (\$1,000,000.00) per occurrence.
2. A comprehensive general liability policy with minimum coverage limits of three million dollars (\$3,000,000.00) for bodily injury and property damage per occurrence.
3. A workers' compensation and employer's liability policy which covers all of the CONTRACTOR'S employees to be engaged in work on this contract as specified by and in accordance with F.S.S. 440.
4. A blanket fidelity bond in the amount of ten thousand dollars (\$10,000.00).

The City of Aventura and Miami-Dade County (the "COUNTY") shall be named as additional insureds on policies listed as 1-4 of the CONTRACTOR'S above required policies of insurance. The form and type of coverage and sufficiency of insurer shall be subject to approval of the City Manager. In the event that the

CITY receives and utilizes grant funds provided by the State of Florida (the "STATE") for the Services, the CONTRACTOR understands and shall add the STATE as an additional insured on policies listed on policies listed as 1-4 of the CONTRACTOR'S above required policies of insurance if the City is required to do so by the STATE.

Copies of all policies or certificates of such insurance shall be delivered to the CITY, the COUNTY, and the STATE (if applicable) and said documentation shall provide for the CITY, the COUNTY, and the STATE (if applicable) to be notified a minimum of thirty (30) days prior to any cancellation, termination, reduction, or non-renewal of any required insurance policy.

The CONTRACTOR shall also, upon request by the CITY, the COUNTY, and the STATE, provide copies of all official receipts and endorsements as verification of CONTRACTOR'S timely payment of each insurance policy premium as required by this Agreement.

5. **Contractor's Indemnification.** Article 7 of the Agreement is hereby amended to create Sections 7.2 and 7.3 as follows:

7.2 The CONTRACTOR shall indemnify and hold harmless and defend the COUNTY and its officers, agents, employees, and instrumentalities from any and all liability, claims, liabilities, losses, and causes of action, including attorney's fees and costs of defense which the COUNTY or its officers, employees, agents and instrumentalities may incur as a result of claims, demands, suits, causes of actions or proceedings of any kind of nature arising out of, or relating to or resulting from any willful misconduct, reckless act, or negligent act or omission by the CONTRACTOR and/or its officers, employees, agents or independent contractors in the provision of services hereunder. The CONTRACTOR shall be required to pay all claims and losses in connections therewith, and shall investigate and defend all claims, suits or actions of any kind or nature in the name of the COUNTY, where applicable, including appellate proceedings, and shall pay costs, judgments and attorney's fees which may issue thereon. For any matters in which CONTRACTOR is obligated to pay for the COUNTY's legal defense hereunder, CONTRACTOR shall be permitted to retain counsel of its choosing for both CONTRACTOR and the COUNTY, provided that such legal counsel is reasonably acceptable to the COUNTY, which consent shall not be unreasonably withheld. The CONTRACTOR expressly understands and agrees that any insurance protection required by this Agreement or otherwise provided by the CONTRACTOR shall in no way limit the responsibility of CONTRACTOR to indemnify, keep and save harmless and defend the COUNTY and its officers, employees, agents or instrumentalities as herein provided. Furthermore, the parties understand and agree that the covenants and representations relating to this indemnification provision shall survive the term of this Agreement and continue in full force and effect as to the party's responsibility to indemnify.

7.3 In the event that the CITY receives and utilizes grant funds provided by the STATE for the provision of the Services, the CONTRACTOR shall agree to indemnify the STATE as follows:

The CONTRACTOR shall indemnify and hold harmless and defend the STATE and its officers, agents, employees, and instrumentalities from any and all liability, claims, liabilities, losses, and causes of action, including attorney's fees and costs of defense which the STATE or its officers, employees, agents and instrumentalities may incur as a result of claims, demands, suits, causes of actions or proceedings of any kind of nature arising out of, or relating to or resulting from any willful misconduct, reckless act, or negligent act or omission by the CONTRACTOR and/or its officers, employees, agents or independent contractors in the provision of services hereunder. The CONTRACTOR shall be required to pay all claims and losses in connections therewith, and shall investigate and defend all claims, suits or actions of any kind or nature in the name of the STATE, where applicable, including appellate proceedings, and shall pay costs, judgments and attorney's fees which may issue thereon. For any matters in which CONTRACTOR is obligated to pay for the STATE's legal defense hereunder, CONTRACTOR shall be permitted to retain counsel of its choosing for both CONTRACTOR and the STATE, provided that such legal counsel is reasonably acceptable to the STATE, which consent shall not be unreasonably withheld. The CONTRACTOR expressly understands and agrees that any insurance protection required by this Agreement or otherwise provided by the CONTRACTOR shall in no way limit the responsibility of CONTRACTOR to indemnify, keep and save harmless and defend the STATE and its officers, employees, agents or instrumentalities as herein provided. Furthermore, the parties understand and agree that the covenants and representations relating to this indemnification provision shall survive the term of this Agreement and continue in full force and effect as to the party's responsibility to indemnify.

6. **Term and Termination.** Section 12.1 of the Agreement is hereby deleted in its entirety and replaced as follows:

12.1 The term of this Agreement shall be retroactively extended from February 2, 2021, through February 2, 2023, thereafter, unless earlier terminated in accordance with Section 12.2 herein. Additionally, the CITY Manager may renew this Agreement for two (2) additional one (1) year periods on the same terms as set forth herein upon written notice to the CONTRACTOR.

7. **Reporting Requirements.** Article 16, "RESERVED," is hereby deleted in its entirety and replaced as follows:

ARTICLE 16
REPORTING REQUIREMENTS

16.1. The CONTRACTOR shall collect or assure the collection of the following information (based on anonymized data):

1. Number of completed rides
2. Average journey time
3. Average distance per ride
4. Average utilization (passengers per vehicle hour)
5. Ridership (average weekday, Saturday and Sunday)
6. Vehicle miles driven
7. Vehicle hours driven
8. No show rate
9. Cancellation rate
10. Average wait time
11. Average percentage of on-time pick up requests
12. Average percentage of requested rides completed
13. Top pick-up and drop-off locations
14. Number of passengers picked-up and dropped off at transit facilities including Metrorail, Miami-Dade Transitway and Park-and Rides
15. Percentage of bookings shared

Reports shall be submitted to the CITY and the COUNTY'S Office of Management and Budget – c/o Management Planning and Performance Analysis on a monthly basis. Additionally, the CONTRACTOR shall comply with Federal, State, and C.I.T.T. reporting requirements applicable to the subject service. Quarterly reports shall include the information listed above in aggregated format, including trends noticed. Monthly reports shall be submitted to the COUNTY no later than the 15th day of the following month.

The CONTRACTOR shall meet or exceed DTPW's adopted service standards for On-demand transportation services.

16.2 The Contractor agrees to provide to the COUNTY the real-time On-demand service route information in a format approved by the DTPW, or its successor department, such as provided by a Global Positioning System (GPS), and which is compatible with, and may be integrated into, the COUNTY'S smartphone transit tracker application and common third-party applications.

8. **Conflict: Amendment Prevails.** In the event of any conflict or ambiguity between the terms and provisions of this First Amendment and the terms and provisions of the Agreement and any prior amendments or addendums, the terms and provisions of this First Amendment shall control.
9. **Agreement Ratified.** Except as otherwise specifically set forth or modified herein, all terms and pricing in the Agreement are hereby ratified and affirmed and shall remain unmodified and in full force and effect in accordance with its terms.

(The rest of this page is intentionally left blank)

KATHERINA A. LIA
Notary Public
State of Florida
Comm. #11589621
Expires 7/13/2024



E-VERIFY AFFIDAVIT

In accordance with Section 448.095, Florida Statutes, the City requires all contractors doing business with the City to register with and use the E-Verify system to verify the work authorization status of all newly hired employees. The City will not enter into a contract unless each party to the contract registers with and uses the E-Verify system.

The contracting entity must provide of its proof of enrollment in E-Verify. For instructions on how to provide proof of the contracting entity's participation/enrollment in E-Verify, please visit: <https://www.e-verify.gov/faq/how-do-i-provide-proof-of-my-participationenrollment-in-e-verify>

By signing below, the contracting entity acknowledges that it has read Section 448.095, Florida Statutes and will comply with the E-Verify requirements imposed by it, including but not limited to obtaining E-Verify affidavits from subcontractors.

☒ **Check here to confirm proof of enrollment in E-Verify has been attached to this Affidavit.**

In the presence of:

Signed, sealed and delivered by:

Witness #1 Print Name: Seth Brown

Print Name: Jason Spiegel

Witness #2 Print Name: Scott Crawshaw

Title: Managing Partner

Entity Name: BeeFree LLC

ACKNOWLEDGMENT

State of Florida

County of MIAMI - Dade

The foregoing instrument was acknowledged before me by means of ☒ physical presence or ☐ online notarization, this 22 day of January, 2024 by Jason Spiegel (name of person) as Managing Partner (type of authority) for BEEFREE LLC (name of party on behalf of whom instrument is executed).



KATHERINA ALI
Notary Public
State of Florida
Comm# HH289661
Expires 7/19/2026

KATHERINA ALI
Notary Public (Print, Stamp, or Type as Commissioned)

☒ Personally known to me; or
☐ Produced identification (Type of Identification: _____)
☐ Did take an oath; or
☐ Did not take an oath



Company ID Number: 1583890

Approved by:

Employer Beefree LLC	
Name (Please Type or Print) Yolanda Menegazzo	Title
Signature Electronically Signed	Date 09/02/2020
Department of Homeland Security – Verification Division	
Name (Please Type or Print) USCIS Verification Division	Title
Signature Electronically Signed	Date 09/02/2020



Company ID Number: 1583890

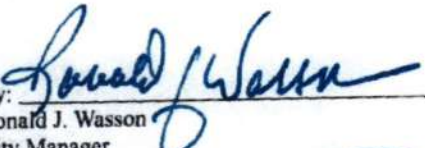
Information Required for the E-Verify Program

Information relating to your Company:

Company Name	Beefree LLC
Company Facility Address	371 NE 61st St. Miami, FL 33137
Company Alternate Address	
County or Parish	MIAMI-DADE
Employer Identification Number	454659887
North American Industry Classification Systems Code	551
Parent Company	
Number of Employees	100 to 499
Number of Sites Verified for	1 site(s)

IN WITNESS WHEREOF, the parties hereto have caused this Amendment to be executed the day and year as first stated above

CITY OF AVENTURA

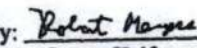
By: 
Ronald J. Wasson
City Manager

Attest:

By: 
Ellisa L. Horvath, MMC
City Clerk



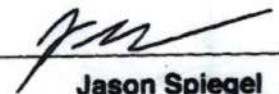
Approved as to form and legal sufficiency:

By: 
Weiss Serota Helfman Cole & Bierman, P.L.
City Attorney

Addresses for Notice:
City of Aventura
Attn: City Manager
19200 W. Country Club Drive
Aventura, FL 33180
305-466-8910 (telephone)
WassonR@cityofaventura.com (email)

With a copy to:
Weiss Serota Helfman Cole & Bierman, P.L.
City of Aventura Attorney
200 E Broward Blvd #1900, Fort Lauderdale, FL
33301
rmeyers@wsh-law.com (email)

CONTRACTOR

By: 
Name: Jason Spiegel
Title: CEO

Entity: Beefree, LLC d/b/a Freebee

Addresses for Notice:
Beefree, LLC d/b/a Freebee
Managing Partner
Attn: Jason Spiegel
2312 N. Miami Avenue
Miami, FL 33127

With a copy to:
Sullivan & Zappala, P.A.
Attn: Bradley Zappala
407 Lincoln Rd, PH 8E
Miami Beach, FL 33139
305-634-4787 (telephone)
bzappala@sullivanlaw.com (email)

EXHIBIT "A"

BEEFREE, LLC d/b/a FREEBEE "RATES AND SERVICES ADDENDUM"

(Rates and Services Addendum for "Freebee" Transportation Services)

This Rates and Services Addendum ("Addendum") supplements the Agreement between BEEFREE, LLC d/b/a FREEBEE ("FREEBEE") and CITY OF AVENTURA ("CITY"), made and entered into on FEB. 24th 2021 (the "Agreement"). This Addendum is subordinate to, and fully incorporates the terms and conditions of the Agreement, unless expressly stated otherwise herein. In consideration of the promises and covenants contained herein, and for good and valuable consideration, FREEBEE and CITY (collectively, the "Parties"), intending to be legally bound, hereby agree as follows:

- (1) **Term.** The term of the Services set forth under this Addendum shall commence upon delivery and deployment of the vehicles within the CITY as set forth in Article 12 of the Agreement.
- (2) **Services.** This Addendum is limited in scope to the following services (the "Services"), which FREEBEE agrees to provide to CITY at the rates specified herein (the "Rates"):
 - (a) FREEBEE will provide two (2) "Freebee" XL Van vehicles and six (6) Tesla Model X dedicated to CITY (the "Vehicles") for the duration of the Term. Both XL Van Vehicles dedicated to CITY will be wheelchair accessible, and FREEBEE will otherwise use its best efforts to be and remain in compliance with all Americans with Disabilities Act ("ADA") requirements. FREEBEE shall be responsible for providing appropriate training to its drivers who will be operating the wheelchair accessible Vehicle, including but not limited to, training as to the operation of the ramping system and securing of wheelchairs.
 - (b) FREEBEE will operate the Vehicles within the CITY's designated service area at all times during CITY's operating hours (weather and conditions permitting) as reflected in Section 5 herein and Exhibit "B" to the Agreement, with the exception being when a driver takes their thirty (30) minute meal break. At such times during a driver break, one (1) vehicle will be in operation and FREEBEE will try to limit this to downtime in service. FREEBEE agrees that, to the extent feasible, at all times during CITY's operating hours, both wheelchair-accessible vehicles will be available to accommodate passengers, upon request, and FREEBEE will operate the ramping system and secure any wheelchairs to the vehicle should such accommodations be requested.
 - (c) Prior to the beginning of the Term, FREEBEE will deliver to CITY at least one (1) fast charger for charging the Vehicles. The fast charger will remain property of FREEBEE but will remain in the CITY for purposes of charging the Vehicle throughout the Term. At the conclusion of the Term, FREEBEE shall be entitled to retake possession of the fast charger. FREEBEE shall be solely responsible for all electricity fees, costs and expenses.

(d) FREEBEE will assist CITY in developing a marketing plan to encourage ridership on the Vehicles during the Term.

(e) FREEBEE shall assist the City in obtaining monthly reports showing data and analytics related to ridership in the Vehicles as follows:

1. FREEBEE shall collect or assure the collection of the following information (based on anonymized data):

- a. Number of completed rides
- b. Average journey time
- c. Average distance per ride
- d. Average utilization (passengers per vehicle hour)
- e. Ridership (average weekday, Saturday and Sunday)
- f. Vehicle miles driven
- g. Vehicle hours driven
- h. No show rate
- i. Cancellation rate
- j. Average wait time
- k. Average percentage of on-time pick up requests
- l. Average percentage of requested rides completed
- m. Top pick-up and drop-off locations
- n. Number of passengers picked-up and dropped off at transit facilities including Metrorail, Miami-Dade Transitway and Park-and Rides
- o. Percentage of bookings shared

Reports shall be submitted to the CITY and the Miami-Dade County Office of Management and Budget – c/o Management Planning and Performance Analysis on a monthly basis. Additionally, FREEBEE shall comply with Federal, State, and C.I.T.T. reporting requirements applicable to the subject service. Quarterly reports shall include the information listed above in aggregated format, including trends noticed. Monthly reports shall be submitted to the CITY and Miami-Dade County no later than the 15th day of the following month.

FREEBEE shall meet or exceed the Miami-Dade County Department of Transportation and Public Work's adopted service standards for On-demand transportation services.

2. FREEBEE agrees to provide to the CITY and Miami-Dade County the real-time On-demand service route information in a format approved by the Miami-Dade County Department of Transportation and Public Works, or its successor department, such as provided by a Global Positioning System (GPS), and which is compatible with, and may be integrated into, the Miami-

Dade County smartphone transit tracker application and common third-party applications.

- (f) FREEBEE agrees that any questions, complaints, or concerns reported to FREEBEE (through its drivers or otherwise) regarding ADA issues will be reported to the CITY within one (1) business day.
 - (g) FREEBEE shall utilize its best efforts to assist CITY with the related Miami-Dade County Interlocal Agreement and with all related County requirements.
- (3) Rates. As consideration for the Services listed above, CITY shall pay FREEBEE at the following Rates:
 - (a) The total payment for the Services to be provided under this Addendum shall not exceed One Million, Fifty-Six Thousand, Three Hundred and Eighty-Seven Dollars and 80 cents. (\$1,056,387.80).with the ability to subsidize total payment with advertising revenue, as stipulated under Section 5(d) herein.
 - (b) The breakdown for the Services charge is as follows:
 - i. Two (2) XL Vehicles
 - ii. Six (6) Tesla Model X Vehicles
 - iii. Service: Monday through Sunday 7:00 am — 11:00 p.m.
 - iv. Ninety-Eight (98) Hours of labor per XL Van Vehicle weekly and 70 hours of labor per Tesla Model X Vehicles (weather and conditions permitting)
 - v. Cost: \$1,056,387.80 Annually
- (4) Payment Terms. CITY agrees to pay the Rates in monthly installments, as follows:
 - (a) Twelve (12) payments of approximately \$88,032.32 per month, payable on or before the 15th of each month, beginning upon delivery and deployment of the vehicles as set forth in Section 2 above.
- (5) Additional Terms.
 - (a) CITY's operating hours, as contemplated in Section 2b. above, shall be as follows: Monday through Sunday 7:00 am — 1 1:00 pm. These hours may be modified by mutual written agreement of the Parties as ridership data becomes available throughout the Term.
 - (b) FREEBEE shall be responsible for installation and maintenance of the fast charger(s) and any costs associated therewith at all times after acceptance of the delivery described in Section 2.c. above.
 - (c) FREEBEE will operate the Vehicles in CITY'S designated service area map as delineated in EXHIBIT "B" (Subject to Revision as Necessary). Notwithstanding the foregoing, no individual on-demand trip shall exceed five (5) miles in length.
 - (d) Subject to the limitations of the Interlocal Agreement between the CITY and the COUNTY governing the use of CITT funds and local and state law, FREEBEE may enter into separate agreements with advertisers for the placement of

advertisements on its XL Van Vehicles at any time during the Term. All advertising must be approved by the CITY in writing prior to the placement of any advertising on the XL Van Vehicles. Any advertising revenue generated from the sale of advertising on the Vehicles during the Term shall be divided equally between FREEBEE and CITY, with each entitled to 50% of advertising revenue that is generated and actually received by FREEBEE beyond the \$24,000 annual amount per XL Van Vehicles which FREEBEE has already credited to CITY in accordance with its proposal. CITY shall be permitted to apply its share of such revenue, if any, towards subsidizing the Rates it has agreed to pay hereunder. Nothing in this section should be deemed to constitute a guarantee that FREEBEE will sell such advertising space or generate any revenue by selling advertising on the Vehicles during the Term, and CITY expressly acknowledges that no such guarantee has been made by FREEBEE.

- (e) Subject to the limitations of the Interlocal Agreement between the CITY and the COUNTY governing the use of CITT funds and local and state law, FREEBEE may enter into separate agreements with advertisers for the placement of advertisements on its Tesla Model X Vehicles at any time during the Term. All advertising must be approved by the CITY in writing prior to the placement of any advertising on the Tesla Model X Vehicles. Any advertising revenue generated from the sale of advertising on the Vehicles during the Term shall be divided equally between FREEBEE and CITY, with each entitled to 50% of advertising revenue that is generated and actually received by FREEBEE. CITY shall be permitted to apply its share of such revenue, if any, towards subsidizing the Rates it has agreed to pay hereunder. Nothing in this section should be deemed to constitute a guarantee that FREEBEE will sell such advertising space or generate any revenue by selling advertising on the Vehicles during the Term, and CITY expressly acknowledges that no such guarantee has been made by FREEBEE.

EXHIBIT "B"

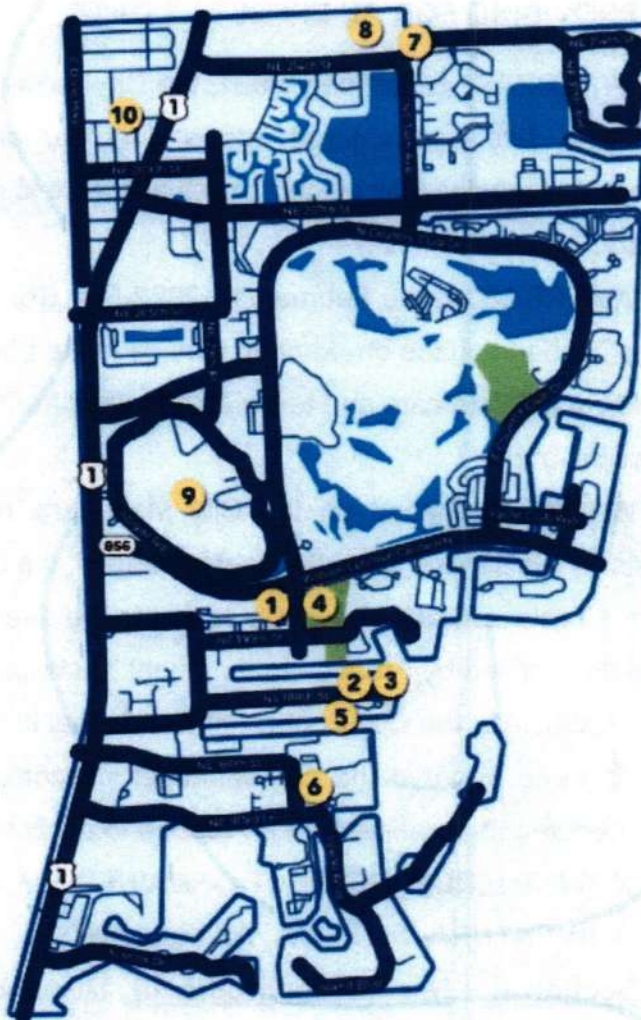
"DESIGNATED SERVICE AREA MAP"

SERVICE AREA

**Pick-up / drop-off
within the identified
Service Area Boundary**

POINTS OF INTEREST:

1. Aventura City Government Center
2. Aventura Community Recreation Center
3. Aventura Arts & Cultural Center
4. Founders Park
5. Peace Park
6. Veterans Park
7. Waterways Dog Park
8. Waterways Park
9. Aventura Mall
10. Aventura Hospital



CITY OF AVENTURA RESOLUTION NO. 2022-64

A RESOLUTION OF THE CITY COMMISSION OF THE CITY OF AVENTURA, FLORIDA, APPROVING THE SECOND AMENDMENT TO THE AGREEMENT WITH FREEBEE, LLC.; AUTHORIZING THE CITY MANAGER TO PURCHASE TWO ADDITIONAL TESLA VEHICLES FROM THE VENDOR; PROVIDING FOR IMPLEMENTATION; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, in February 2021, the City received proposals from two on-demand service providers and entered into a one-year pilot program with Freebee, LLC. ("Freebee") to provide fully electric buses available to residents in a predetermined zoned boundary; and

WHEREAS, at the February 1, 2022 City Commission meeting, the Commission approved expanding the on-demand service to the entire City in two phases and ordered four additional Tesla cars and two electric buses from Freebee to satisfy the demand for this service; and

WHEREAS, based on the City Manager's monitoring of ridership levels and requests for the service since the fleet increased, the City Manager is recommending that two more Tesla vehicles should be added to the fleet, bringing the total number of cars and buses supplied by Freebee to ten (eight Tesla cars and two buses); and

WHEREAS, the City Commission finds that it is in the best interest of the City and its residents to approve the City Manager's recommendation to enter into a second amendment to the agreement with Freebee to order two additional vehicles.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COMMISSION OF THE CITY OF AVENTURA, FLORIDA, AS FOLLOWS:

Section 1. Recitals Incorporated. That each of the above-stated recitals are hereby adopted and confirmed.

Section 2. Second Amendment to Agreement Approved. That the City Commission hereby approves the City Manager's Second Amendment to the Agreement attached hereto as Exhibit "A".

Section 3. Purchases Approved. That the City Commission hereby approves the purchase of two additional electric Tesla vehicles.

Section 4. City Manager Authorized. That the City Manager is hereby authorized to take all necessary steps to implement this Resolution.

SECOND AMENDMENT TO AGREEMENT

CITY OF AVENTURA

AND

BEEFREE, LLC D/B/A FREEBEE

THIS SECOND AMENDMENT TO AGREEMENT (this "Second Amendment ") is entered into this 1st day of November, 2022, by and between the **CITY OF AVENTURA, FLORIDA**, a Florida municipal corporation (hereinafter the "City"), and **BEEFREE, LLC D/B/A FREEBEE**, a Florida limited liability company (hereinafter the "Contractor").

It is mutually understood and agreed by and between the undersigned contracting parties to amend the previously executed Agreement as follows:

1. Agreement, Section 12.1 is deleted in its entirety and replaced with the following:

12.1 The term of this Agreement shall commence January 1st, 2023, through December 31st, 2025, thereafter, unless earlier terminated in accordance with Section 12.2 herein. Additionally, the CITY Manager may renew this Agreement for two (2) additional one (1) year periods on the same terms as set forth herein upon written notice to the CONTRACTOR.

2. Exhibit A, Rates and Services Addendum, Section 2 (a), Services. is deleted in its entirety and replaced with the following:

(a) FREEBEE will provide two (2) "Freebee" XL Van vehicles and eight (8) Tesla Model X dedicated to CITY (the "Vehicles") for the duration of the Term. Both XL Van Vehicles dedicated to CITY will be wheelchair accessible, and FREEBEE will otherwise use its best efforts to be and remain in compliance with all Americans with Disabilities Act ("ADA") requirements. FREEBEE shall be responsible for providing appropriate training to its drivers who will be operating the wheelchair accessible Vehicle, including but not limited to, training as to the operation of the ramping system and securing of wheelchairs.

3. Exhibit A, Rates and Services Addendum, Section 3, Rates is deleted in its entirety and replaced with the following:

(a) The total payment for the Services to be provided under this Addendum shall not exceed One Million, One Hundred and Forty Eight Thousand, Eight Hundred and Sixty-Five Dollars and 80 cents (\$1,148,865.80), which includes a guaranteed advertising subsidy of \$200,000, as stipulated under Section 5(d) and 5(e) herein.

(b) The breakdown for the Services charge is as follows:

Section 5. Effective Date. That this Resolution shall become effective upon its passage.

The foregoing Resolution was offered by Commissioner Shelley, who moved its adoption. The motion was seconded by Vice Mayor Landman, and upon being put to a vote, the vote was as follows:

Commissioner Rachel S. Friedland	<u>Yes</u>
Commissioner Billy Joel	<u>Yes</u>
Commissioner Dr. Linda Marks	<u>Yes</u>
Commissioner Marc Narotsky	<u>Yes</u>
Commissioner Robert Shelley	<u>Yes</u>
Vice Mayor Denise Landman	<u>Yes</u>
Mayor Enid Weisman	<u>Yes</u>

PASSED AND ADOPTED this 1st day of November, 2022.




ENID WEISMAN, MAYOR

ATTEST:


ELLISA L. HORVATH, MMC
CITY CLERK

APPROVED AS TO LEGAL SUFFICIENCY:


CITY ATTORNEY

- i. Two (2) XL Vehicles
- ii. Eight (8) Tesla Model X Vehicles
- iii. Service: Monday through Sunday 7:00 am — 11:00 p.m.
- iv. Ninety-Eight (98) Hours of labor per XL Van Vehicle weekly and 70 hours of labor per Tesla Model X Vehicles (weather and conditions permitting)
- v. Cost: \$1,148,865.80 Annually

4. Exhibit A, Rates and Services Addendum, Section 4, Payment Terms is deleted in its entirety and replaced with the following:

Payment Terms. CITY agrees to pay the Rates in monthly installments, as follows:

(a) Twelve (12) payments of approximately \$95,738.82 per month, payable on or before the 15th of each month, beginning upon delivery and deployment of the vehicles as set forth in Section 2 above.

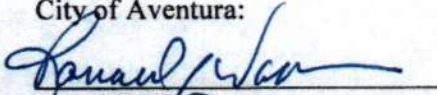
5. Exhibit A, Rates and Services Addendum, Section 5, Additional Terms item d. and e. are deleted in its entirety and replaced with the following:

(d) Subject to the \$24,000 per vehicle advertising discount provided annually to the CITY, FREEBEE may enter into separate agreements with advertisers for the placement of advertisements on its XL Van Vehicles at any time during the Term. All advertising must be approved by the CITY in writing prior to the placement of any advertising on the XL Van Vehicles. Any advertising revenue generated from the sale of advertising on the Vehicles during the Term shall be retained 100% by FREEBEE.

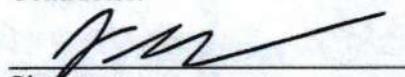
(e) Subject to the \$19,000 per vehicle advertising discount provided annually to the CITY, FREEBEE may enter into separate agreements with advertisers for the placement of advertisements on its Tesla X Vehicles at any time during the Term. All advertising must be approved by the CITY in writing prior to the placement of any advertising on the Tesla X Vehicles. Any advertising revenue generated from the sale of advertising on the Vehicles during the Term shall be retained 100% by FREEBEE.

IN WITNESS WHEREOF, the Parties have caused this Amendment to be executed by their duly authorized representatives, effective as of the date first written above.

City of Aventura:


Ronald J. Wasson
City Manager

Contractor:


Signature



Attest:

Ellisa L. Horvath, MMC
City Clerk

Jason Spiegel

Printed Name

CEO

Title

Approved as to Legal Sufficiency:

Robert Meyers
Weiss Serota Helfman Cole & Bierman, P.L.
City Attorney

Addresses for Notice:

City of Aventura
Attn: City Manager
19200 W. Country Club Drive
Aventura, FL 33180
305-466-8910 (telephone)
WassonR@cityofaventura.com (email)

Addresses for Notice:

Beefree, LLC d/b/a Freebee
Managing Partner
Attn: Jason Spiegel
2312 N Miami Avenue
Miami, FL 33127
jason@ridefreebee.com

With a copy to:

Weiss Serota Helfman Cole & Bierman, P.L.
City of Aventura Attorney
200 E Broward Blvd #1900, Fort Lauderdale, FL 33301
rmeyers@wsh-law.com (email)

EXHIBIT "B"
RATES AND SERVICES ADDENDUM

EXHIBIT "B"

BEEFREE, LLC d/b/a FREEBEE

"RATES AND SERVICES ADDENDUM"

(Rates and Services Addendum for "Freebee" Transportation Services)

This Rates and Services Addendum ("Addendum") supplements the Agreement between BEEFREE, LLC d/b/a FREEBEE ("FREEBEE") and CITY OF KISSIMMEE ("CITY"), made and entered into 20th day of February, 2024 (the "Agreement"). This Addendum is subordinate to, and fully incorporates the terms and conditions of the Agreement, unless expressly stated otherwise herein. In consideration of the promises and covenants contained herein, and for good and valuable consideration, FREEBEE and CITY (collectively, the "Parties"), intending to be legally bound, hereby agree as follows:

1. Term. The term for the performance of services set forth under this Addendum shall commence upon delivery and deployment of the vehicles within the CITY as set forth in Section 2 below but no later than on a date mutually agreed upon by the Parties, and shall remain in full force and effect for twelve (12) months from March 13, 2024 (the "Term"), unless terminated earlier pursuant to any additional clause(s) in this Agreement. –The Term shall be in effect for a twelve (12) month period pending the renewal of the Master Agreement by the City of Aventura.
2. Services. This Addendum is limited in scope to the following services (the "Services"), which FREEBEE agrees to provide to CITY at the rates specified herein (the "Rates"):
 - a) FREEBEE will provide four (4) "Freebee" vehicles dedicated to CITY (the "Vehicles") for the duration of the Term. Three Vehicles dedicated to CITY will be Tesla vehicles and one Vehicle will be a wheelchair-accessible van. Beyond those identified Vehicles, FREEBEE will otherwise use its best efforts to remain in compliance with all Americans with Disabilities Act ("ADA") requirements as they may pertain to vehicle brands and types. FREEBEE shall be responsible for providing appropriate training to its drivers of wheelchair accessible Vehicle(s), including but not limited to, training as to the operation of the ramping system and securing of wheelchairs.
 - b) FREEBEE will utilize the Ride Freebee mobile app to provide free advertising opportunities for local businesses.
 - c) With the exception of the wheelchair-accessible van, which shall operate as needed to accommodate passenger requests, FREEBEE will operate the Vehicles within the CITY's designated service area at all times during CITY's operating hours (weather and conditions permitting) as reflected in Section 5 below, with the exception of a forty-five (45) minute daily meal break afforded to Freebee drivers. During driver meal breaks, at least one (1) Vehicle will be in operation and FREEBEE will try to limit breaks to downtimes in service. FREEBEE agrees that, to the extent feasible, at all times during CITY's operating hours, a wheelchair-accessible vehicle will be available to accommodate passengers upon request, and FREEBEE will operate the ramping system and secure any wheelchairs to the Vehicle should such an accommodation be requested.
 - d) Prior to commencement of the Term, FREEBEE will provide CITY with at minimum, one (1) fast charger for charging the Vehicles. The fast charger will be retained as FREEBEE's private property but will be available for use by CITY for purposes of charging the Vehicles throughout the duration of this Agreement. At the conclusion of the Term, FREEBEE shall be entitled to retake possession of the fast charger- FREEBEE shall be solely responsible

- for costs and expenses associated with installing and maintaining any and all charging equipment necessary for operation of the Vehicles.
- e) FREEBEE will assist CITY in developing a marketing plan to encourage Vehicle ridership.
 - f) Beginning in the second month of the Term and continuing each month thereafter, FREEBEE will provide CITY with a monthly report showing data and analytics related to ridership for the preceding month(s). FREEBEE will provide these reports within ten (10) business days of the last day of each month, unless another time frame is agreed upon by the Parties.
 - g) FREEBEE agrees that any questions, complaints, or concerns reported to FREEBEE (through its drivers or otherwise) regarding ADA issues will be reported to the CITY within one (1) business day.
 - h) CITY will provide four (4) dedicated parking spaces within the designated service area for charging and storage of Vehicles at no cost to FREEBEE. CITY shall further ensure that FREEBEE is permitted to install and utilize the fast charger in proximity to the parking spaces in order to efficiently charge the Vehicles.
3. Rates. As consideration for the services listed above, CITY shall pay FREEBEE at the following rates:
- a) The total charge for the services provided under this Addendum shall not exceed payment for the services to be provided under this Addendum shall not exceed Four Hundred Five Thousand Three Hundred Ninety Dollars (\$405,390.00), with the stipulation that a portion of that outstanding balance may be paid out of advertising revenue, as further described below in Section 5(d).
 - b) The breakdown for the service charges are as follows:
 - i Three Tesla Vehicles;
 - ii Operating Hours: Monday through Friday from 6:00 AM to 9:00 PM;
 - iii Seventy (70) hours per week of operation for each Vehicle in the fleet (weather and conditions permitting);
 - iv Wheelchair Accessible Van shall not have minimum hours requirement but shall be available upon request and on an as-needed basis during regular operating hours.
4. Payment Terms. CITY agrees to pay for the services rendered in monthly installments, as follows:
- a) Twelve (12) payments of approximately \$33,782.50 per month, payable on or before the 5th of each month, beginning upon delivery and deployment of the Vehicles as set forth in Section 2 above.
 - b) The first payment shall be delivered to FREEBEE immediately after City Commission approval and execution of the Agreement, which shall be applied towards the anticipated first month of service to the CITY.
- 5 Additional Terms-
- a) FREEBEE will operate the Vehicles in CITY's designated service area map as delineated in this Exhibit. This service area may be modified or revised revision upon mutual, written consent of the Parties.
 - b) Should state and local law permit FREEBEE to sell advertising space on the Vehicles, and provided FREEBEE is able to sell such advertising space, FREEBEE may enter into separate agreements with advertisers for the placement of advertising on the Vehicles. All advertising shall be subject to CITY's approval prior to its placement on the Vehicles. Any advertising revenue generated from the sale of advertising on the Vehicles during the

Term shall be divided equally between FREEBEE and CITY, with each entitled to 50% of advertising revenue that is generated and actually received. CITY shall be permitted to apply its share of said revenue, if any, towards its monthly payment to FREEBEE for services rendered. Nothing in this section shall not be interpreted as an obligation on FREEBEE to sell any advertising space or generate any revenue by selling advertising on the Vehicles, and CITY hereby expressly acknowledges that no such obligation has been created by enacting this Section.

RESOLUTION No. 28-2022

A RESOLUTION OF THE CITY COMMISSION OF THE CITY OF KISSIMMEE, FLORIDA DELEGATING AUTHORITY TO THE CITY MANAGER TO APPROVE THE FREEBIE CONTRACT AMENDMENTS ON BEHALF OF THE CITY; PROVIDING FOR LEGISLATIVE FINDINGS AND INTENT; PROVIDING AUTHORITY TO THE CITY MANAGER, OR THEIR DESIGNEE TO MODIFY THE SERVICE BOUNDARY; PROVIDING FOR CONFLICTS; PROVIDING FOR SEVERABILITY; PROVIDING AN EFFECTIVE DATE.

WHEREAS, the City of Kissimmee, Florida, a Florida municipal corporation (the "City"), published letter of interest seeking alternative options to standard fixed-route bus line to provide daily, on demand and app-driven, microtransit service to users within a designated area; and

WHEREAS, Pursuant to Competitive bidding and selection process of the City of Aventura, Florida, as Lead Public Agency entered into the Master Agreement with BEEFREE LCC d/b/a Freebee, hereinafter "Contractor" which will expire on February 2, 2023; and

WHEREAS, The City of Kissimmee has entered into a Cooperative Purchase Agreement based on the terms and conditions of the Master Agreement with BEEFREE LCC d/b/a Freebee for the in-city on-demand busing professional services; and

WHEREAS, as part of the Cooperative Purchase Agreement the City Commission has identified and approved a service boundary for the initial launch of the service: and

WHEREAS, this project serves the public interest and provides a public benefit to the community, particularly residents that experience transportation challenges; and

NOW, THEREFORE, BE IT RESOLVED by the City Commissioners of the City of Kissimmee, Florida, as follows:

SECTION 1. RECITALS.

The above recitals are true, correct and incorporated herein as legislative findings.

SECTION 2. DELEGATION OF AUTHORITY.

- a. The City Commission hereby delegates plenary authority to the City Manager to negotiate and execute an Amendment to this Agreement between the City and Contractor, upon the expiration of the City of Aventura Master Agreement in February. The City Manager has the authority to extend the term to reflect the term period of the Master Agreement and any subsequent Amendments thereto, or may determine it is in

the best interest of the City to enter into a Cooperative Agreement from a competitively procured Master Agreement from a different government entity.

- b. The City Commission further delegates authority to the City Manager, or their designee to modify the service boundary to reflect the needs of the community which may change over time.

SECTION 3. CONFLICTS. All Resolutions or parts of Resolutions in conflict with any of the provisions of this Resolution are hereby repealed.

SECTION 4. SEVERABILITY. In the event that any word, phrase, clause, sentence or paragraph of this Resolution is found to be invalid by any court of competent jurisdiction, such phrase, portion or part shall be deemed a separate, distinct and independent provision such holding shall not affect any other word, clause, sentence or paragraph hereof.

SECTION 5. EFFECTIVE DATE. This Resolution shall take effective immediately upon its adoption.

DONE AND RESOLVED this 6th day of December, 2022.



CITY OF KISSIMMEE, FLORIDA

By: Olga Gonzalez
Mayor - Commissioner

ATTEST:

Linda S. Hansell
City Clerk

Approved as to form and legal sufficiency:

Olga Sanchez de Fuentes
City Attorney

ITEM 8.B

Community Project Funding Discussion

Request

Commission discussion on Community Project Funding submissions for FY 2025.

Explanation

Rep. Darren Soto accepts submissions from state and local governments and eligible non-profits for consideration for the Community Project Funding appropriation process. Each year, the City submits one (1) project for funding consideration based on Commission priorities and community needs, since this funding mechanism provides an opportunity for local governments to secure funding via their congressional delegation. In previous years, the City received funding for the Berlinsky House and submitted a request for the Haven on Vine -Motel Conversion Project for FY 2024, which is still in consideration.

The submission process for FY 25 will begin in March and staff would like to review potential City projects and a request from Kissimmee Main Street for Special Event Expansion. Funding requests are usually capped at \$1 million and, based on the nature of the request, may require a financial match. The appropriation requirements for FY25 are not yet available, so additional city projects may be considered to ensure the best project is submitted.

Potential City Projects include:

Kissimmee Gateway Business Airpark South-Utility Improvements

The City of Kissimmee's vision is to have an employment center of statewide impact developed at this location. It is extremely rare to have acreage of this size, with airfield access and a strategic location becoming developable. Increasing the median income in the region is a top priority that can only be accomplished through job creation and quality capital investment and the Kissimmee Gateway Airport has a unique opportunity to create new aviation uses. Approximately 163± acres make up the Southwest Quadrant of ISM. This property, previously operated as a Golf Course which generated over \$100,000 in revenues annually, is now the epicenter of development potential within the city limits.

The airport accommodates general aviation air service 24-hours a day with two paved airport runways at 5,000 and 6,000 feet, respectively. There are two Fixed-Based Operators (FBOs) on-site as well as several flight training schools, new T-hangars, box hangars, and a new aerospace park.

The provision of electricity and water to the site will make the land site ready. The property is exceptionally well suited for aircraft manufacturing, maintenance/repair/overhaul operations, flight training, and other related aviation uses. Of particular note, is recent interest coming from electric vertical take-off and landing (eVTOL) manufacturing and assembly operations.

This request is intended to make the site of 163± airport acres ready for development through capital improvements to both the transmission and distribution power network. Any new development will require increased capacity through the addition of a substation and feeder lines within the Kissimmee Utility Authority (KUA) service area. The current capacity is 5MW but needs to be increased to at least 20MW. More than four (4) prospective businesses with the potential to add up to 4,000 jobs have identified ISM as a potential site for relocation or expansion, but the lack of power capacity prevented further consideration.

City of Kissimmee

In addition, these improvements will advance and fortify site readiness of 163± airport acres by completing 3,500 feet of corridor infrastructure improvements to the site. This work would include the excavation and grading necessary to prepare the undeveloped areas for capital improvements to both the transmission and distribution power network within the Kissimmee Utility Authority (KUA) service area by increasing the power generation and distribution from 5MW to 20MW.

City Request: \$500,000

City Match: \$100,000

Columbia Avenue Complete Streets Improvements (Complete Streets)- Phase I (Design)

This request is for project improvements which include the following: 6 ft widening of road to create a 4-lane urban roadway network, repositioning and/or widening of side sidewalks, 4 ft of bike lane, relocation of existing drainage and drainage improvements, resurfacing of existing 3-lanes of roadway. The project improves 2.3 miles of roadway and non-vehicular access to a busy corridor of retail centers, walk-able schools and low-income apartment communities.

Total project cost estimate: \$8.3M

Request: \$700,000

City match: \$400,000

Main Street's proposed project is attached.

Recommendation

Commission direction on project submissions.

REQUESTED CITY COMMISSION ACTION:

Commission Direction

Department: City Manager

Presenter: Desiree Matthews

Attachment(s):

1. Main Street CPF

From: Mike Steigerwald
Sent: Thursday, February 15, 2024 12:04 PM
To: Desiree Matthews
Subject: Fwd: Event Proposal

FYI

Begin forwarded message:

From: Diana Marrero-Pinto <dmarreropinto@kissimmeemainstreet.org>
Date: February 12, 2024 at 4:47:00 PM EST
To: Mike Steigerwald <MIKE.STEIGERWALD@kissimmee.gov>
Subject: Fwd: Event Proposal

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

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

From: **Lopez, Juan** <Juan.Lopez2@mail.house.gov>
Date: Wednesday, February 7, 2024
Subject: Event Proposal
To: Diana Marrero-Pinto <dmarreropinto@kissimmeemainstreet.org>

Dear Diana,

Thank you for sharing your proposal with us. We are thrilled with the ideas you have presented, and we would like to schedule a follow-up meeting with you, the city manager, and one of the city commissioners. The purpose of this initial meeting will be to coordinate these events with the city, evaluate the costs, and seek funding as a community project for the 2025 budget.

Kindly let me know your availability as soon as possible to schedule the meeting.

Thank you.

Juan A. Lopez

Osceola County Outreach Representative | Congressman Soto (FL-09)

[804 Bryan Street, Kissimmee, FL 34741](#)

Pronouns: *He/Him/His*

[Click here](#) to sign up for Congressman Soto's weekly constituent newsletter

[Click here](#) to sign up for Congressman Soto's monthly grants newsletter



From: Diana Marrero-Pinto <dmarreropinto@kissimmeemainstreet.org>
Sent: Tuesday, February 6, 2024 1:31 PM
To: Lopez, Juan <Juan.Lopez2@mail.house.gov>
Subject: Event Proposal

Honorable Representative Soto,

Thank you for taking the time to meet with the staff of Kissimmee Main Street. It was truly a pleasure sharing with you the many aspects of our nonprofit 501C3 organization, including our mission.

Established in 1997 our mission is to preserve and enhance Historic Downtown Kissimmee for the enjoyment of current and future generations. We accomplish our mission, in part, through our many community events including annual signature events like; BOO! on Broadway, The Kissimmee 5K Run/Walk , Hop on Downtown, Small Business Saturday, Light Up Kissimmee and several monthly events that promote the downtown and lend to its economic vitality. In addition, we are "ambassadors" to our beautiful historic downtown by marketing and supporting our merchants through advertising & promotions, maintaining our city's rich history, and overseeing The Kissimmee Welcome Station, a 1922 historic gas station that provides maps, history, and walking guides to tens of thousands of visitors annually. Its thousands of visitors is one of the reasons we say, #wewelcometheworld. But perhaps our most vital role is the support and guidance we provide to over 800 businesses in the city Downtown CRA District.

We realize, as you also expressed, there is a direct correlation between events in Historic Downtown Kissimmee and the economic vitality of our small businesses and community as a whole. It is why we are proposing the inclusion of the following new and unique events to our downtown.

1. **“Kisstory -this is us” – Expected inception: January 2025**

In 1927, in an effort to increase residents, the City of Kissimmee lined Broadway with tables extending over 200 feet and served dinner to visitors. Kissimmee Main Street aims to replicate that warm reception to residents and visitors alike while utilizing the event to share city history including our citrus, steamboat, and cattle beginnings. This event will be in partnership with Osceola History Center, will include music, vendors, art and historic demonstrations. Area merchants will benefit through food sales and in honor of our cattle history we will reintroduce the “Kissimmee Valley BBQ Cook-Off”

2. **Kissi-mmee Valentine’s Festival- Expected Inception: February 2025**

The goal of this event is to capitalize on our city’s unique and memorable name as a branding tool. We will encourage weddings on Broadway, seek to create an evening event of love and romance in Historic Downtown Kissimmee.

3. **“Battlefield Kissimmee” – Expected Inception: May 2024**

In honor of our armed forces and to create an interactive event for families we would like to introduce a family fitness challenge. Representatives from branches of the US Armed Forces will be charged with creating a physical challenge for families with families completing all challenges receiving medals. Kissimmee Main Street will partner with area Osceola County Veteran organizations and additionally provide information to our local veterans. We purpose to utilize the event to introduce youth to the armed forces by way of a recruitment information officer and connect them with local first responder initiatives including, the Kissimmee Police Department and Osceola Sheriff's Young Explorers. To ensure there is something for everyone this event will run simultaneously alongside the Sunshine Chili Cook-Off.

4. **“All the Arts”- Expected Inception: September 2024**

One of the most beloved and requested events is an arts event. Historic Downtown Kissimmee being home to two dance studios, several murals, a music store, and many music venues, Kissimmee Main Street will host an event celebrating all arts: paint, sculptures, music, dance, and film.

5. **“Christmas in Kissimmee” - Expected Inception: November 2024**

This event will incorporate all of our current Holiday Kick-Off activities including Small Business Saturday shopping by making use of the national campaign to shop small on the business shopping weekend of the year historically, a Christmas concert and karaoke competition, a Parranda in honor of our rich Puerto Rican culture, and the lighting of downtown.

Representative Soto, as witnessed by you, we have seen measurable success with all of the downtown events and hope through these additions to grow our reach, expand resident and visitor engagement, and increase small business success. Our proposal, when approved, will include funding to obtain a full time event coordinator, a part-time marketing coordinator, any training necessary and event equipment. We sincerely appreciate your assistance and support in achieving this goal.

Once again thank you again for your time and attention to this email and its proposed contents and look forward to hearing from you on the funding necessary to add these events to our already exciting event lineup.

Thank you,

Diana Marrero-Pinto

Executive Director
Kissimmee [Main Street](#)

[421 Broadway](#)

[Kissimmee, Florida 34741](#)

www.kissimmeemainstreet.org

www.facebook.com/KissimmeeMainStreet

www.facebook.com/KissimmeeValleyFarmersMarket

407-846-4643 (O)
440-714-8124 (C)



--

Diana Marrero-Pinto, Director
Kissimmee Main Street
440-714-8124

ITEM 8.C

Toho Water Authority Board Reappointment

Request

Approval to reappoint Henry Thacker to the Toho Water Authority Board of Supervisors for a second term as Board Chairman.

Explanation

Henry Thacker is one of the two city appointees and presently is serving in the position of Board Chairman in the Toho Water Authority Board of Supervisors. Mr. Thacker is interested in continuing to serve on the board for a second term.

Recommendation

To reappoint Henry Thacker for a second term (October 1, 2023 to September 30, 2026) as Board Chairman of the Toho Water Authority Board of Supervisors.

REQUESTED CITY COMMISSION ACTION:

Appoint/Reappoint

Department: City Manager

Presenter: Mike Steigerwald

Attachment(s):

1. REAPPOINT Henry Thacker 2024 - signed



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Tel: 407-944-5000
www.tohowater.com

February 13, 2024

Mr. Mike Steigerwald
City Manager
101 Church Street
Kissimmee, FL 34741

RE: Toho Water Authority Board Supervisor Term Extension – Mr. Henry Thacker

Dear Mike,

The purpose of this letter is to request that the City of Kissimmee Commission consider reappointment of Supervisor Henry Thacker for a second term (October 1, 2023 to September 30, 2026) for the Toho Water Authority Board of Supervisors.

Mr Henry Thacker is presently serving in the position of Board Chairman and I have spoken to Mr Thacker who confirmed his interest in continuing to serve on Toho's Board of Supervisors.

If you need additional information, please feel free to contact me.

Sincerely,

Toho Water Authority


[Todd Swingle \(Feb 13, 2024 10:30 CST\)](#)

Todd Swingle

CEO/Executive Director

Signature: 
[Todd Swingle \(Feb 13, 2024 10:30 CST\)](#)

Email: tswingle@tohowater.com

Company: TOHOPEKALIGA WATER AUTHORITY

REAPPOINT Thacker 2024

Final Audit Report

2024-02-13

Created:	2024-02-13
By:	Alison Smith (alsmith@tohowater.com)
Status:	Signed
Transaction ID:	CBJCHBCAABAA9TvcLYCQpOiaHCe44ZMsxLe2fvJiyWnv

"REAPPOINT Thacker 2024" History

-  Document created by Alison Smith (alsmith@tohowater.com)
2024-02-13 - 3:44:08 PM GMT
-  Document emailed to Todd Swingle (tswingle@tohowater.com) for signature
2024-02-13 - 3:44:39 PM GMT
-  Email viewed by Todd Swingle (tswingle@tohowater.com)
2024-02-13 - 4:30:40 PM GMT
-  Document e-signed by Todd Swingle (tswingle@tohowater.com)
Signature Date: 2024-02-13 - 4:30:55 PM GMT - Time Source: server
-  Agreement completed.
2024-02-13 - 4:30:55 PM GMT

