



City of Mount Dora
510 North Baker Street
Mount Dora, Florida 32757
352-735-7126

Mount Dora City Council
Mount Dora City Hall Board Room
510 North Baker Street, Mount Dora, Florida 32757
January 2, 2024, 6:00 PM

AGENDA

CALL TO ORDER

MOMENT OF SILENCE & PLEDGE OF ALLEGIANCE

ROLL CALL

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COMMUNICATIONS AND REPORTS

- Council Member Cal Rolfson
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- Council Member Nate Walker
- Council Member Doug Bryant
- Council Member John Cataldo
- Vice-Mayor Marc Crail
- Mayor Crissy Stile

UPCOMING MEETING DATES

- January 16, 2024, 6:00 PM, Regular Session
- February 6, 2024, 6:00 PM, Regular Session
- February 20, 2024, 6:00 PM, Regular Session
- March 5, 2024, 6:00 PM, Regular Session

ADJOURNMENT

PURSUANT TO SECTION 286.0105, FLORIDA STATUTES, IF ANY PERSON DECIDES TO APPEAL ANY DECISION MADE AT THIS MEETING WITH RESPECT TO ANY MATTER CONSIDERED AT ANY MEETING OR HEARING, SUCH PERSON MAY NEED A RECORD OF THESE PROCEEDINGS FOR SUCH PURPOSE, A PERSON MAY NEED TO ENSURE THAT A VERBATIM RECORD OF THE PROCEEDINGS IS MADE WHICH RECORD INCLUDES THE TESTIMONY AND EVIDENCE UPON WHICH THE APPEAL IS TO BE BASED. VERBATIM RECORD WILL NOT BE PROVIDED BY THE CITY OF MOUNT DORA.

NOTICE: IN ACCORDANCE WITH THE AMERICANS WITH DISABILITIES ACT OF 1990, PERSONS NEEDING A SPECIAL ACCOMMODATION TO PARTICIPATE IN THIS PROCEEDING SHOULD CONTACT THE CITY CLERK AT LEAST 48 HOURS PRIOR TO THE PROCEEDINGS. TELEPHONE (352) 735-7126 FOR ASSISTANCE. IF HEARING IMPAIRED, TELEPHONE THE FLORIDA RELAY SERVICE NUMBERS, (800) 955-8771 (TDD) OR (800) 955-8770 (VOICE) FOR ASSISTANCE.



510 N. Baker St.
Mount Dora, FL 32757
352-735-7126

DATE: January 2, 2024

TO: Honorable Mayor and City Council Members

FROM: Patrick C. Comiskey, City Manager

SUBJECT: Palm Island Park Project

Introduction:

This is an opportunity for Council to receive information about a proposed project.

Discussion:

Mount Dora Boy Scout Ben Solomon would like to perform the service project illustrated on the attachment to this agenda item.

Budget Impact:

N/A

Strategic Impact:

/A

Recommendation:

N/A

Attachment(s):

1. Palm Island Project

Prepared by: Jeanann Hand, City Clerk

Reviewed by:

Trail Border Project Outline

1. This project is meant to discourage park-goers from wandering off the trail at Palm Island Park. This will protect the natural beauty of the area. The border will be a guiding 2-foot tall fence made to keep people on the path without obstructing their view. I will construct this fence out of 4 by 4s and rope. I have already obtained half the funding.
2. Once I receive the money, I will use the money to buy materials at cost from ACE Hardware. This is an agreement I have already made. Once I have obtained the materials I will store them at a location that has already been agreed upon with the Parks and Recreation department. I will have volunteers to help me with putting up the posts.
3. The result of this project will leave a border that can fade into the background while preventing people from destroying the habitat. The border will be 2 feet tall and be able to keep people from walking off trail. This will prevent people from walking off the path and destroying any plants that are there.







510 N. Baker St.
Mount Dora, FL 32757
352-735-7126

DATE: January 2, 2024

TO: Honorable Mayor and City Council Members

FROM: Patrick C. Comiskey, City Manager

SUBJECT: Request Approval of Task Authorization #8 with Bellmore Enterprises, Inc.
Authorizing Underground Conduit Installation for the new development Bristol
Park Apartments Project.

Introduction:

This is a request for City Council to approve Task Authorization #8, installing underground conduit for the Bristol Park Apartments Project.

Discussion:

This project is part of the new development, Bristol Park Apartment Project, that is building 300 units of apartments between US 441 and Limit Avenue, and is considered a developer reimbursement. The City will utilize the contract services from Bellmore Enterprises Incorporated, for underground duct-line work and conduit, as outlined in ITB 19-PW-031 scope of services, which was approved by City Council on September 19, 2019 (Attachment #1), and amended on May 17, 2022 (Attachment #2), and October 17, 2023 (Attachment #3). As part of this work, Bellmore will install 10,175 feet of underground conduit adhering to guidelines contained within their contract, ITB 19-PW-031, scope of services. The City Electric Utility staff will complete all remaining portions of construction.

Total cost of the of work to be performed under the Task Authorization is \$128,105.00. As required by City Policy, requests for services with an estimated cost exceeding \$50,000 will be submitted to City Council for approval.

Budget Impact:

This project is funded in the FY 2023-24 Electric Capital Improvement Plan (CIP) as a developer reimbursed project, GL Number 415-5555-580.63-01-EL2401.

Strategic Impact:

Infrastructure – This project is to provide Electric Utility service to 300 new units through a developer reimbursed project.

Recommendation:

City Council approve Task Authorization #8 for Bellmore Enterprises Incorporated to install underground conduit as part of the Bristol Lakes II developer reimbursed project.

Attachment(s):

1. Attachment #1: EXECUTED ITB_19_PW_031_Duct_Line_Service_Contract
2. Attachment #2: EXECUTED Agreement.Amendment.Bellmore.City of Mount Dora.Underground Duct Line Installation
3. Attachment #3: EXECUTED Second Amendment to Bellmore Agreement w Exh A.10.17.2023
4. TASK ORDER # 8 ELE Developer Project 2023-001

Prepared by: Wayne Zimmerman, Deputy Electric Utility Director

Reviewed by: Steve Langley, Electric Utility Director
Aneta Barton, Budget Director
City Attorney, City Attorney
Jeanann Hand, City Clerk
Patrick Comiskey, City Manager

Approved - 12/19/2023

Approved - 12/21/2023

Approved - 12/22/2023

Approved - 12/22/2023

Final Approval - 12/27/2023

ATTACHMENT #1

AGREEMENT

THIS AGREEMENT is made by and between the CITY OF MOUNT DORA, 510 N. Baker Street, Mount Dora, Florida 32757, hereinafter referred to as the "CITY", and BELLMORE ENTERPRISES, INC., 16019 Redington Drive, Redington Beach, Florida 33708, hereinafter referred to as the "CONTRACTOR".

WITNESSETH:

WHEREAS, the CITY has competitively solicited for Underground Duct-Line Installation Services, pursuant to the CITY's Purchasing Policy and ITB-19-PW-031; and,

WHEREAS, the CONTRACTOR submitted the lowest responsive bid most advantageous to the CITY related to the services set forth in ITB-19-PW-031; and,

WHEREAS, the parties hereto have agreed to the terms and conditions cited herein based on said solicitation;

NOW THEREFORE, in consideration of the mutual covenants contained herein, the parties agree as follows:

SECTION 1. RECITALS.

The above Recitals are true and correct and are incorporated herein by this reference.

SECTION 2. TERM.

The term of this Agreement shall extend from October 1, 2019 through October 1, 2022, and may be extended when in the best interest of the CITY.

SECTION 3. SCOPE OF SERVICES.

The CONTRACTOR shall be responsible for performing the services described in Exhibit "A" attached hereto. To the extent of any conflict between Exhibit "A" and the terms and conditions of this Agreement, the terms and conditions of this Agreement shall prevail.

SECTION 4. WARRANTY.

The CONTRACTOR agrees to provide a full warranty to the CITY for all services which it provides hereunder for one full year following the date of final completion of such services. In the event that the CONTRACTOR is called to perform warranty work, the CONTRACTOR will be responsible for all costs incurred in repairing the warrantied services. To the extent applicable, any manufacturer's warranty on materials provided or installed shall be in addition to the warranty required hereunder.

SECTION 5. OBLIGATIONS OF THE CONTRACTOR.

Obligations of the CONTRACTOR shall include, but not be limited to, the following:

- A. It is understood that the CONTRACTOR shall provide and pay for all labor, tools, materials, permits, equipment, transportation, supervision, and any and all other items or services, of any type whatsoever, which may be necessary to fully complete and deliver the goods and/or services requested by the CITY, and shall not have the authority to create or cause to be filed any liens for labor and/or materials on or against the CITY or any property owned by the CITY. Such lien, attachment, or encumbrance, until it is removed, shall preclude any and all claims or demands for any payment expected by virtue of this Agreement.
- B. The CONTRACTOR will ensure that all of its employees, agents, subcontractors, representatives, volunteers, and the like, fully comply with all of the terms and conditions set herein when providing services for the CITY in accordance herewith.
- C. The CONTRACTOR will maintain an adequate and competent staff and remain authorized to do business within the State of Florida. The CONTRACTOR may subcontract the services requested by the CITY; however, the CONTRACTOR is fully responsible for the satisfactory completion of all subcontracted work.

SECTION 6. STANDARD OF CARE.

- A. The CONTRACTOR has represented to the CITY that it possesses a level of knowledge, experience, and expertise that is commensurate with firms in the areas of practice required for the services to be provided. By executing this Agreement, the CONTRACTOR agrees that the CONTRACTOR will exercise that degree of care, knowledge, skill, and ability as any other similarly situated contractor possessing the degree of skill, knowledge, experience, and expertise, working on

ATTACHMENT #1

similar activities. The CONTRACTOR shall perform the services requested in an efficient manner consistent with the CITY's stated objectives and standards.

- B. The CONTRACTOR covenants and agrees that it and its employees, agents, sub-contractors, representatives, volunteers, and the like, shall be bound by the same standards of conduct as stated above.

SECTION 7. COMPENSATION.

- A. Compensation for services completed by the CONTRACTOR will be in accordance with Florida Statutes, section 218.70, Florida's Prompt Payment Act. The amount to be paid under this Agreement for services rendered shall be in accordance with the pricing schedule set forth in Exhibit "B" which is attached hereto. To the extent of any conflict between Exhibit "B" and the terms and conditions of this Agreement, the terms and conditions of this Agreement shall prevail.
- B. Services to be performed in accordance with this Agreement are subject to the annual appropriation of funds by the CITY. In its sole discretion, the CITY reserves the right to forego use of the CONTRACTOR for any work which may fall within the Scope of Services listed herein. In the event the CITY is not satisfied with the services provided by the CONTRACTOR, the CITY will hold any amounts due until such time as the CONTRACTOR has appropriately addressed the problem, so long as the CITY has provided notice of defect to the CONTRACTOR.

SECTION 8. TERMINATION.

Either party may terminate this Agreement, with or without cause, given thirty (30) days written notice to the other party.

SECTION 9. PAYMENT WHEN SERVICES ARE TERMINATED.

- A. In the event of termination of this Agreement by the CITY, and not due to the fault of the CONTRACTOR, the CITY shall compensate the CONTRACTOR for all services performed prior to the effective date of termination.
- B. In the event of termination of this Agreement due to the fault of the CONTRACTOR, or at the written request of the CONTRACTOR, the CITY shall compensate the CONTRACTOR for all services completed, prior to the effective date of termination, which have resulted in a usable product, or otherwise tangible

ATTACHMENT #1

benefit to the CITY. All such payments shall be subject to an off-set for any damages incurred by the CITY resulting from any delay occasioned by early termination. This provision shall in no way be construed as the sole remedy available to the CITY in the event of breach by the CONTRACTOR.

SECTION 10.

INSURANCE.

- A. The CONTRACTOR shall maintain the following types of insurance, with the respective limits, and shall provide proof of same to the CITY, in the form of a Certificate of Insurance prior to the start of any work hereunder:
1. AUTOMOBILE:
 - a. Combined Single Limit: \$300,000 per accident,

OR

 - b. Bodily Injury: \$300,000 per person,

AND

Property Damage: \$100,000 per accident;
 2. GENERAL LIABILITY: One Million Dollars (\$1,000,000.00) each occurrence;
 3. GENERAL AGGREGATE: Two Million Dollars (\$2,000,000.00);
 4. EXCESS COVERAGE: One Million Dollars (\$1,000,000.00); and,
 5. WORKERS' COMPENSATION: Employers' liability insurance which covers the statutory obligation for all persons engaged in the performance of the work required hereunder with limits not less than One Million Dollars (\$1,000,000.00) per occurrence. Evidence of qualified self-insurance status will suffice for this subsection.
- B. For every insurance policy required hereunder, the CONTRACTOR shall provide the CITY with a Certificate of Insurance evidencing such coverage for the duration of this Agreement. Said Certificate of Insurance shall be dated and show:
1. The name of the insured CONTRACTOR,
 2. The specified job by name and job number,
 3. List the "CITY OF MOUNT DORA" as a Certificate Holder,
 4. Recognizes the Indemnification requirements of this Agreement.
 5. The name of the insurer,
 6. The number of the policy,

ATTACHMENT #1

7. The effective date,
 8. The termination date,
 9. A statement that the insurer will mail notice to the CITY at least thirty (30) days prior to any material changes in the provisions or cancellation of the policy.
- C. Receipt of certificates or other documentation of insurance or policies or copies of policies by the CITY, or by any of its representatives, which indicates less coverage than is required, does not constitute a waiver of the CONTRACTOR's obligation to fulfill the insurance requirements specified herein.
- D. The CONTRACTOR shall ensure that any sub-contractor(s), hired to perform any of the duties contained in the Scope of Services of this Agreement, maintain the same insurance requirements set forth herein. In addition, the CONTRACTOR shall maintain proof of same on file and made readily available upon request by the CITY.

SECTION 11. CITY OBLIGATIONS.

At the CONTRACTOR's request, the CITY agrees to provide, at no cost, all pertinent information known to be available to the CITY to assist the CONTRACTOR in providing and performing the required services.

SECTION 12. ENTIRE AGREEMENT.

This Agreement, including referenced exhibits and attachments hereto, constitutes the entire agreement between the parties and shall supersede, replace and nullify any and all prior agreements or understandings, written or oral, relating to the matters set forth herein, and any such prior agreements or understandings shall have no force or affect whatsoever on this Agreement.

SECTION 13. APPLICABLE LAW, VENUE, JURY TRIAL.

The laws of the State of Florida shall govern all aspects of this Agreement. In the event it is necessary for either party to initiate legal action regarding this Agreement, venue shall lie in Lake County, Florida. The parties hereby waive their right to trial by jury in any action, proceeding or claim, arising out of this Agreement, which may be brought by either of the parties hereto.

SECTION 14. PUBLIC RECORDS.

- A. Pursuant to Florida Statutes, Section 119.0701:

ATTACHMENT #1

IF YOU HAVE QUESTIONS REGARDING THE APPLICATION OF FLORIDA STATUTES, CHAPTER 119, TO YOUR DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS CONTRACT, CONTACT THE CITY'S CUSTODIAN OF PUBLIC RECORDS:

**CITY CLERK: GWEN JOHNS
510 NORTH BAKER STREET
MOUNT DORA, FL 32757
(352) 735-7126
JOHNSG@CITYOFMOUNTDORA.COM**

B. CONTRACTOR agrees to comply with public records laws, specifically to:

1. Keep and maintain public records required by the CITY to perform the services set forth herein.
2. Upon request from the CITY's custodian of public records, provide the CITY 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 Florida Statutes, Chapter 119, or as otherwise provided by law.
3. Ensure that public records which 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 CONTRACTOR does not transfer the records to the CITY.
4. Upon completion of the contract, transfer, at no cost, to the CITY all public records in possession of the CONTRACTOR or keep and maintain public records required by the CITY to perform the services set forth herein. If the CONTRACTOR transfers all public records to the CITY 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 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.

SECTION 15. INDEPENDENT CONTRACTOR.

This Agreement does not create an employee/employer relationship between the parties. It is the parties' intention that the CONTRACTOR, its employees, sub-contractors, representatives, volunteers, and the like, will be an independent contractor and not an employee of the CITY for all purposes, including, but not limited to, the application of the following, as amended: the Fair Labor Standards Act minimum wage and overtime payments, the Federal

ATTACHMENT #1

Insurance Contribution Act, the Social Security Act, the Federal Unemployment Tax Act, the provisions of the Internal Revenue Code, the State of Florida revenue and taxation laws, the State of Florida workers' compensation laws, the State of Florida unemployment insurance laws, and the Florida Retirement System benefits. The CONTRACTOR will retain sole and absolute discretion in the judgment of the manner and means of carrying out the CONTRACTOR's activities and responsibilities hereunder.

SECTION 16. APPLICABLE LICENSING.

The CONTRACTOR, at its sole expense, shall obtain all required federal, state, and local licenses, occupational and otherwise, required to successfully provide the services set forth herein.

SECTION 17. COMPLIANCE WITH ALL LAWS.

The CONTRACTOR, at its sole expense, shall comply with all laws, ordinances, judicial decisions, orders, and regulations of federal, state, county, and municipal governments, as well as their respective departments, commissions, boards, and officers, which are in effect at the time of execution of this Agreement or are adopted at any time following the execution of this Agreement.

SECTION 18. INDEMNIFICATION.

The CONTRACTOR agrees to be liable for any and all damages, losses, and expenses incurred, by the CITY, in any way related to the services provided herein and this Agreement, caused by the acts and/or omissions of the CONTRACTOR, or any of its employees, agents, sub-contractors, representatives, volunteers or the like. The CONTRACTOR agrees to indemnify, defend and hold the CITY harmless for any and all such claims, suits, judgments or damages, losses and expenses, including but not limited to, court costs, expert witnesses, consultation services and attorney's fees, arising from any and all acts and/or omissions of the CONTRACTOR, or any of its employees, agents, sub-contractors, representatives, volunteers, or the like through and including any appeals in any way related to the services provided herein and this Agreement. Said indemnification, defense, and hold harmless actions shall not be limited by any required insurance coverage amounts set forth herein and shall survive termination or natural termination of this Agreement.

SECTION 19. BANKRUPTCY OR INSOLVENCY.

If the CONTRACTOR shall file a Petition in Bankruptcy, or if the same shall be adjudged bankrupt or insolvent by any Court, or if a receiver of the property of the CONTRACTOR shall be appointed in any proceeding brought by or against the CONTRACTOR, or if the CONTRACTOR shall make an assignment for the benefit of creditors,

ATTACHMENT #1

or proceedings shall be commenced on or against the CONTRACTOR's operations of the premises, the CITY may terminate this Agreement immediately notwithstanding any notice requirements set forth herein.

SECTION 20. **BINDING EFFECT.**

This Agreement shall be binding upon and enure to the benefit of the parties hereto, their heirs, personal representatives, successors, and/or assigns.

SECTION 21. **ASSIGNMENT.**

This Agreement shall only be assignable by the CONTRACTOR upon the express written consent of the CITY.

SECTION 22. **SEVERABILITY.**

All clauses found herein shall act independently of each other. If a clause is found to be illegal or unenforceable, it shall have no effect on any other provision of this Agreement. It is understood by the parties hereto that if any part, term, or provision of this Agreement is by the courts held to be illegal or in conflict with any law of the State of Florida or the United States, the validity of the remaining portions or provisions shall not be affected, and the rights and obligations of the parties shall be construed and enforced as if the Agreement did not contain the particular part, term, or provision held to be invalid.

SECTION 23. **WAIVER.**

Failure of the parties to insist upon strict performance of any of the covenants, terms, provisions, or conditions of this Agreement or to exercise any right or option herein contained, shall not be construed as a waiver or a relinquishment for the future of any such covenant, term, provision, or condition, or right of election, but same shall remain in full force and effect.

SECTION 24. **NOTICE.**

The parties hereto agree and understand that written notice, mailed or delivered to the last known mailing address, shall constitute sufficient notice to the CITY and the CONTRACTOR. All notices required and/or made pursuant to this Agreement to be given to the CLERK and the CONTRACTOR shall be in writing and given by way of the United States Postal Service, first class mail, postage prepaid, addressed to the following addresses of record:

ATTACHMENT #1

CITY: City of Mount Dora
Attention: City Manager
510 N. Baker Street
Mount Dora, Florida 32757

CONTRACTOR: Bellmore Enterprises, Inc.
16019 Redington Drive
Redington Beach, Florida 33708

SECTION 25. MODIFICATION.

The covenants, terms, and provisions of this Agreement may be modified by way of a written instrument, mutually accepted by the parties hereto. In the event of a conflict between the covenants, terms, and/or provisions of this Agreement and any written Amendment(s) hereto, the provisions of the latest executed instrument shall take precedence.

SECTION 26. HEADINGS.

All headings of the sections, exhibits, and attachments contained in this Agreement are for the purpose of convenience only and shall not be deemed to expand, limit, or change the provisions contained in such sections, exhibits, and attachments.

SECTION 27. ADMINISTRATIVE PROVISIONS.

In the event the CITY issues a purchase order, memorandum, letter, or any other instrument addressing the services, work, and materials to be provided and performed pursuant to this Agreement, it is hereby specifically agreed and understood that any such purchase order, memorandum, letter, or other instrument is for the CITY's internal purposes only, and any and all terms, provisions, and conditions contained therein, whether printed or written, shall in no way modify the covenants, terms, and provisions of this Agreement and shall have no force or effect thereon.

SECTION 28. CONFLICT OF INTEREST.

The CONTRACTOR warrants that the CONTRACTOR has not employed or retained any company or person, other than a bona fide employee working solely for the CONTRACTOR, to solicit or secure this Agreement, and that the CONTRACTOR has not paid or agreed to pay any person, company, corporation, individual, or firm any fee, commission, percentage, gift, or any other consideration, contingent upon or resulting from the award or making of this Agreement. For the breach or violation of this Paragraph, the CITY shall have the right to terminate this Agreement immediately, without liability and without regard to the notice requirements set forth herein.

ATTACHMENT #1

SECTION 29. PUBLIC ENTITY CRIMES.

As required by section 287.133, Florida Statutes, the CONTRACTOR warrants that it is not on the convicted contractor list for a public entity crime committed within the past thirty-six (36) months. The CONTRACTOR further warrants that it will neither utilize the services of, nor contract with, any supplier, sub-contractor, or consultant in connection with this Agreement for a period of thirty-six (36) months from the date of being placed on the convicted contractor list.

SECTION 30. JOINT AUTHORSHIP.

This Agreement shall be construed as resulting from joint negotiation and authorship. No part of this Agreement shall be construed as the product of any one of the parties hereto.

SECTION 31. EQUAL OPPORTUNITY EMPLOYER.

The CONTRACTOR is an Equal Opportunity Employer and will comply with all equal opportunity employment laws. The CONTRACTOR will further ensure that all sub-contractors it utilizes in providing the services required hereunder will comply with all equal opportunity employment laws.

SECTION 32. AUDITING, RECORDS, AND INSPECTION.

In the performance of this Agreement, the CONTRACTOR shall keep books, records, and accounts of all activities, related to the Agreement, in compliance with generally accepted accounting procedures. Throughout the term of this Agreement, books, records, and accounts related to the performance of this Agreement shall be open to inspection during regular business hours by an authorized representative of the CITY and shall be retained by the CONTRACTOR, for a period of five (5) years after termination or completion of the Agreement or until the full CITY audit is complete, whichever comes first. The CITY shall retain the right to audit the books during the Five (5) year retention period. All books, records, and accounts related to the performance of this Agreement shall be subject to the applicable provisions of the Florida Public Records Act, chapter 119, Florida Statutes. The CITY also has the right to conduct an audit within sixty (60) days from the effective date of this Agreement to determine whether the CONTRACTOR has the ability to fulfill its contractual obligations to the satisfaction of the CITY. The CITY has the right to terminate this Agreement based upon the findings in this audit without regard to any notice requirement for termination.

SECTION 33. USE OF CITY NAME, LOGO AND/OR SEAL

The CONTRACTOR may only use the CITY'S name, logo and/or seal with the express written permission of the City and consistent with any CITY policy related to the same.

ATTACHMENT #1

EXHIBIT A

**Commercial Landscape Professionals, Inc., d/b/a Trimac Outdoor
for professional grounds maintenance and landscaping services
ITB-19-LS-030**

ATTACHMENT #1

EXHIBIT A

GENERAL DESCRIPTION OF SPECIFICATIONS OR SCOPE OF WORK

1. Project Description

From time to time the City of Mount Dora (City) may have need for duct line construction services to cause various sections of the City's electrical distribution system to be moved underground. Such services shall include, but are not limited to, installation of electrical conduit (primary, secondary and service) by directional boring or trenching. An initial project consists of laying an underground line along Mary Lane. Various other small underground jobs shall be performed on an as needed basis. The City will primarily use this contract to request directional boring in order to place electric lines underground. However, occasionally the City will request trenching services.

2. Scope of Work:

Contractor shall provide all labor, equipment, and materials if so requested, to complete each job requested by the City of Mount Dora. The contractor is responsible for providing material labor, equipment breakdown, and a complete 'as-built' for each job. The City will provide contractor with drawings of work to be performed.

The work shall include the unloading into and/or out of storage, transporting, storing, assembling, connecting, testing and maintenance for the successful operation of all materials and equipment. This work shall be comprised essentially of the following:

Install electric, conduit to the locations shown on work order drawings as specified. All driveways and roads that must be crossed shall be bored under. As with all jobs, existing underground facilities must be taken into account whether located or not.

All conduit runs shall contain nylon pull strings and/or Mule Tape.

Before installing conduit, it will be contractor's responsibility to call in locates.

The contractor shall coordinate with the City of Mount Dora personnel regarding project management and conduit inspections.

The contractor is responsible for repairs and/or replace all damages such as sod, shrubbery, irrigation sidewalks, existing underground facilities or driveways, etc. that were damaged during the installation of the conduit, or bear the cost of repairs. Sod and shrubbery requiring replacement must be the same or similar to the type damaged.

The contractor shall be responsible address and resolve in a timely fashion all damage claims filed by any property owners affected by work done during stated assigned job. The City shall be made aware of any and all damage claims, the process to rectify and the end result. All costs of repairs will be the Contractor's sole responsibility.

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It is the responsibility of the contractor to furnish and set up traffic control devices that may be required. All traffic control plans shall comply with the FDOT Index 600 standard, and contractor shall coordinate with City Public Works, Police and Fire.

ATTACHMENT #1

Exhibit "B"

PROPOSAL/BID PRICING FORM ITB# 19-PW-031 Underground Duct Line Installation Services

UNIT PRICE LIST FOR "NORMAL" SURFACE AND SUBSURFACE CONDITIONS UNIT GROUP DB - DIRECTIONAL BORING

Installation of conduit utilizing the directional boring method. Unit prices to include entrance and receiving pits (if required) and all equipment and materials (other than City supplied materials) necessary for the installation of PE (polyethylene) conduit at a minimum depth of 36". Price will be by lineal foot. Pricing units to include hauling and disposal of boring slurries if applicable.

On per foot cost of adding additional pipe to the same bore, the largest pipe size will be used as the cost basis for the first pipe installed. Smaller or equal size pipe are the additions.

UNIT PRICE LIST FOR "NORMAL" SURFACE AND SUBSURFACE CONDITIONS UNIT GROUP DB - DIRECTIONAL BORING

DESCRIPTION	Estimated Quantity (feet)	Unit Price	COST
Bore 1-2" HDPE, SDR 13.5 Conduit	6000	\$15.00	\$90,000.00
Bore 1-2.5" HDPE, SDR 13.5 Conduit	2000	\$15.00	\$30,000.00
Bore 1-4" HDPE, SDR 13.5 Conduit	1000	\$20.00	\$20,000.00
Bore each additional 2" HDPE, SDR 13.5 Conduit	6000	\$5.00	\$30,000.00
Bore each additional 2.5" HDPE, SDR 13.5 Conduit	500	\$5.00	\$2,500.00
Bore each additional 4" HDPE, SDR 13.5 Conduit	100	\$7.50	\$750.00
Missile 1"-2.5" Sch-40 Conduit @24" depth	500	\$9.00	\$4,500.00
Missile 1"-2.5" Sch-40 Conduit @30" depth	50	\$9.00	\$450.00
Missile 1"-2.5" Sch-40 Conduit @36" depth	50	\$12.00	\$600.00
Missile 1"-2.5" Sch-40 Conduit @42" depth	25	\$15.00	\$375.00

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Missile 3"-4" Sch-40 Conduit @ 24" depth	50	\$15.00	\$750.00
Missile 3"-4" Sch-40 Conduit @ 30" depth	50	\$15.00	\$750.00
Missile 3"-4" Sch-40 Conduit @ 36" depth	50	\$20.00	\$1,000.00
Missile 3"-4" Sch-40 Conduit @ 42" depth	25	\$20.00	\$500.00
GRAND TOTAL			

Sub Total Unit Group DB \$ 182,175.00

UNIT GROUP EA - HAND TRENCH

Hand dug trench and backfill 12" maximum width, to depth as indicated, pricing unit 1 lineal ft. of trench

DESCRIPTION	Estimated Quantity (feet)	Unit Price	EXTENDED COST
Hand trench * backfill 12" width, 24" depth	500	\$7.00	\$3,500.00
Hand trench * backfill 12" width, 30" depth	50	\$8.00	\$400.00
Hand trench * backfill 12" width, 36" depth	800	\$10.00	\$8,000.00
Hand trench * backfill 12" width, 42" depth	100	\$12.00	\$1,200.00
Hand trench * backfill 12" width, 48" depth	50	\$14.00	\$700.00
Hand trench * backfill each additional 6" in depth	50	\$3.00	\$150.00

Sub Total Unit Group EA \$ 13,950.00

ATTACHMENT #1

UNIT GROUP EB - MACHINE TRENCH (BACKHOE) 12"

Machine dug trench (with a backhoe) and backfill 12" maximum width, depth as indicated, pricing unit 1 lineal feet. of trench.

DESCRIPTION	Estimated Quantity (feet)	Unit Price	EXTENDED COST
Machine trench (backhoe) 12" width, 24" depth	500	\$6.00	\$3,000.00
Machine trench (backhoe) 12" width, 30" depth	500	\$7.00	\$3,500.00
Machine trench (backhoe) 12" width, 36" depth	8000	\$8.00	\$64,000.00
Machine trench (backhoe) 12" width, 42" depth	3000	\$10.00	\$30,000.00
Machine trench (backhoe) 12" width, 48" depth	2000	\$12.00	\$24,000.00
Machine trench (backhoe) each additional 6" in depth	500	\$3.00	\$1,500.00
Machine trench (backhoe) each additional 6" in width	500	\$3.00	\$1,500.00

Sub Total Unit Group EB \$127,500.00

ATTACHMENT #1

UNIT GROUP EC - REMOVAL & REPLACEMENT OF PAVING

These Units shall be used when site conditions require the removal and replacement of pavement. All material and labor will be by the Contractor. Pricing unit is per square foot of area removed or replaced. Pricing to include hauling and disposal of excess materials and debris.

DESCRIPTION	Estimated Quantity (Sq. ft.)	Unit Price	EXTENDED COST
Removal of asphalt pavement, 2" thick or less	500	\$5.00	\$2500.00
Removal of asphalt pavement, 2" thick or less	500	\$5.00	\$2500.00
Removal of lime rock base, 8" or less	200	\$5.50	\$1100.00
Replace lime rock base, 8" or less	200	\$5.50	\$1100.00
Removal of lime rock base, 12" or less	100	\$6.50	\$650.00
Replace lime rock base, 12" or less	100	\$6.50	\$650.00
Removal of concrete 6" thick or less	300	\$5.00	\$1500.00
Replace of concrete 6" thick or less	100	\$5.00	\$500.00
Replace concrete 6" thickness	300	\$6.00	\$1,800.00
Each additional 1" of concrete	100	\$2.00	\$200.00
Sub Total Unit Group EC			\$ 12,500.00

UNIT GROUP ED - LANDSCAPING

These units shall be used for the replacement of landscaping disturbed during the work, the Contractor shall provide all sod, seed and mulch. Pricing unit is per square foot of area, including the hauling and removal of excess material and debris.

DESCRIPTION	Estimated Quantity (Sq. ft.)	Unit Price	EXTENDED COST
Replace sod with similar sod type	15,000 sq. ft.	\$1.25	\$18750.00
Rake, mulch and seed with grass	5,000 sq. ft.	\$0.75	\$3750.00

Sub Total Unit Group ED \$22,500.00

ATTACHMENT #1

UNIT GROUP GA - INSTALL CONDUIT UNDER 200'

Installation of conduit in advance of cable pulling in an existing trench at locations other than street crossings. Trenching charges in association with this work shall be chargeable in accordance with either Unit Group A, B, C, or D as applicable. Pricing unit 1 lineal foot of trench.

DESCRIPTION	Estimated Quantity (feet)	Unit Price	EXTENDED COST
1"-3" PVC Conduit 24" depth	500	\$1.50	\$450.00
1"-3" PVC Conduit 30" depth	50	\$1.50	\$75.00
1"-3" PVC Conduit 36" depth	500	\$2.00	\$1000.00
4"-6" PVC Conduit 36" depth	300	\$2.50	\$750.00
1"-3" PVC Conduit 42" depth	25	\$2.00	\$50.00
2"-3" PVC Conduit 48" depth	25	\$2.50	\$62.50
4"-6" PVC Conduit 42" depth	25	\$3.00	\$75.00
4"-6" PVC Conduit 48" depth	25	\$3.00	\$75.00
Each additional 1" - 3" PVC conduit in trench	500	\$1.50	\$750.00
Each additional 4" - 6" PVC conduit in trench	25 each	\$2.50	\$62.50

Sub Total Unit Group GA \$3,350.00

UNIT GROUP GB - INSTALL ELBOWS

These units are to be used for the placement of conduit elbows/sweep and pole risers which terminate trenches. All elbows/sweeps and pole risers shall be supplied by the City. No additional charges for trenching shall be added to these unit costs for installation of conduit elbows. Pricing unit for elbows/sweeps is each installed. Pricing unit for pole risers is per foot, on concrete or wood poles.

DESCRIPTION	Estimated Quantity (each)	Unit Price	EXTENDED COST
Install 1 -90 or 45 deg. 24" radius elbow; 2"-3" PVC	500	5.00	2500.00
Install 1 -90 or 45 deg. 24" radius elbow 4" PVC	500	7.00	3500.00

Sub Total Unit Group GB \$6,000.00

ATTACHMENT #1

UNIT GROUP JB - MISCELLANEOUS

DESCRIPTION	Estimated Quantity (feet)	Unit Price	EXTENDED COST
Dewater jack & bore pit	50	\$50.00	\$2,500.00
Dewater trench less than 50'	50	\$50.00	\$2,500.00
Dewater trench 50' to 200' length	25	\$50.00	\$1,250.00
Dewater trench more than 200'	25	\$30.00	\$750.00
Installation of 40 lb. bag of concrete in trench	10	\$6.00	\$60.00

Sub Total Unit Group JB \$ 7,060.00

UNIT GROUP BGA - HAND TRENCH "DIFFICULT" SURFACE & SUBSURFACE CONDITIONS

Hand dug trench and backfill 12" maximum width, to depth as indicated, pricing unit 1 lineal foot of trench.

DESCRIPTION	Estimated Quantity (feet)	Unit Price	EXTENDED COST
Hand trench & backfill 12" width, 24" depth	50	12.00	600.00
Hand trench & backfill 12" width, 30" depth	50	14.00	700.00
Hand trench & backfill 12" width, 36" depth	50	16.00	800.00
Hand trench & backfill 12" width, 42" depth	50	18.00	900.00
Hand trench & backfill 12" width, 48" depth	50	20.00	1000.00
Hand trench & backfill each additional 6" in depth	50	10.00	500.00

Sub Total Unit Group BGA \$ 4,500.00

CONDUIT INSTALLATION

1.4-A PART A. Group Price Schedule for "Normal" Surface & Subsurface Conditions (All Sub Totals)

Total Charge, Unit Group DB - Directional Boring	\$ <u>182,175.00</u>
Total Charge, Unit Group EA - Hand Trench 12" Width	\$ <u>13,950.00</u>
Total Charge, Unit Group EB - Machine Trench (Backhoe) 12"	\$ <u>127,500.00</u>

ATTACHMENT #1

Total Charge, Unit Group EC - Removal & Replacement of Paving	<u>\$12,500.00</u>
Total Charge, Unit Group ED - Landscaping	<u>\$22,500.00</u>
Total Charge, Unit Group GA - Install Conduit Under 200'	<u>\$3,350.00</u>
Total Charge, Unit Group GB - Install Elbows	<u>\$6,000.00</u>
Total Charge, Unit Group GE - Jack & Bore Conduit	<u>\$</u>
Total Charge, Unit Group JB - Miscellaneous	<u>\$7,060.00</u>
TOTAL	<u>\$375,035.00</u>

Description - PART A	Grand Total Part A
Part A Total price for "Normal" surface & subsurface conditions (All Groups)	\$ 375,035.00

1.4-PART B. CONDUIT AND CABLE INSTALLATION

Total Price schedule for "Difficult" Surface and Subsurface Conditions

Total Charge, Unit Group BGA Hand Trench and Backfill \$ 4,500.00

GRAND TOTAL \$ 4,500.00

Description - PART B	Grand Total Part B
Part B Total Price for "Difficult" surface & subsurface conditions	\$ 4,500.00

Grand Total PARTS A, and B	Grand Total Part A, and B
Part A, and B grand total	\$ 379,535.00

Total Price in Words: THREE HUNDRED SEVENTY NINE THOUSAND FIVE HUNDRED THIRTY FIVE AND ZERO CENTS

ATTACHMENT #1

ADDITIONAL SERVICES:

CONDUIT INSTALLATION

1.5 LABOR AND EQUIPMENT RATES

GENERAL

The contractor is to submit with the bid submittal hourly labor and equipment rates. The City will use the information provided to determine projected costs of "extra work" and miscellaneous as needed projects.

- A. A complete listing of labor costs by classification including but not limited to laborer, electrician, cable splicer, foreman, and superintendent.
- B. A complete listing of rental equipment costs by type of equipment including but not limited to cranes, backhoes, front end loaders, trenchers, pickup trucks, flatbed trucks, dump trucks, bucket trucks, boom trucks, air compressors, mud hogs, and compactors.

CONDUIT AND CABLE INSTALLATION

1.5 PART A. LABOR RATES:

Item	Proposed Labor/Craft	Rate per Hour from 6:00 am to 6:00 pm	Rate per Hour from 6:01 pm to 5:59 am
1.	Superintendent	\$ 75.00	\$ 125.00
2.	Foreman	\$ 60.00	\$ 90.00
3.	Equipment Operator	\$ 50.00	\$ 80.00
4.	Skilled Labor	\$ 40.00	\$ 65.00
5.	Semi-Skilled Labor	\$ 30.00	\$ 55.00
6.	Common Labor	\$ 25.00	\$ 45.00
7.	Medium Voltage Journeyman Electrician	\$ 100.00	\$ 150.00
8.	Medium Voltage Apprentice Electrician	\$ 50.00	\$ 80.00
9.	Cable Splicer	\$ 75.00	\$ 125.00
10.	Lineman	\$ 125.00	\$ 175.00

CONDUIT AND CABLE INSTALLATION

- 1.5 PART B. EQUIPMENT COSTS for Unforeseeable Work Ordered (Note: Equipment cost must be included in the previous cost categories for boring, conduit installation, etc.

ATTACHMENT #1

Item No.	Equipment Description	Rate per Hour	Item No.	Equipment Description	Rate per Hour
1.	¾ or 1 ton truck	\$50.00	16.	Pole trailer or cable trailer	\$50.00
2.	1 ½ Ton truck	\$60.00	17.	Air compressor	\$50.00
3.	1 ½ Ton truck w/winch	\$125.00	18.	Generator	\$50.00
4.	Dump truck	\$300.00	19.	2-3 inch water pump	\$25.00
5.	Material hauler	\$125.00	20.	Mud hen/hog pump (diaphragm type)	\$25.00
6.	35 ft. bucket truck	\$250.00	21.	Manhole ventilation/blower	\$25.00
7.	Pole truck w/auger (Min. 12,000 lb. torque)	\$250.00	22.	Acetylene torch	\$25.00
8.	Loader/backhoe	\$125.00	23.	Plate compactor	\$25.00
9.	13/ C.Y. backhoe	\$500.00	24.	Roller compactor	\$250.00
10.	Crawler mounted backhoe	\$175.00	25.	Asphalt roller	\$250.00
11.	3 C.Y. loader	\$125.00	26.	Chain saw	\$25.00
12.	40 ton crane	\$500.00	27.	Concrete/asphalt saw	\$25.00
13.	25 ton crane	\$400.00	28.	Arrow board	\$50.00
14.	Trencher - 20 H.P. or less	\$75.00	29.	Barricade & flashing light	\$25.00
15.	Trencher - more than 20 H.P.	\$125.00	30.	Light tree	\$125.00
			31.	Rear lot machine	\$250.00

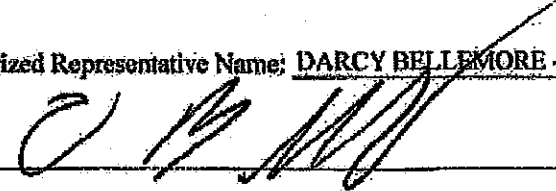
Company Name: BELLMORE ENTERPRISE INC

Address: 16019 REDINGTON DRIVE, REDINGTON BEACH, FL 33708

Telephone Number: (727)224-1584

Email Address: BELLMOREINC@AOL.COM

Company Authorized Representative Name: DARCY BELLMORE - PRESIDENT

Signature/Date: 

08/17/2019

ATTACHMENT #1

RESOLUTION NO. 2019-135

A RESOLUTION OF THE CITY OF MOUNT DORA, FLORIDA, PERTAINING TO THE SOLICITATION FOR UNDERGROUND DUCT-LINE INSTALLATION SERVICES; PROVIDING FOR LEGISLATIVE FINDINGS AND INTENT; PROVIDING AUTHORIZATION TO EXECUTE THE AGREEMENT; PROVIDING FOR AUTHORITY TO THE CITY MANAGER FOR IMPLEMENTING ADMINISTRATIVE ACTIONS; PROVIDING A SAVINGS CLAUSE; PROVIDING FOR SCRIVENER'S ERRORS; PROVIDING FOR CONFLICTS; PROVIDING FOR SEVERABILITY; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the City issued ITB-19-PW-031 for underground duct-line installation services; and

WHEREAS, the lowest responsive bid was submitted by Bellmore Enterprises, Inc.; and

WHEREAS, the City has determined that it is in its best interest to enter into an Agreement with Bellmore Enterprises, Inc., for the provision of underground duct-line installation services.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY OF MOUNT DORA, FLORIDA, AS FOLLOWS:

SECTION 1. Legislative Findings and Intent. The City of Mount Dora has complied with all requirements and procedures of Florida law in processing this Resolution. The above recitals are hereby adopted.

SECTION 2. Authorization to Execute Agreement. The City Council hereby authorizes the Mayor or designee to execute the contract with Bellmore Enterprises, Inc., attached hereto as **Exhibit "A"**.

SECTION 3. Implementing Administrative Actions. The City Manager is hereby authorized and directed to take such action as may be deemed necessary and appropriate in order to implement the provisions of this Resolution. The City Manager may, as deemed appropriate, necessary and convenient, delegate the powers of implementation as herein set forth to such City employees as deemed effectual and prudent.

SECTION 4. Savings Clause. All prior actions of the City of Mount Dora pertaining to the solicitation for underground duct-line installation services, as well as any and all matters relating thereto, are hereby ratified and affirmed consistent with the provisions of this Resolution.

ATTACHMENT #1

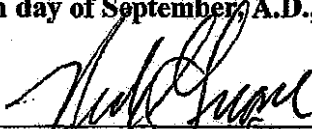
SECTION 5. Scrivener's Errors. Typographical errors and other matters of a similar nature that do not affect the intent of this Resolution, as determined by the City Clerk and City Attorney, may be corrected.

SECTION 6. Conflicts. All resolutions or parts of resolutions in conflict with any of the provisions of this Resolution are hereby repealed.

SECTION 7. Severability. If any section or portion of a section of this Resolution proves to be invalid, unlawful, or unconstitutional, it shall not be held to invalidate or impair the validity, force, or effect of any other Section or part of this Resolution.

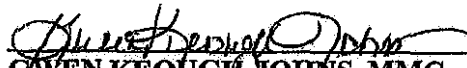
SECTION 8. Effective Date. This Resolution shall become effective immediately upon its passage and adoption.

PASSED AND ADOPTED this 19th day of September, A.D., 2019.



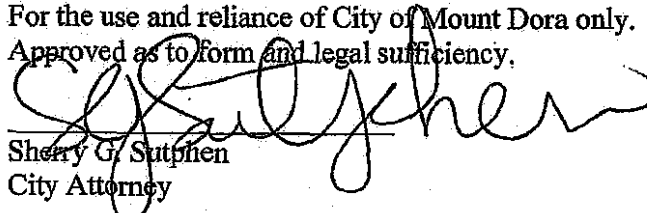
NICK GIRONE
MAYOR of the City of Mount Dora, Florida

ATTEST:



GWEN KEOUGH-JOHNS, MMC
CITY CLERK

For the use and reliance of City of Mount Dora only.
Approved as to form and legal sufficiency.



Sherry G. Sutphen
City Attorney

ATTACHMENT #1

IN WITNESS WHEREOF, the parties hereto, by their duly authorized representatives,
have executed this Agreement effective the ____ day of _____, 2019.

CONTRACTOR

By: [Signature]

Print: DARCY BELLEMORE

Title: President

STATE OF FLORIDA

COUNTY OF OSCEOLA

The foregoing instrument was executed before me this 1st day of OCTOBER, 2019, by Darcy Bellmore, as President of Bellmore Enterprises, Inc., who personally swore or affirmed that he/she is authorized to execute this Agreement and thereby bind the Contractor, and who is personally known to me OR has produced FD as identification.

(stamp)

[Signature]
NOTARY PUBLIC, State of Florida



Phillip J. Koplan
State of Florida
My Commission Expires 04/26/2023
Commission No. GG 306107

CITY OF MOUNT DORA

[Signature]
NICK GIRONE

MAYOR of the City of Mount Dora, Florida

ATTEST:

[Signature]
GWEN KEOUGH-JOHNS, MMC
CITY CLERK

For the use and reliance of City of Mount Dora only.
Approved as to form and legal sufficiency.

[Signature]
Sherry G. Sutphen
City Attorney

ATTACHMENT #2

AMENDMENT 1 TO AGREEMENT BETWEEN THE CITY OF MOUNT DORA AND BELLMORE ENTERPRISES, INC.

THIS AMENDMENT is entered into by and between the City of Mount Dora, a municipal corporation of the State of Florida, 510 N. Baker Street, Mount Dora, Florida 32757 hereinafter referred to as the “CITY” and Bellmore Enterprises, Inc., 16019 Redington Drive, Redington Beach, Florida 33708, hereinafter referred to as the “CONTRACTOR”.

WHEREAS, on September 19, 2019, the City adopted Resolution 2019-135, which authorized the Agreement between the CITY and the CONTRACTOR related to ITB-19-PW-031 (Agreement); and

WHEREAS, the Agreement and ITB-19-PW-031, contemplated that the CONTRACTOR would provide underground duct-line installation services; and

WHEREAS, the CONTRACTOR has requested a rate increase for certain unit prices due to material cost increases and the parties have determined that it is in their mutual best interest to amend the Agreement to accommodate the request.

NOW THEREFORE, in consideration of the mutual covenants contained herein, the CITY and the CONTRACTOR agree as follows:

1. Section 2, Term, is hereby amended to extend the Term through October 1, 2023.
2. Section 7, Compensation, is hereby amended to revise certain unit pricing on the schedule attached to the Agreement as Exhibit “B”. The unit pricing shall be adjusted as set forth in **Exhibit “A”** attached hereto. **Exhibit “A”** is in no way intended to alter any other term or condition of the Agreement and is only intended to provide an adjustment to those specific unit prices as indicated in **Exhibit “A”**.
3. All other terms and conditions of the Agreement shall remain in full force and effect.

(Signatures on the following page)

ATTACHMENT #2

IN WITNESS WHEREOF, the parties hereto, by their duly authorized representatives, have executed this Amendment 1 effective this 17 day of may, 2022.

CITY OF MOUNT DORA



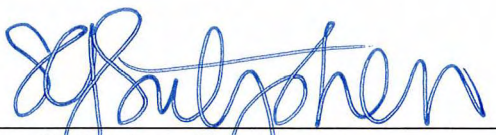
CRISSY STILE, MAYOR of the City of
Mount Dora, Florida

ATTEST:



JESSICA BURNHAM
CITY CLERK

For the use and reliance of City of Mount Dora only
Approved as to form and legal sufficiency



Sherry G. Sutphen, City Attorney

ATTACHMENT #2

CONTRACTOR

By: [Signature]

Print: Darcy Bellemore

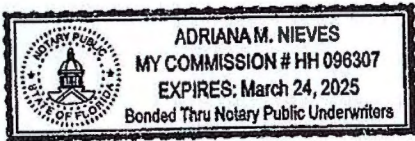
Title: President

STATE OF FLORIDA
COUNTY OF Pinellas

The foregoing instrument was acknowledged before me by means of ☒ physical presence or ☐ online notarization of Darcy Bellemore, as President, of Bellmore Enterprises, who personally swore or affirmed that he/she is authorized to execute this Agreement and thereby bind the Contractor, and who is personally known to me or who produced _____ as identification, and who did/did not take an oath this 9th day of May, 2022.

(stamp)

[Signature]
NOTARY PUBLIC, State of Florida



ATTACHMENT #2
Exhibit "A"

PROPOSAL/BID PRICING FORM
ITB# 19-PW-031
Underground Duct Line Installation Services

Therefore, the undersigned, Hereinafter called "Bidder" hereby certifies that he/she has familiarized himself/herself with the extend of the services, and having examined carefully the scope of services herein, propose to furnish all labor, equipment, and services without exception, for the "Underground Duct-Line Installation Services". Award will be based on GRAND TOTAL (Part A, and B)

UNIT PRICE LIST FOR "NORMAL" SURFACE AND SUBSURFACE CONDITIONS
UNIT GROUP DB - DIRECTIONAL BORING

Installation of conduit utilizing the directional boring method. Unit prices to include entrance and receiving pits (if required) and all equipment and materials (other than City supplied materials) necessary for the installation of PE (polyethylene) conduit at a minimum depth of 36". Price will be by lineal foot. **Pricing units to include hauling and disposal of boring slurries if applicable.**

On per foot cost of adding additional pipe to the same bore, the largest pipe size will be used as the cost basis for the first pipe installed. Smaller or equal size pipe are the additions.

UNIT PRICE LIST FOR "NORMAL" SURFACE AND SUBSURFACE CONDITIONS
UNIT GROUP DB - DIRECTIONAL BORING

DESCRIPTION	Estimated Quantity (feet)	Unit Price	COST
Bore 1-2" HDPE, SDR 13.5 Conduit	6000	\$15.00 +\$2.00/ft NEW UNIT PRICE \$17.00	
Bore 1-2.5" HDPE, SDR 13.5 Conduit	2000	\$15.00	\$30,000.00
Bore 1-4" HDPE, SDR 13.5 Conduit	1000	\$20.00 +\$3.00/ft NEW UNIT PRICE \$23.00	
Bore each additional 2" HDPE, SDR 13.5 Conduit	6000	\$5.00 +\$2.00/ft NEW UNIT PRICE \$7.00	
Bore each additional 2.5" HDPE, SDR 13.5 Conduit	500	\$5.00	\$2,500.00
Bore each additional 4" HDPE, SDR 13.5 Conduit	100	\$7.50 +\$3.00/ft NEW UNIT PRICE \$10.50	
Missile 1"-2.5" Sch-40 Conduit @24" depth	500	\$9.00	\$4,500.00
Missile 1"-2.5" Sch-40 Conduit @30" depth	50	\$9.00	\$450.00
Missile 1"-2.5" Sch-40 Conduit @36" depth	50	\$12.00	\$600.00
Missile 1"-2.5" Sch-40 Conduit @42" depth	25	\$15.00	\$375.00

ATTACHMENT #2

UNIT GROUP GA - INSTALL CONDUIT UNDER 200'

Installation of conduit in advance of cable pulling in an existing trench at locations other than street crossings. Trenching charges in association with this work shall be chargeable in accordance with either Unit Group A, B, C, or D as applicable. Pricing unit 1 lineal foot of trench.

DESCRIPTION	Estimated Quantity (feet)	Unit Price	EXTENDED COST
1"-3" PVC Conduit 24" depth	300	\$1.50 +\$3.00/ft NEW UNIT PRICE \$4.50	
1"-3" PVC Conduit 30" depth	50	\$1.50 +\$3.00/ft NEW UNIT PRICE \$4.50	
1"-3" PVC Conduit 36" depth	500	\$2.00 +\$3.00/ft NEW UNIT PRICE \$5.00	
4"-6" PVC Conduit 36" depth	300	\$2.50 +\$3.50/ft NEW UNIT PRICE \$6.00	
1"-3" PVC Conduit 42" depth	25	\$2.00 +\$3.00/ft NEW UNIT PRICE \$5.00	
2"-3" PVC Conduit 48" depth	25	\$2.50 +\$3.00/ft NEW UNIT PRICE \$5.50	
4"-6" PVC Conduit 42" depth	25	\$3.00 +\$3.50/ft NEW UNIT PRICE \$6.50	
4"-6" PVC Conduit 48" depth	25	\$3.00 +\$3.50/ft NEW UNIT PRICE \$6.50	
Each additional 1" – 3" PVC conduit in trench	500	\$1.50 +\$2.50/ft NEW UNIT PRICE \$4.00	
Each additional 4"-6" PVC conduit in trench	25 each	\$2.50 +\$3.00/ft NEW UNIT PRICE \$5.50	

Sub Total Unit Group GA \$ 3,350.00

UNIT GROUP GB - INSTALL ELBOWS

These units are to be used for the placement of conduit elbows/sweep and pole risers which terminate trenches. All elbows/sweeps and pole risers shall be supplied by the City. No additional charges for trenching shall be added to these unit costs for installation of conduit elbows. Pricing unit for elbows/sweeps is each installed. Pricing unit for pole risers is per foot, on concrete or wood poles.

DESCRIPTION	Estimated Quantity (each)	Unit Price	EXTENDED COST
Install 1 -90 or 45 deg. 24" radius elbow, 2"-3" PVC	500	5.00	2500.00
Install 1 -90 or 45 deg. 24" radius elbow 4" PVC	500	7.00	3500.00

Sub Total Unit Group GB \$ 6,000.00

ATTACHMENT #3

SECOND AMENDMENT TO AGREEMENT BETWEEN THE CITY OF MOUNT DORA AND BELLMORE ENTERPRISES, INC.

THIS SECOND AMENDMENT is entered into by and between the City of Mount Dora, municipal corporation of the State of Florida, 510 N. Baker Street, Mount Dora, Florida 32757 (the “CITY”) and Bellmore Enterprises, Inc., 16019 Redington Drive, Redington Beach, Florida 33708 (the “CONTRACTOR”).

WHEREAS, on September 19, 2019, the City adopted Resolution 2019-135, which authorized the Agreement between the CITY and the CONTRACTOR related to ITB 19-PW-031 Underground Duct-Line Services (the “Agreement”); and

WHEREAS, pursuant to Section 2 of the Agreement, the parties may extend the term of the Agreement when it is in the best interests of the CITY; and

WHEREAS, the Agreement and ITB-19-PW-031 contemplate the CONTRACTOR performing underground duct-line installment services at fixed unit prices; and

WHEREAS, the Agreement was previously amended on May 17, 2022, to extend the term of the Agreement and to revise certain unit pricing (“Amendment 1”); and

WHEREAS, the Agreement is scheduled to expire on October 1, 2023, pursuant to Amendment 1, and the parties have determined that it is in their mutual best interest to further extend the term of the Agreement in exchange for certain unit price increases.

NOW THEREFORE, in consideration of the mutual covenants and promises contained herein, which the parties acknowledge is valuable consideration, the CITY and the CONTRACTOR agree as follows:

1. Section 2, Term, which was previously amended by Amendment 1, is hereby amended to extend the Term of the Agreement through October 1, 2024; and
2. Section 7, Compensation, which was previously amended by Amendment 1, is hereby amended to adopt and revise certain unit pricing as set forth in **Exhibit “A,”** attached hereto. Only those unit price revisions contained in **Exhibit “A”** are adopted by this Second Amendment. **Exhibit “A”** is not intended and shall not be interpreted to alter or adjust any other term or condition of the Agreement; and
3. All other terms and conditions of the Agreement shall remain in full force and effect; and
4. In the event of a conflict between the express terms of the Second Amendment and the Agreement or Amendment 1, the terms of the Second Amendment shall control.

[Signatures on following page]

ATTACHMENT #3

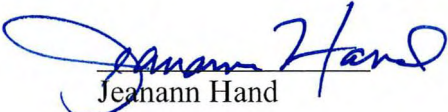
IN WITNESS WHEREOF, the parties hereto by their duly authorized representatives, have executed this Second Amendment effective this 17th day of October, 2023.

CITY OF MOUNT DORA



CRISSEY STILE, MAYOR
City of Mount Dora

ATTEST:



Jeanann Hand
City Clerk

Approved as to form and legal sufficiency



Patrick Brackins, City Attorney

ATTACHMENT #3

CONTRACTOR

By: Bellmore Enterprises Inc

Print: DARCY Bellemore

Title: President

STATE OF FLORIDA
COUNTY OF Lake

The foregoing instrument was acknowledged before me by means of ☒ physical presence or ☐ online notarization of Darcy Bellemore, as President, of Bellmore Enterprises Inc who personally swore or affirmed that he/she is authorized to executed this Second Amendment and thereby bind Bellmore Enterprises, Inc., who is personally known to me ☐ or who produced FL DL as identification, and who did ☐ did not ☒ take an oath this 10th day of October, 2023.


NOTARY PUBLIC, STATE OF FLORIDA

(stamp)



ATTACHMENT #3

PROPOSAL/BID PRICING FORM ITB# 19-PW-031 Underground Duct Line Installation Services

Therefore, the undersigned, Hereinafter called "Bidder" hereby certifies that he/she has familiarized himself/herself with the extend of the services, and having examined carefully the scope of services herein, propose to furnish all labor, equipment, and services without exception, for the "Underground Duct-Line Installation Services". Award will be based on GRAND TOTAL (Part A, and B)

UNIT PRICE LIST FOR "NORMAL" SURFACE AND SUBSURFACE CONDITIONS UNIT GROUP DB - DIRECTIONAL BORING

Installation of conduit utilizing the directional boring method. Unit prices to include entrance and receiving pits (if required) and all equipment and materials (other than City supplied materials) necessary for the installation of PE (polyethylene) conduit at a minimum depth of 36". Price will be by lineal foot. **Pricing units to include hauling and disposal of boring slurries if applicable.**

On per foot cost of adding additional pipe to the same bore, the largest pipe size will be used as the cost basis for the first pipe installed. Smaller or equal size pipe are the additions.

UNIT PRICE LIST FOR "NORMAL" SURFACE AND SUBSURFACE CONDITIONS UNIT GROUP DB - DIRECTIONAL BORING

DESCRIPTION	Estimated Quantity (feet)	Unit Price	COST
Bore 1-2" HDPE, SDR 13.5 Conduit	6000	\$15.00 +\$2.00/ft NEW UNIT PRICE \$17.00	
Bore 1-2.5" HDPE, SDR 13.5 Conduit	2000	\$15.00	\$30,000.00
Bore 1-4" HDPE, SDR 13.5 Conduit	1000	\$20.00 +\$3.00/ft NEW UNIT PRICE \$23.00	
Bore each additional 2" HDPE, SDR 13.5 Conduit	6000	\$5.00 +\$2.00/ft NEW UNIT PRICE \$7.00	
Bore each additional 2.5" HDPE, SDR 13.5 Conduit	500	\$5.00	\$2,500.00
Bore each additional 4" HDPE, SDR 13.5 Conduit	100	\$7.50 +\$3.00/ft NEW UNIT PRICE \$10.50	
Missile 1"-2.5" Sch-40 Conduit @24" depth	500	\$9.00	\$4,500.00
Missile 1"-2.5" Sch-40 Conduit @30" depth	50	\$9.00	\$450.00
Missile 1"-2.5" Sch-40 Conduit @36" depth	50	\$12.00	\$600.00
Missile 1"-2.5" Sch-40 Conduit @42" depth	25	\$15.00	\$375.00

AMENDMENT 2 - CONTRACT EXTENSION YEAR 2

All units that apply - 3" HDPE Conduit - ADD \$1.00 to the unit price

ATTACHMENT #3

UNIT GROUP GA - INSTALL CONDUIT UNDER 200'

Installation of conduit in advance of cable pulling in an existing trench at locations other than street crossings. Trenching charges in association with this work shall be chargeable in accordance with either Unit Group A, B, C, or D as applicable. Pricing unit 1 lineal foot of trench.

DESCRIPTION	Estimated Quantity (feet)	Unit Price	EXTENDED COST
1"-3" PVC Conduit 24" depth	300	\$1.50 +\$3.00/ft NEW UNIT PRICE	\$4.50
1"-3" PVC Conduit 30" depth	50	\$1.50 +\$3.00/ft NEW UNIT PRICE	\$4.50
1"-3" PVC Conduit 36" depth	500	\$2.00 +\$3.00/ft NEW UNIT PRICE	\$5.00
4"-6" PVC Conduit 36" depth	300	\$2.50 +\$3.50/ft NEW UNIT PRICE	\$6.00
1"-3" PVC Conduit 42" depth	25	\$2.00 +\$3.00/ft NEW UNIT PRICE	\$5.00
2"-3" PVC Conduit 48" depth	25	\$2.50 +\$3.00/ft NEW UNIT PRICE	\$5.50
4"-6" PVC Conduit 42" depth	25	\$3.00 +\$3.50/ft NEW UNIT PRICE	\$6.50
4"-6" PVC Conduit 48" depth	25	\$3.00 +\$3.50/ft NEW UNIT PRICE	\$6.50
Each additional 1" - 3" PVC conduit in trench	500	\$1.50 +\$2.50/ft NEW UNIT PRICE	\$4.00
Each additional 4"-6" PVC conduit in trench	25 each	\$2.50 +\$3.00/ft NEW UNIT PRICE	\$5.50

Sub Total Unit Group GA \$ 3,350.00

UNIT GROUP GB - INSTALL ELBOWS

These units are to be used for the placement of conduit elbows/sweep and pole risers which terminate trenches. All elbows/sweeps and pole risers shall be supplied by the City. No additional charges for trenching shall be added to these unit costs for installation of conduit elbows. Pricing unit for elbows/sweeps is each installed. Pricing unit for pole risers is per foot, on concrete or wood poles.

DESCRIPTION	Estimated Quantity (each)	Unit Price	EXTENDED COST
Install 1 -90 or 45 deg. 24" radius elbow, 2"-3" PVC	500	5.00	2500.00
Install 1 -90 or 45 deg. 24" radius elbow 4" PVC	500	7.00	3500.00

Sub Total Unit Group GB \$ 6,000.00

**CITY OF MOUNT DORA
TASK AUTHORIZATION FORM**

In accordance with the terms and conditions of the Agreement between Bellmore Enterprises, Inc. (Contractor) and the City of Mount Dora, approved under Resolution 2019-135, dated September 19, 2019, and amended October 17, 2023, the parties hereto agree to the scope of work, pricing, schedule and subcontractors set forth herein.	Budget Account Number: 410-0000-389.80-01
Project Amount: Total Project \$128,105.00	City Project Manager: Wayne Zimmerman
Contractor: Bellmore Enterprises, Inc.	Contractor Project Manager: Darcy Bellmore

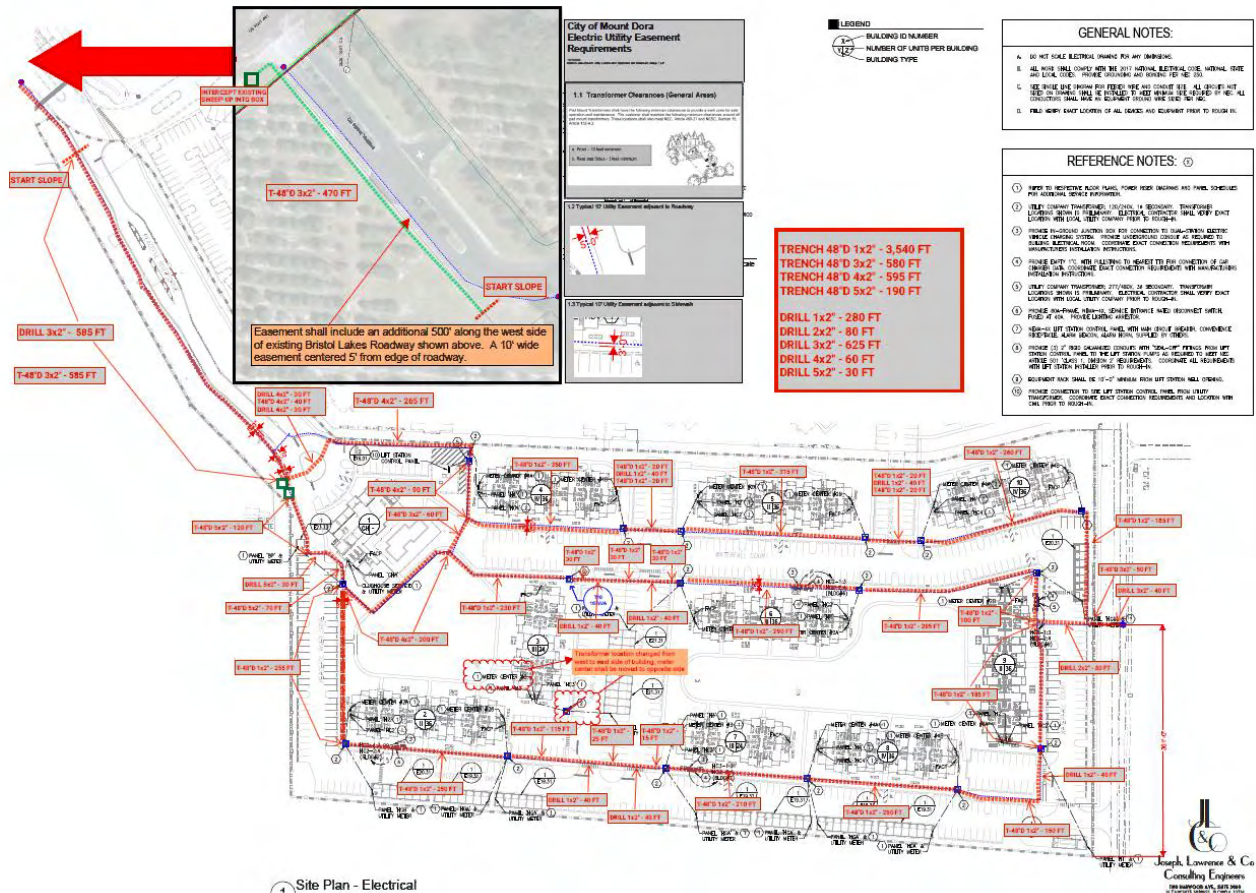
NOTE: THE CONTRACTOR MAY NOT BEGIN WORK UNTIL THIS FULLY SIGNED TASK AUTHORIZATION AND, IF APPLICABLE, A CITY PURCHASE ORDER ARE DELIVERD TO THE CONTRACTOR.

SUMMARY OF WORK TO BE COMPLETED	
<u>Each Task Authorization package shall include:</u> Exhibit A – Scope of Work Exhibit B – Compensation Exhibit C - Sub-Contractors Exhibit D – Schedule	
Recommended By: Print: Wayne R. Zimmerman Signature: Wayne R. Zimmerman Digitally signed by Wayne R. Zimmerman Date: <u>12/11/2023</u> Date: 2023.12.11 15:05:25 -05'00'	
Reviewed By: Print: <u>Steven G. Langley</u> Signature: Steven G. Langley Digitally signed by Steven G. Langley Date: <u>2023.12.12 16:08:29 -05'00'</u>	
CONTRACTOR ACCEPTANCE	CITY APPROVAL
Print Name: DARCY BELLEMORE	Print Name:
Signature:	Signature:
Date: 12-11-2023	Date:

EXHIBIT "A" Scope of Services

PROJECT NAME: Bristol Lakes II – ELE Developer Project 2023-001

This project proposes installation of conduit quantity and size shown below.



BELLMORE ENTERPRISES INC**PROPOSAL****BRISTOL PARK APTS**

Date: 12/11/2023

BELLMORE ENTERPRISES INC
16019 REDINGTON DRIVE
REDINGTON BEACH, FL 33708
PH: 727-224-1584
Customer ID MT DORA

Contact	Job	Payment Terms	Due Date
S.BAGWELL	BRISTOL PARK APTS		

Qty	Description	Unit Price	Line Total
5,490 FT	TRENCH ONLY 48" DEPTH	\$14.00/FT	\$76,860.00
5,490 FT	INSTALL 1 ST 2" CONDUIT IN EXISTING TRENCH 48" DEPTH	\$5.50/FT	\$30,195.00
4,875 FT	INSTALL ADDL 2" CONDUIT IN EXISTING TRENCH 48" DEPTH	\$4.00/FT	\$19,500.00
280 FT	DIRECTIONAL BORE 1X CONDUIT 2"	\$17.00/FT	\$4,760.00
80 FT	DIRECTIONAL BORE 2X CONDUIT 2"	\$24.00/FT	\$1,920.00
40 FT	DIRECTIONAL BORE 3X CONDUIT 2"	\$31.00/FT	\$1,240.00
60 FT	DIRECTIONAL BORE 4X CONDUIT 2"	\$38.00/FT	\$2,280.00
30 FT	DIRECTIONAL BORE 5X CONDUIT 2"	\$45.00/FT	\$1,350.00
	BELLMORE TO ASSIST SETTING LOCATIONS FOR 22 TRANSFORMER LOCATIONS ON DESIGN		
	1800LB MULETAPE INCLUDED IN ALL INSTALLED PIPE		
Subtotal			\$138,105.00
Discount			-\$10,000.00
Total			\$128,105.00

**EXHIBIT “B”
Compensation**

METHOD OF COMPENSATION: Hourly Rate and Fixed Fee with Not-to-Exceed Amount of \$\$128,105.00 for total services.

EXHIBIT “C”

Sub-Contractors

None

**EXHIBIT “D”
Schedule**

SCHEDULE OF SERVICES: CONTRACTOR shall complete the Scope of Work within 90 days of project initiation.

BELLMORE ENTERPRISES INC

PROPOSAL

BRISTOL PARK APTS

Date: 12/11/2023

ELE Developer Project 2023-001 Task Order #8

BELLMORE ENTERPRISES INC
16019 REDINGTON DRIVE
REDINGTON BEACH, FL 33708
PH: 727-224-1584
Customer ID MT DORA

Contact	Job	Payment Terms	Due Date
S.BAGWELL	BRISTOL PARK APTS		

Qty	Description	Unit Price	Line Total
5,490 FT	TRENCH ONLY 48" DEPTH	\$14.00/FT	\$76,860.00
5,490 FT	INSTALL 1 ST 2" CONDUIT IN EXISTING TRENCH 48" DEPTH	\$5.50/FT	\$30,195.00
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Subtotal			\$138,105.00
Discount			-\$10,000.00
Total			\$128,105.00

**Bristol Park
Apartments**

Mount Dora, FL
J. C. 202.0002.00



SET DISTRIBUTIONS
08/03/23
08/12/23

SHEET REVISIONS
A

EDITED BY:	MANED
PROJECT NO.	4346

Site Plan
Electrical

E16.01

- GENERAL NOTES:**
- DO NOT SCALE ELECTRICAL DRAWING FOR ANY DIMENSIONS.
 - ALL WORK SHALL COMPLY WITH THE 2017 NATIONAL ELECTRICAL CODE, NATIONAL, STATE AND LOCAL CODES. PROVIDE GROUNDING AND BONDING PER NEC 250.
 - ALL CONDUCTORS SHALL BE INSTALLED TO MEET MINIMUM SIZE REQUIRED BY NEC. ALL CONDUCTORS SHALL HAVE AN EQUIPMENT GROUND WIRE SIZED PER NEC.
 - FIELD VERIFY EXISTING LOCATION OF ALL DEVICES AND EQUIPMENT PRIOR TO INSTALLATION.

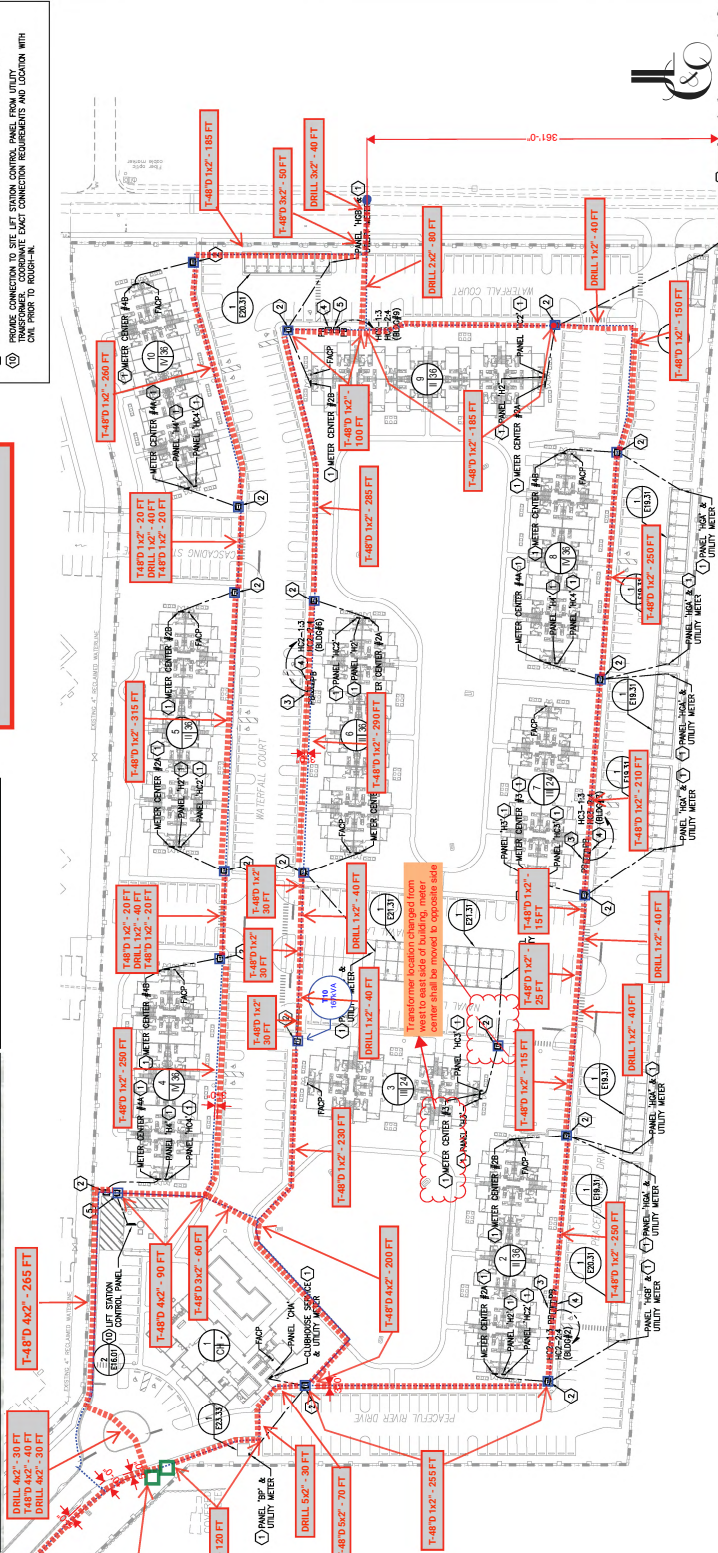
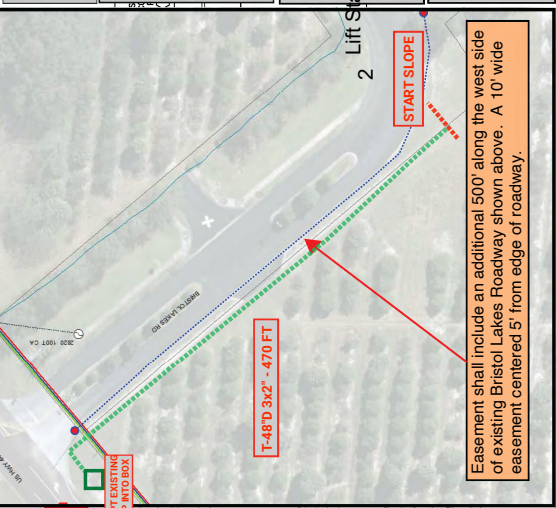
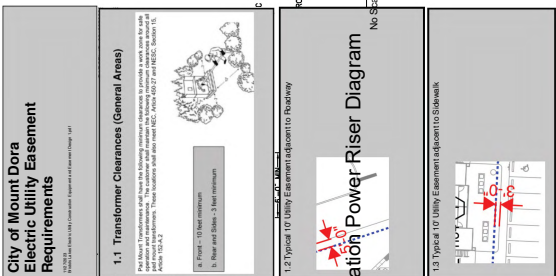
- REFERENCE NOTES:**
- REFER TO RESPECTIVE FLOOR PLANS, POWER RISES DIAGRAMS AND PANEL SCHEDULES FOR ADDITIONAL SERVICE INFORMATION.
 - UTILITY COMPANY TRANSFORMER: 120/240V, 14 SECONDARY. TRANSFORMER LOCATION SHALL BE VERIFIED PRIOR TO CONSTRUCTION. TRANSFORMER SHALL BE LOCATED WITH LOCAL UTILITY COMPANY PRIOR TO CONSTRUCTION.
 - PROVIDE IN-GROUND JUNCTION BOX FOR CONNECTION TO DUAL-SOURCE ELECTRIC VEHICLE CHARGING SYSTEM. PROVIDE UNDERGROUND CONDUIT AS REQUIRED TO MEET MANUFACTURER'S INSTALLATION INSTRUCTIONS.
 - PROVIDE EMPT 1/2" WITH PULLSTRING TO HANGST TIE FOR CONNECTION OF CAR CHARGER DATA COORDINATE EXACT CONNECTION REQUIREMENTS WITH MANUFACTURER'S INSTALLATION INSTRUCTIONS.
 - PROVIDE 60A-PANEL, 120/240V, 14 SECONDARY. TRANSFORMER LOCATION SHALL BE VERIFIED PRIOR TO CONSTRUCTION. TRANSFORMER SHALL BE LOCATED WITH LOCAL UTILITY COMPANY PRIOR TO CONSTRUCTION.
 - PROVIDE 60A-PANEL, 120/240V, 14 SECONDARY. TRANSFORMER LOCATION SHALL BE VERIFIED PRIOR TO CONSTRUCTION. TRANSFORMER SHALL BE LOCATED WITH LOCAL UTILITY COMPANY PRIOR TO CONSTRUCTION.
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LEGEND

BUILDING ID NUMBER
NUMBER OF UNITS PER BUILDING
BUILDING TYPE

TRENCH 48"D 1x2" - 3,540 FT
TRENCH 48"D 3x2" - 580 FT
TRENCH 48"D 4x2" - 595 FT
TRENCH 48"D 5x2" - 190 FT

DRILL 1x2" - 280 FT
DRILL 2x2" - 80 FT
DRILL 3x2" - 625 FT
DRILL 4x2" - 60 FT
DRILL 5x2" - 30 FT



Site Plan - Electrical



510 N. Baker St.
Mount Dora, FL 32757
352-735-7126

DATE: January 2, 2024

TO: Honorable Mayor and City Council Members

FROM: Patrick C. Comiskey, City Manager

SUBJECT: Request Approval of Task Authorization with Faden Builders, Inc. for WWTP #1 Reject Pond Repairs

Introduction:

This is a request for City Council to approve a task authorization with Faden Builders, Inc. to perform repairs on the Waste Water Treatment Plant #1 (WWTP#1) reject water storage pond.

Discussion:

The WWTP#1 reject water storage pond is in need of repair, which includes replacement of the concrete drain structure and repair of the pond liner. This is work that was contemplated as part of the alternative maintenance improvement program introduced to City Council in March 2023.

Staff wishes to utilize the existing Citywide CMAR contract with Faden Builders, adopted by City Council under Resolution No. 2020-24 on April 7, 2020, to complete the work. The total cost of the project, \$110,737.06, requires City Council approval.

Budget Impact:

This project is funded by GL#425-5555-580.63-01-WA2002.

Strategic Impact:

Objective 2.4. Sustain City Infrastructure

Recommendation:

City Council approve a task authorization with Faden Builders, Inc. to perform repairs on the Waste Water Treatment Plant #1 (WWTP#1) reject water storage pond.

Attachment(s):

1. Attachment #1: Reso No 2020-24 City CMAR Services for Citywide Projects
2. Signed Task Authorization - WWTP 1 Reject Pond Repairs

Prepared by: GEORGE MAREK, Public Works Director
Reviewed by: GEORGE MAREK, Public Works Director
Aneta Barton, Budget Director
City Attorney, City Attorney
Jeanann Hand, City Clerk
Patrick Comiskey, City Manager

Approved - 12/21/2023
Approved - 12/21/2023
Approved - 12/27/2023
Approved - 12/27/2023
Final Approval - 12/27/2023

ATTACHMENT #1

RESOLUTION NO. 2020-24

A RESOLUTION OF THE CITY OF MOUNT DORA, FLORIDA, PERTAINING TO CONSTRUCTION MANAGER AT RISK (CMAR) SERVICES FOR CITYWIDE PROJECTS LESS THAN TWO MILLION DOLLARS; PROVIDING FOR LEGISLATIVE FINDINGS AND INTENT; PROVIDING FOR APPROVAL OF AGREEMENT AND AUTHORIZATION TO EXECUTE; PROVIDING FOR THE IMPLEMENTATION OF ADMINISTRATIVE ACTIONS; PROVIDING A SAVINGS CLAUSE; PROVIDING FOR SCRIVENER'S ERRORS; PROVIDING FOR CONFLICTS; PROVIDING FOR SEVERABILITY; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the City has competitively solicited for construction manager at risk services for Citywide projects which are less than Two Million Dollars, pursuant to the City's Purchasing Policy and RFQ-19-GS-018; and

WHEREAS, the evaluation committee ranked the proposals during the selection process and Evergreen Construction Group of Florida, LLC, Faden Builders, Inc., and Wharton-Smith, Inc., were deemed to be the most responsive, responsible and qualified firms to provide construction manager at risk services on an as needed basis for Citywide projects which are less than Two Million Dollars as contemplated by RFQ-19-GS-018; and

WHEREAS, on September 19, 2019, pursuant to Resolution 2020-137, the City authorized negotiations with Evergreen Construction Group of Florida, LLC, Faden Builders, Inc., and Wharton-Smith, Inc., for construction manager at risk services for Citywide projects which are less than Two Million Dollars; and

WHEREAS, the City has successfully negotiated contracts with Evergreen Construction Group of Florida, LLC, Faden Builders, Inc., and Wharton-Smith, Inc., and has determined that it is in its best interest to approve the execution of the same.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY OF MOUNT DORA, FLORIDA, AS FOLLOWS:

SECTION 1. Legislative Findings and Intent. The City of Mount Dora has complied with all requirements and procedures of Florida law in processing this Resolution. The above recitals are hereby adopted.

Resolution No. 2020-24

1 of 6

SECTION 2. Approval of Agreement and Authorization to Execute.

A. The Agreement with Evergreen Construction Group of Florida, LLC, attached hereto as **Exhibit “A”** is approved and the Mayor, or designee thereof, is authorized to execute the same.

B. The Agreement with Faden Builders, Inc., attached hereto as **Exhibit “B”** is approved and the Mayor, or designee thereof, is authorized to execute the same.

C. The Agreement with Wharton-Smith, Inc., attached hereto as **Exhibit “C”** is approved and the Mayor, or designee thereof, is authorized to execute the same.

SECTION 3. Implementing Administrative Actions. The City Manager is hereby authorized and directed to take such actions as may be deemed necessary and appropriate in order to implement the provisions of this Resolution. The City Manager may, as deemed appropriate, necessary and convenient, delegate the powers of implementation as herein set forth to such City employees as deemed effectual and prudent.

SECTION 4. Savings Clause. All prior actions of the City pertaining to the solicitation for construction manager at risk services for Citywide projects which are less than Two Million Dollars, as well as any and all matters relating thereto, are hereby ratified and affirmed consistent with the provisions of this Resolution.

SECTION 5. Scrivener’s Errors. Typographical errors and other matters of a similar nature that do not affect the intent of this Resolution, as determined by the City Clerk and City Attorney, may be corrected.

SECTION 6. Conflicts. All Resolutions or parts of Resolutions in conflict with any of the provisions of this Resolution are hereby repealed.

SECTION 7. Severability. If any Section or portion of a Section of this Resolution proves to be invalid, unlawful, or unconstitutional, it shall not be held to invalidate or impair the validity, force, or effect of any other Section or part of this Resolution.

SECTION 8. Effective Date. This Resolution shall become effective immediately upon its passage and adoption.

Signatures on Following Page

Resolution No. 2020-24

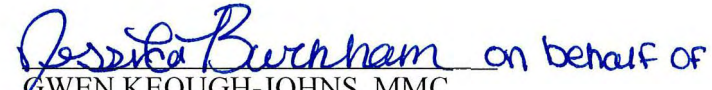
2 of 6

PASSED AND ADOPTED this 7th day of April, 2020.



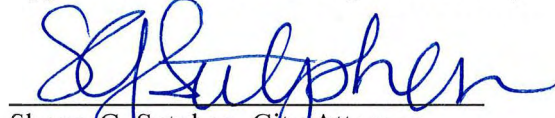
CATHERINE T. HOECHST,
MAYOR of the City of Mount Dora, Florida

ATTEST:



on behalf of
GWEN KEOUGH-JOHNS, MMC
CITY CLERK

For the use and reliance of City of Mount Dora only.
Approved as to form and legal sufficiency.



Sherry G. Sutphen, City Attorney

Exhibit "A"

Agreement with Evergreen Construction Group of Florida, LLC
for construction manager at risk services on an as-needed basis
for Citywide projects which are less than Two Million Dollars
RFQ-19-GS-018

**AGREEMENT
BETWEEN OWNER AND CONSTRUCTION MANAGER**

THIS AGREEMENT made by and between the City of Mount Dora, a municipal corporation of the State of Florida, 510 N. Baker Street, Mount Dora, Florida 32757, the Community Redevelopment Agency of the City of Mount Dora, 510 N. Baker Street, Mount Dora, Florida 32757, the Northeast Community Redevelopment Agency of the City of Mount Dora, 510 N. Baker Street, Mount Dora, Florida 32757, hereinafter singly and collectively referred to as "Owner" and Evergreen Construction Management, Inc., 30941 Suneagle Drive, Mount Dora Florida 32757, hereinafter "Construction Manager".

**ARTICLE I
THE CONSTRUCTION TEAM AND EXTENT OF AGREEMENT**

The Construction Manager accepts the relationship of trust and confidence established between it and the Owner by this Agreement. The Construction Manager covenants with the Owner to furnish its best skill and judgment and to cooperate with the Architect-Engineer in furthering the interests of the Owner. The Construction Manager agrees to furnish efficient business administration and superintendence and use its best efforts to complete the various City project(s) in the soundest and most expeditious and economical manner, consistent with the interests of the Owner.

1.1 The Construction Team:

The Construction Manager, the Owner and the Architect-Engineer, called the "Construction Team", shall work jointly during design and through final construction completion and shall be available thereafter should additional services be required related to the Project. The Architect and the Construction Manager shall communicate through the Owner, except as may otherwise be provided in this Agreement or when direct communications have been specifically authorized by the Owner. The Construction Manager shall copy the Owner on all correspondence sent to or received from the Architect or any of its consultants of which the Owner was not copied.

The specific representatives of the Construction Team shall be established at the time of approval of each Task Authorization.

1.2 Extent of Agreement:

This Agreement for pre-construction and construction management services for the Project, between the Owner and the Construction Manager supersedes any prior negotiations, representations or agreements. The City will from time to time issue a Task Authorization to the Construction Manager, in the form attached hereto as **Exhibit "A"**, for individual City projects which may include either pre-construction and construction management services or construction management services only. If pre-construction services are required as part of a Project, an initial Task Authorization will be issued by the City Manager if the cost of the pre-construction services is within the City Manager's purchasing authority. Thereafter, once the drawings, specifications and other descriptive

documents for the Project are complete, an Amendment to Task Authorization in the form attached hereto as **Exhibit "B"**, will be issued following approval by the City Council of the guaranteed maximum price (GMP) for the specific construction management work to be completed for the Project. In the event pre-construction services exceed the City Manager's purchasing authority, a Task Authorization for the pre-construction services will be issued on the appropriate form, following approval of the same by the City Council. Thereafter, once the drawings, specifications and other descriptive documents for the Project are complete, an Amendment to Task Authorization, which shall include the GMP for the specific construction management work to be completed for the Project, shall be issued on the appropriate form following approval by the City Council. In the event pre-construction services are not required for a Project, once the drawings, specifications and the other descriptive documents for a Project have been approved, a Task Authorization will be issued following approval of the GMP for the Project by the City Council. To expedite the preparation of the GMP Amendment by the Owner, the Construction Manager shall obtain two (2) sets of dated drawings, specifications and other documents upon which the GMP is based from the Architect-Engineer via the Owner. The Construction Manager shall acknowledge on the face of each set of drawings, that it is the set upon which the GMP is based. Thereafter one set of the documents shall be sent to the Owner along with the GMP proposal. This Agreement shall not be superseded by any provisions/revisions of the documents for construction and may be amended only by written instrument signed by both Owner and Construction Manager.

- 1.3 **Definitions:** The following definitions shall be applicable to this Agreement. Any words which are not set forth below but are found capitalized throughout this Agreement shall have the meanings established in the various Articles and/or Sections of this Agreement:

Architect-Engineer - To be determined by the Owner as applicable for each separate Project for which a Task Authorization is issued.

Construction Documents - This Contract, the Drawings, Specifications and related Construction Documents or any other documents incorporated herein by reference.

Construction Manager – Evergreen Construction Group of Florida, I.LLC

Estimate - The Construction Manager's latest estimate of probable project construction costs

Final Completion - The following items have been completed or satisfied:

1. Construction of the Project is totally complete, including all work on the Contract Documents and certified as such by the Owner and Architect.
2. The Project is suitable for full use and occupancy as determined by the Owner and Architect.

3. All Punch List items have been completed or otherwise disposed of or accounted for to the Owner's satisfaction and approval.
4. A Final Certificate of Occupancy and all other permits and approvals required have been legally and validly issued.
5. Final executed Releases of Lien have been delivered to the Owner by Construction Manager.

General Conditions - Those items that are not specific to any trade and are required for the construction of the Project. Examples of General Conditions items include daily cleanup and safety rails.

Owner - City of Mount Dora, a municipal corporation of the State of Florida, on behalf of itself, the Community Redevelopment Agency of the City of Mount Dora (CRA) pursuant to Resolution 2020-24 (CRA) and the Northeast Community Redevelopment Agency of the City of Mount Dora (Northeast CRA) pursuant to Resolution 2020-24 (Northeast CRA).

Owner's Representative - The Owner's Representative is its Construction Project Manager, who is Chet Cramer, or such other individual designated, in writing, by the City Manager.

Project - The Project shall mean the total work to be performed under each Task Authorization, or Amendment thereto, issued pursuant to this Agreement. The Project may consist of pre-construction planning, design and permitting services, as well as construction and code inspection services for various construction projects which do not exceed Two Million Dollars in total construction costs.

Punch List - 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/completion.

Substantial Completion Date - The date, certified by the Architect, 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 Owner can reasonably occupy or utilize the Project, or designated portion thereof, for its intended use. Additionally, complete all items referred to as necessary for Substantial Completion.

Task Authorization or Amendment to Task Authorization - The document issued to the Construction Manager which sets forth the service expectations, schedules, pricing/GMP, construction team and subcontractors for a specified Project.

1.4 Owner's Construction Budget:

Owner's funds budgeted and requested for construction of the Project: The Owner's Construction Budget for each Project is Two Million Dollars or less, including all preconstruction services, Construction Manager fees, costs of the work and the Owner's and Construction Manager's construction and interface contingencies as defined in Articles 8 and 9. This acknowledgment of the Owner's budgeted funds is not to be construed as the Construction Manager's Guaranteed Maximum Price. A Guaranteed Maximum Price will be offered by separate documentation as outlined in Article 7.

ARTICLE 2
CONSTRUCTION MANAGER'S SERVICES

The services which the Construction Manager shall provide include, but are not limited to, those described or specified herein. The services described or specified shall not be deemed to constitute a comprehensive specification having the effect of excluding services not specifically mentioned.

2.1 Project Management Information System (PMIS):

1. General:

- A. Commencing immediately after contract award, the Construction Manager shall implement and shall utilize throughout the life of this Contract all subsystems of the Project Management Information System hereinafter referred to as PMIS.
- B. The reports, documents, and data to be provided shall represent an accurate assessment of the current status of the Project and of the work remaining to be accomplished and it shall provide a sound basis for identifying variances and problems and for making management decisions. It shall be prepared and furnished to the Owner and the Architect-Engineer monthly.
- C. If requested by the Owner, the Construction Manager shall conduct a comprehensive workshop for participants designated by the Owner and additional seminars as required, to provide instruction. This workshop and the seminars shall facilitate each participant's and the Owner's representatives' use and understanding of PMIS; shall support, in-part, the function of organizing in concert with the Architect-Engineer for the design and construction of the Project; and shall establish, with the full concurrence of the Owner and the Architect-Engineer, procedures for accomplishing the management control aspect of the Project.
- D. The PMIS shall be described in terms of the following major subsystems:
 - 1. Narrative Reporting, on a monthly basis,

2. Schedule Control, on a monthly basis,
3. Cost Control, and estimating,
4. Project Accounting,
5. Accounting and Payment, and
6. Action Reports.

2. Narrative Reporting Subsystem:

- A. The Construction Manager shall prepare written reports as described hereunder. No other PMIS narrative reports shall be required. All reports shall be in 8.5" X 11" format, unless directed otherwise by the Owner.
- B. The Narrative Reporting Subsystem shall include the following reports:
 1. Monthly Executive Summary - which provides an overview of current issues and pending decisions, future developments and expected achievements, and any problems or delays, including code violations found by any permitting authority.
 2. Monthly Cost Narrative - describing the current construction cost estimate status of the Project.
 3. Monthly Scheduling Narrative - summarizing the current status of the overall project schedule. This report shall include an analysis of the various project schedules, a description of the critical path, and other analyses as necessary to compare planned performance with actual performance.
 4. Monthly Accounting Narrative - describing the current cost and payment status of the entire project. This report shall relate current encumbrances and expenditures to the budget allocations.
 5. Monthly Construction Progress Report - summarizing the work of the various subcontractors during the construction phase. This report shall include information from the weekly job site meetings, as applicable, such as general conditions, long lead supplies, current deliveries, safety and labor relations programs permits, construction problems and recommendations and plans for the succeeding month.
 6. Daily Construction Diary - during the construction phase describing events and conditions on the site.

- C. The reports outlined above shall be bound with applicable computer reports and submitted monthly during design and construction phases and shall be current through the end of the preceding month. Copies shall be transmitted to the Owner and the Architect-Engineer and others as designated by the Owner's Representative with the monthly pay requisition. Additional copies of the report outlined above shall be bound separately and distributed monthly as directed by the Owner's Representative.
- D. The report outlined in Article 2.1(2)(B)(6) above shall be maintained at the site available to the Owner and Architect-Engineer. A bound copy of the complete Daily Construction Diary shall be submitted to the Owner at the conclusion of the Project

3. Scheduled Control Subsystem:

- A. Master Project Schedule - Within thirty (30) days of award of this Agreement, the Construction Manager shall submit, to the Owner for approval, a master project schedule covering the planning and design approvals, construction and Owner occupancy of the Project. This schedule shall serve as the framework for the subsequent development of all detailed schedules. The master project schedule shall be produced and updated monthly throughout the project. Revisions, activity additions, activity deletions and/or logic changes to the Master Project Schedule, or any other schedule previously approved by the Owner, shall not be made without the Owner's approval.
- B. Within thirty (30) days after the date of the Owner's issuance of a Notice to Proceed with construction, the Construction Manager shall prepare and submit for approval, to the Owner's Representative, a construction schedule in quadruplicate with sufficient detail to graphically depict the activities contemplated for completion of the Project and which shows the sequence that the Construction Manager proposes for each such activity to occur and the duration (dates of commencement and completion, respectively) of each such activity. The Owner shall determine whether the construction schedule developed and submitted by the Construction Manager meets the requirements stated herein and thereafter such determination shall be binding on the Construction Manager. Failure of the Construction Manager to develop and submit a construction schedule as set forth hereinabove shall be sufficient grounds for the Owner to find the Construction Manager in substantial default and certify that sufficient cause exists to terminate the contract or to withhold payment to the Construction Manager until a schedule acceptable to the Owner is submitted.
- C. During the period of time required to finally complete the Project, at the end of each such calendar month or at such earlier intervals as circumstances may require, the Construction Manager shall update the construction

schedule to show the actual progress of the work performed and the occurrence of all events which have affected the progress of performance of the work already performed or will affect the progress of the performance of the work yet to be performed in contrast with the planned progress of performance of such work, as depicted on the original construction schedule and all updates thereto as reflected in the updated construction schedule last submitted. Each such update to the construction schedule shall be submitted to the Owner in duplicate. Failure of the Construction Manager to update, revise and submit the construction schedule as set forth herein shall be sufficient grounds for the Owner to find the Construction Manager in substantial default, and certify that sufficient cause exists to terminate the Contract or to withhold payment to the Construction Manager until a schedule or schedule update acceptable to the Owner is submitted. No revisions, activity additions, activity deletions or logic changes shall be made without the Owner's approval, which shall not be unreasonably withheld.

- D. When required by the Owner, the Construction Manager shall prepare and incorporate into the schedule database, at the required intervals, the following schedules:
1. Subcontractor Construction Schedules - Upon the award of each sub-contract, the Construction Manager shall jointly, with the subcontractor, develop a schedule which is more detailed than the pre-bid schedule included in the specifications, taking into account the work schedule of the other subcontractors. The construction schedule shall include as many activities as necessary to make the schedule an effective tool for construction planning and for monitoring the performance of the subcontractor. The construction schedule shall also show pertinent activities for material purchase orders, shop drawing schedules and material delivery schedules.
 2. Occupancy Schedule - The Construction Manager shall jointly develop with the Architect-Engineer and Owner a detailed plan, inclusive of punch lists, final inspections, maintenance training and turn-over procedures, to be used for ensuring accomplishment of a smooth and phased transition from construction to Owner occupancy. The Occupancy Schedule shall be produced and updated monthly from its inception through final Owner occupancy.
- E. All schedules will be provided to the Owner in an electronic format acceptable to the Owner. The Construction Manager will provide the Owner with the appropriate software, if necessary, to read the data. The cost of providing the licenses and software shall be part of the cost of construction and included as part of Article 9, Direct Costs of the Project.

4. Budget Control Subsystem:

The operation of this subsystem shall provide sufficient timely data and detail to permit the Construction Team to control and adjust the Project requirements, needs, materials, equipment and systems by building and site elements so that construction will be completed at a cost which, together with all other Project costs, will not exceed the maximum total Project budget. Requirements of this subsystem include the following submissions at the following phases of the project:

Estimates - Prior to the start of pre-construction services, the requirement of the following estimates will be determined by the Owner:

- A. Completion of Schematic Documents.
- B. Completion of fifty percent (50%) Design Development Documents.
- C. Completion of one hundred percent (100%) Design Development Documents.
- D. One hundred percent (100%) GMP Estimate - When the Construction Documents are sufficiently complete enough to establish the GMP.

5. Project Accounting Subsystem:

The operation of this subsystem shall enable the Construction Team to monitor and control the funds available for the Project, cash flow, costs, change orders, payments and other major financial factors by comparison of budget, estimate, total commitment, amounts invoiced, amounts payable and to plan effectively. This subsystem will be produced and updated monthly and includes the following reports, which together will serve as a basic accounting tool and an audit trail. This report will also provide for accounting by building and site element.

- A. Cost Status Report - presenting the budget, estimate and base commitment for any given contract or budget line item. It shall show approved change orders for each contract which when added to the base commitment will become the total commitment. Pending change orders will also be shown to produce the total estimated probable cost to complete the work.
- B. Payment Status Report - showing the value in place, both current and cumulative, the amount invoiced (both current and cumulative), the amount retained, the amount payable (both current and cumulative) and the balance remaining. A summary of this report shall accompany each pay request.
- C. Detailed Status Report - showing the complete activity history of each item in the Project accounting structure. It shall include the budget, estimate and base commitment figures for each contract. It shall give the change order history including change order numbers, description, proposed and

approved dates and proposed and approved dollar amounts. Pending or rejected change orders shall also be shown.

- D. Cash Flow Diagram - showing the projected accumulation of cash payments against the project. Cash flow projections shall be generated for anticipated monthly payments as well as cumulative payments.
- E. Job Ledger - shall be maintained as necessary to supplement the operation of the Project accounting subsystem. The Job Ledger will be used to provide construction cost accountability for general conditions work, on-site reimbursable expenses and costs requiring accounting needs.

2.2 Project Manual:

When directed by the Owner, the Construction Manager shall provide the following:

1. Upon issuance of a Task Authorization, the Construction Manager shall develop a draft comprehensive Project Manual describing the services set forth in this Contract for Owner's approval, providing a plan for the control, direction, coordination and evaluation of work performed, including identification of key personnel, responsibilities of Construction Manager, responsibilities of Owner and responsibilities of the specified Architect-Engineer, work flow diagrams and strategy for bidding the work. The Project Manual shall be updated as necessary with the Owner's approval throughout the design, construction and Owner occupancy phases. Two copies of the Project Manual and any updates shall be submitted to the Owner and Architect-Engineer. In developing the Project Manual, the Construction Manager shall coordinate with the Owner and the Architect-Engineer.
2. Contents of Project Manual - The Project Manual shall describe in detail the procedures for executing the work and the organizations participating. The Project Manual shall include as a minimum the following sections:
 - A. Project Definition - The known characteristics of the project or sub-projects shall be described in general terms which will provide the participants a basic understanding of the project or sub-projects.
 - B. Project Goals - The schedule, budget, physical, technical and other objectives for the Project shall be defined.
 - C. Project Strategy - A narrative description of the Project delivery methods being utilized to accomplish the project goals shall be listed.
 - D. Project Work Plan - A matrix display of the program of work to be performed by the Construction Manager, the Architect-Engineer and the Owner during each phase of the Project.

- E. Project Organization - A summary organization chart showing the interrelationships between the Owner, the Construction Manager and the Architect-Engineer, and other supporting organizations and permitting review agencies. Detailed charts shall be included, one each for the Construction Manager, the Architect Engineer and the Owner, showing the organizational elements participating in the Project.
- F. Responsibility Performance Chart - A detailed matrix showing the specific responsibilities and interrelationships of the Owner, the Architect Engineer, and Construction Manager. The Responsibility Performance Chart shall indicate major responsibility, and minor responsibility, for each specific task required to deliver the project. The Construction Manager shall develop a similar chart for the personnel within his own organization who are assigned to the project, and also for the personnel of the Owner and the Architect-Engineer from data supplied by each.
- G. Flow Diagrams - Charts displaying the flow of information and the decisional process for the review and approval of shop drawings, submittals, progress and change orders.
- H. Written Procedures – Procedures for communications and coordination required between Construction Team members throughout the Project. Procedures shall cover such items as correspondence, minutes, reports, inspections, team meetings, technical reviews, design reviews and other necessary communications.

2.3 Design and Review and Recommendations:

The Construction Manager shall perform the services described in this Article. The services to be provided herein constitute the Pre-construction phase services. The parties acknowledge the Construction phase may commence before the Pre-construction phase is completed, and to a certain extent both phases may proceed concurrently.

- 1. Preliminary Evaluation - The Construction Manager shall provide a preliminary evaluation of the Owner's Project and Project budget requirements, each in terms of the other.
- 2. Consultation - The Construction Manager will jointly schedule and attend regular meetings with the Owner and Architect. The Construction Manager will consult with the Owner regarding site use and improvements, and the selection of materials, building systems and equipment. The Construction Manager will provide recommendations on construction feasibility; actions designated to minimize adverse effects of labor or material shortages; time requirements for procurement, installation, and construction completion; and factors related to construction cost including estimates of alternative designs or materials, preliminary budgets, and possible economies.

3. Phased Construction - The Construction Manager shall make recommendations to the Owner regarding the phased issuance of Drawings and Specifications to facilitate phased construction of the Project, if such phased construction is appropriate for the Project, taking into consideration such factors as economies, time of performance, availability of labor and materials, and provisions for temporary facilities, if applicable.
4. Review Reports - Within thirty (30) days after receiving the Construction Documents for each phase of the Project, the Construction Manager shall perform a specific review thereof, focused upon factors of a nature encompassed in Articles 2.3(1) and 2.3(2) above and on factors set out in Article 2.3(7) below. Promptly after completion of the review, the Construction Manager shall submit to the Owner, with copies to the Architect-Engineer, a written report covering suggestions or recommendations previously submitted, additional suggestions or recommendations as may be deemed appropriate, and all actions taken by the Architect-Engineer with respect to same, any comments deemed to be appropriate with respect to separating the work into separate contracts, alternative materials, and all comments called for under Article 2.3(7).

THE CONSTRUCTION MANAGER SHALL WARRANT, TO THE BEST OF THE CONSTRUCTION MANAGER'S KNOWLEDGE, WITHOUT ASSUMING ANY ARCHITECTURAL OR ENGINEERING RESPONSIBILITY, THAT THE PLANS AND SPECIFICATIONS ARE CONSISTENT, PRACTICAL, FEASIBLE AND CONSTRUCTIBLE. THE CONSTRUCTION MANAGER SHALL WARRANT THAT THE WORK DESCRIBED IN THE PLANS AND SPECIFICATIONS FOR THE VARIOUS BIDDING PACKAGES IS CONSTRUCTIBLE WITHIN THE SCHEDULED CONSTRUCTION TIME.

The recommendations and advice of the Construction Manager concerning design alternatives shall be subject to the review and approval of the Owner and Owner's professional consultants. Construction Manager shall not assume in anyway the responsibilities of the Architect, in particular, the responsibility of assuring that the drawings and specifications, which shall be identified for each Project prior to the time the GMP is determined, are in accordance with applicable laws, statutes, ordinances, Building Codes, Rules and Regulations; however, if the Construction Manager recognizes that portions of the Drawings and Specifications are inconsistent with applicable laws, statutes, ordinances, Building Codes, Rules and Regulations, the Construction Manager shall promptly notify the Architect and the Owner, in writing.

5. Long Lead Procurements - The Construction Manager shall review the design for the purpose of identifying long lead procurement items such as machinery, equipment, materials and supplies. When each item is identified, the Construction Manager shall notify the subcontractors, the Owner and the Architect-Engineer of the required procurement and schedule. Such information shall be included in the bid documents and made a part of all affected sub-contracts. The Construction

Manager shall keep himself informed of the progress of the respective subcontractors or suppliers, manufacturing or fabricating such items and advise Owner and Architect-Engineer of any problems or prospective delay in delivery. The Construction Manager may recommend to the Owner a schedule for procurement of the long-lead time items, which will constitute part of the work, as required to meet the Project Schedule. If such long-lead time items are procured by the Owner, they shall be procured on terms and conditions acceptable to the Construction Manager. Upon the Owner's acceptance of the Construction Manager's Guaranteed Maximum Price proposal, all contracts for such items shall be assigned by the Owner to the Construction Manager, who shall accept responsibility for such items as if procured by the Construction Manager. The Construction Manager shall assist in expediting the delivery of long-lead time items.

6. **Separate Contracts Planning** - Without assuming any design responsibilities, the Construction Manager shall review the design with the Architect-Engineer and make recommendations to the Owner with respect to dividing the work in such manner as will permit the Construction Manager to take bids and award separate construction sub-contracts on the current schedule while the design is being completed. He shall take into consideration such factors as natural and practical lines of severability, sequencing effectiveness, access and availability constraints, total time for completion, construction market conditions, availability of labor and materials, community relations and any other factors pertinent to saving time and cost by overlapping design and construction that are authorized by the Owner.
7. **Interfacing** -
 - A. The Construction Manager shall take such measures as are appropriate to provide that all construction requirements will be covered in the separate subcontracts for procurement of long lead items, the separate construction subcontracts and the General Conditions items performed without duplication or overlap, sequenced to maintain completion of all work on schedule. Particular attention shall be given to provide that each bid package clearly identifies the work included in that particular separate subcontract, its schedule for start and completion and its relationship to other separate contractors.
 - B. Without assuming any design responsibilities of the Architect-Engineer, the Construction Manager shall include in the reports required under Article 2.3(4) comments on overlap with any other separate subcontracts, omissions, lack of correlation between drawings, and any other deficiencies noted, in order that the Owner and Architect-Engineer may arrange for necessary corrections.
8. **Job-Site Facilities** - The Construction Manager shall arrange for all job-site facilities necessary to enable the Construction Manager and the Owner's

representatives and the Architect-Engineer to perform their respective duties in the management, inspection, and supervision of construction.

Tangible personal property otherwise referred to as job-site facilities, include but are not limited to such things as trailers, toilets, computers and any other equipment necessary to carry on the Project. The method of acquiring such job-site facilities, which are planned to become the property of the Owner at the conclusion of the Project, shall be evaluated based on cost over the life of the Project. Owning versus leasing shall be considered by the Construction Manager obtaining at least three (3) proposals for leasing and at least three (3) proposals for purchasing and then analyzing which is least expensive over the usage life of the item. The Construction Manager shall present his evaluation with recommendation to the Owner for approval.

When the Construction Manager wishes to supply job-site facilities from his own equipment pool, he shall first evaluate buy versus lease as discussed in the paragraph above. If leasing is found to be the least expensive approach, then he may lease such job-site facilities from his own equipment pool at a price not greater than the lowest of the three (3) lease proposals obtained.

For all such facilities purchased, which are to become the property of the Owner at the conclusion of the project, the Construction Manager shall maintain care and custody responsibilities of such facilities until the Project conclusion. The cost of such equipment shall be a Direct Cost of the Project, as defined in Article 9. At the conclusion of the Project, the Construction Manager shall provide the Owner with a complete inventory for each unit of equipment that has been purchased for the Owner. The inventory shall describe the equipment and identify the purchase price, serial number, model number, current location, and condition. Where said equipment has a title, said title shall be properly transferred to the Owner or to his designee.

The Construction Manager is responsible for proper care and maintenance of all equipment while in his control. At the time of transfer to the Owner, the Owner may refuse acceptance of the equipment if the Owner determines in its sole discretion that the equipment has not been properly cared for by the Construction Manager. In such event, the Construction Manager shall reimburse Owner for such item.

9. Weather Protection - The Construction Manager shall ascertain what temporary enclosures, if any, of building areas should be provided for and may be provided as a practical matter, in order to assure orderly progress of the work in periods when extreme weather conditions are likely to be experienced. The Construction Manager shall submit, to the Construction Team, recommendations as to needed requirements of this nature and as to the contract or contracts in which such weather protection requirements should be included. The Construction Manager is totally responsible for all weather protection necessary to ensure that all new construction

and renovation projects are adequately protected from the normal inclement elements.

10. Market Analysis and Stimulation of Bidder Interest -

- A. The Construction Manager shall monitor conditions in the construction market to identify factors that will or may affect costs and time for completing the Project; the Construction Manager shall make analysis as necessary to (1) determine and report on availability of labor, material, equipment, potential bidders, and possible impact of any shortages or surplus of labor or material, and (2) in light of such determinations, make recommendations to the Owner as may be appropriate with respect to long lead procurement, separation of construction into bid packages, sequencing of work, use of alternative materials, equipment or methods, other economics in design or construction, and other matters that will promote cost savings and completion within the scheduled time.
- B. The Construction Manager shall submit to the Owner a written "Construction Market Analysis and Prospective Bidders Report" setting out recommendations and providing information as to prospective bidders. As various bid packages are prepared for bidding, the Construction Manager shall submit to the Owner and the Architect-Engineer a list of potential bidders. The Construction Manager shall be responsible to stimulate bidder interest in the local market place and identify and encourage bidding competition.
- C. The Construction Manager shall carry out an active program of stimulating interest of qualified contractors in bidding on the work and of familiarizing those bidders with the requirements of this project.

2.4 Construction Phase:

- 1. Construction Manager's Staff - The Construction Manager shall maintain sufficient off-site support staff, and competent full time staff at the Project site authorized to act on behalf of the Construction Manager to coordinate, inspect and provide general direction of the work and progress of the subcontractors and the Construction Manager shall provide no less than those personnel during the respective phases of construction as are identified at the time the GMP is determined. The Construction Manager shall not change any of those persons named at the time the GMP is determined unless mutually agreed to by the Owner and Construction Manager. In such case, the Owner shall have the right to approve the qualifications of any replacement personnel. Such approval will not be unreasonably withheld.
- 2. Lines of Authority - The Construction Manager shall establish and maintain lines of authority for its personnel, and shall provide notice of the same to the Owner and

all other affected parties such as the code inspectors of the Permitting Authority, the subcontractors, the Architect-Engineer and the Owner's representatives, in order to provide general direction of the work and progress of the various phases and subcontractors. The Owner and Architect-Engineer may attend meetings between the Construction Manager and his subcontractors; however, such attendance shall not diminish either the authority or responsibility of the Construction Manager to administer the subcontractors.

3. **Schedule and Project Manual Provisions** - The Construction Manager shall provide subcontractors and the Owner, its representatives and the Architect-Engineer with copies of the Project Manual, a total number of copies not to exceed seven (7) hard copies and an electronic version in a format acceptable to the Owner, developed and updated as required by Article 2.2, expanded for the Construction Phase, employing the respective milestones, beginning and finishing dates, the respective responsibilities for performance and the relationships of the work with respect to subcontractors and suppliers. The Construction Manager shall also continue to provide current and up to date scheduling information, direction and coordination regarding milestones, and beginning and finishing dates. Furthermore, the Construction Manager shall be responsible for performance and the relationships of the Construction Manager's work to the work of its subcontractors and suppliers to enable the same to perform their respective tasks so that the development of construction progresses in a smooth and efficient manner in conformance with the overall project schedule. The schedule shall include all phases of the construction work, material supplies, long lease procurement, approval of shop drawings, change orders in progress, schedules for change orders, and performance testing requirements. The Construction Manager shall advise the Owner, its representatives and the Architect-Engineer of their required participation in any meetings or inspections, giving each at least one weeks-notice, unless such notice is made impossible by conditions beyond the control of the Construction Manager. The Construction Manager shall hold job-site meetings at least once each month with the Construction Team or more frequently as required by work progress, to review progress, discuss problems and solutions and to coordinate future work with all subcontractors.

4. **Solicitation of Bids** -

- A. Without assuming responsibilities of the Architect-Engineer, the Construction Manager shall prepare invitations for bids, or requests for proposal when applicable, for all procurement of long lead items, materials and services, for Subcontractor contracts and for site utilities. Such invitations for bids shall be prepared in accordance with the following guidelines:

Those portions of the work that the Construction Manager does not customarily perform with the Construction Manager's own personnel shall be performed under subcontracts or by other appropriate agreements with

the Construction Manager. The Construction Manager shall obtain bids from subcontractors, vendors, consultants and from suppliers of materials or equipment fabricated to a special design for the work. The Construction Manager shall strive to receive at least three (3) competitive bids per trade package. Should the nature of the trade package prohibit three (3) competitive bids, the Construction Manager shall notify the Owner in writing as to the reason and offer suggestions, if any, to create trade interest.

- B. The Construction Manager shall be responsible for coordinating with the Architect-Engineer and preparing all information that is the responsibility of the Construction Manager for bidding of the separate bid packages.
 - C. As part of such preparation, the Construction Manager shall review the specifications and drawings prepared by the Architect-Engineer. Ambiguities, conflicts or lack of clarity of language, use of illegally restrictive requirements, and any other defects in the specifications or in the drawings noted by the Construction Manager shall be brought to the attention of the Owner and Architect-Engineer in written form.
 - D. The Construction Manager and the Owner's Representative shall mutually agree when and if to conduct a pre-bid conference with prospective bidders and the Architect-Engineer. In the event questions are raised which require an interpretation of the bidding documents or otherwise indicate a need for clarification or correction of the invitation, the Construction Manager shall transmit these to the Owner and the Architect-Engineer and upon receiving clarification or correction in writing shall prepare an addendum to the bidding document, and issue same to all of the prospective bidders.
 - E. The Construction Manager shall not enter into contracts without the Owner reviewing the proposed successful bidder. The Owner shall promptly, within three (3) business days, review all proposals and provide comments so as not to cause delay in the award of a contract. Owner's failure to respond within this time frame shall constitute acceptance of the proposed contract. Owner shall have the right to reject any award of subcontract providing such rejection is justifiable and with cause. Should the Owner reject a proposal and should the next bondable, qualified bidder that is acceptable to the Construction Manager, be greater than the GMP budget for that work item, the Owner shall issue a change order to the Construction Manager, increasing the GMP, for the amount of the difference between the proposed award and that which the Owner has requested.
5. Bonds - In accordance with the provisions of Florida Statutes, Section 255.05, the Construction Manager shall provide to the Owner, on forms furnished by the Owner, a one hundred percent (100%) Performance Bond and a one hundred percent (100%) Labor and Material Payment Bond each in an amount not less than the total construction cost as defined in Articles 7, 8 and 9. To be acceptable to the

Owner, as Surety for Performance Bonds and Labor and Material Payment Bonds, a Surety Company shall comply with the following provisions:

- A. The Surety Company shall have a currently valid Certificate of Authority, issued by the State of Florida, Department of Insurance, authorizing it to write surety bonds in the State of Florida.
- B. The Surety Company shall have currently valid Certificate of Authority issued by the United States Department of Treasury under Sections 9304 to 9308 of Title 31 of the United States Code.
- C. The Surety Company shall be in full compliance with the provisions of the Florida Insurance Code.
- D. The Surety Company shall have at least twice the minimum surplus and capital required by the Florida Insurance Code at the time a bond is issued.
- E. The Surety Company shall have at least the following minimum ratings in the latest issue of Best's Key Rating Guide.

Contract Amount	Policy Holder's Rating	Required Financial Rating
\$500,000 to \$1,000,000	A	Class IV
\$1,000,000 to \$2,500,000	A	Class V
\$2,500 000 to \$5,000 000	A	Class VI
\$5,000,000 to \$10,000 000	A	Class VII
\$10,000,000 to \$25,000,000	A	Class VIII
\$25 000 000 to \$50,000,000	A	Class IX
\$50,000,000 to \$75,000,000	A	Class X

- 6. **Quality Control** - The Construction Manager shall develop and maintain a written program, acceptable to the Owner and Architect-Engineer, to assure quality control of the construction. He shall supervise the work of all subcontractors providing instructions to each when their work does not conform to the requirements of the plans and specifications and he shall continue to exert his influence and control over each subcontractor to ensure that corrections are made in a timely manner so as to not affect the efficient progress of the work. Should disagreement occur between the Construction Manager and Architect-Engineer over acceptability of

work and conformance with the requirements of the specifications and plans, the Owner shall be the final judge of performance and acceptability.

7. Subcontractor Interfacing - The Construction Manager shall be the single point of interface with all subcontractors for the Owner and all of its agents and representatives including the Architect-Engineer. He shall negotiate all change orders, field orders and request for proposals, with all affected subcontractors and shall review the costs of those proposals and advise the Owner and Architect-Engineer of their validity and reasonableness, acting in the Owner's best interest prior to requesting approval of each change order from the Owner. Before any work begins on any change order, a written authorization from the Owner must be issued. However, when health and safety are threatened, the Construction Manager shall act immediately to remove the threat to health and safety. The Construction Manager shall carefully review all shop drawings and forward the same to the Architect for review and action. The Architect shall transmit them back to the Construction Manager who will then issue the shop drawings to the affected subcontractor for fabrication or revision. The Construction Manager shall maintain a suspense control system to promote expeditious handling. The Construction Manager shall request the Architect-Engineer via the Owner to make interpretations of the drawings or specifications requested of the Construction Manager by the subcontractors and shall maintain a suspense control system to promote timely response. The Construction Manager shall advise the Owner and Architect-Engineer when timely response is not occurring on any of the above.
8. Permits - The Construction Manager shall secure all necessary building permits from the Permitting Authority and all necessary utility connection permits, the cost of which will be considered a Direct Cost of the project, but not subject to a Construction Phase Fee, as described in Article 8.1(3).
9. Job Site Requirements -
 - A. The Construction Manager shall provide for each of the following activities as a part of its Construction Phase Cost:
 1. Maintain a log of daily activities, including manpower records, weather, delays, major decisions, etc.
 2. Maintain a roster of companies on the project with names and telephone numbers of key personnel.
 3. Establish and enforce job rules governing parking, clean-up, use of facilities and worker discipline.
 4. Provide labor relations management for a harmonious, productive project.

5. Provide a safety program for the project to meet OSHA requirements. Monitor for subcontractor compliance without relieving any subcontractor of responsibilities to perform work in accordance with the best acceptable practices.
 6. Provide a quality control program.
 7. Provide miscellaneous office supplies that support the construction efforts.
 8. Travel to and from its home office to the project site, as the project requires.
- B. The Construction Manager shall provide personnel and equipment or shall arrange for separate subcontracts to provide each of the following as a direct cost item:
1. Schedule the services of independent testing laboratories for the necessary testing of materials to ensure conformance to contract requirements.
 2. The printing and distribution of all required bidding documents and shop drawings, including the sets required by the Permitting Authority's inspectors.
10. Job Site Administration - The Construction Manager shall provide administrative functions during construction to assure proper documentation, including but not limited to such things as the following:
- A. Job Meetings - Hold weekly progress and coordination meetings to provide for an easy flowing project implementation process, assure timely submittals, expedite processing approvals and return of shop drawings and samples; Coordinate and expedite critical ordering and delivery of materials, work sequences, inspection and testing and labor allocation; Review and coordinate each subcontractor's work; Review and implement revisions to the project schedule; Monitor and promote safety requirements.
- Use the job site meeting as a tool for planning of work and enforcing schedules and for establishing procedures, responsibilities, and identification of authority for all to clearly understand.
- Identify party or parties responsible for follow up on any problems, delay items or questions and record course for solutions. Revisit each pending item at each subsequent meeting until resolution is achieved. Require all present to make any problems or delaying events known to those present for appropriate attention and resolution.

A regular monthly project status meeting will be held between the Architect-Engineer, Owner and Construction Manager.

- B. Shop Drawing Submittals/Approvals - Provide staff to check shop drawings and to implement procedures to be approved by Owner for submittal and transmittal to the Architect-Engineer and Owner of such drawings for action, and closely monitor their submittal and approval process.
- C. Material and Equipment Expediting - Provide staff to closely monitor material and equipment deliveries and to implement checking and follow-up procedures on supplier commitments of all subcontractors.
- D. Payments to subcontractors - Develop and implement a procedure for review, processing and payment of applications by subcontractors for progress and final payments.
- E. Document Interpretation - Refer all questions for interpretation of the documents prepared by the Architect-Engineer to the Architect-Engineer through the Owner.
- F. Reports and Project Site Documents - Record the progress of the project. Submit written progress reports to the Owner and the Architect-Engineer, including information on the subcontractor's work and the percentage of completion. Keep a daily log available to the Owner, the Architect-Engineer and the Permitting Authority inspectors.
- G. Subcontractor's Progress - Prepare periodic punch lists for the subcontractor's work including unsatisfactory or incomplete items and schedules for their completion.
- H. Substantial Completion - Ascertain when the work, or designated portions thereof, are ready for the Owner's and the Architect-Engineer's substantial completion inspection. Prior to the Owner's and Architect's pre-substantial completion inspection, the Construction Manager shall issue a list of incomplete items. After the Owner's and the Architect-Engineer's inspection, the Construction Manager shall prepare a schedule for the completion of the list, indicating completion dates for the Owner's review. The Owner and the Architect-Engineer will issue a Certificate of Substantial Completion in the format prescribed in **Exhibit "C"**, when the work on the Construction Manager's pre-substantial Punch List has been accomplished, to the best of the Construction Manager's ability.
- I. Final Completion - Monitor the Subcontractor's performance on the completion of the Project and provide notice to the Owner and Architect-Engineer that the work is ready for final inspection. Secure and transmit to the Owner, through the Architect-Engineer, all required guarantees,

affidavits, releases, bonds and waivers, manuals, record drawings and maintenance books, including issuance of the Certificate of Final Completion attached as **Exhibit "D"**.

- J. Start-Up - With the Owner's personnel, direct the checkout of utilities, operations, systems and equipment for readiness and assist in their initial start-up and testing by the trade contractors.
 - K. Record Drawings - The Construction Manager shall monitor the progress of its own forces or its Subcontractors on marked up field prints, which at project completion, shall be sent to the Architect-Engineer through the Owner who will prepare the final record drawings. Continuously review "As-Built" Drawings and mark up progress prints to provide as much accuracy as possible.
11. Administrative Records - The Construction Manager may be required to maintain, at the job site, current and up to date files and records such as, but not limited to the following:
- Contracts or Purchase Orders
 - Davis Bacon Federal Compliance Documents
 - ARRA / Build America Bonds Compliance Documentation
 - Shop Drawing Submittal/Approval Logs
 - Equipment Purchase/Delivery Logs
 - Contract Drawings and Specifications with Addenda
 - Warranties and Guarantees
 - Cost Accounting Records:
 - Labor Costs
 - Material Costs
 - Equipment Costs
 - Cost Proposal Requests
 - Payment Request Records
 - Meeting Minutes
 - Cost-Estimates
 - Bulletin Quotations
 - Lab Test Reports
 - Insurance Certificates and Bonds
 - Contract Changes
 - Purchase Orders
 - Material Purchase Delivery Logs
 - Technical Standards
 - Design Handbooks
 - "As-Built" Marked Prints
 - Operating & Maintenance Instruction
 - Daily Progress Reports
 - Monthly Progress Reports

Correspondence Files
Transmittal Records
Inspection Reports
Bid/Award Information
Bid Analysis and Negotiations
Punch Lists
PMIS Schedule and Updates
Suspense (Tickler) Files of Outstanding Requirements
Project Manual
Job Photographs

The Project records shall be available at all times to the Owner and Architect-Engineer for reference or review.

12. Owner Occupancy -

The Construction Manager shall:

Provide services during the design and construction phases, which will provide a smooth and successful Owner occupancy of the Project. The Construction Manager shall provide consultation and project management to facilitate Owner occupancy and provide transitional services to get the work, as completed by the contractors, "on-line" in such conditions as will satisfy Owner operational requirements.

Conduct the Construction Manager's preliminary Punch List inspection and coordinate the completion of all Punch List work to be done with Owner occupancy requirements in mind. The Construction Manager shall videotape all major equipment startup procedures and deliver videos as part of the closeout documents.

Catalog operational and maintenance requirements of equipment to be operated by maintenance personnel and convey the same to the Owner in such a manner as to promote their usability. The Construction Manager shall provide operational training, in equipment use, for all such operators.

The Construction Manager shall secure required guarantees and warranties, assemble and deliver same to the Owner in a manner that will facilitate maximum enforcement and assure meaningful implementation.

The Owner may occupy or take control of portions of the Project providing the above items discussed in this paragraph have been completed and the "Substantial Completion", "Start-Up", "Record Drawing", and "Warranty" requirements specified in Article 2.4 above have been completed to the Owner's satisfaction for the portions to be occupied, excluding the requirements for a warranty inspection eleven (11) months after Owner Occupancy.

13. Warranty -

Where any work is performed by the Construction Manager's own forces or by subcontractors under contract with the Construction Manager, the Construction Manager shall warrant that all materials and equipment included in such work will be new except where indicated otherwise in Contract Documents, and that such work will be of good quality, free from improper workmanship and defective materials and in conformance with the Contract Documents. With respect to the same work, the Construction Manager further agrees to correct all work found by the Owner to be defective in material and workmanship or not in conformance with the Contract Documents for a period of one year from the date of Substantial Completion or partial occupancy of any portion of the building, whichever comes first, or for such longer periods of time as may be set forth with respect to specific warranties contained in the trade sections of the Specifications. The Construction Manager shall collect and deliver to the Owner any specific written warranties given by others as required by the Contract Documents. In addition, the Construction Manager shall conduct, jointly with the Owner and the Architect-Engineer, a warranty inspection in approximately eleven (11) months after the date of Owner Occupancy.

ARTICLE 3
OWNER'S RESPONSIBILITIES

3.1 Owner's Information:

The Owner shall provide full information regarding its requirements for the Project.

3.2 Owner's Representatives:

The Owner shall designate in writing any additional representatives authorized to act on the Owner's behalf with respect to the Project, not previously defined in Article 1.3, together with the scope of his/her respective authority. In no event shall any delegation of authority be contrary to state or county laws or codes. Functions to be performed by the Owner as set forth in this Agreement can be delegated by the Owner only by written notice to the Construction Manager from the Owner. The Construction Manager shall be entitled to rely on directions, and it shall be required to follow such directions, from the Owner's Representative designated in Article 1.3 and such other representatives from time to time designated in writing within the authority conferred by the City of Mount Dora City Council in this Agreement or any Amendment or Change Order to this Agreement. The City of Mount Dora City Council hereby authorizes the Article 1.3 Owner's Representative to: (1) act as the Owner's agent and execute documents associated with this Project. Examples of these documents are Construction Manager's Contingency Authorizations, Notices of Commencement, Certificates of Substantial Completion and permits from applicable agencies; (2) administer, coordinate, interpret and otherwise manage the contractual provisions and requirements of this Agreement; (3) negotiate a duly authorized Change Order on behalf of the Owner; and (4) issue a duly authorized purchase order,

memorandum, letter or other instrument covering the services and work to be provided pursuant to this Agreement. Directions and decisions made by Owner's Representatives shall be binding on the Owner.

The City of Mount Dora City Council additionally authorizes the City Manager, in conjunction with the Owner's Representative, to authorize changes in the work up to \$35,000.00 (Thirty-five Thousand and 00/100 Dollars) or such other dollar amount as authorized by policy adopted by the City Council. Said work can be funded from the Owner's Contingency and shall not cause an increase to the overall project budget.

3.3 Architect-Engineer's Agreement:

The Owner shall retain an Architect-Engineer for design and to prepare Construction Documents for the Project. The Architect-Engineer's services, duties and responsibilities are described in the Agreement between the Owner and the Architect-Engineer, a copy of which will be furnished to the Construction Manager. The Agreement between the Owner and the Architect-Engineer shall not be modified without written notification to the Construction Manager.

3.4 Site Survey and Reports:

The Owner shall provide all surveys describing the physical characteristics, soil reports, and subsurface investigations, legal limitations, utility locations and a legal description for the Project.

3.5 Approvals and Easements:

The Owner shall pay for necessary approvals, easements, assessments and charges required for the construction, use or occupancy of permanent structures or for permanent changes in existing facilities.

3.6 Legal Services:

The Owner shall furnish such legal services as may be necessary for providing the items set forth in Article 3.5 and such document examination and interpretation as may require.

3.7 Drawings and Specifications:

The Construction Manager will be furnished a reproducible set of all copies of Drawings and Specifications reasonably necessary and ready for printing.

3.8 Cost of Surveys and Reports:

The services, information, surveys and reports required by the above paragraphs shall be furnished with reasonable promptness in accordance with the approved schedule at the

Owner's expense, and the Construction Manager shall be entitled to rely upon the accuracy and completeness thereof.

3.9 Project Fault Defects:

If the Owner becomes aware of any fault or defect in the Project or non-conformance with the Drawings and Specifications, it shall give prompt written notice thereof to the Construction Manager and Architect-Engineer.

3.10 Funding:

The Owner shall furnish, in accordance with the established schedule, reasonable evidence satisfactory to the Construction Manager that sufficient funds will be available and committed for the cost of each part of the Project. The Construction Manager shall not commence any work, unless authorized in writing by the Owner.

3.11 Lines of Communication:

The Owner and the Architect-Engineer, through the Owner, shall communicate with the subcontractors or suppliers only through the Construction Manager while such method of communication is effective in maintaining project schedules and quality.

3.12 Permitting & Code Inspections:

The Owner recognizes and coordinates with the appropriate Permitting Authority and expects the Construction Manager to do the same.

ARTICLE 4
PERMITS, FEES AND NOTICES

- 4.1 Unless otherwise provided in the Contract Documents, the Construction Manager shall secure and pay for the building permits, which are customarily secured by a General Contractor.
- 4.2 The Construction Manager shall comply with and give notices, as required by laws, ordinances, rules, regulations and lawful orders of public authorities bearing on performance of the Project.
- 4.3 It is not the Construction Manager's responsibility to ascertain whether the Contract Documents are in accordance with applicable laws, statutes, ordinances, Building Codes and Rules and Regulations; however, if the Construction Manager observes that portions of the Contract Documents are inconsistent therewith, the Construction Manager shall promptly notify the Architect-Engineer and Owner in writing and necessary changes shall be accomplished by appropriate modification.

- 4.4 If the Construction Manager performs work knowing it to be contrary to applicable laws, statutes, ordinances, Building Codes and Rules and Regulations without such notice to the Architect-Engineer and Owner, the Construction Manager shall assume full responsibility for such work and shall bear all attributable costs and damages.
- 4.5 Cost for all re-inspections of work found to be defective and subsequently repaired, shall be borne by the Construction Manager if such defective work was performed knowingly contrary to applicable laws, statutes, ordinances, Building Codes and Rules and Regulations.

ARTICLE 5

SUBCONTRACTS

5.1 **Definition:**

A subcontractor is a person or organization who has a direct contract with the Construction Manager to perform any of the work at on the Project. Nothing contained in the Contract Documents shall create any contractual relationship between the Owner or Architect-Engineer and any subcontractor.

5.2 **Proposals:**

Subject to Article 9 and, in accordance with Article 2.4(4), the Construction Manager shall request and receive proposals from subcontractors and suppliers and will award those contracts to the qualified low bidder after reviewing all proposals with the Owner and Architect-Engineer and all are satisfied that the subcontractor/supplier is qualified to perform work or provide materials for the Project.

5.3 **Required Subcontractors' Qualifications and Subcontract Conditions:**

1. Sub-contractual Relations - The Construction Manager shall require each Subcontractor to assume all the obligations and responsibilities which the Construction Manager owes the Owner under this Agreement, to the extent of the work to be performed by the Subcontractor. Said agreements shall be made in writing and shall preserve and protect the rights of the Owner and Architect-Engineer under the Contract Documents with respect to the work to be performed by the Subcontractor so that the subcontracting thereof will not prejudice such rights. Where appropriate, the Construction Manager shall require each Subcontractor to enter into similar agreements with its sub-subcontractor.

Insurance requirements for Subcontractors shall be no more stringent than those requirements imposed on the Construction Manager by the Owner.

The Construction Manager shall make available to each proposed Subcontractor, prior to the execution of the Subcontract, copies of the Contract Documents to which the Subcontractor will be bound.

2. All subcontracts shall provide -

LIMITATION OF REMEDY- NO DAMAGES FOR DELAY

The subcontractor's exclusive remedy for delays in the performance of the contract caused by events beyond its control, including delays claimed to be caused by the Owner or Architect-Engineer or attributable to the Owner or Architect-Engineer and including claims based on breach of contract or negligence, shall be an extension of its contract time and shall in no way involve any monetary claim.

In the event of a change in the work, the Subcontractor's claim for adjustments in the contract sum are limited exclusively to its negotiated costs for such changes plus no more than seven percent (7%) for overhead, profit and bond costs.

The subcontract shall require the subcontractor to expressly agree that the foregoing constitutes the sole and exclusive remedy for delays and changes in the work and eliminates any other remedies or claims for increase in the contract price, damages, losses or additional compensation. Each subcontract shall require that any claims by the subcontractor for delay or additional cost must be submitted to the Construction Manager within the time and in the manner in which the Construction Manager must submit such claims to the Owner, and that failure to comply with the conditions for giving notice and submitting claims shall result in the waiver of such claims.

5.4 Responsibilities for Acts and Omissions:

The Construction Manager shall be responsible to the Owner for the acts and omissions of its employees, agents, subcontractors, the agents thereof and employees thereof, and all other persons performing any of the work or supplying materials for the Project under a contract to the Construction Manager.

ARTICLE 6
SCHEDULE, TIME OF COMMENCEMENT
AND SUBSTANTIAL COMPLETION

- 6.1 At the time a Guaranteed Maximum Price (GMP) is established as provided for in Article 7, a Project Substantial Completion Date, a Project Final Completion Date and an Owner Occupancy Date for completion of the Project in accordance with the master project schedule, shall also be established by the Construction Team. The Construction Manager agrees to complete the construction in accordance with the agreed Substantial Completion Date, Final Completion Date and Owner Occupancy Date. The Construction Manager acknowledges that failure to complete the Project within the construction time set forth in the approved schedule will result in substantial damages to the Owner. These liquidated damages are the sole remedy for delay, shall in no way be deemed a waiver of the Owner's right to all other legal remedies in this Agreement.

In the event the Construction Manager does not achieve the Substantial Completion Date the Construction Manager shall pay the Owner, as liquidated damages and not as a penalty, in the amount of Five Hundred Dollars (\$500.00) for each calendar day the actual time of performance exceeds the authorized Substantial Completion Date for each separate GMP as applicable.

- 6.2 The date of Owner Occupancy shall occur as described in Article 2.4(12) herein above. Warranties called for by this Agreement or by the Contract Documents shall commence on the Substantial Completion Date, unless otherwise agreed to, in writing, between the Owner and Construction Manager.

ARTICLE 7

GUARANTEED MAXIMUM PRICE FOR CONSTRUCTION

- 7.1 When the design documents are sufficiently complete to establish the scope of work for the Project, or any portion thereof, as generally defined by a design document listing to be provided by the Architect-Engineer, or at such time thereafter designated by the Owner, the Construction Manager will establish and submit in writing to the Owner for approval, a Guaranteed Maximum Price (GMP), guaranteeing the maximum price to the Owner, for the construction cost of the Project or designated part thereof. The Construction Manager acknowledges multiple GMPs may be required for the portions of the Project to support the project phasing and schedule. Such Guaranteed Maximum Price will be subject to modification for changes in the Project as provided in Article 10; however, the actual price paid for the work by the Owner shall be the actual cost of all work subcontracts, supply contracts, direct labor costs, direct supervision costs and direct job costs as defined under Article 9, plus the Construction Manager's costs and fees, or the GMP, whichever is less when the work is complete.
- 7.2 The GMP will only include those taxes, in the cost of the Project, which are legally enacted at the time the GMP is established.
- 7.3 At the time of submission of a GMP, the Construction Manager will verify the time schedule for activities and work, which were adopted by the Construction Team and used to determine the Construction Manager's cost of work. Included in the GMP will be a Contractor's Contingency, which is included for the Construction Manager to use, with the Owner's consent. The contingency is intended to cover the costs associated with Project scope that were not adequately detailed at the time of GMP. The Contractor's Contingency is also intended to protect against price increases between the GMP and the completion of the 100% construction documents, as well as for the purpose of defraying the expenses due to unforeseen circumstances relating to construction and for price increases attributable to any code compliance reviews. The Construction Manager will be required to furnish documentation evidencing expenditures charged to the Contractor's Contingency prior to the release of funds by the Owner. Documentation for use of the Contractor's Contingency shall be determined by the Construction Team, included in the Project Manual and displayed monthly in the Project Management Information System. The Architect-Engineer shall verify the actual costs. If there are funds remaining in the Contractor's

Contingency at the conclusion of the Project, said funds will be returned to the Owner, through deductive change order.

- 7.4 When the Project is bid and one hundred percent (100%) of the trade contracts have been executed, the contingency within the GMP may be decreased in proportion to the percent of the work completed up to a maximum of fifty percent (50%). In other words, if ten percent (10%) of the work has been completed and the Owner requests that the contingency within the GMP be adjusted, then ten percent (10%) of the contingency within the GMP will be removed from the GMP by change order up to a maximum of fifty percent (50%) of the initial GMP contingency value. During the buyout period of the trade contracts, at a point mutually agreed upon between the Owner and Construction Manager, the net amount of the buyout will be reviewed. If the net amount of the total buyout results in excess funds being required, those funds will be taken from the Contractor's Contingency.

If the net amount of the buyout results in a savings, the savings will be assigned to the Owner's Buyout Contingency as defined in Article 7.5

If bids are not received for a portion of the work at or below the applicable line item amount in the GMP, the Construction Manager reserves the right to perform that portion of the work or negotiate for its performance for the specified line item lump sum amount or less.

- 7.5 The Owner's Buyout Contingency shall be created by the savings generated by subcontractor buyout as set forth in Article 7.4 and also by reductions in scope that otherwise could reduce the GMP. The intent of this Owner's Buyout Contingency is to allow funds already within the GMP to remain in the GMP and be used at the Owner's discretion for scope issues that may become required and/or desired during the course of the Project.

Authorizations up to Thirty-five Thousand and 00/100 Dollars (\$35,000.00), or such other dollar amount as authorized by policy adopted by the City Council, for the use of the Owner's Buyout Contingency, may be granted by the City Manager. Authorizations, for more than Thirty-five Thousand and 00/100 Dollars (\$35,000.00), will be granted by the City Council unless the City Council authorizes an increase in the City Manager's authority for the same.

ARTICLE 8

CONSTRUCTION MANAGER'S COSTS

- 8.1 In consideration of the performance of this Agreement, the Owner agrees to pay the Construction Manager as compensation for his services, costs or fees, as set forth herein.
1. Design Phase/Pre-construction Costs - For the performance of the services set forth under Article 2 and for profit and overhead related to these services, the Construction Manager shall be paid a total amount to be determined prior to the issuance of the Task Authorization. The Design Phase/Pre-construction Costs shall be paid according to the percent complete of the design phase.

The Construction Manager's personnel to be assigned during this phase and their duties and responsibilities to this project and the duration of their assignments are shown on the Task Authorization.

2. Construction Phase Costs - Prior to commencement of each Construction Phase, the Owner will direct the Construction Manager in writing to proceed into said Construction Phase. The Construction Phase Cost for work or services performed during the Construction Phase shall be an amount of *(To Be Determined at GMP)*. The Construction Phase Costs shall be paid according to the percent complete of the Project. The first monthly payment shall be due thirty (30) days following the issuance of the first Construction Authorization by the Owner's Representative and the final monthly payment shall be paid only when construction of the Project, or portion thereof, is finally completed and occupancy of the Project, or portion thereof, accepted by the Owner. If construction is authorized only for a part of the Project, the costs paid shall be proportionate to the amount of work authorized by the Owner.
 - A. Adjustments in Costs - For changes in the Project as provided in Article 10, the Construction Phase Costs shall be adjusted as follows:
 1. The Construction Manager shall be paid an additional amount subject to negotiation if the Construction Manager is placed in charge of reconstruction of an insured or uninsured loss excluding any condition that may have been caused from negligent acts by the Construction Manager.
 2. Should the construction duration for any phase extend longer than stipulated above, there shall be no additional Construction Phase Costs paid to the Construction Manager unless such delays are as defined in Article 10.2.
 3. The Construction Manager will not be due any additional Construction Phase Fee on increases in the Guaranteed Maximum Price (GMP) that do not exceed a cumulative total of two percent (2%) for each separate GMP. Should a GMP be increased by more than a cumulative total of two percent (2%) under the terms of Article 10 hereinafter, due to no fault of the Construction Manager, the Construction Manager's additional Construction Phase Fee will be based on the Original GMP as set forth in the below chart for that portion of the accumulative increases in the GMP that exceed the GMP by more than two percent (2%).

GMP	Construction Manager's Fee
\$0.00 to \$150,000	10%
\$150,001 to \$500,000	8%
\$500,001 to \$750,000	7.5%
\$750,001 to \$1,000,000	7%
\$1,000,001 to \$1,500,000	6%
\$1,500,001 to \$2,000,000	5%

Construction Manager's Exclusive Remedy - In the event the construction Substantial or Final Completion date is extended, regardless of whether delay is caused by any act or neglect of the Owner or the Architect-Engineer, or is attributable to the Owner or the Architect-Engineer, the Construction Manager's sole and exclusive remedy is an extension of the Substantial Completion Date and payment of additional Construction Phase Costs and Construction Phase Fee as provided above.

B. Costs and Expenses Included in Construction Phase Costs – The following are included in the Construction Phase Costs for services during the Construction Phase:

1. Salaries or other compensation of the Construction Manager's employees at its principal office and branch offices.
 2. General operating expenses of the Construction Manager's principal and branch offices related to the Project.
 3. The costs of all data processing staff.
 4. Salaries or other compensation of the Construction Manager's employees at the job site.
 5. General operating expenses incurred in the management and supervision of the Project, except as expressly included in Article 9.
 6. Those services set forth in Article 2.4(9)(A).
 7. Job office supplies including but not limited to paper, pencils, paper clips, file folders, staples and janitorial supplies.
3. Construction Phase Fee - For overhead, profit and general expenses of any kind, except as may be expressly included in Article 9, for services provided during and related to the construction phase, the amount shall be based on the Original GMP as set forth in the chart below and shall be converted to a fixed amount upon acceptance of the GMP, subject to changes as described herein, and shall be paid

proportionally to the ratio of the cost of the work in place, including stored materials, as it bears on the latest estimate of the total construction cost and/or to the GMP, whichever is less. The balance of the fee shall be paid when construction of the Project, or portion thereof, is finally completed and occupancy of the Project, or portion thereof, is accepted by the Owner. If construction is authorized only for a part of the Project, the fee paid shall be proportionate to the amount of work authorized by the Owner. The Construction Manager's exclusive remedy for any adjustments in the Construction Phase Fee is provided in Article 8.1(2).

GMP	Construction Manager's Fee
\$0.00 to \$150,000	10%
\$150,001 to \$500,000	8%
\$500,001 to \$750,000	7.5%
\$750,001 to \$1,000,000	7%
\$1,000,001 to \$1,500,000	6%
\$1,500,001 to \$2,000,000	5%

ARTICLE 9

DIRECT COSTS OF THE PROJECT

9.1 Definition:

The term Direct Cost of the Project shall mean costs necessarily incurred in the Project during the Construction Phase for Construction Services and paid by the Construction Manager, which are not included in the Construction Phase Fee. Such costs shall include the items set forth below in this Article.

The Owner agrees to pay the Construction Manager for the Direct Costs of the Project as defined herein. Such payment shall be in addition to the Construction Phase Costs stipulated in Article 8. Invoices submitted under this Article 9 shall be submitted in detail sufficient for a proper pre-audit and post-audit thereof.

9.2 Direct Cost Items:

1. Cost of all materials, supplies and equipment incorporated in the Project, including costs of transportation and storage thereof.
2. Payments due to subcontractors from the Construction Manager or made by the Construction Manager to subcontractors for work performed pursuant to contract under this Agreement.
3. Cost including transportation and maintenance of all materials, supplies, equipment, temporary facilities and hand tools not owned by the workmen, employed or consumed in the performance of the work.

4. Rental charges on all necessary machinery and equipment, exclusive of hand tools used at the site of the Project, whether rented from the Construction Manager or other, including installation, repairs and replacement, dismantling, removal, transportation and delivery costs thereof, which are used in the support of a subcontractor or the Construction Manager's own forces in the performance of the work, at rental charges consistent with those prevailing in the area.
5. Cost of the premiums for all insurance and cost of premiums for all bonds, which the Construction Manager is required to procure by this Agreement specifically for the construction of the Project. The cost of the work shall include any subcontractor bonds the Construction Manager deems appropriate. There shall be no Construction Phase Fee on this item.
6. Losses and expenses sustained by the Construction Manager in connection with the work, not compensated by insurance, including deductibles provided they have resulted from causes other than the negligent misconduct of Construction Manager.
7. Sales, use, gross receipts or similar taxes related to allowable direct costs of the Project imposed by any governmental authority, and for which the Construction Manager is liable.
8. The cost of corrective work, subject to the GMP, except for any corrective work made necessary because of defective workmanship or other problems caused by the negligence of the Construction Manager or its subcontractors or suppliers. No costs shall be paid by the Owner to the Construction Manager for any expenses made necessary to correct defective workmanship or to correct any work not in conformance with the Contract Documents or to correct any deficiency or damage caused by the negligent acts by the Construction Manager.
9. Costs for repairs and maintenance, which are consistent with industry standards associated with work required during the warranty period, which may be the responsibility of Construction Manager. This shall not apply to work, which is the responsibility of subcontractors, except in the case of a subcontractor's default.
10. Costs for trash and debris control and removal from the site.
11. Costs incurred due to an emergency affecting the safety of persons and property.
12. Legal costs reasonably and properly resulting from the Project on behalf of the Owner, including handling claims for changes by Subcontractors and Vendors, subject to the following limitations:
 - A. The Owner approved incurring such costs in advance, which approval shall not be unreasonably denied; and

- B. The legal costs were not incurred as result of the Construction Manager's own negligence or default.

This paragraph does not provide for payment of legal costs incurred in preparing or asserting claim or requests, by Construction Manager itself, for change orders or in enforcing the obligations of this contract.

13. All costs directly incurred in the performance of the Project for the benefit of the Project and not included in the Construction Phase Costs as set forth in Article 8.
14. If requested by the Owner, the Construction Manager will perform all or a portion of the General Conditions work as a Direct Cost of the Project.
15. If approved by the Owner, the Construction Manager, when qualified, may perform all or a portion of the work for any item listed on the estimate or GMP breakdown where it is deemed advantageous due to schedule or economic benefit as a Direct Cost of the Project.
16. Transportation outside of Lake, Orange or Seminole for those personnel employed directly for the Project, not including relocation expenses. Such transportation must be approved in advance by the Owner, and will be in accordance with the Construction Manager's standard personnel policy.
17. Costs of all reproductions used for bidding or information purposes required by the Project to directly benefit the Project.
18. Costs for watchman and security services for the Project.
19. Costs for efficient logistical control of the site, including horizontal and vertical transportation of materials and personnel and costs for adequate storage and parking.
20. Costs for such temporary facilities and temporary protection during construction, as approved by the Owner, including temporary water, heat, power, sanitary facilities, telephones, radios and computers with software.
21. Costs for any job site items not referenced herein, not normally provided by the subcontractors, which will be provided by the Construction Manager as required to complete the Project.

ARTICLE 10
CHANGES IN THE PROJECT

10.1 Change Orders:

The Owner, without invalidating this Agreement, may order changes in the Project within the general scope of this Agreement consisting of additions, deletions or other revisions, with the GMP and the Substantial and/or Final Completion Dates being adjusted accordingly. All changes in the Project, not covered by an authorized contingency, shall be authorized by a Change Order signed by the Owner before the change is implemented.

1. A Change Order is a written order to the Construction Manager signed by the Owner issued after the execution of this Agreement, authorizing a change in the Project, the Construction Phase Fee, or other attributable cost of the Project.
2. The increase or decrease in the GMP resulting from a change in the Project shall be determined in one or more of the following ways:
 - A. by mutual acceptance of a lump sum properly itemized and supported by sufficient substantiating data to permit evaluation by the Architect-Engineer and Owner;
 - B. by unit prices stated in the Agreement or subsequently agreed upon;
 - C. by cost as defined in Article 9 and a mutually acceptable fixed or percentage fee; or
 - D. by the method provided in Article 10.1(3).
 - E. Should any costs be required for design of an alternative system that would be advantageous to the Project and result in a deductive change order, the Construction Manager shall include the cost of the redesign services of the Architect-Engineer so that the Owner can make proper assessment of the cost of such change. Payment for additional services shall be made by the Owner.
3. If none of the methods set forth in Article 10.1(2) is agreed upon, the Construction Manager, provided it receives a written order signed by the Owner, shall promptly proceed with the work involved. The cost of such work shall then be determined on the basis of the reasonable expenditures and savings of those performing the work attributed to the change. In the event a Change Order is issued under these conditions, the Construction Manager shall establish an estimated cost of the work and the Construction Manager shall not perform any work if the cost exceeds that estimate without prior written approval by the Owner.

4. In the event of either Article 10.1(2) or Article 10.1(3) above, the Construction Manager shall keep and present, in such form as the Owner may prescribe, an itemized accounting together with appropriate supporting data, of the increase in the Direct Cost of the Project as outlined in Article 9.
5. The amount of decrease in the Guaranteed Maximum Price to be allowed by the Construction Manager to the Owner for any deletion or change which results in a net decrease in cost will be the amount of the actual net decrease.
6. If unit prices are stated in the Agreement or subsequently agreed upon, and if the quantities originally contemplated are so changed in a proposed Change Order, and that application of the agreed unit prices to the quantities of work proposed will cause substantial inequity to the Owner or the Construction Manager, the applicable unit prices and Guaranteed Maximum Price shall be equitably adjusted.
7. In the performance of the work, should concealed conditions be encountered below the surface of the ground or should concealed or unknown conditions in an existing structure be inconsistent with the conditions indicated by the Drawings, Specifications, or Owner furnished information or should unknown physical conditions exist below the surface of the ground or should concealed or unknown conditions in an existing structure of an unusual nature, differing materially from those ordinarily encountered and generally recognized as inherent in work of the character provided for in this Agreement, be encountered, the Guaranteed Maximum Price and the Substantial and/or Final Completion Dates shall be equitably adjusted by Change Order upon a request for Change Order in accordance with Article 10.2.
8. In the event the Construction Manager encounters material reasonably believed to be asbestos or polychlorinated biphenyl (PCB) which has not been rendered harmless, petroleum waste, biohazardous substances, radioactive waste or any other substance falling within the category of hazardous or toxic waste under the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) or any other state or federal environmental statute or regulation, hereinafter collectively referred to as "hazardous waste," the Construction Manager shall immediately stop work in the area affected and report the condition to the Owner in writing. Owner shall thereafter as soon as reasonably possible conduct a thorough investigation to determine if the suspected material in the affected area is in fact hazardous waste and shall certify to Construction Manager that such material is not hazardous waste or if such material is in fact hazardous waste that such hazardous waste has been abated and that it is safe to return to the affected area and resume work. The Construction Manager may require the Owner to furnish copies of reports of tests conducted by a qualified testing laboratory acceptable to Construction Manager verifying the absence of such hazardous waste before Construction Manager will be required to resume work. The Contract time and amount shall thereafter be equitably adjusted to account for the time lost due to the encountering of the hazardous waste and the reasonable cost associated therewith.

The Construction Manager shall, through an analysis of network schedule, prove such time delays and associated costs.

9. The Construction Manager shall not be required to perform any work relating to hazardous waste without consent pursuant to this Article 10.

10.2 Claims for Additional Cost or Time:

All claims for additional cost or time shall be made by request for a Change Order submitted as provided in Article 16.

The Substantial Completion date shall be extended by Change Order for such reasonable time as the Construction Manager may determine. If the Construction Manager is delayed at any time in the progress of the work by any act or neglect of the Owner or the Architect-Engineer or of any employee of either or by any separate Construction Manager employed by the Owner or by any changes ordered in the work by labor disputes, fire or unusual delay in transportation, unavoidable casualties or any causes beyond the Construction Manager's control or by delay authorized by the Owner pending resolution of disputes, and such delay extends the Substantial and/or Final Completion Date, then the dates for completion may be equitably adjusted.

Only delays which are determined to extend the critical path for the schedule for constructing the Project, will result in a time extension. Neither the Owner nor the Construction Manager shall be considered to own the schedule float time.

10.3 Minor Changes in the Project:

The Owner will have authority to order minor changes in the Project not involving an adjustment in the Guaranteed Maximum Price or an extension of the Substantial and/or Final Completion Date and not inconsistent with the intent of the Contract Documents. Such changes shall be affected by written order. The Documentation of changes shall be determined by the Construction Team, included in the Project Manual and displayed monthly in the Project Management Information System. Changes shall be approved by the Owner and Architect-Engineer.

10.4 Emergencies:

In any emergency affecting the safety of persons or property, the Construction Manager shall act at its discretion, to prevent threatened damage, injury or loss. Any increase in the Guaranteed Maximum Price or extension of time claimed by the Construction Manager on account of emergency work shall be determined as provided in this Article 10.

ARTICLE 11

DISCOUNTS

All discounts for prompt payment shall accrue to the Owner to the extent the cost of the item(s) purchased is paid directly by the Owner or from a fund made available by the Owner to the Construction Manager for such payments. To the extent the cost associated with the Project is paid with funds of the Construction Manager, all cash discounts shall accrue to the Construction Manager. All trade discounts, rebates and refunds, and all returns from the sale of surplus materials and equipment, shall be credited to the cost of the Project.

ARTICLE 12

PAYMENTS TO THE CONSTRUCTION MANAGER

12.1 Monthly Statements:

The Construction Manager shall submit to the Owner a sworn statement, along with the cost reports required under Article 2.1(5), showing, in detail, all moneys paid out, cost accumulated or costs incurred during the previous period and the amount of the Construction Phase Fees due as provided in Article 8. This data shall be attached to the Partial Pay Request form shown in **Exhibit E**". Ten percent (10%) retainage shall be held on all payments until the contract is fifty percent (50%) complete, except when approved by the Owner certain suppliers and subcontractors may be paid the entire amount due when such payment is generally the practice of the industry. At fifty percent (50%) completion, the Owner may approve a reduction of the retainage from ten percent (10%) to five (5%) at its discretion. Retainage shall not be withheld on services or fees set forth in Article 8. Payments by the Owner to the Construction Manager shall be made as described in this Article 12. As a condition to application for a monthly partial pay requisition, the Construction Manager agrees that all as-built information will be recorded within thirty (30) days after receipt of information that a change to the Construction Documents has occurred.

12.2 Final Payment:

Final payment constituting the unpaid balance of the Construction Phase Cost of the Project and the Construction Phase Fee, shall be due and payable as described in Article 12.4 after Final Completion, provided that the Project has been finally completed, that the Construction Manager has verified by appropriate signature that it has completed all items and that this Agreement has been finally performed. However, if there should remain work to be completed, the Construction Manager, the Owner, and the Architect-Engineer shall list those items prior to receiving final payment and the Owner may retain a sum equal to the estimated cost of completing any unfinished work and portion of the Construction Manager's retainage, provided that said unfinished items are listed separately and the estimated cost of completing the unfinished items are likewise listed separately. Thereafter, Owner shall pay the Construction Manager monthly, the amount retained for each incomplete item after each such item is completed.

12.3 Payments to Subcontractors:

The Construction Manager shall promptly, within ten (10) days after receipt of payment from the Owner, pay all the amounts due to subcontractors less a retainage of ten percent (10%) until the project is fifty percent (50%) complete, and based on Construction Manager's evaluation of the subcontractor's acceptable performance, the Owner may approve a reduction in retainage from ten percent (10%) to five percent (5%) thereafter. If there should remain items to be completed, the Construction Manager, the Owner and Architect-Engineer shall list those items required for completion and the Construction Manager shall require the retainage of a sum equal to five percent (5%) of the estimated cost of completing any unfinished items, provided that said unfinished items are listed separately and the estimated cost of completing any unfinished items are likewise listed separately. Thereafter, the Construction Manager shall pay to the subcontractors monthly, the amount retained for each incomplete item after each such item is completed. Before issuance of final payment without any retainage, the subcontractor shall submit satisfactory evidence that all payrolls, material bills and other indebtedness connected with the Project have been paid or otherwise satisfied, warranty information is complete, as-built markups have been submitted and instruction for the Owner's operating and maintenance personnel is complete.

Final payment may be made to certain select subcontractors whose work is satisfactorily completed prior to the total completion of the Project but only upon approval of the Owner.

12.4 Construction Manager's Payment Rights:

All payments for construction services shall be governed by and made in accordance with Florida's Prompt Payment Act, Florida Statutes, Section 218.735.

12.5 Payments for Materials and Equipment:

Payments will be made for material and equipment not incorporated in the work but delivered and suitably stored at a Project site or another location that is insured to protect the Owner's assets subject to prior approval and acceptance by the Owner on each occasion.

12.6 Withholding Payments to Subcontractors:

The Construction Manager shall not withhold payments to subcontractors if such payments have been made to the Construction Manager. Should this occur, the Construction Manager shall return such moneys to the Owner, adjusting pay requests and project bookkeeping as required. However, this provision shall not apply should payments to subcontractors be withheld as a result of procuring normal process paperwork in accordance with the Construction Manager's contract with said subcontractor. The Construction Manager shall, if requested by the Owner, notify the Owner in writing as to the reason for withholding payment.

ARTICLE 13
INSURANCE, INDEMNITY AND WAIVER OF SUBROGATION

13.1 Indemnity:

The Construction Manager agrees to be liable for any and all damages, losses and expenses incurred, by the Owner, in any way related to or caused by the acts and/or omissions of the Construction Manager, or any of its employees, agents, sub-contractors, representatives, volunteers or the like, to the extent stemming from the services provided by this Agreement. The Construction Manager agrees to indemnify, defend and hold the Owner harmless for any and all claims, suits, judgments, damages, losses and expenses, including but not limited to, court costs, expert witness fees, consultation services and attorney's fees, through and including any appeals, arising from and related to any and all acts and/or omissions of the Construction Manager, or any of its employees, agents, sub-contractors, representatives, volunteers, or the like, to the extent stemming from the services provided by this Agreement. Said indemnification, defense and hold harmless activities shall not be limited by any required insurance coverage amounts set forth herein and shall survive termination or natural expiration of this Agreement.

13.2 Construction Manager's Insurance:

1. The Construction Manager shall not commence any construction work in connection with this Agreement until he has obtained all of the following types of insurance and such insurance has been approved by the Owner, nor shall the Construction Manager allow any subcontractor to commence work on its subcontract until all similar insurance required of the subcontractor has been so obtained and approved. All insurance policies shall be from insurers qualified and doing business in Florida with an AM Best Company rating of no less than A.
2. 'Worker's Compensation Insurance - The Construction Manager shall take out and maintain during the life of this Agreement Worker's Compensation Insurance for all his employees, and the like, connected with the work of this Project and, in case any work is sublet, the Construction Manager shall require the subcontractor similarly to provide Worker's Compensation Insurance for all of the subcontractor's employees unless such employees are covered by the protection afforded by the Construction Manager. Such insurance shall comply with Florida Worker's Compensation Law. In case any class of employees, engaged in hazardous work on the Project, is not protected under the Worker's Compensation statute, the Construction Manager shall provide adequate insurance, satisfactory to the Owner, for the protection of employees not otherwise protected. Employers' liability shall be no less than \$1,000,000/1,000,000/1,000,000.
3. Construction Manager's Public Liability and Property Damage Insurance - The Construction Manager shall take out and maintain during the life of this Agreement, Comprehensive General Liability and Comprehensive Automobile Liability Insurance to protect it from claims of damage for personal injury, including

accidental death, as well as claims for property damage which may arise from its operations under this Agreement whether such operations are by the Construction Manager or by anyone directly or indirectly employed by it, and the amount of such insurance shall have the following minimum limits:

- A. GENERAL LIABILITY: One Million Dollars (\$1,000,000.00) each occurrence; GENERAL AGGREGATE: Two Million Dollars (\$2,000,000.00). There shall not be an EFIS Exclusion Endorsement on any general liability policy;
 - B. Automobile Liability Coverages, One Million Dollars (\$1,000,000.00) combined single limit, and One Million Dollars (\$1,000,000.00) for each occurrence of bodily injury and property damage;
 - C. Excess Liability, Umbrella Coverage, Two Million Dollars (\$2,000,000.00) each occurrence.
- 4. Subcontractor's Public Liability and Property Damage Insurance - The Construction Manager shall require each of its subcontractors to procure and maintain during the life of any such subcontract, insurance coverage of the types specified above or insure the activities of the subcontractors in the Construction Manager's policies, as specified above.
 - 5. "XCU" (Explosion, Collapse, Underground Damage) - The Construction Manager's Liability Policy shall provide "XCU" coverage for those classifications in which they are excluded.
 - 6. Products and completed operations Coverages - The Construction Manager's Liability Policy shall include Broad Form Property Damage Coverage, Products and Completed Operations Coverages. The products and completed operations portions of the liability coverage shall extend for a period of two (2) years after the Final Acceptance of the Project by the Owner.
 - 7. Contractual Liability Work Contracts - The Construction Manager's Liability Policy shall include Contractual Liability Coverage designed to protect the Construction Manager for contractual liabilities assumed by the Construction Manager in the performance of this Agreement.
 - 8. Indemnification Rider -
 - A. To cover to the fullest extent permitted by law, the Construction Manager shall indemnify and hold harmless the Owner and the Architect-Engineer and their agents and employees from and against all claims, damages, losses and expenses, including but not limited to attorney's fees, arising out of or resulting from the performance of the Project, provided that any such claim, damage, loss or expense (1) is attributable to bodily injury, sickness, disease

or death, or to injury to or destruction of tangible property (other than the work itself), and to the extent it (2) is caused in whole or in part by any negligent act or omission of the Construction Manager, any subcontractor, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, regardless of whether or not it is caused in part by a party indemnified hereunder. Such obligation shall not be construed to negate, abridge, or otherwise reduce any other right to obligation of indemnity which would otherwise exist as to any party or person described in this Article.

- B. In any and all claims against the Owner or the Architect-Engineer or any of their agents or employees by any employee of the Construction Manager, any subcontractor, anyone directly or indirectly employed by either or anyone for whose acts either may be liable, the indemnification obligations under this Paragraph shall not be limited in any way by any limitation on the amount or type of damages, compensation or benefits payable by or for the Construction Manager or any subcontractor under workers' or workmen's compensation acts, disability benefit acts or other employee benefit acts.
 - C. The obligations of the Construction Manager under this Article 13.2(8) shall not extend to the liability of Architect-Engineer, his agents or employees, arising out of (1) the preparation or approval of maps, drawings, opinions, reports, surveys, change orders, designs or specifications, or (2) the giving of or the failure to give directions or instruction by Architect-Engineer, its agents or employees provided such giving or failure to give is the primary cause of the injury or damage.
 - D. The Construction Manager hereby acknowledges receipt of Ten Dollars (\$10.00) and other good and valuable consideration from the Owner and acknowledges receipt of Ten Dollars (\$10.00) and other good and valuable consideration from the Architect-Engineer in exchange for giving the Owner and Architect-Engineer, respectively, the indemnification provided above in Articles 13.1 and 13.2.
9. Builder's Risk Coverage - The Construction Manager shall take out and maintain a "Builder's Risk Policy" for each assigned Project, issued to provide coverages on an "all risk" basis including theft. This coverage shall not lapse or be canceled because of partial occupancy by the Owner prior to Final Acceptance of the Project. The Owner may elect to take out and maintain this insurance coverage. Should the Owner purchase said insurance, the insurance policy shall have a deductible for each occurrence of Five Thousand and 00/100 Dollars (\$5,000.00). The Construction Manager shall be responsible for paying any deductible amount.
10. Certificate of Insurance - For every insurance policy required hereunder, the Construction Manager shall provide the Owner with a Certificate of Insurance

evidencing such coverage for the duration of this Agreement, or such longer period if required hereunder. Said Certificate of Insurance shall be dated and show:

- A. The name of the insured Construction Manager;
 - B. The specified job by name and job number;
 - C. List the "CITY OF MOUNT DORA" as an Additional Insured;
 - D. Recognizes the Indemnification requirements of this Agreement;
 - E. The name of the insurer;
 - F. The number of the policy;
 - G. The effective date;
 - H. The termination date;
 - I. A statement that the insurer will mail notice to the CITY at least thirty (30) days prior to any material changes in the provisions or cancellation of the policy.
11. Receipt of certificates or other documentation of insurance or policies or copies of policies by the Owner, or by any of its representatives, which indicates less coverage than is required hereunder, does not constitute a waiver of the Construction Manager's obligation to fulfill the insurance requirements specified herein.
12. The Construction Manager shall ensure that any sub-contractor(s), hired to perform any of the work on any part of the Project, maintain appropriate insurance as determined by the Construction Manager. In addition, the Construction Manager shall maintain proof of same on file and made readily available upon request by the Owner.

13.3 Waiver of Subrogation:

- 1. The Owner and the Construction Manager waive all rights against each other, for damages caused by perils covered by insurance provided under Article 13.2 to the extent they are covered by such insurance except such rights as either may have to the proceeds of such insurance held by the Owner and Construction Manager as trustees. The Construction Manager shall require similar waivers from all subcontractors and their sub-subcontractors.
- 2. The Owner and Construction Manager waive all rights against each other for loss or damage to any equipment used in connection with the Project and covered by any property insurance. The Construction Manager shall require similar waivers from all subcontractors and their sub-subcontractors.
- 3. The Owner waives subrogation against the Construction Manager on all property and consequential loss policies carried by the Owner on adjacent properties and under property and consequential loss policies purchased for the Project after its completion.

4. If the policies of insurance referred to in this Article require an endorsement to provide for continued coverage where there is a waiver of subrogation, the Owner of such policies will cause them to be so endorsed and failure to obtain proper endorsement nullifies the waiver of subrogation.

ARTICLE 14
TERMINATION OF THE AGREEMENT AND OWNER'S RIGHT TO
PERFORM CONSTRUCTION MANAGER'S OBLIGATION

14.1 Termination by the Construction Manager:

If the Project is stopped for a period of thirty (30) days under an order of any court or other public authority having jurisdiction or as a result of an act of government, such as a declaration of a national emergency making materials unavailable, through no act or fault of the Construction Manager, or if the Project should be stopped for a period of sixty (60) days by the Construction Manager, for the Owner's failure to make payments thereon, then the Construction Manager may, upon seven (7) days written notice to the Owner, request payment for all work executed, the Construction Manager's fees earned to date, and for any proven loss sustained upon any materials, equipment, tools, construction equipment and machinery, including reasonable profit thereon and termination expenses incurred by the Construction Manager.

14.2 Owner's Right to Perform Construction Manager's Obligations and Termination by Owner for Cause:

1. If the Construction Manager fails to perform any of its obligations under this Agreement, including any obligation it assumes to perform work with its own forces, the Owner may correct any deficiencies after providing seven (7) days written notice to the Construction Manager. In such an event, the GMP, or the actual cost of the Project, whichever is less, shall be reduced by the cost to the Owner of correcting such deficiencies and the Construction Manager's Construction Phase Fee shall also be reduced by the amount required to manage the correction of such deficiencies.
2. The Owner may, without prejudice to any other right or remedy and upon providing the Construction Manager and its surety, if any, seven (7) days written notice of failures or deficiencies, terminate this Agreement with the Construction Manager and take possession of the site and of all materials, equipment, tools, construction equipment and machinery thereon, owned by the Construction Manager, and may finish the Project by whatever means or method the Owner, in its sole discretion, deems appropriate.
3. If the Construction Manager is adjudged bankrupt, or if it makes a general assignment for the benefit of its creditors, or if a receiver is appointed on account of the Construction Manager's insolvency, or if it persistently or repeatedly refuses or fails, except in cases for which an extension of time is provided, to supply enough

properly skilled workmen or proper materials and fails to maintain an established schedule by falling forty-five (45) days or more behind the schedule adopted by the Construction Team, or if the Construction Manager fails to make prompt payments to subcontractors for materials or labor, or persistently disregards laws, rules, ordinances, regulations or orders of any public authority having jurisdiction, or otherwise is in breach of a material provision of this Agreement, the Construction Manager shall not be entitled to receive any further payment until the Project is finished nor shall it be relieved from its obligations assumed under Article 6. Reasonable termination expenses incurred by the Owner may be deducted from any payments which remain owed to the Construction Manager, excluding any monies owed the Construction Manager for subcontract work.

14.3 Termination by Owner Without Cause:

1. The Owner may, at any time, terminate the Contract for the Owner's convenience and without cause take possession of the site and of all materials, equipment, tools, construction equipment and machinery thereon, owned by the Construction Manager, and may finish the Project by whatever method he may deem expedient without prejudice to any right or remedy.
2. Upon seven (7) days written notice from the Owner of such termination for the Owner's convenience, the Contractor shall:
 - A. cease operations as directed by the Owner in the notice;
 - B. take actions necessary, or that the Owner may direct, for the protection and preservation of the work; and
 - C. terminate all existing subcontracts and purchase orders and not enter into further subcontracts and purchase orders, except for work directed to be performed prior to the effective date of termination stated in the notice.
3. In case of such termination for the Owner's convenience, the Construction Manager shall be entitled to receive payment for work executed, and costs incurred by reason of such termination, along with a reasonable fee, as defined in Article 8.1(2), overhead and profit on the work performed.

ARTICLE 15
ASSIGNMENT AND GOVERNING LAW

- 15.1 Neither the Owner nor the Construction Manager shall assign its interest in this Agreement without the written consent of the other except as to the assignment of proceeds.
- 15.2 This Agreement shall be governed by the laws of the State of Florida. Venue shall be in Lake County, Florida. The parties waive all rights to trial by jury.

ARTICLE 16
NOTICE OF CLAIM; WAIVER OF REMEDIES

16.1 The Owner's liability to the Construction Manager for any claims arising out of or related to the subject matter of this Agreement, whether in contract or tort, including, but not limited to, claims for extension of construction time, for payment by the Owner of the costs, damages or losses because of changed conditions under which the work is to be performed, or for additional work, shall be governed by the following provisions:

1. All claims must be submitted as a Request for Change Order in the manner as provided herein;
2. The Construction Manager must submit a Notice of Claim to Owner within twenty (20) days of the Construction Manager becoming aware of the occurrence, or the event, giving rise to the claim; and
3. Within ten (10) days of submitting its Notice of Claim, the Construction Manager shall submit to the Owner its Request for Change Order, which shall include a written statement of all the details of the claim, including a description of the work affected.

The Construction Manager agrees that the Owner shall not be liable for any claim that the Construction Manager fails to submit as a Request for Change Order as provided in this paragraph to the extent that the Owner is prejudiced by the failure of the Construction Manager to submit the Request for Change Order.

16.2 After receipt of a Request for Change Order, the Owner, in consultation with the Architect-Engineer, shall deliver to the Construction Manager its written determination of the claim.

16.3 For work the Construction Manager performs with its own forces, and in addition to the adjustments provided for in Article 8, the Construction Manager's exclusive remedy for delays in performance of the construction caused by events beyond its control, including delays claimed to be caused by or attributable to the Owner or the Architect-Engineer, including claims based on breach of contract or negligence, shall be a claim submitted in compliance with Article 16.1 above, for an extension of the scheduled construction time. In the event of a change in such work, the Construction Manager's claims for adjustments in the contract sum are limited exclusively to its actual costs for such changes plus the Construction Manager's Fee established at each Project's Original GMP. The Construction Manager expressly agrees that the foregoing constitutes its sole and exclusive remedy for delays and changes in work, and eliminates any other remedies for claims for increase in the contract price, delays, changes in the work, damages, losses or additional compensation.

ARTICLE 17
DIRECT MATERIALS ACQUISITION AND SALES TAX EXEMPT
PURCHASE PROCEDURES FOR PUBLIC PROJECTS

17.1 Direct Materials Acquisition by Owner - Supply Bonds:

1. The Construction Manager shall ensure that each subcontractor includes Florida state tax and other applicable sales tax for all material, supplies and equipment included in a subcontractor's bid.
2. The Owner may, if not prohibited by law, exercise a right to purchase directly, various construction materials, supplies and equipment that may be part of this Agreement or of a subcontract, provided that the Owner receives proper authorization from the State of Florida in the form of a Technical Assistance Advisement as set forth in Florida Administrative Code, Rule 12-11.003. Any materials purchased by the Owner shall be referred to as "Owner Purchased Materials" and the responsibilities of both the Owner and the Construction Manager relating to such Owner Purchased Materials shall be governed by the terms and conditions of this Article, which shall take precedence over other conditions and terms of this Agreement where inconsistencies or conflicts exist.
3. The Owner will issue its own purchase orders directly to a vendor. The Owner's Purchase Order shall contain or be accompanied by the Owner's exemption certificate and must include the Owner's name, address and exemption number with issue and expiration date shown. The materials shall be purchased from the vendors and suppliers selected by the Construction Manager or subcontractor for prices negotiated by the Construction Manager or subcontractor, as applicable. The Construction Manager will provide all the necessary information for preparation of the purchase orders by the Owner and will coordinate the purchase of the materials in a timely manner so as to not negatively impact the performance of the construction activity of the Project.
4. The subcontract amount shall be reduced by the net, undiscounted amount of these purchase orders, plus all sales taxes. Issuance of the purchase orders by the Owner shall not relieve the subcontractor or the Construction Manager of any of their responsibilities regarding material purchases, or installation, with the exception of the payments for the material so purchased. The Construction Manager and the subcontractor shall remain, with respect to materials, supplies and equipment, fully responsible for coordination, correct quantities ordered, submittals, protection, storage, scheduling, shipping, security, expediting, receiving, installation, cleaning and the management of all applicable warranties.
5. As Owner Purchased Materials are delivered to the jobsite, the Construction Manager, as Owner's representative, shall visually inspect all shipments from the suppliers, and approve the vendor's invoice for material delivered. The Construction Manager shall assure that each delivery of Owner Purchased Material

is accompanied by documentation adequate to identify the purchase order against which the purchase is made. This documentation may consist of a delivery ticket and an invoice from the supplier conforming to the Purchase Order, together with such additional information as the Owner or Construction Manager may require. The Construction Manager, as Owner's representative, shall verify in writing to the Owner the accuracy of the delivery ticket. The vendor will then forward the invoice to the Owner through the Construction Manager for payment. The invoice shall be thereupon furnished to the Owner for processing and payment in the same manner that all other Owner invoices are processed. The Owner shall have the right to assign Owner personnel to verify and audit the accuracy of all Direct Purchase documents.

6. Notwithstanding the transfer of Owner Purchased Materials by the Owner to the Construction Manager's possession, the Owner shall retain title to any and all Owner Purchased Materials.
7. The Owner shall purchase and maintain insurance which shall be sufficient to protect against any loss of or damage to Owner purchased equipment, materials or supplies. Such insurance shall cover the value of any Owner Purchased Materials not yet incorporated into the Project from the time the Owner first takes title.
8. The material supplier may be required to provide a supply bond in the amount of 100% of the purchase order price. The bond shall be from a qualified surety company authorized to do business in the State of Florida and acceptable to the Owner and the Construction Manager. If a supply bond is required, the cost of the bond will be added to the amount of the Purchase Order. The premium cost for this supply bond shall be included in the bid price. Verifying that a designated material supplier can furnish a supply bond, if required, will be the responsibility of the Construction Manager. Owner reserves the right to waive the requirement of providing a supply bond at the discretion of Owner.
9. If the State of Florida assesses any sales tax penalties and/or interest against the Construction Manager or any of its subcontractors or material suppliers relating to the direct acquisition of materials and/or equipment by Owner as authorized by this paragraph, such taxes, penalties, interest and/or any legal and administrative fees expended by the Construction Manager as a direct result of any action or assessment made by the State of Florida, shall be reimbursed by Owner to the Construction Manager in a prompt and reasonable manner and shall not be considered a Project Cost.

18.2 Sales Tax Exempt Purchasing Procedures for Public Projects:

1. The Construction Manager has included Florida sales tax and other applicable taxes in its bid for material, supplies and equipment. The Owner, being exempt from sales tax, reserves the right to make direct purchases of various construction equipment, materials or supplies included in any subcontractor's bid and/or contract.

2. Any equipment, materials or supplies directly purchased by the Owner that are included in the Construction Manager's contract or any subcontract shall be referred to as Owner Purchased Materials and the responsibilities of both the Owner and the subcontractor relating to such Owner Purchased Materials shall be governed by these procedures.
3. Material suppliers shall be selected by the Construction Manager or subcontractor, as applicable.
4. Owner purchasing of construction materials, if selected, will be administered on a deductive Change Order basis and the contract amount shall be reduced by the net undiscounted amount of the purchase orders issued by the Owner, plus all sales tax included.
5. The Construction Manager shall provide a list of all intended suppliers, vendors and materialmen for consideration as Owner Purchased materials with a description of the materials to be supplied, estimated quantities and prices. This information shall be submitted to the Owner as soon as practicable.
6. The Construction Manager or subcontractors, as applicable, shall prepare a purchase order requisition form in a form acceptable to the Owner and the Construction Manager, to specifically identify the materials, which Owner has, at its sole option, elected to purchase directly. The purchase order requisition form shall include:
 - A. the name, address, telephone number and contact person for the material supplier;
 - B. manufacturer or brand, model or specification number of the item;
 - C. estimated quantity needed;
 - D. the price quoted by the supplier for the materials identified therein;
 - E. any sales tax associated with such quote; and
 - F. delivery dates
7. Construction Manager or subcontractor shall include reference to any terms and conditions, which have been negotiated with the vendors, such as payment terms, warranties, retainage and the like. The purchase order requisition forms are to be submitted to the Owner's Representative no less than seven (7) days prior to the need for ordering such Owner Purchased Materials, in order to provide sufficient time for Owner review and approval and to assure that such directly purchased materials may be directly purchased by Owner and delivered to the Project site without any delay to the Project.

8. After receipt of the purchase order requisition form, Owner shall prepare the Purchase Order for equipment, materials or supplies which the Owner chooses to purchase directly. Pursuant to the Purchase Order, the vendor will provide the required quantities of material at the price established in the vendor's quote to the Construction Manager or subcontractor, less any sales tax associated with such price. Promptly upon receipt of each Purchase Order, the Construction Manager shall verify the terms and conditions of the Purchase Order prior to its issuance to supplier and in a manner to assure proper and timely delivery of items. The Owner's Purchase Orders shall be accompanied by the Owner's exemption certificate and must include the Owner's name, address, and exemption number with issue and expiration date shown.
9. In conjunction with the execution of the Purchase Orders, by the suppliers, one or more deductive Change Orders shall be issued, referencing the full value of all Owner Purchased Materials to be provided by each supplier from whom the Owner elected to purchase material directly, plus all sales tax savings associated with such materials in the Construction Manager's price or subcontractor's bid.
10. Construction Manager shall be fully responsible for all matters relating to the receipt of materials furnished by the Owner in accordance with these procedures, including, but not limited to, verifying correct quantities, verifying documentation of orders in a timely manner, coordinating purchases, providing and obtaining all warranties and guarantees required by the Contract Documents, inspection and acceptance of the goods at the time of delivery, and loss or damage to equipment and materials following acceptance of items by the Owner. The Construction Manager shall coordinate delivery schedules, sequence of delivery, loading orientation and other arrangements normally required for the particular materials furnished. The Construction Manager shall provide all services required for the unloading, handling and storage of materials through installation. The Construction Manager agrees to indemnify and hold harmless the Owner from any and all claims of whatever nature resulting from non-payment of goods to suppliers arising from the actions or directions of the Construction Manager.
11. As Owner Purchased Materials are delivered to the jobsite, the Construction Manager, as Owner's representative, shall visually inspect all shipments from the suppliers and approve the vendor's invoice for material delivered. The Construction Manager shall assure that each delivery of Owner Purchased Material is accompanied by documentation adequate to identify the purchase order against which the purchase is made. This documentation may consist of a delivery ticket and an invoice from the supplier conforming to the purchase order, together with such additional information as the Owner or Construction Manager may require. The Construction Manager, as Owner's representative, shall verify in writing to the Owner the accuracy of the delivery ticket. The vendor will then forward the invoice to the Owner through the Construction Manager for payment. The invoice shall be thereupon furnished to the Owner for processing and payment in the manner all

other Owner invoices are processed. The Owner shall have the right to assign Owner personnel to verify and audit the accuracy of all Direct Purchase documents.

12. The Construction Manager shall ensure that Owner Purchased Materials conform to the Specifications, and determine prior to incorporation into the work if such materials are patently defective and whether such materials are identical to the materials ordered and match the description on the bill of lading. If the Construction Manager discovers defective or nonconformity in the Owner Purchased Material, upon such visual inspection, the Construction Manager shall not utilize such nonconforming or defective materials in the work, shall promptly take action to remedy the defect or nonconformance so as not to delay the Project and shall promptly notify the vendor of the defective or non-conforming condition in order to pursue repair or replacement of those materials without any undue delay or interruption to the Project. Additionally, the Construction Manager shall notify the Owner of such occurrence. If the Construction Manager fails to perform such inspection and otherwise incorporates defective or nonconforming Owner Purchased Materials, the condition of which it either knew or should have known by performance of an inspection, the Construction Manager shall be responsible for all damages to the Owner resulting from the incorporation of such materials into the Project, including liquidated or delay damages.
13. The Construction Manager shall maintain records of all Owner Purchased Materials it incorporates into the work from the stock of Owner Purchased Materials in its possession. The Construction Manager shall account monthly to the Owner for any Owner Purchased Materials delivered into the Construction Manager's possession, including portions of all such materials, which have been incorporated into the work.
14. The Construction Manager shall be responsible for obtaining and managing all warranties and guarantees for all materials and products. All repairs, maintenance or damage repair calls shall be handled by the Construction Manager for resolution with the appropriate supplier or vendor.
15. Notwithstanding the transfer of Owner Purchased Materials by the Owner to the Construction Manager's possession, the Owner shall retain title to any and all Owner Purchased Materials.
16. The transfer of possession of Owner Purchased Materials from the Owner to the Construction Manager shall constitute a bailment for mutual benefit of the Owner and the Construction Manager. The Owner shall be considered the bailor and the Construction Manager the bailee of the Owner Purchased Materials. Owner Purchased Materials shall be considered returned to the Owner for purposes of its bailment at such time as they are incorporated into the Project or consumed in the process of completing the project. The Construction Manager shall have the duty to safeguard, store and protect all Owner Purchased Materials.

17. The Owner shall purchase and maintain insurance which shall be sufficient to protect against any loss of or damage to Owner Purchased equipment, materials or supplies. Such insurance shall cover the full value of any Owner Purchased Materials not yet incorporated into the Project from the time the Owner first takes title.
18. The Owner shall in no way be liable for interruption or delay in the Project, for any defects or other problems with the Project, or for any extra costs or time resulting from delay in the delivery of, or defects in, Owner Purchased Materials.
19. On a monthly basis, the Construction Manager shall be required to review invoices submitted by all suppliers of Owner Purchased Materials delivered to the Project site during that month and either concur or object to the Owner's issuance of payment to the suppliers, based upon the Construction Manager's records of materials delivered to the site and any defects in such materials.
20. In order to arrange for the prompt payment to the supplier, the Construction Manager shall provide the Owner with a copy of the applicable Purchase Order, invoices, delivery tickets, written acceptance of the delivered items and such other documentation as may be reasonably required by the Owner. Upon receipt and verification of the appropriate documentation, the Owner shall prepare a check drawn to the supplier based upon the receipt of data provided. The check will be released, delivered and remitted directly to the supplier. The Construction Manager agrees to assist the Owner to immediately obtain partial or final release of lien waivers as appropriate.
21. At the end of the Project, any refund for surplus materials returned to suppliers plus applicable sales tax savings amounts shall be credited with an additive Change Order to the applicable subcontractor agreement with the Construction Manager. Salvage materials shall be the property of the Owner and stored or removed from the site by the Construction Manager at the Owner's direction.

ARTICLE 18

MISCELLANEOUS

18.1 Harmony:

1. The Construction Manager is advised and hereby agrees that it will exert every reasonable and diligent effort to assure that all labor employed by the Construction Manager and its Subcontractors for work on the Project shall work in harmony with and be compatible with all other labor being used by building and construction contractors now or hereafter on the site of the Project.
2. The Construction Manager further agrees that the above provision will be included in all contracts with the subcontractors; however, said provision shall not be interpreted or enforced so as to deny or abridge, on account of membership or non-

membership in any labor union or labor organization, the right of any person to work as guaranteed by Article 1, Section 6 of the Florida Constitution.

18.2 Dispute Resolution:

1. All claims, disputes and other matters in question, hereinafter referred to as a "Controversy", between the parties to this Agreement arising out of or relating to this Agreement or the breach thereof shall be initially submitted to mediation if mutually agreeable in accordance with the Construction Mediation Rules of the American Arbitration Association ("AAA") or any other mutually agreeable mediation firm.
2. Should either the Owner or the Construction Manager feel it necessary and appropriate to take any legal action to enforce any of the terms or conditions of this Agreement, then each party shall be responsible for its own attorney's fees and costs associated with such litigation.

18.3 Construction Manager's Project Records:

The Construction Manager's Project records shall be maintained for the minimum period required by state and federal law, and shall be made available to the Owner or its authorized representative at mutually convenient times.

18.4 Consequential Damages:

The parties mutually waive all claims for consequential damages, except to the extent paid for by insurance maintained for this project.

18.5 Public Records:

1. Pursuant to Florida Statutes, Section 119.0701:

**IF YOU HAVE QUESTIONS REGARDING THE APPLICATION OF
FLORIDA STATUTES, CHAPTER 119, TO YOUR DUTY TO PROVIDE
PUBLIC RECORDS RELATING TO THIS CONTRACT, CONTACT THE
ITY'S/OWNER'S CUSTODIAN OF PUBLIC RECORDS:**

**CITY CLERK: GWEN JOHNS
510 NORTH BAKER STREET
MOUNT DORA, FL 32757
(352) 735-7126
JOHNSG@CITYOFMOUNTDORA.COM**

2. Construction Manager agrees to comply with public records laws, specifically to:

- A. Keep and maintain public records required by the City/Owner to perform the services set forth herein.
- B. Upon request from the City's/Owner's custodian of public records, provide the City/Owner 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 Florida Statutes, Chapter 119, or as otherwise provided by law.
- C. Ensure that public records which 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/Owner.
- D. Upon completion of the contract, transfer, at no cost to the City/Owner, all public records in possession of the Construction Manager or keep and maintain public records required by the City/Owner to perform the services set forth herein. If the Construction Manager transfers all public records to the City/Owner upon completion of the contract, the Construction Manager shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If the Construction Manager keeps and maintains public records upon completion of the contract, the Construction Manager shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to the City/Owner, upon request from the City's/Owner's custodian of public records, in a format that is compatible with the information technology systems of the City/Owner.

18.6 Severability:

All clauses found herein shall act independently of each other. If a clause is found to be illegal or unenforceable, it shall have no effect on any other provision of this Agreement. It is understood by the parties hereto that if any part, term, or provision of this Agreement is by the courts held to be illegal or in conflict with any law of the State of Florida or the United States, the validity of the remaining portions or provisions shall not be affected, and the rights and obligations of the parties shall be construed and enforced as if the Agreement did not contain the particular part, term, or provision held to be invalid.

18.7 Waiver:

Failure of the parties to insist upon strict performance of any of the covenants, terms, provisions, or conditions of this Agreement or to exercise any right or option herein contained, shall not be construed as a waiver or a relinquishment for the future of any such covenant, term, provision, or condition, or right of election, but same shall remain in full force and effect.

18.8 Notice:

The parties hereto agree and understand that written notice, mailed or delivered to the last known mailing address, shall constitute sufficient notice to the Owner and the Construction Manager. All notices required and/or made pursuant to this Agreement to be given to the Owner and the Construction Manager shall be in writing and given by way of the United States Postal Service, first class mail, postage prepaid, addressed to the following addresses of record:

Owner: City of Mount Dora
Attention: City Manager
510 N. Baker Street
Mount Dora, Florida 32757

with copy to: City Attorney
Bell & Roper, P.A.
2707 E. Jefferson Street
Orlando, Florida 32803

Construction Manager: Evergreen Construction Management, Inc.
30941 Suneagle Drive
Mount Dora Florida 32757

18.9 Modification:

The covenants, terms, and provisions of this Agreement may be modified by way of a written instrument, mutually accepted by the parties hereto. In the event of a conflict between the covenants, terms, and/or provisions of this Agreement and any written Amendment(s) hereto, the provisions of the latest executed instrument shall take precedence.

18.10 Headings:

All headings of the sections, exhibits, and attachments contained in this Agreement are for the purpose of convenience only and shall not be deemed to expand, limit, or change the provisions contained in such sections, exhibits, and attachments.

18.11 Joint Authorship:

This Agreement shall be construed as resulting from joint negotiation and authorship. No part of this Agreement shall be construed as the product of any one of the parties hereto.

18.12 Equal Opportunity Employer:

The Construction Manager is an Equal Opportunity Employer and will comply with all equal opportunity employment laws. The Construction Manager will further ensure that

all sub-contractors it utilizes in providing the services required hereunder will comply with all equal opportunity employment laws. During the performance of this contract, the Construction Manager agrees as follows:

1. The Construction Manager will not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender identity or national origin. The Construction Manager will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, sexual orientation, gender identity or national origin. Such action shall include, but not be limited to the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Construction Manager agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause.
2. The Construction Manager will, in all solicitations or advertisements for employees placed by or on behalf of the Construction Manager, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, sexual orientation, gender identity or national origin.
3. The Construction Manager will not discharge or in any other manner discriminate against any employee or applicant for employment because such employee or applicant has inquired about, discussed or disclosed the compensation of the employee or applicant or another employee or applicant. This provision shall not apply to instances in which an employee who has access to the compensation information of other employees or applicants as a part of such employee's essential job functions discloses the compensation of such other employees or applicants to individuals who do not otherwise have access to such information, unless such disclosure is in response to a formal complaint or charge, in furtherance of an investigation, proceeding, hearing or action, including an investigation conducted by the employer or is consistent with the contractor's legal duty to furnish information.
4. The Construction Manager will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice to be provided advising the said labor union or workers' representatives of the Construction Manager's commitments under this section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
5. The Construction Manager will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations and relevant orders of the Secretary of Labor.

6. The Construction Manager will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by rules, regulations and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the administering agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations and orders.
7. In the event of the Construction Manager's noncompliance with the nondiscrimination clauses of this Agreement or with any of the said rules, regulations, or orders, this Agreement may be canceled, terminated or suspended in whole or in part and the Construction Manager may be declared ineligible for further Government contracts or federally assisted construction contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation or order of the Secretary of Labor, or as otherwise provided by law.
8. The Construction Manager will include the provisions of paragraphs (1) through and including this paragraph (7) in every subcontract or purchase order unless exempted by rules, regulations or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The Construction Manager will take such action with respect to any subcontract or purchase order as necessary.

18.13 Compliance with the Davis-Bacon Act:

1. To be determined at GMP, all transactions regarding this Agreement shall be done in compliance with the Davis-Bacon Act (40 U.S.C. 3141- 3144, and 3146-3148) and the requirements of 29 C.F.R. pt. 5 as may be applicable. The Construction Manager shall comply with 40 U.S.C. 3141-3144, and 3146-3148 and the requirements of 29 C.F.R. pt. 5 as applicable.
2. The Construction Manager is required to pay wages to laborers and mechanics at a rate not less than the prevailing wages specified in a wage determination made by the Secretary of Labor.

18.14 Compliance with the Copeland "Anti-Kickback" Act:

1. The Construction Manager shall comply with 18 U.S.C. § 874, 40 U.S.C. § 3145, and the requirements of 29 C.F.R. pt. 3 as may be applicable, which are incorporated by reference into this contract.
2. The Construction Manager shall ensure that any subcontracts contain the above clause and such other clauses as FEMA may by appropriate instructions require, and also a clause requiring the subcontractors include these clauses in any lower

tier subcontracts. The Construction Manager shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all such contract clauses.

3. A breach of the contract clauses above may be grounds for termination of the Agreement.

18.15 Clean Air Act:

1. The Construction Manager agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. § 7401 et seq.
2. The Construction Manager agrees to report each violation to the Owner and understands and agrees that the Owner will, in turn, report each violation as required to assure notification to the Federal Emergency Management Agency, and the appropriate Environmental Protection Agency Regional Office.
3. The Construction Manager agrees to include these requirements in each subcontract exceeding \$150,000.00, financed in whole or in part with Federal assistance provided by FEMA.

18.16 Applicable Licensing and Compliance with all Laws:

The Construction Manager, at its sole expense, shall obtain all required federal, state, and local licenses, occupational and otherwise, required to successfully provide the services set forth herein. The Construction Manager, at its sole expense, shall comply with all laws, ordinances, judicial decisions, orders, and regulations of federal, state, county and municipal governments, as well as their respective departments, commissions, boards and officers, which are in effect at the time of execution of this Agreement or are adopted at any time following the execution of this Agreement, including any required processes, procedures or actions necessary to assist the Owner with reimbursement or enable the Owner to seek reimbursement from FEMA if the need arises. Notwithstanding any language herein to the contrary, in the event that any laws, ordinances, judicial decisions, orders, or regulations of the federal, state, county, or municipal governments change after execution of this Agreement, Construction Manager shall be entitled to an equitable adjustment in time as applicable and price to the extent the Construction Manager's direct costs, not including labor, are affected. Any such adjustment will be determined at the time of such an occurrence and there shall only be a construction phase fee on this item if it exceeds two percent (2%) for each separate GMP.

18.17 Use of City Logo, Name, Seal, Flag and/or City Letterhead:

The Construction Manager may only use the City of Mount Dora's name, logo seal and/or flag with the express written permission of the City and consistent with any City policy related to use of the same. In addition, the Construction Manager shall not use the City's

Letterhead for issuing any correspondence, for any purpose, without the express written consent of the Owner.

IN WITNESS WHEREOF, the parties hereto, by their duly authorized representatives, have executed this Agreement effective the 7 day of April, 2020.

CITY OF MOUNT DORA

**COMMUNITY REDEVELOPMENT AGENCY
OF THE CITY OF MOUNT DORA**

**NORTHEAST COMMUNITY
REDEVELOPMENT AGENCY OF THE CITY
OF MOUNT DORA**

CATHERINE T. HOECHST
MAYOR of the City of Mount Dora, Florida

ATTEST:

For the use and reliance of the City of Mount Dora, the CRA of the City of Mount Dora and the Northeast CRA of the City of Mount Dora only.
Approved as to form and legal sufficiency.

O P
OWEN KEOUGH-JOHNS, MMC
CITY CLERK

Sherry G. Sulphen
City Attorney

**EVERGREEN CONSTRUCTION
MANAGEMENT, INC.**

By: _____

Print: Mark Starcher

Title: President

STATE OF FLORIDA
COUNTY OF Lake

The foregoing instrument was acknowledged before me by means of ☒ physical presence or [] online notarization of Mark Starcher, the President of Evergreen Construction Management, Inc., who personally swore or affirmed that he/she is authorized to execute this Agreement and thereby bind the Construction Manager, who is personally known to me or who produced _____ as identification, and who did/did not take an oath this 6th day of April, 2020.

(stamp)

Lita Conyers
NOTARY PUBLIC, State of Florida



EXHIBIT "A"

**CITY OF MOUNT DORA/CRA/Northeast CRA
TASK AUTHORIZATION**

In accordance with the terms and conditions of the Agreement between _____ (Construction Manager) and the City of Mount Dora/CRA/Northeast CRA, dated _____, the parties hereto agree to the scope of work, pricing/GMP, schedule, construction team and subcontractors attached hereto.

City Project Manager:

Construction Manager Contact:

Project Name:

Project Number:

**NOTE: THE CONTRACTOR MAY NOT BEGIN WORK UNTIL THIS FULLY SIGNED TASK
AUTHORIZATION IS DELIVERD TO THE CONTSTRUCTION MANAGER.**

SUMMARY OF WORK TO BE COMPLETED	
<u>Each Task Authorization package shall include:</u> Exhibit A – Scope of Work Exhibit B – Price/GMP Breakdown Exhibit C – Basic Schedule Exhibit D – Construction Team Exhibit E – Construction Manager's Staff Exhibit F – Sub-Contractors	
Recommended By: Print: _____ Date: _____ Signature: _____	
Reviewed By (if applicable): Print: _____ Date: _____ Signature: _____	
CONTRACTOR ACCEPTANCE	CITY APPROVAL
Print Name:	Print Name:
Title:	Title:
Signature:	Signature:
Date:	Date:

EXHIBIT "B"
CITY OF MOUNT DORA/CRA/Northeast CRA
AMENDMENT TO TASK AUTHORIZATION

In accordance with the terms and conditions of the Agreement between _____ (Construction Manager) and the City of Mount Dora, dated _____, and the Task Authorization dated _____ (Original Task Authorization), the parties hereto agree to the scope of work, pricing/GMP, schedule, construction team and subcontractors set forth herein. To the extent of any conflict between this Amendment and the Original Task Authorization, this Amendment shall prevail.

Amendment Number:

City Project Manager:

Construction Manager Contact:

Project Name:

Project Number:

NOTE: THE CONTRACTOR MAY NOT BEGIN WORK UNTIL THIS FULLY SIGNED AMENDMENT TO TASK AUTHORIZATION IS DELIVERD TO THE CONTSTRUCTION MANAGER.

SUMMARY OF WORK TO BE COMPLETED	
<u>Each Task Authorization package shall include:</u> Exhibit A – Scope of Work Exhibit B – Price/GMP Breakdown Exhibit C – Basic Schedule Exhibit D – Construction Team Exhibit E – Construction Manager's Staff Exhibit F – Sub-Contractors	
Recommended By: Print: _____ Date: _____ Signature: _____	
Reviewed By (if applicable): Print: _____ Date: _____ Signature: _____	
CONTRACTOR ACCEPTANCE	CITY APPROVAL
Print Name:	Print Name:
Title:	Title:
Signature:	Signature:
Date:	Date:

EXHIBIT "C"
CERTIFICATE OF SUBSTANTIAL COMPLETION

PROJECT NAME:
PROJECT ADDRESS:
PROJECT NUMBER:
CONTRACT DATE:
CONSTRUCTION MANAGER:

TO OWNER:
Name _____
Address _____

TO CONSTRUCTION MANAGER:
Name _____
Address _____

Copy to: _____

Project or portion of Project Designated for Partial Occupancy or Use:

The work performed on the Project under the Agreement has been reviewed and found, the Architect's best knowledge, information and belief to be substantially complete. Substantial Completion is the stage in the progress of the work when the work or designated portion is sufficiently complete in accordance with the Contract Documents so that the Owner can occupy or utilize the work for its intended use. The date of substantial completion of the Project or portion designated above is the date of issuance established by this Certificate of Substantial Completion, which is also the date of commencement of applicable warranties required by the Contract Documents as stated below:

Architect

By: _____

Date of Substantial Completion: _____

Print: _____

(Warranty Date of Commencement)

A Punch List of items to be completed or corrected is attached hereto. The failure to include any items on such Punch List does not alter the responsibility of the Construction Manager to complete all work in accordance with the Contract Documents. Unless otherwise agreed to in writing, the date of commencement of warranties for items on the attached list will be the date of issuance of the final Certificate of Payment or the date of final payment.

Cost Estimate of Work that is incomplete or defective: _____

The Construction Manager will complete or correct the work on the Punch List within _____ days from the above date of Substantial Completion.

Construction Manager

By: _____

Date: _____

Print: _____

The Owner hereby accepts the work or designated portions as substantially complete and will assume full possession at _____ am/pm on _____, 20__

Owner

By: _____

Date: _____

Print: _____

The responsibilities of the Owner and Construction Manager for security, maintenance, utilities, damage and insurance are as follows:

EXHIBIT "D"
CERTIFICATE OF FINAL COMPLETION

PROJECT NAME:
PROJECT ADDRESS:
PROJECT NUMBER:
CONTRACT DATE:
CONSTRUCTION MANAGER:
SUBSTANTIAL COMPLETION DATE:
FINAL PUNCHLIST INSPECTION DATE:

The Construction Manager hereby certifies that the work and all other requirements have been completed in accordance with the Contract Documents, including, but not limited to:

- ☐ completion of all discrepancies (Punchlist Items) noted at the time of Substantial Completion
- ☐ submission of "as-built" plans and specifications, shop drawings, and other record documents
- ☐ completion of all Owner training – submission of all contractually required stock and spare parts
- ☐ submission of all final Operation & Maintenance documents and other closeout deliverables
- ☐ submission of consent of Builder's surety
- ☐ submission and approval of all remaining change order proposals, claims, and applications for payment
- ☐ payment of all costs incurred for equipment, material, labor and services against the Project

The Construction Manager further certifies that:

- ☐ no liens have been attached against the Project
- ☐ no suits are pending by reason of work on the Project under the Contract for Construction
- ☐ all Workers' compensation claims are covered by Workers' Compensation Insurance as required by law
- ☐ all insurance required of the Construction Manager beyond final payment, if any, is in effect and will not be cancelled or allowed to be expired without notice to the Owner
- ☐ all public liability claims are adequately covered by insurance and that the Construction Manager shall save, protect, defend, indemnify and hold the Owner harmless from and against any and all claims which arise as a direct or indirect result of any transaction, event, occurrence, or omission related to performance of the work on the Project contemplated under said Contract for Construction.

Upon execution below, this Project will be considered complete. This consideration does not relieve the Construction Manager from its post-construction responsibilities, including correction of discrepancies noted during the first year after Substantial Completion, warranty issues, latent defects, and other requirements of the Contract or under Florida law.

Construction Manager

By: _____

Date: _____

Print: _____

STATE OF FLORIDA

COUNTY OF _____

The foregoing instrument was executed before me this _____ day of _____, 201_, by _____, as _____ of Evergreen Construction Group of Florida, LLC, who is authorized to bind Evergreen Construction Group of Florida, LLC, and who is personally known to me OR has produced _____ as identification.

(stamp)

NOTARY PUBLIC, State of Florida

Recommend By:

Architect

By: _____

Date: _____

Print: _____

Accepted By:

Owner

By: _____

Date: _____

Print: _____

EXHIBIT "E"
Partial Pay Request Form

APPLICATION AND CERTIFICATE FOR PAYMENT

PAGE 1

TO OWNER:

PROJECT:

APPLICATION NO: 001
PERIOD TO: 03/25/2020
PROJECT NOS.: 1810008

Distribution to:
☐ OWNER
☐ ARCHITECT
☐ CONTRACTOR
☐ FIELD
☐ OTHER

FROM CONTRACTOR:

VIA ARCHITECT:

CONTRACT DATE: 01/23/2020

Evergreen Construction
30941 Suneagle Drive
Mt Dora, FL 32757

CUSTOMER CONTRACT ID:
#02-856137

DESCRIPTION:

CONTRACTOR'S APPLICATION FOR PAYMENT

Application is made for Payment, as shown below, in cor
Continuation Sheet.

1. ORIGINAL CONTRACT SUM
2. Net change by Change Orders
3. CONTRACT SUM TO DATE (Line 1 + 2)
SCHEDULE OF VALUE
4. TOTAL COMPLETED & STORED TO DATE
5. RETAINAGE:
 - a. 3.41% of Completed Work
(Columns D + E)
 - b. 0.00% of Stored Material
(Column F)Total Retainage (Line 5a + 5b)
6. TOTAL EARNED LESS RETAINAGE
7. LESS PREVIOUS APPLICATIONS FOR PAYMENTS
8. CURRENT PAYMENT DUE
9. BALANCE TO FINISH, INCLUDING RETAINAGE ...

CHANGE ORDER SUMMARY	ADDITIONS	DEDUCTIONS
Total changes approved in previous months by Owner:	0.00	0.00
Total approved this Month:	0.00	0.00
TOTALS:	0.00	0.00
NET CHANGES by Change Order:	0.00	

The undersigned Contractor certifies that to the best of the Contractor's knowledge, information and belief the Work covered by this Application for Payment has been completed in accordance with the Contract Documents, that all amounts have been paid by the Contractor for Work for which previous Certificates for Payment were issued and payments received from the Owner, and that current payment shown herein is now due.

CONTRACTOR: Evergreen Construction

By: _____ Date: _____

Jerry Schafrath / Senior Executive CFO

State of: _____ County of: _____

Subscribed and sworn to before me this _____ day of _____

Notary Public:

My Commission expires:

ARCHITECT'S CERTIFICATE FOR PAYMENT

In accordance with the Contract Documents, based on on-site observations and the data comprising this application, the Architect certifies to the Owner that to the best of the Architect's knowledge, information and belief the Work has progressed as indicated, the quality of the Work is in accordance with the Contract Documents, and that the Contractor is entitled to payment of the AMOUNT CERTIFIED.

AMOUNT CERTIFIED \$ _____

(Attach explanation if amount certified differs from the amount applied for. Initial all figures on this Application and on the Continuation Sheet that are changed to conform to the amount certified.)

ARCHITECT:

By: _____ Date: _____

This Certificate is not negotiable. The AMOUNT CERTIFIED is payable only to the Contractor named herein. Issuance, payment and acceptance of payment are without prejudice to any rights of the Owner or Contractor under this Contract.

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CONTINUATION SHEET

PAGE 2

TO:

From:

Project Name:

Project #:

Application #:

Period:

A	B	C	D	E	F	G	H	I		
	DESCRIPTION	SCHEDULED VALUE (\$)	PRIOR COMPLETED AMOUNT (\$)	THIS PERIOD COMPLETED AMOUNT (\$)	PRESENTLY STORED AMOUNT (\$)	(D+E+F) COMPLETED & STORED TO DATE (\$)	(G/C) PROGRESS PERCENT	(C-G) BALANCE TO FINISH (\$)	RETAINAGE PERCENT	RETAINED AMOUNT (\$)
1	01 - Staffing & Site Requirements									10
2	GL Insurance									10
3	02 - Demolition & Site Work									10
4	03 - Concrete									10
5	05 - Metals									10
6	06 - Carpentry & Millwork									10
7	07 - Firestopping, Moisture & Thermal Protection									10
8	08.1 - Doors, Windows									10
9	08.4 - Glass & Storefront									10
10	09.1 - Drywall									10

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CONTINUATION SHEET

PAGE 3

TO:

From:

Project Name:

Project #:

Application #:

Period:

A	B	C	D	E	F	G		H		I
	DESCRIPTION	SCHEDULED VALUE (\$)	PRIOR COMPLETED AMOUNT (\$)	THIS PERIOD COMPLETED AMOUNT (\$)	PRESENTLY STORED AMOUNT (\$)	(D+E+F) COMPLETED & STORED TO DATE (\$)	(G/C) PROGRESS PERCENT	(C-G) BALANCE TO FINISH (\$)	RETAINAGE PERCENT	RETAINED AMOUNT (\$)
11	9.2 - Ceilings									
12	9.3 - Flooring									
13	9.5 - Painting									
14	10 - Specialities									
15	15.1 - Fire Protection									
16	15.2 - HVAC & Plumbing									
17	16 - Electrical									
18	Contingency									
19	Fee									
Totals:										

Page 68 of 68

Exhibit "B"
Agreement with Faden Builders, Inc.
for construction manager at risk services on an as-needed basis
for Citywide projects which are less than Two Million Dollars
RFQ-19-GS-018

**AGREEMENT
BETWEEN OWNER AND CONSTRUCTION MANAGER**

THIS AGREEMENT made by and between the City of Mount Dora, a municipal corporation of the State of Florida, 510 N. Baker Street, Mount Dora, Florida 32757, the Community Redevelopment Agency of the City of Mount Dora, 510 N. Baker Street, Mount Dora, Florida 32757, the Northeast Community Redevelopment Agency of the City of Mount Dora, 510 N. Baker Street, Mount Dora, Florida 32757, hereinafter singly and collectively referred to as "Owner" and Faden Builders, Inc, 1194 Camp Avenue, Mount Dora Florida 32757, hereinafter "Construction Manager".

**ARTICLE I
THE CONSTRUCTION TEAM AND EXTENT OF AGREEMENT**

The Construction Manager accepts the relationship of trust and confidence established between it and the Owner by this Agreement. The Construction Manager covenants with the Owner to furnish its best skill and judgment and to cooperate with the Architect-Engineer in furthering the interests of the Owner. The Construction Manager agrees to furnish efficient business administration and superintendence and use its best efforts to complete the various City project(s) in the soundest and most expeditious and economical manner, consistent with the interests of the Owner.

1.1 The Construction Team:

The Construction Manager, the Owner and the Architect-Engineer, called the "Construction Team", shall work jointly during design and through final construction completion and shall be available thereafter should additional services be required related to the Project. The Architect and the Construction Manager shall communicate through the Owner, except as may otherwise be provided in this Agreement or when direct communications have been specifically authorized by the Owner. The Construction Manager shall copy the Owner on all correspondence sent to or received from the Architect or any of its consultants of which the Owner was not copied.

The specific representatives of the Construction Team shall be established at the time of approval of each Task Authorization.

1.2 Extent of Agreement:

This Agreement for pre-construction and construction management services for the Project, between the Owner and the Construction Manager supersedes any prior negotiations, representations or agreements. The City will from time to time issue a Task Authorization to the Construction Manager, in the form attached hereto as **Exhibit "A"**, for individual City projects which may include either pre-construction and construction management services or construction management services only. If pre-construction services are required as part of a Project, an initial Task Authorization will be issued by the City Manager if the cost of the pre-construction services is within the City Manager's purchasing authority. Thereafter, once the drawings, specifications and other descriptive

documents for the Project are complete, an Amendment to Task Authorization in the form attached hereto as **Exhibit "B"**, will be issued following approval by the City Council of the guaranteed maximum price (GMP) for the specific construction management work to be completed for the Project. In the event pre-construction services exceed the City Manager's purchasing authority, a Task Authorization for the pre-construction services will be issued on the appropriate form, following approval of the same by the City Council. Thereafter, once the drawings, specifications and other descriptive documents for the Project are complete, an Amendment to Task Authorization, which shall include the GMP for the specific construction management work to be completed for the Project, shall be issued on the appropriate form following approval by the City Council. In the event pre-construction services are not required for a Project, once the drawings, specifications and the other descriptive documents for a Project have been approved, a Task Authorization will be issued following approval of the GMP for the Project by the City Council. To expedite the preparation of the GMP Amendment by the Owner, the Construction Manager shall obtain two (2) sets of dated drawings, specifications and other documents upon which the GMP is based from the Architect-Engineer via the Owner. The Construction Manager shall acknowledge on the face of each set of drawings, that it is the set upon which the GMP is based. Thereafter one set of the documents shall be sent to the Owner along with the GMP proposal. This Agreement shall not be superseded by any provisions/revisions of the documents for construction and may be amended only by written instrument signed by both Owner and Construction Manager.

- 1.3 **Definitions:** The following definitions shall be applicable to this Agreement. Any words which are not set forth below but are found capitalized throughout this Agreement shall have the meanings established in the various Articles and/or Sections of this Agreement:

Architect-Engineer - To be determined by the Owner as applicable for each separate Project for which a Task Authorization is issued.

Construction Documents - This Contract, the Drawings, Specifications and related Construction Documents or any other documents incorporated herein by reference.

Construction Manager – Faden Builders, Inc.

Estimate - The Construction Manager's latest estimate of probable project construction costs

Final Completion - The following items have been completed or satisfied:

1. Construction of the Project is totally complete, including all work on the Contract Documents and certified as such by the Owner and Architect.
2. The Project is suitable for full use and occupancy as determined by the Owner and Architect.
3. All Punch List items have been completed or otherwise disposed of or accounted for to the Owner's satisfaction and approval.

4. A Final Certificate of Occupancy and all other permits and approvals required have been legally and validly issued.
5. Final executed Releases of Lien have been delivered to the Owner by Construction Manager.

General Conditions - Those items that are not specific to any trade and are required for the construction of the Project. Examples of General Conditions items include daily cleanup and safety rails.

Owner - City of Mount Dora, a municipal corporation of the State of Florida, on behalf of itself, the Community Redevelopment Agency of the City of Mount Dora (CRA) pursuant to Resolution 2020-24 (CRA) and the Northeast Community Redevelopment Agency of the City of Mount Dora (Northeast CRA) pursuant to Resolution 2020-24 (Northeast CRA).

Owner's Representative - The Owner's Representative is its Construction Project Manager, who is Chet Cramer, or such other individual designated, in writing, by the City Manager.

Project - The Project shall mean the total work to be performed under each Task Authorization, or Amendment thereto, issued pursuant to this Agreement. The Project may consist of pre-construction planning, design and permitting services, as well as construction and code inspection services for various construction projects which do not exceed Two Million Dollars in total construction costs.

Punch List - 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/completion.

Substantial Completion Date - The date, certified by the Architect, 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 Owner can reasonably occupy or utilize the Project, or designated portion thereof, for its intended use. Additionally, complete all items referred to as necessary for Substantial Completion.

Task Authorization or Amendment to Task Authorization - The document issued to the Construction Manager which sets forth the service expectations, schedules, pricing/GMP, construction team and subcontractors for a specified Project.

1.4 Owner's Construction Budget:

Owner's funds budgeted and requested for construction of the Project: The Owner's Construction Budget for each Project is Two Million Dollars or less, including all preconstruction services, Construction Manager fees, costs of the work and the Owner's and Construction Manager's construction and interface contingencies as defined in Articles

8 and 9. This acknowledgment of the Owner's budgeted funds is not to be construed as the Construction Manager's Guaranteed Maximum Price. A Guaranteed Maximum Price will be offered by separate documentation as outlined in Article 7.

ARTICLE 2

CONSTRUCTION MANAGER'S SERVICES

The services which the Construction Manager shall provide include, but are not limited to, those described or specified herein. The services described or specified shall not be deemed to constitute a comprehensive specification having the effect of excluding services not specifically mentioned.

2.1 Project Management Information System (PMIS):

1. General:

- A. Commencing immediately after contract award, the Construction Manager shall implement and shall utilize throughout the life of this Contract all subsystems of the Project Management Information System hereinafter referred to as PMIS.
- B. The reports, documents, and data to be provided shall represent an accurate assessment of the current status of the Project and of the work remaining to be accomplished and it shall provide a sound basis for identifying variances and problems and for making management decisions. It shall be prepared and furnished to the Owner and the Architect-Engineer monthly.
- C. If requested by the Owner, the Construction Manager shall conduct a comprehensive workshop for participants designated by the Owner and additional seminars as required, to provide instruction. This workshop and the seminars shall facilitate each participant's and the Owner's representatives' use and understanding of PMIS; shall support, in-part, the function of organizing in concert with the Architect-Engineer for the design and construction of the Project; and shall establish, with the full concurrence of the Owner and the Architect-Engineer, procedures for accomplishing the management control aspect of the Project.
- D. The PMIS shall be described in terms of the following major subsystems:
 - 1. Narrative Reporting, on a monthly basis,
 - 2. Schedule Control, on a monthly basis,
 - 3. Cost Control, and estimating,
 - 4. Project Accounting,

5. Accounting and Payment, and

6. Action Reports.

2. Narrative Reporting Subsystem:

A. The Construction Manager shall prepare written reports as described hereunder. No other PMIS narrative reports shall be required. All reports shall be in 8.5" X 11" format, unless directed otherwise by the Owner.

B. The Narrative Reporting Subsystem shall include the following reports:

1. Monthly Executive Summary - which provides an overview of current issues and pending decisions, future developments and expected achievements, and any problems or delays, including code violations found by any permitting authority.

2. Monthly Cost Narrative - describing the current construction cost estimate status of the Project.

3. Monthly Scheduling Narrative - summarizing the current status of the overall project schedule. This report shall include an analysis of the various project schedules, a description of the critical path, and other analyses as necessary to compare planned performance with actual performance.

4. Monthly Accounting Narrative - describing the current cost and payment status of the entire project. This report shall relate current encumbrances and expenditures to the budget allocations.

5. Monthly Construction Progress Report - summarizing the work of the various subcontractors during the construction phase. This report shall include information from the weekly job site meetings, as applicable, such as general conditions, long lead supplies, current deliveries, safety and labor relations programs permits, construction problems and recommendations and plans for the succeeding month.

6. Daily Construction Diary - during the construction phase describing events and conditions on the site.

C. The reports outlined above shall be bound with applicable computer reports and submitted monthly during design and construction phases and shall be current through the end of the preceding month. Copies shall be transmitted to the Owner and the Architect-Engineer and others as designated by the Owner's Representative with the monthly pay requisition. Additional copies of the report outlined above shall be bound separately and distributed monthly as directed by the Owner's Representative.

- D. The report outlined in Article 2.1(2)(B)(6) above shall be maintained at the site available to the Owner and Architect-Engineer. A bound copy of the complete Daily Construction Diary shall be submitted to the Owner at the conclusion of the Project

3. Scheduled Control Subsystem:

- A. Master Project Schedule - Within thirty (30) days of award of this Agreement, the Construction Manager shall submit, to the Owner for approval, a master project schedule covering the planning and design approvals, construction and Owner occupancy of the Project. This schedule shall serve as the framework for the subsequent development of all detailed schedules. The master project schedule shall be produced and updated monthly throughout the project. Revisions, activity additions, activity deletions and/or logic changes to the Master Project Schedule, or any other schedule previously approved by the Owner, shall not be made without the Owner's approval.
- B. Within thirty (30) days after the date of the Owner's issuance of a Notice to Proceed with construction, the Construction Manager shall prepare and submit for approval, to the Owner's Representative, a construction schedule in quadruplicate with sufficient detail to graphically depict the activities contemplated for completion of the Project and which shows the sequence that the Construction Manager proposes for each such activity to occur and the duration (dates of commencement and completion, respectively) of each such activity. The Owner shall determine whether the construction schedule developed and submitted by the Construction Manager meets the requirements stated herein and thereafter such determination shall be binding on the Construction Manager. Failure of the Construction Manager to develop and submit a construction schedule as set forth hereinabove shall be sufficient grounds for the Owner to find the Construction Manager in substantial default and certify that sufficient cause exists to terminate the contract or to withhold payment to the Construction Manager until a schedule acceptable to the Owner is submitted.
- C. During the period of time required to finally complete the Project, at the end of each such calendar month or at such earlier intervals as circumstances may require, the Construction Manager shall update the construction schedule to show the actual progress of the work performed and the occurrence of all events which have affected the progress of performance of the work already performed or will affect the progress of the performance of the work yet to be performed in contrast with the planned progress of performance of such work, as depicted on the original construction schedule and all updates thereto as reflected in the updated construction schedule last submitted. Each such update to the construction schedule shall be submitted to the Owner in duplicate. Failure of the Construction Manager to update,

revise and submit the construction schedule as set forth herein shall be sufficient grounds for the Owner to find the Construction Manager in substantial default, and certify that sufficient cause exists to terminate the Contract or to withhold payment to the Construction Manager until a schedule or schedule update acceptable to the Owner is submitted. No revisions, activity additions, activity deletions or logic changes shall be made without the Owner's approval, which shall not be unreasonably withheld.

D. When required by the Owner, the Construction Manager shall prepare and incorporate into the schedule database, at the required intervals, the following schedules:

1. Subcontractor Construction Schedules - Upon the award of each sub-contract, the Construction Manager shall jointly, with the subcontractor, develop a schedule which is more detailed than the pre-bid schedule included in the specifications, taking into account the work schedule of the other subcontractors. The construction schedule shall include as many activities as necessary to make the schedule an effective tool for construction planning and for monitoring the performance of the subcontractor. The construction schedule shall also show pertinent activities for material purchase orders, shop drawing schedules and material delivery schedules.
2. Occupancy Schedule - The Construction Manager shall jointly develop with the Architect-Engineer and Owner a detailed plan, inclusive of punch lists, final inspections, maintenance training and turn-over procedures, to be used for ensuring accomplishment of a smooth and phased transition from construction to Owner occupancy. The Occupancy Schedule shall be produced and updated monthly from its inception through final Owner occupancy.

E. All schedules will be provided to the Owner in an electronic format acceptable to the Owner. The Construction Manager will provide the Owner with the appropriate software, if necessary, to read the data. The cost of providing the licenses and software shall be part of the cost of construction and included as part of Article 9, Direct Costs of the Project.

4. Budget Control Subsystem:

The operation of this subsystem shall provide sufficient timely data and detail to permit the Construction Team to control and adjust the Project requirements, needs, materials, equipment and systems by building and site elements so that construction will be completed at a cost which, together with all other Project costs, will not exceed the maximum total Project budget. Requirements of this subsystem include the following submissions at the following phases of the project:

Estimates - Prior to the start of pre-construction services, the requirement of the following estimates will be determined by the Owner:

- A. Completion of Schematic Documents.
- B. Completion of fifty percent (50%) Design Development Documents.
- C. Completion of one hundred percent (100%) Design Development Documents.
- D. One hundred percent (100%) GMP Estimate - When the Construction Documents are sufficiently complete enough to establish the GMP.

5. Project Accounting Subsystem:

The operation of this subsystem shall enable the Construction Team to monitor and control the funds available for the Project, cash flow, costs, change orders, payments and other major financial factors by comparison of budget, estimate, total commitment, amounts invoiced, amounts payable and to plan effectively. This subsystem will be produced and updated monthly and includes the following reports, which together will serve as a basic accounting tool and an audit trail. This report will also provide for accounting by building and site element.

- A. Cost Status Report - presenting the budget, estimate and base commitment for any given contract or budget line item. It shall show approved change orders for each contract which when added to the base commitment will become the total commitment. Pending change orders will also be shown to produce the total estimated probable cost to complete the work.
- B. Payment Status Report - showing the value in place, both current and cumulative, the amount invoiced (both current and cumulative), the amount retained, the amount payable (both current and cumulative) and the balance remaining. A summary of this report shall accompany each pay request.
- C. Detailed Status Report - showing the complete activity history of each item in the Project accounting structure. It shall include the budget, estimate and base commitment figures for each contract. It shall give the change order history including change order numbers, description, proposed and approved dates and proposed and approved dollar amounts. Pending or rejected change orders shall also be shown.
- D. Cash Flow Diagram - showing the projected accumulation of cash payments against the project. Cash flow projections shall be generated for anticipated monthly payments as well as cumulative payments.

- E. Job Ledger - shall be maintained as necessary to supplement the operation of the Project accounting subsystem. The Job Ledger will be used to provide construction cost accountability for general conditions work, on-site reimbursable expenses and costs requiring accounting needs.

2.2 Project Manual:

When directed by the Owner, the Construction Manager shall provide the following:

1. Upon issuance of a Task Authorization, the Construction Manager shall develop a draft comprehensive Project Manual describing the services set forth in this Contract for Owner's approval, providing a plan for the control, direction, coordination and evaluation of work performed, including identification of key personnel, responsibilities of Construction Manager, responsibilities of Owner and responsibilities of the specified Architect-Engineer, work flow diagrams and strategy for bidding the work. The Project Manual shall be updated as necessary with the Owner's approval throughout the design, construction and Owner occupancy phases. Two copies of the Project Manual and any updates shall be submitted to the Owner and Architect-Engineer. In developing the Project Manual, the Construction Manager shall coordinate with the Owner and the Architect-Engineer.
2. Contents of Project Manual - The Project Manual shall describe in detail the procedures for executing the work and the organizations participating. The Project Manual shall include as a minimum the following sections:
 - A. Project Definition - The known characteristics of the project or sub-projects shall be described in general terms which will provide the participants a basic understanding of the project or sub-projects.
 - B. Project Goals - The schedule, budget, physical, technical and other objectives for the Project shall be defined.
 - C. Project Strategy - A narrative description of the Project delivery methods being utilized to accomplish the project goals shall be listed.
 - D. Project Work Plan - A matrix display of the program of work to be performed by the Construction Manager, the Architect-Engineer and the Owner during each phase of the Project.
 - E. Project Organization - A summary organization chart showing the interrelationships between the Owner, the Construction Manager and the Architect-Engineer, and other supporting organizations and permitting review agencies. Detailed charts shall be included, one each for the Construction Manager, the Architect Engineer and the Owner, showing the organizational elements participating in the Project.

- F. Responsibility Performance Chart - A detailed matrix showing the specific responsibilities and interrelationships of the Owner, the Architect Engineer, and Construction Manager. The Responsibility Performance Chart shall indicate major responsibility, and minor responsibility, for each specific task required to deliver the project. The Construction Manager shall develop a similar chart for the personnel within his own organization who are assigned to the project, and also for the personnel of the Owner and the Architect-Engineer from data supplied by each.
- G. Flow Diagrams - Charts displaying the flow of information and the decisional process for the review and approval of shop drawings, submittals, progress and change orders.
- H. Written Procedures – Procedures for communications and coordination required between Construction Team members throughout the Project. Procedures shall cover such items as correspondence, minutes, reports, inspections, team meetings, technical reviews, design reviews and other necessary communications.

2.3 Design and Review and Recommendations:

The Construction Manager shall perform the services described in this Article. The services to be provided herein constitute the Pre-construction phase services. The parties acknowledge the Construction phase may commence before the Pre-construction phase is completed, and to a certain extent both phases may proceed concurrently.

- 1. Preliminary Evaluation - The Construction Manager shall provide a preliminary evaluation of the Owner's Project and Project budget requirements, each in terms of the other.
- 2. Consultation - The Construction Manager will jointly schedule and attend regular meetings with the Owner and Architect. The Construction Manager will consult with the Owner regarding site use and improvements, and the selection of materials, building systems and equipment. The Construction Manager will provide recommendations on construction feasibility; actions designated to minimize adverse effects of labor or material shortages; time requirements for procurement, installation, and construction completion; and factors related to construction cost including estimates of alternative designs or materials, preliminary budgets, and possible economies.
- 3. Phased Construction - The Construction Manager shall make recommendations to the Owner regarding the phased issuance of Drawings and Specifications to facilitate phased construction of the Project, if such phased construction is appropriate for the Project, taking into consideration such factors as economies, time of performance, availability of labor and materials, and provisions for temporary facilities, if applicable.

4. Review Reports - Within thirty (30) days after receiving the Construction Documents for each phase of the Project, the Construction Manager shall perform a specific review thereof, focused upon factors of a nature encompassed in Articles 2.3(1) and 2.3(2) above and on factors set out in Article 2.3(7) below. Promptly after completion of the review, the Construction Manager shall submit to the Owner, with copies to the Architect-Engineer, a written report covering suggestions or recommendations previously submitted, additional suggestions or recommendations as may be deemed appropriate, and all actions taken by the Architect-Engineer with respect to same, any comments deemed to be appropriate with respect to separating the work into separate contracts, alternative materials, and all comments called for under Article 2.3(7).

THE CONSTRUCTION MANAGER SHALL WARRANT, TO THE BEST OF THE CONSTRUCTION MANAGER'S KNOWLEDGE, WITHOUT ASSUMING ANY ARCHITECTURAL OR ENGINEERING RESPONSIBILITY, THAT THE PLANS AND SPECIFICATIONS ARE CONSISTENT, PRACTICAL, FEASIBLE AND CONSTRUCTIBLE. THE CONSTRUCTION MANAGER SHALL WARRANT THAT THE WORK DESCRIBED IN THE PLANS AND SPECIFICATIONS FOR THE VARIOUS BIDDING PACKAGES IS CONSTRUCTIBLE WITHIN THE SCHEDULED CONSTRUCTION TIME.

The recommendations and advice of the Construction Manager concerning design alternatives shall be subject to the review and approval of the Owner and Owner's professional consultants. Construction Manager shall not assume in anyway the responsibilities of the Architect, in particular, the responsibility of assuring that the drawings and specifications, which shall be identified for each Project prior to the time the GMP is determined, are in accordance with applicable laws, statutes, ordinances, Building Codes, Rules and Regulations; however, if the Construction Manager recognizes that portions of the Drawings and Specifications are inconsistent with applicable laws, statutes, ordinances, Building Codes, Rules and Regulations, the Construction Manager shall promptly notify the Architect and the Owner, in writing.

5. Long Lead Procurements - The Construction Manager shall review the design for the purpose of identifying long lead procurement items such as machinery, equipment, materials and supplies. When each item is identified, the Construction Manager shall notify the subcontractors, the Owner and the Architect-Engineer of the required procurement and schedule. Such information shall be included in the bid documents and made a part of all affected sub-contracts. The Construction Manager shall keep himself informed of the progress of the respective subcontractors or suppliers, manufacturing or fabricating such items and advise Owner and Architect-Engineer of any problems or prospective delay in delivery. The Construction Manager may recommend to the Owner a schedule for procurement of the long-lead time items, which will constitute part of the work, as required to meet the Project Schedule. If such long-lead time items are procured by the Owner, they shall be procured on terms and conditions acceptable to the

Construction Manager. Upon the Owner's acceptance of the Construction Manager's Guaranteed Maximum Price proposal, all contracts for such items shall be assigned by the Owner to the Construction Manager, who shall accept responsibility for such items as if procured by the Construction Manager. The Construction Manager shall assist in expediting the delivery of long-lead time items.

6. Separate Contracts Planning - Without assuming any design responsibilities, the Construction Manager shall review the design with the Architect-Engineer and make recommendations to the Owner with respect to dividing the work in such manner as will permit the Construction Manager to take bids and award separate construction sub-contracts on the current schedule while the design is being completed. He shall take into consideration such factors as natural and practical lines of severability, sequencing effectiveness, access and availability constraints, total time for completion, construction market conditions, availability of labor and materials, community relations and any other factors pertinent to saving time and cost by overlapping design and construction that are authorized by the Owner.
7. Interfacing -
 - A. The Construction Manager shall take such measures as are appropriate to provide that all construction requirements will be covered in the separate subcontracts for procurement of long lead items, the separate construction subcontracts and the General Conditions items performed without duplication or overlap, sequenced to maintain completion of all work on schedule. Particular attention shall be given to provide that each bid package clearly identifies the work included in that particular separate subcontract, its schedule for start and completion and its relationship to other separate contractors.
 - B. Without assuming any design responsibilities of the Architect-Engineer, the Construction Manager shall include in the reports required under Article 2.3(4) comments on overlap with any other separate subcontracts, omissions, lack of correlation between drawings, and any other deficiencies noted, in order that the Owner and Architect-Engineer may arrange for necessary corrections.
8. Job-Site Facilities - The Construction Manager shall arrange for all job-site facilities necessary to enable the Construction Manager and the Owner's representatives and the Architect-Engineer to perform their respective duties in the management, inspection, and supervision of construction.

Tangible personal property otherwise referred to as job-site facilities, include but are not limited to such things as trailers, toilets, computers and any other equipment necessary to carry on the Project. The method of acquiring such job-site facilities, which are planned to become the property of the Owner at the conclusion of the

Project, shall be evaluated based on cost over the life of the Project. Owning versus leasing shall be considered by the Construction Manager obtaining at least three (3) proposals for leasing and at least three (3) proposals for purchasing and then analyzing which is least expensive over the usage life of the item. The Construction Manager shall present his evaluation with recommendation to the Owner for approval.

When the Construction Manager wishes to supply job-site facilities from his own equipment pool, he shall first evaluate buy versus lease as discussed in the paragraph above. If leasing is found to be the least expensive approach, then he may lease such job-site facilities from his own equipment pool at a price not greater than the lowest of the three (3) lease proposals obtained.

For all such facilities purchased, which are to become the property of the Owner at the conclusion of the project, the Construction Manager shall maintain care and custody responsibilities of such facilities until the Project conclusion. The cost of such equipment shall be a Direct Cost of the Project, as defined in Article 9. At the conclusion of the Project, the Construction Manager shall provide the Owner with a complete inventory for each unit of equipment that has been purchased for the Owner. The inventory shall describe the equipment and identify the purchase price, serial number, model number, current location, and condition. Where said equipment has a title, said title shall be properly transferred to the Owner or to his designee.

The Construction Manager is responsible for proper care and maintenance of all equipment while in his control. At the time of transfer to the Owner, the Owner may refuse acceptance of the equipment if the Owner determines in its sole discretion that the equipment has not been properly cared for by the Construction Manager. In such event, the Construction Manager shall reimburse Owner for such item.

9. Weather Protection - The Construction Manager shall ascertain what temporary enclosures, if any, of building areas should be provided for and may be provided as a practical matter, in order to assure orderly progress of the work in periods when extreme weather conditions are likely to be experienced. The Construction Manager shall submit, to the Construction Team, recommendations as to needed requirements of this nature and as to the contract or contracts in which such weather protection requirements should be included. The Construction Manager is totally responsible for all weather protection necessary to ensure that all new construction and renovation projects are adequately protected from the normal inclement elements.
10. Market Analysis and Stimulation of Bidder Interest -
 - A. The Construction Manager shall monitor conditions in the construction market to identify factors that will or may affect costs and time for

completing the Project; the Construction Manager shall make analysis as necessary to (1) determine and report on availability of labor, material, equipment, potential bidders, and possible impact of any shortages or surplus of labor or material, and (2) in light of such determinations, make recommendations to the Owner as may be appropriate with respect to long lead procurement; separation of construction into bid packages, sequencing of work, use of alternative materials, equipment or methods, other economics in design or construction, and other matters that will promote cost savings and completion within the scheduled time.

- B. The Construction Manager shall submit to the Owner a written "Construction Market Analysis and Prospective Bidders Report" setting out recommendations and providing information as to prospective bidders. As various bid packages are prepared for bidding, the Construction Manager shall submit to the Owner and the Architect-Engineer a list of potential bidders. The Construction Manager shall be responsible to stimulate bidder interest in the local market place and identify and encourage bidding competition.
- C. The Construction Manager shall carry out an active program of stimulating interest of qualified contractors in bidding on the work and of familiarizing those bidders with the requirements of this project.

2.4 Construction Phase:

1. Construction Manager's Staff - The Construction Manager shall maintain sufficient off-site support staff, and competent full time staff at the Project site authorized to act on behalf of the Construction Manager to coordinate, inspect and provide general direction of the work and progress of the subcontractors and the Construction Manager shall provide no less than those personnel during the respective phases of construction as are identified at the time the GMP is determined. The Construction Manager shall not change any of those persons named at the time the GMP is determined unless mutually agreed to by the Owner and Construction Manager. In such case, the Owner shall have the right to approve the qualifications of any replacement personnel. Such approval will not be unreasonably withheld.
2. Lines of Authority - The Construction Manager shall establish and maintain lines of authority for its personnel, and shall provide notice of the same to the Owner and all other affected parties such as the code inspectors of the Permitting Authority, the subcontractors, the Architect-Engineer and the Owner's representatives, in order to provide general direction of the work and progress of the various phases and subcontractors. The Owner and Architect-Engineer may attend meetings between the Construction Manager and his subcontractors; however, such attendance shall not diminish either the authority or responsibility of the Construction Manager to administer the subcontractors.

3. Schedule and Project Manual Provisions - The Construction Manager shall provide subcontractors and the Owner, its representatives and the Architect-Engineer with copies of the Project Manual, a total number of copies not to exceed seven (7) hard copies and an electronic version in a format acceptable to the Owner, developed and updated as required by Article 2.2, expanded for the Construction Phase, employing the respective milestones, beginning and finishing dates, the respective responsibilities for performance and the relationships of the work with respect to subcontractors and suppliers. The Construction Manager shall also continue to provide current and up to date scheduling information, direction and coordination regarding milestones, and beginning and finishing dates. Furthermore, the Construction Manager shall be responsible for performance and the relationships of the Construction Manager's work to the work of its subcontractors and suppliers to enable the same to perform their respective tasks so that the development of construction progresses in a smooth and efficient manner in conformance with the overall project schedule. The schedule shall include all phases of the construction work, material supplies, long lease procurement, approval of shop drawings, change orders in progress, schedules for change orders, and performance testing requirements. The Construction Manager shall advise the Owner, its representatives and the Architect-Engineer of their required participation in any meetings or inspections, giving each at least one weeks-notice, unless such notice is made impossible by conditions beyond the control of the Construction Manager. The Construction Manager shall hold job-site meetings at least once each month with the Construction Team or more frequently as required by work progress, to review progress, discuss problems and solutions and to coordinate future work with all subcontractors.

4. Solicitation of Bids -

A. Without assuming responsibilities of the Architect-Engineer, the Construction Manager shall prepare invitations for bids, or requests for proposal when applicable, for all procurement of long lead items, materials and services, for Subcontractor contracts and for site utilities. Such invitations for bids shall be prepared in accordance with the following guidelines:

Those portions of the work that the Construction Manager does not customarily perform with the Construction Manager's own personnel shall be performed under subcontracts or by other appropriate agreements with the Construction Manager. The Construction Manager shall obtain bids from subcontractors, vendors, consultants and from suppliers of materials or equipment fabricated to a special design for the work. The Construction Manager shall strive to receive at least three (3) competitive bids per trade package. Should the nature of the trade package prohibit three (3) competitive bids, the Construction Manager shall notify the Owner in writing as to the reason and offer suggestions, if any, to create trade interest.

- B. The Construction Manager shall be responsible for coordinating with the Architect-Engineer and preparing all information that is the responsibility of the Construction Manager for bidding of the separate bid packages.
 - C. As part of such preparation, the Construction Manager shall review the specifications and drawings prepared by the Architect-Engineer. Ambiguities, conflicts or lack of clarity of language, use of illegally restrictive requirements, and any other defects in the specifications or in the drawings noted by the Construction Manager shall be brought to the attention of the Owner and Architect-Engineer in written form.
 - D. The Construction Manager and the Owner's Representative shall mutually agree when and if to conduct a pre-bid conference with prospective bidders and the Architect-Engineer. In the event questions are raised which require an interpretation of the bidding documents or otherwise indicate a need for clarification or correction of the invitation, the Construction Manager shall transmit these to the Owner and the Architect-Engineer and upon receiving clarification or correction in writing shall prepare an addendum to the bidding document, and issue same to all of the prospective bidders.
 - E. The Construction Manager shall not enter into contracts without the Owner reviewing the proposed successful bidder. The Owner shall promptly, within three (3) business days, review all proposals and provide comments so as not to cause delay in the award of a contract. Owner's failure to respond within this time frame shall constitute acceptance of the proposed contract. Owner shall have the right to reject any award of subcontract providing such rejection is justifiable and with cause. Should the Owner reject a proposal and should the next bondable, qualified bidder that is acceptable to the Construction Manager, be greater than the GMP budget for that work item, the Owner shall issue a change order to the Construction Manager, increasing the GMP, for the amount of the difference between the proposed award and that which the Owner has requested.
5. Bonds - In accordance with the provisions of Florida Statutes, Section 255.05, the Construction Manager shall provide to the Owner, on forms furnished by the Owner, a one hundred percent (100%) Performance Bond and a one hundred percent (100%) Labor and Material Payment Bond each in an amount not less than the total construction cost as defined in Articles 7, 8 and 9. To be acceptable to the Owner, as Surety for Performance Bonds and Labor and Material Payment Bonds, a Surety Company shall comply with the following provisions:
- A. The Surety Company shall have a currently valid Certificate of Authority, issued by the State of Florida, Department of Insurance, authorizing it to write surety bonds in the State of Florida.

- B. The Surety Company shall have currently valid Certificate of Authority issued by the United States Department of Treasury under Sections 9304 to 9308 of Title 31 of the United States Code.
- C. The Surety Company shall be in full compliance with the provisions of the Florida Insurance Code.
- D. The Surety Company shall have at least twice the minimum surplus and capital required by the Florida Insurance Code at the time a bond is issued.
- E. The Surety Company shall have at least the following minimum ratings in the latest issue of Best's Key Rating Guide.

Contract Amount	Policy Holder's Rating	Required Financial Rating
\$500,000 to \$1,000,000	A	Class IV
\$1,000,000 to \$2,500,000	A	Class V
\$2,500 000 to \$5,000 000	A	Class VI
\$5,000,000 to \$10,000 000	A	Class VII
\$10,000,000 to \$25,000,000	A	Class VIII
\$25 000 000 to \$50,000,000	A	Class IX
\$50,000,000 to \$75,000,000	A	Class X

- 6. **Quality Control** - The Construction Manager shall develop and maintain a written program, acceptable to the Owner and Architect-Engineer, to assure quality control of the construction. He shall supervise the work of all subcontractors providing instructions to each when their work does not conform to the requirements of the plans and specifications and he shall continue to exert his influence and control over each subcontractor to ensure that corrections are made in a timely manner so as to not affect the efficient progress of the work. Should disagreement occur between the Construction Manager and Architect-Engineer over acceptability of work and conformance with the requirements of the specifications and plans, the Owner shall be the final judge of performance and acceptability.
- 7. **Subcontractor Interfacing** - The Construction Manager shall be the single point of interface with all subcontractors for the Owner and all of its agents and representatives including the Architect-Engineer. He shall negotiate all change orders, field orders and request for proposals, with all affected subcontractors and

shall review the costs of those proposals and advise the Owner and Architect-Engineer of their validity and reasonableness, acting in the Owner's best interest prior to requesting approval of each change order from the Owner. Before any work begins on any change order, a written authorization from the Owner must be issued. However, when health and safety are threatened, the Construction Manager shall act immediately to remove the threat to health and safety. The Construction Manager shall carefully review all shop drawings and forward the same to the Architect for review and action. The Architect shall transmit them back to the Construction Manager who will then issue the shop drawings to the affected subcontractor for fabrication or revision. The Construction Manager shall maintain a suspense control system to promote expeditious handling. The Construction Manager shall request the Architect-Engineer via the Owner to make interpretations of the drawings or specifications requested of the Construction Manager by the subcontractors and shall maintain a suspense control system to promote timely response. The Construction Manager shall advise the Owner and Architect-Engineer when timely response is not occurring on any of the above.

8. Permits - The Construction Manager shall secure all necessary building permits from the Permitting Authority and all necessary utility connection permits, the cost of which will be considered a Direct Cost of the project, but not subject to a Construction Phase Fee, as described in Article 8.1(3).
9. Job Site Requirements -
 - A. The Construction Manager shall provide for each of the following activities as a part of its Construction Phase Cost:
 1. Maintain a log of daily activities, including manpower records, weather, delays, major decisions, etc.
 2. Maintain a roster of companies on the project with names and telephone numbers of key personnel.
 3. Establish and enforce job rules governing parking, clean-up, use of facilities and worker discipline.
 4. Provide labor relations management for a harmonious, productive project.
 5. Provide a safety program for the project to meet OSHA requirements. Monitor for subcontractor compliance without relieving any subcontractor of responsibilities to perform work in accordance with the best acceptable practices.
 6. Provide a quality control program.

7. Provide miscellaneous office supplies that support the construction efforts.
 8. Travel to and from its home office to the project site, as the project requires.
- B. The Construction Manager shall provide personnel and equipment or shall arrange for separate subcontracts to provide each of the following as a direct cost item:
1. Schedule the services of independent testing laboratories for the necessary testing of materials to ensure conformance to contract requirements.
 2. The printing and distribution of all required bidding documents and shop drawings, including the sets required by the Permitting Authority's inspectors.
10. Job Site Administration - The Construction Manager shall provide administrative functions during construction to assure proper documentation, including but not limited to such things as the following:
- A. Job Meetings - Hold weekly progress and coordination meetings to provide for an easy flowing project implementation process, assure timely submittals, expedite processing approvals and return of shop drawings and samples; Coordinate and expedite critical ordering and delivery of materials, work sequences, inspection and testing and labor allocation; Review and coordinate each subcontractor's work; Review and implement revisions to the project schedule; Monitor and promote safety requirements.
- Use the job site meeting as a tool for planning of work and enforcing schedules and for establishing procedures, responsibilities, and identification of authority for all to clearly understand.
- Identify party or parties responsible for follow up on any problems, delay items or questions and record course for solutions. Revisit each pending item at each subsequent meeting until resolution is achieved. Require all present to make any problems or delaying events known to those present for appropriate attention and resolution.
- A regular monthly project status meeting will be held between the Architect-Engineer, Owner and Construction Manager.
- B. Shop Drawing Submittals/Approvals - Provide staff to check shop drawings and to implement procedures to be approved by Owner for submittal and

transmittal to the Architect-Engineer and Owner of such drawings for action, and closely monitor their submittal and approval process.

- C. Material and Equipment Expediting - Provide staff to closely monitor material and equipment deliveries and to implement checking and follow-up procedures on supplier commitments of all subcontractors.
- D. Payments to subcontractors - Develop and implement a procedure for review, processing and payment of applications by subcontractors for progress and final payments.
- E. Document Interpretation - Refer all questions for interpretation of the documents prepared by the Architect-Engineer to the Architect-Engineer through the Owner.
- F. Reports and Project Site Documents - Record the progress of the project. Submit written progress reports to the Owner and the Architect-Engineer, including information on the subcontractor's work and the percentage of completion. Keep a daily log available to the Owner, the Architect-Engineer and the Permitting Authority inspectors.
- G. Subcontractor's Progress - Prepare periodic punch lists for the subcontractor's work including unsatisfactory or incomplete items and schedules for their completion.
- H. Substantial Completion - Ascertain when the work, or designated portions thereof, are ready for the Owner's and the Architect-Engineer's substantial completion inspection. Prior to the Owner's and Architect's pre-substantial completion inspection, the Construction Manager shall issue a list of incomplete items. After the Owner's and the Architect-Engineer's inspection, the Construction Manager shall prepare a schedule for the completion of the list, indicating completion dates for the Owner's review. The Owner and the Architect-Engineer will issue a Certificate of Substantial Completion in the format prescribed in **Exhibit "C"**, when the work on the Construction Manager's pre-substantial Punch List has been accomplished, to the best of the Construction Manager's ability.
- I. Final Completion - Monitor the Subcontractor's performance on the completion of the Project and provide notice to the Owner and Architect-Engineer that the work is ready for final inspection. Secure and transmit to the Owner, through the Architect-Engineer, all required guarantees, affidavits, releases, bonds and waivers, manuals, record drawings and maintenance books, including issuance of the Certificate of Final Completion attached as **Exhibit "D"**.

- J. Start-Up - With the Owner's personnel, direct the checkout of utilities, operations, systems and equipment for readiness and assist in their initial start-up and testing by the trade contractors.
 - K. Record Drawings - The Construction Manager shall monitor the progress of its own forces or its Subcontractors on marked up field prints, which at project completion, shall be sent to the Architect-Engineer through the Owner who will prepare the final record drawings. Continuously review "As-Built" Drawings and mark up progress prints to provide as much accuracy as possible.
11. Administrative Records - The Construction Manager may be required to maintain, at the job site, current and up to date files and records such as, but not limited to the following:

Contracts or Purchase Orders
Davis Bacon Federal Compliance Documents
ARRA / Build America Bonds Compliance Documentation
Shop Drawing Submittal/Approval Logs
Equipment Purchase/Delivery Logs
Contract Drawings and Specifications with Addenda
Warranties and Guarantees
Cost Accounting Records:
Labor Costs
Material Costs
Equipment Costs
Cost Proposal Requests
Payment Request Records
Meeting Minutes
Cost-Estimates
Bulletin Quotations
Lab Test Reports
Insurance Certificates and Bonds
Contract Changes
Purchase Orders
Material Purchase Delivery Logs
Technical Standards
Design Handbooks
"As-Built" Marked Prints
Operating & Maintenance Instruction
Daily Progress Reports
Monthly Progress Reports
Correspondence Files
Transmittal Records
Inspection Reports
Bid/Award Information

Bid Analysis and Negotiations
Punch Lists
PMIS Schedule and Updates
Suspense (Tickler) Files of Outstanding Requirements
Project Manual
Job Photographs

The Project records shall be available at all times to the Owner and Architect-Engineer for reference or review.

12. Owner Occupancy -

The Construction Manager shall:

Provide services during the design and construction phases, which will provide a smooth and successful Owner occupancy of the Project. The Construction Manager shall provide consultation and project management to facilitate Owner occupancy and provide transitional services to get the work, as completed by the contractors, "on-line" in such conditions as will satisfy Owner operational requirements.

Conduct the Construction Manager's preliminary Punch List inspection and coordinate the completion of all Punch List work to be done with Owner occupancy requirements in mind. The Construction Manager shall videotape all major equipment startup procedures and deliver videos as part of the closeout documents.

Catalog operational and maintenance requirements of equipment to be operated by maintenance personnel and convey the same to the Owner in such a manner as to promote their usability. The Construction Manager shall provide operational training, in equipment use, for all such operators.

The Construction Manager shall secure required guarantees and warranties, assemble and deliver same to the Owner in a manner that will facilitate maximum enforcement and assure meaningful implementation.

The Owner may occupy or take control of portions of the Project providing the above items discussed in this paragraph have been completed and the "Substantial Completion", "Start-Up", "Record Drawing", and "Warranty" requirements specified in Article 2.4 above have been completed to the Owner's satisfaction for the portions to be occupied, excluding the requirements for a warranty inspection eleven (11) months after Owner Occupancy.

13. Warranty -

Where any work is performed by the Construction Manager's own forces or by subcontractors under contract with the Construction Manager, the Construction Manager shall warrant that all materials and equipment included in such work will

be new except where indicated otherwise in Contract Documents, and that such work will be of good quality, free from improper workmanship and defective materials and in conformance with the Contract Documents. With respect to the same work, the Construction Manager further agrees to correct all work found by the Owner to be defective in material and workmanship or not in conformance with the Contract Documents for a period of one year from the date of Substantial Completion or partial occupancy of any portion of the building, whichever comes first, or for such longer periods of time as may be set forth with respect to specific warranties contained in the trade sections of the Specifications. The Construction Manager shall collect and deliver to the Owner any specific written warranties given by others as required by the Contract Documents. In addition, the Construction Manager shall conduct, jointly with the Owner and the Architect-Engineer, a warranty inspection in approximately eleven (11) months after the date of Owner Occupancy.

ARTICLE 3

OWNER'S RESPONSIBILITIES

3.1 Owner's Information:

The Owner shall provide full information regarding its requirements for the Project.

3.2 Owner's Representatives:

The Owner shall designate in writing any additional representatives authorized to act on the Owner's behalf with respect to the Project, not previously defined in Article 1.3, together with the scope of his/her respective authority. In no event shall any delegation of authority be contrary to state or county laws or codes. Functions to be performed by the Owner as set forth in this Agreement can be delegated by the Owner only by written notice to the Construction Manager from the Owner. The Construction Manager shall be entitled to rely on directions, and it shall be required to follow such directions, from the Owner's Representative designated in Article 1.3 and such other representatives from time to time designated in writing within the authority conferred by the City of Mount Dora City Council in this Agreement or any Amendment or Change Order to this Agreement. The City of Mount Dora City Council hereby authorizes the Article 1.3 Owner's Representative to: (1) act as the Owner's agent and execute documents associated with this Project. Examples of these documents are Construction Manager's Contingency Authorizations, Notices of Commencement, Certificates of Substantial Completion and permits from applicable agencies; (2) administer, coordinate, interpret and otherwise manage the contractual provisions and requirements of this Agreement; (3) negotiate a duly authorized Change Order on behalf of the Owner; and (4) issue a duly authorized purchase order, memorandum, letter or other instrument covering the services and work to be provided pursuant to this Agreement. Directions and decisions made by Owner's Representatives shall be binding on the Owner.

The City of Mount Dora City Council additionally authorizes the City Manager, in conjunction with the Owner's Representative, to authorize changes in the work up to \$35,000.00 (Thirty-five Thousand and 00/100 Dollars) or such other dollar amount as authorized by policy adopted by the City Council. Said work can be funded from the Owner's Contingency and shall not cause an increase to the overall project budget.

3.3 Architect-Engineer's Agreement:

The Owner shall retain an Architect-Engineer for design and to prepare Construction Documents for the Project. The Architect-Engineer's services, duties and responsibilities are described in the Agreement between the Owner and the Architect-Engineer, a copy of which will be furnished to the Construction Manager. The Agreement between the Owner and the Architect-Engineer shall not be modified without written notification to the Construction Manager.

3.4 Site Survey and Reports:

The Owner shall provide all surveys describing the physical characteristics, soil reports, and subsurface investigations, legal limitations, utility locations and a legal description for the Project.

3.5 Approvals and Easements:

The Owner shall pay for necessary approvals, easements, assessments and charges required for the construction, use or occupancy of permanent structures or for permanent changes in existing facilities.

3.6 Legal Services:

The Owner shall furnish such legal services as may be necessary for providing the items set forth in Article 3.5 and such document examination and interpretation as may require.

3.7 Drawings and Specifications:

The Construction Manager will be furnished a reproducible set of all copies of Drawings and Specifications reasonably necessary and ready for printing.

3.8 Cost of Surveys and Reports:

The services, information, surveys and reports required by the above paragraphs shall be furnished with reasonable promptness in accordance with the approved schedule at the Owner's expense, and the Construction Manager shall be entitled to rely upon the accuracy and completeness thereof.

3.9 Project Fault Defects:

If the Owner becomes aware of any fault or defect in the Project or non-conformance with the Drawings and Specifications, it shall give prompt written notice thereof to the Construction Manager and Architect-Engineer.

3.10 Funding:

The Owner shall furnish, in accordance with the established schedule, reasonable evidence satisfactory to the Construction Manager that sufficient funds will be available and committed for the cost of each part of the Project. The Construction Manager shall not commence any work, unless authorized in writing by the Owner.

3.11 Lines of Communication:

The Owner and the Architect-Engineer, through the Owner, shall communicate with the subcontractors or suppliers only through the Construction Manager while such method of communication is effective in maintaining project schedules and quality.

3.12 Permitting & Code Inspections:

The Owner recognizes and coordinates with the appropriate Permitting Authority and expects the Construction Manager to do the same.

ARTICLE 4
PERMITS, FEES AND NOTICES

- 4.1 Unless otherwise provided in the Contract Documents, the Construction Manager shall secure and pay for the building permits, which are customarily secured by a General Contractor.
- 4.2 The Construction Manager shall comply with and give notices, as required by laws, ordinances, rules, regulations and lawful orders of public authorities bearing on performance of the Project.
- 4.3 It is not the Construction Manager's responsibility to ascertain whether the Contract Documents are in accordance with applicable laws, statutes, ordinances, Building Codes and Rules and Regulations; however, if the Construction Manager observes that portions of the Contract Documents are inconsistent therewith, the Construction Manager shall promptly notify the Architect-Engineer and Owner in writing and necessary changes shall be accomplished by appropriate modification.
- 4.4 If the Construction Manager performs work knowing it to be contrary to applicable laws, statutes, ordinances, Building Codes and Rules and Regulations without such notice to the Architect-Engineer and Owner, the Construction Manager shall assume full responsibility for such work and shall bear all attributable costs and damages.

- 4.5 Cost for all re-inspections of work found to be defective and subsequently repaired, shall be borne by the Construction Manager if such defective work was performed knowingly contrary to applicable laws, statutes, ordinances, Building Codes and Rules and Regulations.

ARTICLE 5

SUBCONTRACTS

5.1 **Definition:**

A subcontractor is a person or organization who has a direct contract with the Construction Manager to perform any of the work at on the Project. Nothing contained in the Contract Documents shall create any contractual relationship between the Owner or Architect-Engineer and any subcontractor.

5.2 **Proposals:**

Subject to Article 9 and, in accordance with Article 2.4(4), the Construction Manager shall request and receive proposals from subcontractors and suppliers and will award those contracts to the qualified low bidder after reviewing all proposals with the Owner and Architect-Engineer and all are satisfied that the subcontractor/supplier is qualified to perform work or provide materials for the Project.

5.3 **Required Subcontractors' Qualifications and Subcontract Conditions:**

1. Sub-contractual Relations - The Construction Manager shall require each Subcontractor to assume all the obligations and responsibilities which the Construction Manager owes the Owner under this Agreement, to the extent of the work to be performed by the Subcontractor. Said agreements shall be made in writing and shall preserve and protect the rights of the Owner and Architect-Engineer under the Contract Documents with respect to the work to be performed by the Subcontractor so that the subcontracting thereof will not prejudice such rights. Where appropriate, the Construction Manager shall require each Subcontractor to enter into similar agreements with its sub-subcontractor. Insurance requirements for Subcontractors shall be no more stringent than those requirements imposed on the Construction Manager by the Owner.

The Construction Manager shall make available to each proposed Subcontractor, prior to the execution of the Subcontract, copies of the Contract Documents to which the Subcontractor will be bound.

2. All subcontracts shall provide -

LIMITATION OF REMEDY- NO DAMAGES FOR DELAY

The subcontractor's exclusive remedy for delays in the performance of the contract caused by events beyond its control, including delays claimed to be caused by the Owner or Architect-Engineer or attributable to the Owner or Architect-Engineer and including claims based on breach of contract or negligence, shall be an extension of its contract time and shall in no way involve any monetary claim.

In the event of a change in the work, the Subcontractor's claim for adjustments in the contract sum are limited exclusively to its negotiated costs for such changes plus no more than seven percent (7%) for overhead, profit and bond costs.

The subcontract shall require the subcontractor to expressly agree that the foregoing constitutes the sole and exclusive remedy for delays and changes in the work and eliminates any other remedies or claims for increase in the contract price, damages, losses or additional compensation. Each subcontract shall require that any claims by the subcontractor for delay or additional cost must be submitted to the Construction Manager within the time and in the manner in which the Construction Manager must submit such claims to the Owner, and that failure to comply with the conditions for giving notice and submitting claims shall result in the waiver of such claims.

5.4 Responsibilities for Acts and Omissions:

The Construction Manager shall be responsible to the Owner for the acts and omissions of its employees, agents, subcontractors, the agents thereof and employees thereof, and all other persons performing any of the work or supplying materials for the Project under a contract to the Construction Manager.

ARTICLE 6 SCHEDULE, TIME OF COMMENCEMENT AND SUBSTANTIAL COMPLETION

- 6.1 At the time a Guaranteed Maximum Price (GMP) is established as provided for in Article 7, a Project Substantial Completion Date, a Project Final Completion Date and an Owner Occupancy Date for completion of the Project in accordance with the master project schedule, shall also be established by the Construction Team. The Construction Manager agrees to complete the construction in accordance with the agreed Substantial Completion Date, Final Completion Date and Owner Occupancy Date. The Construction Manager acknowledges that failure to complete the Project within the construction time set forth in the approved schedule will result in substantial damages to the Owner. These liquidated damages are the sole remedy for delay, shall in no way be deemed a waiver of the Owner's right to all other legal remedies in this Agreement.

In the event the Construction Manager does not achieve the Substantial Completion Date the Construction Manager shall pay the Owner, as liquidated damages and not as a penalty, in the amount of Five Hundred Dollars (\$500.00) for each calendar day the actual time of

performance exceeds the authorized Substantial Completion Date for each separate GMP as applicable.

- 6.2 The date of Owner Occupancy shall occur as described in Article 2.4(12) herein above. Warranties called for by this Agreement or by the Contract Documents shall commence on the Substantial Completion Date, unless otherwise agreed to, in writing, between the Owner and Construction Manager.

ARTICLE 7

GUARANTEED MAXIMUM PRICE FOR CONSTRUCTION

- 7.1 When the design documents are sufficiently complete to establish the scope of work for the Project, or any portion thereof, as generally defined by a design document listing to be provided by the Architect-Engineer, or at such time thereafter designated by the Owner, the Construction Manager will establish and submit in writing to the Owner for approval, a Guaranteed Maximum Price (GMP), guaranteeing the maximum price to the Owner, for the construction cost of the Project or designated part thereof. The Construction Manager acknowledges multiple GMPs may be required for the portions of the Project to support the project phasing and schedule. Such Guaranteed Maximum Price will be subject to modification for changes in the Project as provided in Article 10; however, the actual price paid for the work by the Owner shall be the actual cost of all work subcontracts, supply contracts, direct labor costs, direct supervision costs and direct job costs as defined under Article 9, plus the Construction Manager's costs and fees, or the GMP, whichever is less when the work is complete.
- 7.2 The GMP will only include those taxes, in the cost of the Project, which are legally enacted at the time the GMP is established.
- 7.3 At the time of submission of a GMP, the Construction Manager will verify the time schedule for activities and work, which were adopted by the Construction Team and used to determine the Construction Manager's cost of work. Included in the GMP will be a Contractor's Contingency, which is included for the Construction Manager to use, with the Owner's consent. The contingency is intended to cover the costs associated with Project scope that were not adequately detailed at the time of GMP. The Contractor's Contingency is also intended to protect against price increases between the GMP and the completion of the 100% construction documents, as well as for the purpose of defraying the expenses due to unforeseen circumstances relating to construction and for price increases attributable to any code compliance reviews. The Construction Manager will be required to furnish documentation evidencing expenditures charged to the Contractor's Contingency prior to the release of funds by the Owner. Documentation for use of the Contractor's Contingency shall be determined by the Construction Team, included in the Project Manual and displayed monthly in the Project Management Information System. The Architect-Engineer shall verify the actual costs. If there are funds remaining in the Contractor's Contingency at the conclusion of the Project, said funds will be returned to the Owner, through deductive change order.

- 7.4 When the Project is bid and one hundred percent (100%) of the trade contracts have been executed, the contingency within the GMP may be decreased in proportion to the percent of the work completed up to a maximum of fifty percent (50%). In other words, if ten percent (10%) of the work has been completed and the Owner requests that the contingency within the GMP be adjusted, then ten percent (10%) of the contingency within the GMP will be removed from the GMP by change order up to a maximum of fifty percent (50%) of the initial GMP contingency value. During the buyout period of the trade contracts, at a point mutually agreed upon between the Owner and Construction Manager, the net amount of the buyout will be reviewed. If the net amount of the total buyout results in excess funds being required, those funds will be taken from the Contractor's Contingency.

If the net amount of the buyout results in a savings, the savings will be assigned to the Owner's Buyout Contingency as defined in Article 7.5

If bids are not received for a portion of the work at or below the applicable line item amount in the GMP, the Construction Manager reserves the right to perform that portion of the work or negotiate for its performance for the specified line item lump sum amount or less.

- 7.5 The Owner's Buyout Contingency shall be created by the savings generated by subcontractor buyout as set forth in Article 7.4 and also by reductions in scope that otherwise could reduce the GMP. The intent of this Owner's Buyout Contingency is to allow funds already within the GMP to remain in the GMP and be used at the Owner's discretion for scope issues that may become required and/or desired during the course of the Project.

Authorizations up to Thirty-five Thousand and 00/100 Dollars (\$35,000.00), or such other dollar amount as authorized by policy adopted by the City Council, for the use of the Owner's Buyout Contingency, may be granted by the City Manager. Authorizations, for more than Thirty-five Thousand and 00/100 Dollars (\$35,000.00), will be granted by the City Council unless the City Council authorizes an increase in the City Manager's authority for the same.

ARTICLE 8

CONSTRUCTION MANAGER'S COSTS

- 8.1 In consideration of the performance of this Agreement, the Owner agrees to pay the Construction Manager as compensation for his services, costs or fees, as set forth herein.
1. Design Phase/Pre-construction Costs - For the performance of the services set forth under Article 2 and for profit and overhead related to these services, the Construction Manager shall be paid a total amount to be determined prior to the issuance of the Task Authorization. The Design Phase/Pre-construction Costs shall be paid according to the percent complete of the design phase.

The Construction Manager's personnel to be assigned during this phase and their duties and responsibilities to this project and the duration of their assignments are shown on the Task Authorization.

2. Construction Phase Costs - Prior to commencement of each Construction Phase, the Owner will direct the Construction Manager in writing to proceed into said Construction Phase. The Construction Phase Cost for work or services performed during the Construction Phase shall be an amount of *(To Be Determined at GMP)*. The Construction Phase Costs shall be paid according to the percent complete of the Project. The first monthly payment shall be due thirty (30) days following the issuance of the first Construction Authorization by the Owner's Representative and the final monthly payment shall be paid only when construction of the Project, or portion thereof, is finally completed and occupancy of the Project, or portion thereof, accepted by the Owner. If construction is authorized only for a part of the Project, the costs paid shall be proportionate to the amount of work authorized by the Owner.
 - A. Adjustments in Costs - For changes in the Project as provided in Article 10, the Construction Phase Costs shall be adjusted as follows:
 1. The Construction Manager shall be paid an additional amount subject to negotiation if the Construction Manager is placed in charge of reconstruction of an insured or uninsured loss excluding any condition that may have been caused from negligent acts by the Construction Manager.
 2. Should the construction duration for any phase extend longer than stipulated above, there shall be no additional Construction Phase Costs paid to the Construction Manager unless such delays are as defined in Article 10.2.
 3. The Construction Manager will not be due any additional Construction Phase Fee on increases in the Guaranteed Maximum Price (GMP) that do not exceed a cumulative total of two percent (2%) for each separate GMP. Should a GMP be increased by more than a cumulative total of two percent (2%) under the terms of Article 10 hereinafter, due to no fault of the Construction Manager, the Construction Manager's additional Construction Phase Fee will be based on the Original GMP as set forth in the below chart for that portion of the accumulative increases in the GMP that exceed the GMP by more than two percent (2%).

GMP	Construction Manager's Fee
\$0.00 to \$150,000	14%
\$150,001 to \$500,000	12%
\$500,001 to \$750,000	10%
\$750,001 to \$1,000,000	8%
\$1,000,001 to \$1,500,000	6%
\$1,500,001 to \$2,000,000	5%

Construction Manager's Exclusive Remedy - In the event the construction Substantial or Final Completion date is extended, regardless of whether delay is caused by any act or neglect of the Owner or the Architect-Engineer, or is attributable to the Owner or the Architect-Engineer, the Construction Manager's sole and exclusive remedy is an extension of the Substantial Completion Date and payment of additional Construction Phase Costs and Construction Phase Fee as provided above.

B. Costs and Expenses Included in Construction Phase Costs – The following are included in the Construction Phase Costs for services during the Construction Phase:

1. Salaries or other compensation of the Construction Manager's employees at its principal office and branch offices.
 2. General operating expenses of the Construction Manager's principal and branch offices related to the Project.
 3. The costs of all data processing staff.
 4. Salaries or other compensation of the Construction Manager's employees at the job site.
 5. General operating expenses incurred in the management and supervision of the Project, except as expressly included in Article 9.
 6. Those services set forth in Article 2.4(9)(A).
 7. Job office supplies including but not limited to paper, pencils, paper clips, file folders, staples and janitorial supplies.
3. Construction Phase Fee - For overhead, profit and general expenses of any kind, except as may be expressly included in Article 9, for services provided during and related to the construction phase, the amount shall be based on the Original GMP as set forth in the chart below and shall be converted to a fixed amount upon acceptance of the GMP, subject to changes as described herein, and shall be paid

proportionally to the ratio of the cost of the work in place, including stored materials, as it bears on the latest estimate of the total construction cost and/or to the GMP, whichever is less. The balance of the fee shall be paid when construction of the Project, or portion thereof, is finally completed and occupancy of the Project, or portion thereof, is accepted by the Owner. If construction is authorized only for a part of the Project, the fee paid shall be proportionate to the amount of work authorized by the Owner. The Construction Manager's exclusive remedy for any adjustments in the Construction Phase Fee is provided in Article 8.1(2).

GMP	Construction Manager's Fee
\$0.00 to \$150,000	14 %
\$150,001 to \$500,000	12%
\$500,001 to \$750,000	10%
\$750,001 to \$1,000,000	8%
\$1,000,001 to \$1,500,000	6%
\$1,500,001 to \$2,000,000	5%

ARTICLE 9 DIRECT COSTS OF THE PROJECT

9.1 Definition:

The term Direct Cost of the Project shall mean costs necessarily incurred in the Project during the Construction Phase for Construction Services and paid by the Construction Manager, which are not included in the Construction Phase Fee. Such costs shall include the items set forth below in this Article.

The Owner agrees to pay the Construction Manager for the Direct Costs of the Project as defined herein. Such payment shall be in addition to the Construction Phase Costs stipulated in Article 8. Invoices submitted under this Article 9 shall be submitted in detail sufficient for a proper pre-audit and post-audit thereof.

9.2 Direct Cost Items:

1. Cost of all materials, supplies and equipment incorporated in the Project, including costs of transportation and storage thereof.
2. Payments due to subcontractors from the Construction Manager or made by the Construction Manager to subcontractors for work performed pursuant to contract under this Agreement.
3. Cost including transportation and maintenance of all materials, supplies, equipment, temporary facilities and hand tools not owned by the workmen, employed or consumed in the performance of the work.

4. Rental charges on all necessary machinery and equipment, exclusive of hand tools used at the site of the Project, whether rented from the Construction Manager or other, including installation, repairs and replacement, dismantling, removal, transportation and delivery costs thereof, which are used in the support of a subcontractor or the Construction Manager's own forces in the performance of the work, at rental charges consistent with those prevailing in the area.
5. Cost of the premiums for all insurance and cost of premiums for all bonds, which the Construction Manager is required to procure by this Agreement specifically for the construction of the Project. The cost of the work shall include any subcontractor bonds the Construction Manager deems appropriate. There shall be no Construction Phase Fee on this item.
6. Losses and expenses sustained by the Construction Manager in connection with the work, not compensated by insurance, including deductibles provided they have resulted from causes other than the negligent misconduct of Construction Manager.
7. Sales, use, gross receipts or similar taxes related to allowable direct costs of the Project imposed by any governmental authority, and for which the Construction Manager is liable.
8. The cost of corrective work, subject to the GMP, except for any corrective work made necessary because of defective workmanship or other problems caused by the negligence of the Construction Manager or its subcontractors or suppliers. No costs shall be paid by the Owner to the Construction Manager for any expenses made necessary to correct defective workmanship or to correct any work not in conformance with the Contract Documents or to correct any deficiency or damage caused by the negligent acts by the Construction Manager.
9. Costs for repairs and maintenance, which are consistent with industry standards associated with work required during the warranty period, which may be the responsibility of Construction Manager. This shall not apply to work, which is the responsibility of subcontractors, except in the case of a subcontractor's default.
10. Costs for trash and debris control and removal from the site.
11. Costs incurred due to an emergency affecting the safety of persons and property.
12. Legal costs reasonably and properly resulting from the Project on behalf of the Owner, including handling claims for changes by Subcontractors and Vendors, subject to the following limitations:
 - A. The Owner approved incurring such costs in advance, which approval shall not be unreasonably denied; and
 - B. The legal costs were not incurred as result of the Construction Manager's own negligence or default.

This paragraph does not provide for payment of legal costs incurred in preparing or asserting claim or requests, by Construction Manager itself, for change orders or in enforcing the obligations of this contract.

13. All costs directly incurred in the performance of the Project for the benefit of the Project and not included in the Construction Phase Costs as set forth in Article 8.
14. If requested by the Owner, the Construction Manager will perform all or a portion of the General Conditions work as a Direct Cost of the Project.
15. If approved by the Owner, the Construction Manager, when qualified, may perform all or a portion of the work for any item listed on the estimate or GMP breakdown where it is deemed advantageous due to schedule or economic benefit as a Direct Cost of the Project.
16. Transportation outside of Lake, Orange or Seminole for those personnel employed directly for the Project, not including relocation expenses. Such transportation must be approved in advance by the Owner, and will be in accordance with the Construction Manager's standard personnel policy.
17. Costs of all reproductions used for bidding or information purposes required by the Project to directly benefit the Project.
18. Costs for watchman and security services for the Project.
19. Costs for efficient logistical control of the site, including horizontal and vertical transportation of materials and personnel and costs for adequate storage and parking.
20. Costs for such temporary facilities and temporary protection during construction, as approved by the Owner, including temporary water, heat, power, sanitary facilities, telephones, radios and computers with software.
21. Costs for any job site items not referenced herein, not normally provided by the subcontractors, which will be provided by the Construction Manager as required to complete the Project.

ARTICLE 10

CHANGES IN THE PROJECT

10.1 Change Orders:

The Owner, without invalidating this Agreement, may order changes in the Project within the general scope of this Agreement consisting of additions, deletions or other revisions, with the GMP and the Substantial and/or Final Completion Dates being adjusted

accordingly. All changes in the Project, not covered by an authorized contingency, shall be authorized by a Change Order signed by the Owner before the change is implemented.

1. A Change Order is a written order to the Construction Manager signed by the Owner issued after the execution of this Agreement, authorizing a change in the Project, the Construction Phase Fee, or other attributable cost of the Project.
2. The increase or decrease in the GMP resulting from a change in the Project shall be determined in one or more of the following ways:
 - A. by mutual acceptance of a lump sum properly itemized and supported by sufficient substantiating data to permit evaluation by the Architect-Engineer and Owner;
 - B. by unit prices stated in the Agreement or subsequently agreed upon;
 - C. by cost as defined in Article 9 and a mutually acceptable fixed or percentage fee; or
 - D. by the method provided in Article 10.1(3).
 - E. Should any costs be required for design of an alternative system that would be advantageous to the Project and result in a deductive change order, the Construction Manager shall include the cost of the redesign services of the Architect-Engineer so that the Owner can make proper assessment of the cost of such change. Payment for additional services shall be made by the Owner.
3. If none of the methods set forth in Article 10.1(2) is agreed upon, the Construction Manager, provided it receives a written order signed by the Owner, shall promptly proceed with the work involved. The cost of such work shall then be determined on the basis of the reasonable expenditures and savings of those performing the work attributed to the change. In the event a Change Order is issued under these conditions, the Construction Manager shall establish an estimated cost of the work and the Construction Manager shall not perform any work if the cost exceeds that estimate without prior written approval by the Owner.
4. In the event of either Article 10.1(2) or Article 10.1(3) above, the Construction Manager shall keep and present, in such form as the Owner may prescribe, an itemized accounting together with appropriate supporting data, of the increase in the Direct Cost of the Project as outlined in Article 9.
5. The amount of decrease in the Guaranteed Maximum Price to be allowed by the Construction Manager to the Owner for any deletion or change which results in a net decrease in cost will be the amount of the actual net decrease.

6. If unit prices are stated in the Agreement or subsequently agreed upon, and if the quantities originally contemplated are so changed in a proposed Change Order, and that application of the agreed unit prices to the quantities of work proposed will cause substantial inequity to the Owner or the Construction Manager, the applicable unit prices and Guaranteed Maximum Price shall be equitably adjusted.
7. In the performance of the work, should concealed conditions be encountered below the surface of the ground or should concealed or unknown conditions in an existing structure be inconsistent with the conditions indicated by the Drawings, Specifications, or Owner furnished information or should unknown physical conditions exist below the surface of the ground or should concealed or unknown conditions in an existing structure of an unusual nature, differing materially from those ordinarily encountered and generally recognized as inherent in work of the character provided for in this Agreement, be encountered, the Guaranteed Maximum Price and the Substantial and/or Final Completion Dates shall be equitably adjusted by Change Order upon a request for Change Order in accordance with Article 10.2.
8. In the event the Construction Manager encounters material reasonably believed to be asbestos or polychlorinated biphenyl (PCB) which has not been rendered harmless, petroleum waste, biohazardous substances, radioactive waste or any other substance falling within the category of hazardous or toxic waste under the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) or any other state or federal environmental statute or regulation, hereinafter collectively referred to as "hazardous waste," the Construction Manager shall immediately stop work in the area affected and report the condition to the Owner in writing. Owner shall thereafter as soon as reasonably possible conduct a thorough investigation to determine if the suspected material in the affected area is in fact hazardous waste and shall certify to Construction Manager that such material is not hazardous waste or if such material is in fact hazardous waste that such hazardous waste has been abated and that it is safe to return to the affected area and resume work. The Construction Manager may require the Owner to furnish copies of reports of tests conducted by a qualified testing laboratory acceptable to Construction Manager verifying the absence of such hazardous waste before Construction Manager will be required to resume work. The Contract time and amount shall thereafter be equitably adjusted to account for the time lost due to the encountering of the hazardous waste and the reasonable cost associated therewith. The Construction Manager shall, through an analysis of network schedule, prove such time delays and associated costs.
9. The Construction Manager shall not be required to perform any work relating to hazardous waste without consent pursuant to this Article 10.

10.2 Claims for Additional Cost or Time:

All claims for additional cost or time shall be made by request for a Change Order submitted as provided in Article 16.

The Substantial Completion date shall be extended by Change Order for such reasonable time as the Construction Manager may determine. If the Construction Manager is delayed at any time in the progress of the work by any act or neglect of the Owner or the Architect-Engineer or of any employee of either or by any separate Construction Manager employed by the Owner or by any changes ordered in the work by labor disputes, fire or unusual delay in transportation, unavoidable casualties or any causes beyond the Construction Manager's control or by delay authorized by the Owner pending resolution of disputes, and such delay extends the Substantial and/or Final Completion Date, then the dates for completion may be equitably adjusted.

Only delays which are determined to extend the critical path for the schedule for constructing the Project, will result in a time extension. Neither the Owner nor the Construction Manager shall be considered to own the schedule float time.

10.3 Minor Changes in the Project:

The Owner will have authority to order minor changes in the Project not involving an adjustment in the Guaranteed Maximum Price or an extension of the Substantial and/or Final Completion Date and not inconsistent with the intent of the Contract Documents. Such changes shall be affected by written order. The Documentation of changes shall be determined by the Construction Team, included in the Project Manual and displayed monthly in the Project Management Information System. Changes shall be approved by the Owner and Architect-Engineer.

10.4 Emergencies:

In any emergency affecting the safety of persons or property, the Construction Manager shall act at its discretion, to prevent threatened damage, injury or loss. Any increase in the Guaranteed Maximum Price or extension of time claimed by the Construction Manager on account of emergency work shall be determined as provided in this Article 10.

ARTICLE 11
DISCOUNTS

All discounts for prompt payment shall accrue to the Owner to the extent the cost of the item(s) purchased is paid directly by the Owner or from a fund made available by the Owner to the Construction Manager for such payments. To the extent the cost associated with the Project is paid with funds of the Construction Manager, all cash discounts shall accrue to the Construction Manager. All trade discounts, rebates and refunds, and all returns from the sale of surplus materials and equipment, shall be credited to the cost of the Project.

ARTICLE 12
PAYMENTS TO THE CONSTRUCTION MANAGER

12.1 Monthly Statements:

The Construction Manager shall submit to the Owner a sworn statement, along with the cost reports required under Article 2.1(5), showing, in detail, all moneys paid out, cost accumulated or costs incurred during the previous period and the amount of the Construction Phase Fees due as provided in Article 8. This data shall be attached to the Partial Pay Request form shown in **Exhibit "E"**. Ten percent (10%) retainage shall be held on all payments until the contract is fifty percent (50%) complete, except when approved by the Owner certain suppliers and subcontractors may be paid the entire amount due when such payment is generally the practice of the industry. At fifty percent (50%) completion, the Owner may approve a reduction of the retainage from ten percent (10%) to five (5%) at its discretion. Retainage shall not be withheld on services or fees set forth in Article 8. Payments by the Owner to the Construction Manager shall be made as described in this Article 12. As a condition to application for a monthly partial pay requisition, the Construction Manager agrees that all as-built information will be recorded within thirty (30) days after receipt of information that a change to the Construction Documents has occurred.

12.2 Final Payment:

Final payment constituting the unpaid balance of the Construction Phase Cost of the Project and the Construction Phase Fee, shall be due and payable as described in Article 12.4 after Final Completion, provided that the Project has been finally completed, that the Construction Manager has verified by appropriate signature that it has completed all items and that this Agreement has been finally performed. However, if there should remain work to be completed, the Construction Manager, the Owner, and the Architect-Engineer shall list those items prior to receiving final payment and the Owner may retain a sum equal to the estimated cost of completing any unfinished work and portion of the Construction Manager's retainage, provided that said unfinished items are listed separately and the estimated cost of completing the unfinished items are likewise listed separately. Thereafter, Owner shall pay the Construction Manager monthly, the amount retained for each incomplete item after each such item is completed.

12.3 Payments to Subcontractors:

The Construction Manager shall promptly, within ten (10) days after receipt of payment from the Owner, pay all the amounts due to subcontractors less a retainage of ten percent (10%) until the project is fifty percent (50%) complete, and based on Construction Manager's evaluation of the subcontractor's acceptable performance, the Owner may approve a reduction in retainage from ten percent (10%) to five percent (5%) thereafter. If there should remain items to be completed, the Construction Manager, the Owner and Architect-Engineer shall list those items required for completion and the Construction Manager shall require the retainage of a sum equal to five percent (5%) of the estimated

cost of completing any unfinished items, provided that said unfinished items are listed separately and the estimated cost of completing any unfinished items are likewise listed separately. Thereafter, the Construction Manager shall pay to the subcontractors monthly, the amount retained for each incomplete item after each such item is completed. Before issuance of final payment without any retainage, the subcontractor shall submit satisfactory evidence that all payrolls, material bills and other indebtedness connected with the Project have been paid or otherwise satisfied, warranty information is complete, as-built markups have been submitted and instruction for the Owner's operating and maintenance personnel is complete.

Final payment may be made to certain select subcontractors whose work is satisfactorily completed prior to the total completion of the Project but only upon approval of the Owner.

12.4 Construction Manager's Payment Rights:

All payments for construction services shall be governed by and made in accordance with Florida's Prompt Payment Act, Florida Statutes, Section 218.735.

12.5 Payments for Materials and Equipment:

Payments will be made for material and equipment not incorporated in the work but delivered and suitably stored at a Project site or another location that is insured to protect the Owner's assets subject to prior approval and acceptance by the Owner on each occasion.

12.6 Withholding Payments to Subcontractors:

The Construction Manager shall not withhold payments to subcontractors if such payments have been made to the Construction Manager. Should this occur, the Construction Manager shall return such moneys to the Owner, adjusting pay requests and project bookkeeping as required. However, this provision shall not apply should payments to subcontractors be withheld as a result of procuring normal process paperwork in accordance with the Construction Manager's contract with said subcontractor. The Construction Manager shall, if requested by the Owner, notify the Owner in writing as to the reason for withholding payment.

ARTICLE 13

INSURANCE, INDEMNITY AND WAIVER OF SUBROGATION

13.1 Indemnity:

The Construction Manager agrees to be liable for any and all damages, losses and expenses incurred, by the Owner, in any way related to or caused by the acts and/or omissions of the Construction Manager, or any of its employees, agents, sub-contractors, representatives, volunteers or the like, to the extent stemming from the services provided by this Agreement. The Construction Manager agrees to indemnify, defend and hold the Owner harmless for any and all claims, suits, judgments, damages, losses and expenses, including

but not limited to, court costs, expert witness fees, consultation services and attorney's fees, through and including any appeals, arising from and related to any and all acts and/or omissions of the Construction Manager, or any of its employees, agents, sub-contractors, representatives, volunteers, or the like, to the extent stemming from the services provided by this Agreement. Said indemnification, defense and hold harmless activities shall not be limited by any required insurance coverage amounts set forth herein and shall survive termination or natural expiration of this Agreement.

13.2 Construction Manager's Insurance:

1. The Construction Manager shall not commence any construction work in connection with this Agreement until he has obtained all of the following types of insurance and such insurance has been approved by the Owner, nor shall the Construction Manager allow any subcontractor to commence work on its subcontract until all similar insurance required of the subcontractor has been so obtained and approved. All insurance policies shall be from insurers qualified and doing business in Florida with an AM Best Company rating of no less than A.
2. Worker's Compensation Insurance - The Construction Manager shall take out and maintain during the life of this Agreement Worker's Compensation Insurance for all his employees, and the like, connected with the work of this Project and, in case any work is sublet, the Construction Manager shall require the subcontractor similarly to provide Worker's Compensation Insurance for all of the subcontractor's employees unless such employees are covered by the protection afforded by the Construction Manager. Such insurance shall comply with Florida Worker's Compensation Law. In case any class of employees, engaged in hazardous work on the Project, is not protected under the Worker's Compensation statute, the Construction Manager shall provide adequate insurance, satisfactory to the Owner, for the protection of employees not otherwise protected. Employers' liability shall be no less than \$1,000,000/1,000,000/1,000,000.
3. Construction Manager's Public Liability and Property Damage Insurance - The Construction Manager shall take out and maintain during the life of this Agreement, Comprehensive General Liability and Comprehensive Automobile Liability Insurance to protect it from claims of damage for personal injury, including accidental death, as well as claims for property damage which may arise from its operations under this Agreement whether such operations are by the Construction Manager or by anyone directly or indirectly employed by it, and the amount of such insurance shall have the following minimum limits:
 - A. GENERAL LIABILITY: One Million Dollars (\$1,000,000.00) each occurrence; GENERAL AGGREGATE: Two Million Dollars (\$2,000,000.00). There shall not be an EFIS Exclusion Endorsement on any general liability policy;

- B. Automobile Liability Coverages, One Million Dollars (\$1,000,000.00) combined single limit, and One Million Dollars (\$1,000,000.00) for each occurrence of bodily injury and property damage;
 - C. Excess Liability, Umbrella Coverage, Two Million Dollars (\$2,000,000.00) each occurrence.
- 4. Subcontractor's Public Liability and Property Damage Insurance - The Construction Manager shall require each of its subcontractors to procure and maintain during the life of any such subcontract, insurance coverage of the types specified above or insure the activities of the subcontractors in the Construction Manager's policies, as specified above.
- 5. "XCU" (Explosion, Collapse, Underground Damage) - The Construction Manager's Liability Policy shall provide "XCU" coverage for those classifications in which they are excluded.
- 6. Products and completed operations Coverages - The Construction Manager's Liability Policy shall include Broad Form Property Damage Coverage, Products and Completed Operations Coverages. The products and completed operations portions of the liability coverage shall extend for a period of two (2) years after the Final Acceptance of the Project by the Owner.
- 7. Contractual Liability Work Contracts - The Construction Manager's Liability Policy shall include Contractual Liability Coverage designed to protect the Construction Manager for contractual liabilities assumed by the Construction Manager in the performance of this Agreement.
- 8. Indemnification Rider -
 - A. To cover to the fullest extent permitted by law, the Construction Manager shall indemnify and hold harmless the Owner and the Architect-Engineer and their agents and employees from and against all claims, damages, losses and expenses, including but not limited to attorney's fees, arising out of or resulting from the performance of the Project, provided that any such claim, damage, loss or expense (1) is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the work itself), and to the extent it (2) is caused in whole or in part by any negligent act or omission of the Construction Manager, any subcontractor, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, regardless of whether or not it is caused in part by a party indemnified hereunder. Such obligation shall not be construed to negate, abridge, or otherwise reduce any other right to obligation of indemnity which would otherwise exist as to any party or person described in this Article.

- B. In any and all claims against the Owner or the Architect-Engineer or any of their agents or employees by any employee of the Construction Manager, any subcontractor, anyone directly or indirectly employed by either or anyone for whose acts either may be liable, the indemnification obligations under this Paragraph shall not be limited in any way by any limitation on the amount or type of damages, compensation or benefits payable by or for the Construction Manager or any subcontractor under workers' or workmen's compensation acts, disability benefit acts or other employee benefit acts.
 - C. The obligations of the Construction Manager under this Article 13.2(8) shall not extend to the liability of Architect-Engineer, his agents or employees, arising out of (1) the preparation or approval of maps, drawings, opinions, reports, surveys, change orders, designs or specifications, or (2) the giving of or the failure to give directions or instruction by Architect-Engineer, its agents or employees provided such giving or failure to give is the primary cause of the injury or damage.
 - D. The Construction Manager hereby acknowledges receipt of Ten Dollars (\$10.00) and other good and valuable consideration from the Owner and acknowledges receipt of Ten Dollars (\$10.00) and other good and valuable consideration from the Architect-Engineer in exchange for giving the Owner and Architect-Engineer, respectively, the indemnification provided above in Articles 13.1 and 13.2.
9. Builder's Risk Coverage - The Construction Manager shall take out and maintain a "Builder's Risk Policy" for each assigned Project, issued to provide coverages on an "all risk" basis including theft. This coverage shall not lapse or be canceled because of partial occupancy by the Owner prior to Final Acceptance of the Project. The Owner may elect to take out and maintain this insurance coverage. Should the Owner purchase said insurance, the insurance policy shall have a deductible for each occurrence of Five Thousand and 00/100 Dollars (\$5,000.00). The Construction Manager shall be responsible for paying any deductible amount.
10. Certificate of Insurance - For every insurance policy required hereunder, the Construction Manager shall provide the Owner with a Certificate of Insurance evidencing such coverage for the duration of this Agreement, or such longer period if required hereunder. Said Certificate of Insurance shall be dated and show:
- A. The name of the insured Construction Manager;
 - B. The specified job by name and job number;
 - C. List the "CITY OF MOUNT DORA" as an Additional Insured;
 - D. Recognizes the Indemnification requirements of this Agreement;
 - E. The name of the insurer;
 - F. The number of the policy;
 - G. The effective date;

- H. The termination date;
 - I. A statement that the insurer will mail notice to the CITY at least thirty (30) days prior to any material changes in the provisions or cancellation of the policy.
- 11. Receipt of certificates or other documentation of insurance or policies or copies of policies by the Owner, or by any of its representatives, which indicates less coverage than is required hereunder, does not constitute a waiver of the Construction Manager's obligation to fulfill the insurance requirements specified herein.
 - 12. The Construction Manager shall ensure that any sub-contractor(s), hired to perform any of the work on any part of the Project, maintain appropriate insurance as determined by the Construction Manager. In addition, the Construction Manager shall maintain proof of same on file and made readily available upon request by the Owner.

13.3 Waiver of Subrogation:

- 1. The Owner and the Construction Manager waive all rights against each other, for damages caused by perils covered by insurance provided under Article 13.2 to the extent they are covered by such insurance except such rights as either may have to the proceeds of such insurance held by the Owner and Construction Manager as trustees. The Construction Manager shall require similar waivers from all subcontractors and their sub-subcontractors.
- 2. The Owner and Construction Manager waive all rights against each other for loss or damage to any equipment used in connection with the Project and covered by any property insurance. The Construction Manager shall require similar waivers from all subcontractors and their sub-subcontractors.
- 3. The Owner waives subrogation against the Construction Manager on all property and consequential loss policies carried by the Owner on adjacent properties and under property and consequential loss policies purchased for the Project after its completion.
- 4. If the policies of insurance referred to in this Article require an endorsement to provide for continued coverage where there is a waiver of subrogation, the Owner of such policies will cause them to be so endorsed and failure to obtain proper endorsement nullifies the waiver of subrogation.

ARTICLE 14
TERMINATION OF THE AGREEMENT AND OWNER'S RIGHT TO
PERFORM CONSTRUCTION MANAGER'S OBLIGATION

14.1 Termination by the Construction Manager:

If the Project is stopped for a period of thirty (30) days under an order of any court or other public authority having jurisdiction or as a result of an act of government, such as a declaration of a national emergency making materials unavailable, through no act or fault of the Construction Manager, or if the Project should be stopped for a period of sixty (60) days by the Construction Manager, for the Owner's failure to make payments thereon, then the Construction Manager may, upon seven (7) days written notice to the Owner, request payment for all work executed, the Construction Manager's fees earned to date, and for any proven loss sustained upon any materials, equipment, tools, construction equipment and machinery, including reasonable profit thereon and termination expenses incurred by the Construction Manager.

14.2 Owner's Right to Perform Construction Manager's Obligations and Termination by Owner for Cause:

1. If the Construction Manager fails to perform any of its obligations under this Agreement, including any obligation it assumes to perform work with its own forces, the Owner may correct any deficiencies after providing seven (7) days written notice to the Construction Manager. In such an event, the GMP, or the actual cost of the Project, whichever is less, shall be reduced by the cost to the Owner of correcting such deficiencies and the Construction Manager's Construction Phase Fee shall also be reduced by the amount required to manage the correction of such deficiencies.
2. The Owner may, without prejudice to any other right or remedy and upon providing the Construction Manager and its surety, if any, seven (7) days written notice of failures or deficiencies, terminate this Agreement with the Construction Manager and take possession of the site and of all materials, equipment, tools, construction equipment and machinery thereon, owned by the Construction Manager, and may finish the Project by whatever means or method the Owner, in its sole discretion, deems appropriate.
3. If the Construction Manager is adjudged bankrupt, or if it makes a general assignment for the benefit of its creditors, or if a receiver is appointed on account of the Construction Manager's insolvency, or if it persistently or repeatedly refuses or fails, except in cases for which an extension of time is provided, to supply enough properly skilled workmen or proper materials and fails to maintain an established schedule by falling forty-five (45) days or more behind the schedule adopted by the Construction Team, or if the Construction Manager fails to make prompt payments to subcontractors for materials or labor, or persistently disregards laws, rules, ordinances, regulations or orders of any public authority having jurisdiction, or

otherwise is in breach of a material provision of this Agreement, the Construction Manager shall not be entitled to receive any further payment until the Project is finished nor shall it be relieved from its obligations assumed under Article 6. Reasonable termination expenses incurred by the Owner may be deducted from any payments which remain owed to the Construction Manager, excluding any monies owed the Construction Manager for subcontract work.

14.3 Termination by Owner Without Cause:

1. The Owner may, at any time, terminate the Contract for the Owner's convenience and without cause take possession of the site and of all materials, equipment, tools, construction equipment and machinery thereon, owned by the Construction Manager, and may finish the Project by whatever method he may deem expedient without prejudice to any right or remedy.
2. Upon seven (7) days written notice from the Owner of such termination for the Owner's convenience, the Contractor shall:
 - A. cease operations as directed by the Owner in the notice;
 - B. take actions necessary, or that the Owner may direct, for the protection and preservation of the work; and
 - C. terminate all existing subcontracts and purchase orders and not enter into further subcontracts and purchase orders, except for work directed to be performed prior to the effective date of termination stated in the notice.
3. In case of such termination for the Owner's convenience, the Construction Manager shall be entitled to receive payment for work executed, and costs incurred by reason of such termination, along with a reasonable fee, as defined in Article 8.1(2), overhead and profit on the work performed.

ARTICLE 15
ASSIGNMENT AND GOVERNING LAW

- 15.1 Neither the Owner nor the Construction Manager shall assign its interest in this Agreement without the written consent of the other except as to the assignment of proceeds.
- 15.2 This Agreement shall be governed by the laws of the State of Florida. Venue shall be in Lake County, Florida. The parties waive all rights to trial by jury.

ARTICLE 16
NOTICE OF CLAIM; WAIVER OF REMEDIES

- 16.1 The Owner's liability to the Construction Manager for any claims arising out of or related to the subject matter of this Agreement, whether in contract or tort, including, but not

limited to, claims for extension of construction time, for payment by the Owner of the costs, damages or losses because of changed conditions under which the work is to be performed, or for additional work, shall be governed by the following provisions:

1. All claims must be submitted as a Request for Change Order in the manner as provided herein;
2. The Construction Manager must submit a Notice of Claim to Owner within twenty (20) days of the Construction Manager becoming aware of the occurrence, or the event, giving rise to the claim; and
3. Within ten (10) days of submitting its Notice of Claim, the Construction Manager shall submit to the Owner its Request for Change Order, which shall include a written statement of all the details of the claim, including a description of the work affected.

The Construction Manager agrees that the Owner shall not be liable for any claim that the Construction Manager fails to submit as a Request for Change Order as provided in this paragraph to the extent that the Owner is prejudiced by the failure of the Construction Manager to submit the Request for Change Order.

- 16.2 After receipt of a Request for Change Order, the Owner, in consultation with the Architect-Engineer, shall deliver to the Construction Manager its written determination of the claim.
- 16.3 For work the Construction Manager performs with its own forces, and in addition to the adjustments provided for in Article 8, the Construction Manager's exclusive remedy for delays in performance of the construction caused by events beyond its control, including delays claimed to be caused by or attributable to the Owner or the Architect-Engineer, including claims based on breach of contract or negligence, shall be a claim submitted in compliance with Article 16.1 above, for an extension of the scheduled construction time. In the event of a change in such work, the Construction Manager's claims for adjustments in the contract sum are limited exclusively to its actual costs for such changes plus the Construction Manager's Fee established at each Project's Original GMP. The Construction Manager expressly agrees that the foregoing constitutes its sole and exclusive remedy for delays and changes in work, and eliminates any other remedies for claims for increase in the contract price, delays, changes in the work, damages, losses or additional compensation.

ARTICLE 17

DIRECT MATERIALS ACQUISITION AND SALES TAX EXEMPT PURCHASE PROCEDURES FOR PUBLIC PROJECTS

- 17.1 Direct Materials Acquisition by Owner - Supply Bonds:

2. The Owner may, if not prohibited by law, exercise a right to purchase directly, various construction materials, supplies and equipment that may be part of this Agreement or of a subcontract, provided that the Owner receives proper authorization from the State of Florida in the form of a Technical Assistance Advisement as set forth in Florida Administrative Code, Rule 12-11.003. Any materials purchased by the Owner shall be referred to as "Owner Purchased Materials" and the responsibilities of both the Owner and the Construction Manager relating to such Owner Purchased Materials shall be governed by the terms and conditions of this Article, which shall take precedence over other conditions and terms of this Agreement where inconsistencies or conflicts exist.
3. The Owner will issue its own purchase orders directly to a vendor. The Owner's Purchase Order shall contain or be accompanied by the Owner's exemption certificate and must include the Owner's name, address and exemption number with issue and expiration date shown. The materials shall be purchased from the vendors and suppliers selected by the Construction Manager or subcontractor for prices negotiated by the Construction Manager or subcontractor, as applicable. The Construction Manager will provide all the necessary information for preparation of the purchase orders by the Owner and will coordinate the purchase of the materials in a timely manner so as to not negatively impact the performance of the construction activity of the Project.
4. The subcontract amount shall be reduced by the net, undiscounted amount of these purchase orders, plus all sales taxes. Issuance of the purchase orders by the Owner shall not relieve the subcontractor or the Construction Manager of any of their responsibilities regarding material purchases, or installation, with the exception of the payments for the material so purchased. The Construction Manager and the subcontractor shall remain, with respect to materials, supplies and equipment, fully responsible for coordination, correct quantities ordered, submittals, protection, storage, scheduling, shipping, security, expediting, receiving, installation, cleaning and the management of all applicable warranties.
5. As Owner Purchased Materials are delivered to the jobsite, the Construction Manager, as Owner's representative, shall visually inspect all shipments from the suppliers, and approve the vendor's invoice for material delivered. The Construction Manager shall assure that each delivery of Owner Purchased Material is accompanied by documentation adequate to identify the purchase order against which the purchase is made. This documentation may consist of a delivery ticket and an invoice from the supplier conforming to the Purchase Order, together with such additional information as the Owner or Construction Manager may require. The Construction Manager, as Owner's representative, shall verify in writing to the Owner the accuracy of the delivery ticket. The vendor will then forward the invoice to the Owner through the Construction Manager for payment. The invoice shall be thereupon furnished to the Owner for processing and payment in the same manner that all other Owner invoices are processed. The Owner shall have the right to

assign Owner personnel to verify and audit the accuracy of all Direct Purchase documents.

6. Notwithstanding the transfer of Owner Purchased Materials by the Owner to the Construction Manager's possession, the Owner shall retain title to any and all Owner Purchased Materials.
7. The Owner shall purchase and maintain insurance which shall be sufficient to protect against any loss of or damage to Owner purchased equipment, materials or supplies. Such insurance shall cover the value of any Owner Purchased Materials not yet incorporated into the Project from the time the Owner first takes title.
8. The material supplier may be required to provide a supply bond in the amount of 100% of the purchase order price. The bond shall be from a qualified surety company authorized to do business in the State of Florida and acceptable to the Owner and the Construction Manager. If a supply bond is required, the cost of the bond will be added to the amount of the Purchase Order. The premium cost for this supply bond shall be included in the bid price. Verifying that a designated material supplier can furnish a supply bond, if required, will be the responsibility of the Construction Manager. Owner reserves the right to waive the requirement of providing a supply bond at the discretion of Owner.
9. If the State of Florida assesses any sales tax penalties and/or interest against the Construction Manager or any of its subcontractors or material suppliers relating to the direct acquisition of materials and/or equipment by Owner as authorized by this paragraph, such taxes, penalties, interest and/or any legal and administrative fees expended by the Construction Manager as a direct result of any action or assessment made by the State of Florida, shall be reimbursed by Owner to the Construction Manager in a prompt and reasonable manner and shall not be considered a Project Cost.

18.2 Sales Tax Exempt Purchasing Procedures for Public Projects:

1. The Construction Manager has included Florida sales tax and other applicable taxes in its bid for material, supplies and equipment. The Owner, being exempt from sales tax, reserves the right to make direct purchases of various construction equipment, materials or supplies included in any subcontractor's bid and/or contract.
2. Any equipment, materials or supplies directly purchased by the Owner that are included in the Construction Manager's contract or any subcontract shall be referred to as Owner Purchased Materials and the responsibilities of both the Owner and the subcontractor relating to such Owner Purchased Materials shall be governed by these procedures.
3. Material suppliers shall be selected by the Construction Manager or subcontractor, as applicable.

4. Owner purchasing of construction materials, if selected, will be administered on a deductive Change Order basis and the contract amount shall be reduced by the net undiscounted amount of the purchase orders issued by the Owner, plus all sales tax included.
5. The Construction Manager shall provide a list of all intended suppliers, vendors and materialmen for consideration as Owner Purchased materials with a description of the materials to be supplied, estimated quantities and prices. This information shall be submitted to the Owner as soon as practicable.
6. The Construction Manager or subcontractors, as applicable, shall prepare a purchase order requisition form in a form acceptable to the Owner and the Construction Manager, to specifically identify the materials, which Owner has, at its sole option, elected to purchase directly. The purchase order requisition form shall include:
 - A. the name, address, telephone number and contact person for the material supplier;
 - B. manufacturer or brand, model or specification number of the item;
 - C. estimated quantity needed;
 - D. the price quoted by the supplier for the materials identified therein;
 - E. any sales tax associated with such quote; and
 - F. delivery dates
7. Construction Manager or subcontractor shall include reference to any terms and conditions, which have been negotiated with the vendors, such as payment terms, warranties, retainage and the like. The purchase order requisition forms are to be submitted to the Owner's Representative no less than seven (7) days prior to the need for ordering such Owner Purchased Materials, in order to provide sufficient time for Owner review and approval and to assure that such directly purchased materials may be directly purchased by Owner and delivered to the Project site without any delay to the Project.
8. After receipt of the purchase order requisition form, Owner shall prepare the Purchase Order for equipment, materials or supplies which the Owner chooses to purchase directly. Pursuant to the Purchase Order, the vendor will provide the required quantities of material at the price established in the vendor's quote to the Construction Manager or subcontractor, less any sales tax associated with such price. Promptly upon receipt of each Purchase Order, the Construction Manager shall verify the terms and conditions of the Purchase Order prior to its issuance to supplier and in a manner to assure proper and timely delivery of items. The Owner's

Purchase Orders shall be accompanied by the Owner's exemption certificate and must include the Owner's name, address, and exemption number with issue and expiration date shown.

9. In conjunction with the execution of the Purchase Orders, by the suppliers, one or more deductive Change Orders shall be issued, referencing the full value of all Owner Purchased Materials to be provided by each supplier from whom the Owner elected to purchase material directly, plus all sales tax savings associated with such materials in the Construction Manager's price or subcontractor's bid.
10. Construction Manager shall be fully responsible for all matters relating to the receipt of materials furnished by the Owner in accordance with these procedures, including, but not limited to, verifying correct quantities, verifying documentation of orders in a timely manner, coordinating purchases, providing and obtaining all warranties and guarantees required by the Contract Documents, inspection and acceptance of the goods at the time of delivery, and loss or damage to equipment and materials following acceptance of items by the Owner. The Construction Manager shall coordinate delivery schedules, sequence of delivery, loading orientation and other arrangements normally required for the particular materials furnished. The Construction Manager shall provide all services required for the unloading, handling and storage of materials through installation. The Construction Manager agrees to indemnify and hold harmless the Owner from any and all claims of whatever nature resulting from non-payment of goods to suppliers arising from the actions or directions of the Construction Manager.
11. As Owner Purchased Materials are delivered to the jobsite, the Construction Manager, as Owner's representative, shall visually inspect all shipments from the suppliers and approve the vendor's invoice for material delivered. The Construction Manager shall assure that each delivery of Owner Purchased Material is accompanied by documentation adequate to identify the purchase order against which the purchase is made. This documentation may consist of a delivery ticket and an invoice from the supplier conforming to the purchase order, together with such additional information as the Owner or Construction Manager may require. The Construction Manager, as Owner's representative, shall verify in writing to the Owner the accuracy of the delivery ticket. The vendor will then forward the invoice to the Owner through the Construction Manager for payment. The invoice shall be thereupon furnished to the Owner for processing and payment in the manner all other Owner invoices are processed. The Owner shall have the right to assign Owner personnel to verify and audit the accuracy of all Direct Purchase documents.
12. The Construction Manager shall ensure that Owner Purchased Materials conform to the Specifications, and determine prior to incorporation into the work if such materials are patently defective and whether such materials are identical to the materials ordered and match the description on the bill of lading. If the Construction Manager discovers defective or nonconformity in the Owner Purchased Material, upon such visual inspection, the Construction Manager shall not utilize such

nonconforming or defective materials in the work, shall promptly take action to remedy the defect or nonconformance so as not to delay the Project and shall promptly notify the vendor of the defective or non-conforming condition in order to pursue repair or replacement of those materials without any undue delay or interruption to the Project. Additionally, the Construction Manager shall notify the Owner of such occurrence. If the Construction Manager fails to perform such inspection and otherwise incorporates defective or nonconforming Owner Purchased Materials, the condition of which it either knew or should have known by performance of an inspection, the Construction Manager shall be responsible for all damages to the Owner resulting from the incorporation of such materials into the Project, including liquidated or delay damages.

13. The Construction Manager shall maintain records of all Owner Purchased Materials it incorporates into the work from the stock of Owner Purchased Materials in its possession. The Construction Manager shall account monthly to the Owner for any Owner Purchased Materials delivered into the Construction Manager's possession, including portions of all such materials, which have been incorporated into the work.
14. The Construction Manager shall be responsible for obtaining and managing all warranties and guarantees for all materials and products. All repairs, maintenance or damage repair calls shall be handled by the Construction Manager for resolution with the appropriate supplier or vendor.
15. Notwithstanding the transfer of Owner Purchased Materials by the Owner to the Construction Manager's possession, the Owner shall retain title to any and all Owner Purchased Materials.
16. The transfer of possession of Owner Purchased Materials from the Owner to the Construction Manager shall constitute a bailment for mutual benefit of the Owner and the Construction Manager. The Owner shall be considered the bailor and the Construction Manager the bailee of the Owner Purchased Materials. Owner Purchased Materials shall be considered returned to the Owner for purposes of its bailment at such time as they are incorporated into the Project or consumed in the process of completing the project. The Construction Manager shall have the duty to safeguard, store and protect all Owner Purchased Materials.
17. The Owner shall purchase and maintain insurance which shall be sufficient to protect against any loss of or damage to Owner Purchased equipment, materials or supplies. Such insurance shall cover the full value of any Owner Purchased Materials not yet incorporated into the Project from the time the Owner first takes title.
18. The Owner shall in no way be liable for interruption or delay in the Project, for any defects or other problems with the Project, or for any extra costs or time resulting from delay in the delivery of, or defects in, Owner Purchased Materials.

19. On a monthly basis, the Construction Manager shall be required to review invoices submitted by all suppliers of Owner Purchased Materials delivered to the Project site during that month and either concur or object to the Owner's issuance of payment to the suppliers, based upon the Construction Manager's records of materials delivered to the site and any defects in such materials.
20. In order to arrange for the prompt payment to the supplier, the Construction Manager shall provide the Owner with a copy of the applicable Purchase Order, invoices, delivery tickets, written acceptance of the delivered items and such other documentation as may be reasonably required by the Owner. Upon receipt and verification of the appropriate documentation, the Owner shall prepare a check drawn to the supplier based upon the receipt of data provided. The check will be released, delivered and remitted directly to the supplier. The Construction Manager agrees to assist the Owner to immediately obtain partial or final release of lien waivers as appropriate.
21. At the end of the Project, any refund for surplus materials returned to suppliers plus applicable sales tax savings amounts shall be credited with an additive Change Order to the applicable subcontractor agreement with the Construction Manager. Salvage materials shall be the property of the Owner and stored or removed from the site by the Construction Manager at the Owner's direction.

ARTICLE 18

MISCELLANEOUS

18.1 Harmony:

1. The Construction Manager is advised and hereby agrees that it will exert every reasonable and diligent effort to assure that all labor employed by the Construction Manager and its Subcontractors for work on the Project shall work in harmony with and be compatible with all other labor being used by building and construction contractors now or hereafter on the site of the Project.
2. The Construction Manager further agrees that the above provision will be included in all contracts with the subcontractors; however, said provision shall not be interpreted or enforced so as to deny or abridge, on account of membership or non-membership in any labor union or labor organization, the right of any person to work as guaranteed by Article 1, Section 6 of the Florida Constitution.

18.2 Dispute Resolution:

1. All claims, disputes and other matters in question, hereinafter referred to as a "Controversy", between the parties to this Agreement arising out of or relating to this Agreement or the breach thereof shall be initially submitted to mediation if mutually agreeable in accordance with the Construction Mediation Rules of the

American Arbitration Association ("AAA") or any other mutually agreeable mediation firm.

2. Should either the Owner or the Construction Manager feel it necessary and appropriate to take any legal action to enforce any of the terms or conditions of this Agreement, then each party shall be responsible for its own attorney's fees and costs associated with such litigation.

18.3 Construction Manager's Project Records:

The Construction Manager's Project records shall be maintained for the minimum period required by state and federal law, and shall be made available to the Owner or its authorized representative at mutually convenient times.

18.4 Consequential Damages:

The parties mutually waive all claims for consequential damages, except to the extent paid for by insurance maintained for this project.

18.5 Public Records:

1. Pursuant to Florida Statutes, Section 119.0701:

IF YOU HAVE QUESTIONS REGARDING THE APPLICATION OF FLORIDA STATUTES, CHAPTER 119, TO YOUR DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS CONTRACT, CONTACT THE CITY'S/OWNER'S CUSTODIAN OF PUBLIC RECORDS:

CITY CLERK: GWEN JOHNS
510 NORTH BAKER STREET
MOUNT DORA, FL 32757
(352) 735-7126
JOHNSG@CITYOFMOUNTDORA.COM

2. Construction Manager agrees to comply with public records laws, specifically to:
 - A. Keep and maintain public records required by the City/Owner to perform the services set forth herein.
 - B. Upon request from the City's/Owner's custodian of public records, provide the City/Owner 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 Florida Statutes, Chapter 119, or as otherwise provided by law.
 - C. Ensure that public records which 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/Owner.

- D. Upon completion of the contract, transfer, at no cost to the City/Owner, all public records in possession of the Construction Manager or keep and maintain public records required by the City/Owner to perform the services set forth herein. If the Construction Manager transfers all public records to the City/Owner upon completion of the contract, the Construction Manager shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If the Construction Manager keeps and maintains public records upon completion of the contract, the Construction Manager shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to the City/Owner, upon request from the City's/Owner's custodian of public records, in a format that is compatible with the information technology systems of the City/Owner.

18.6 Severability:

All clauses found herein shall act independently of each other. If a clause is found to be illegal or unenforceable, it shall have no effect on any other provision of this Agreement. It is understood by the parties hereto that if any part, term, or provision of this Agreement is by the courts held to be illegal or in conflict with any law of the State of Florida or the United States, the validity of the remaining portions or provisions shall not be affected, and the rights and obligations of the parties shall be construed and enforced as if the Agreement did not contain the particular part, term, or provision held to be invalid.

18.7 Waiver:

Failure of the parties to insist upon strict performance of any of the covenants, terms, provisions, or conditions of this Agreement or to exercise any right or option herein contained, shall not be construed as a waiver or a relinquishment for the future of any such covenant, term, provision, or condition, or right of election, but same shall remain in full force and effect.

18.8 Notice:

The parties hereto agree and understand that written notice, mailed or delivered to the last known mailing address, shall constitute sufficient notice to the Owner and the Construction Manager. All notices required and/or made pursuant to this Agreement to be given to the Owner and the Construction Manager shall be in writing and given by way of the United States Postal Service, first class mail, postage prepaid, addressed to the following addresses of record:

Owner: City of Mount Dora
Attention: City Manager
510 N. Baker Street
Mount Dora, Florida 32757

with copy to: City Attorney
Bell & Roper, P.A.
2707 E. Jefferson Street
Orlando, Florida 32803

Construction Manager: Faden Builders, Inc.
1194 Camp Avenue
Mount Dora Florida 32757

18.9 Modification:

The covenants, terms, and provisions of this Agreement may be modified by way of a written instrument, mutually accepted by the parties hereto. In the event of a conflict between the covenants, terms, and/or provisions of this Agreement and any written Amendment(s) hereto, the provisions of the latest executed instrument shall take precedence.

18.10 Headings:

All headings of the sections, exhibits, and attachments contained in this Agreement are for the purpose of convenience only and shall not be deemed to expand, limit, or change the provisions contained in such sections, exhibits, and attachments.

18.11 Joint Authorship:

This Agreement shall be construed as resulting from joint negotiation and authorship. No part of this Agreement shall be construed as the product of any one of the parties hereto.

18.12 Equal Opportunity Employer:

The Construction Manager is an Equal Opportunity Employer and will comply with all equal opportunity employment laws. The Construction Manager will further ensure that all sub-contractors it utilizes in providing the services required hereunder will comply with all equal opportunity employment laws. During the performance of this contract, the Construction Manager agrees as follows:

1. The Construction Manager will not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender identity or national origin. The Construction Manager will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, sexual orientation,

gender identity or national origin. Such action shall include, but not be limited to the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Construction Manager agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause.

2. The Construction Manager will, in all solicitations or advertisements for employees placed by or on behalf of the Construction Manager, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, sexual orientation, gender identity or national origin.
3. The Construction Manager will not discharge or in any other manner discriminate against any employee or applicant for employment because such employee or applicant has inquired about, discussed or disclosed the compensation of the employee or applicant or another employee or applicant. This provision shall not apply to instances in which an employee who has access to the compensation information of other employees or applicants as a part of such employee's essential job functions discloses the compensation of such other employees or applicants to individuals who do not otherwise have access to such information, unless such disclosure is in response to a formal complaint or charge, in furtherance of an investigation, proceeding, hearing or action, including an investigation conducted by the employer or is consistent with the contractor's legal duty to furnish information.
4. The Construction Manager will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice to be provided advising the said labor union or workers' representatives of the Construction Manager's commitments under this section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
5. The Construction Manager will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations and relevant orders of the Secretary of Labor.
6. The Construction Manager will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by rules, regulations and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the administering agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations and orders.
7. In the event of the Construction Manager's noncompliance with the nondiscrimination clauses of this Agreement or with any of the said rules,

regulations, or orders, this Agreement may be canceled, terminated or suspended in whole or in part and the Construction Manager may be declared ineligible for further Government contracts or federally assisted construction contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation or order of the Secretary of Labor, or as otherwise provided by law.

8. The Construction Manager will include the provisions of paragraphs (1) through and including this paragraph (7) in every subcontract or purchase order unless exempted by rules, regulations or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The Construction Manager will take such action with respect to any subcontract or purchase order as necessary.

18.13 Compliance with the Davis-Bacon Act:

1. To be determined at GMP, all transactions regarding this Agreement shall be done in compliance with the Davis-Bacon Act (40 U.S.C. 3141- 3144, and 3146-3148) and the requirements of 29 C.F.R. pt. 5 as may be applicable. The Construction Manager shall comply with 40 U.S.C. 3141-3144, and 3146-3148 and the requirements of 29 C.F.R. pt. 5 as applicable.
2. The Construction Manager is required to pay wages to laborers and mechanics at a rate not less than the prevailing wages specified in a wage determination made by the Secretary of Labor.

18.14 Compliance with the Copeland "Anti-Kickback" Act:

1. The Construction Manager shall comply with 18 U.S.C. § 874, 40 U.S.C. § 3145, and the requirements of 29 C.F.R. pt. 3 as may be applicable, which are incorporated by reference into this contract.
2. The Construction Manager shall ensure that any subcontracts contain the above clause and such other clauses as FEMA may by appropriate instructions require, and also a clause requiring the subcontractors include these clauses in any lower tier subcontracts. The Construction Manager shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all such contract clauses.
3. A breach of the contract clauses above may be grounds for termination of the Agreement.

18.15 Clean Air Act:

1. The Construction Manager agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. § 7401 et seq.
2. The Construction Manager agrees to report each violation to the Owner and understands and agrees that the Owner will, in turn, report each violation as required to assure notification to the Federal Emergency Management Agency, and the appropriate Environmental Protection Agency Regional Office.
3. The Construction Manager agrees to include these requirements in each subcontract exceeding \$150,000.00, financed in whole or in part with Federal assistance provided by FEMA.

18.16 Applicable Licensing and Compliance with all Laws:

The Construction Manager, at its sole expense, shall obtain all required federal, state, and local licenses, occupational and otherwise, required to successfully provide the services set forth herein. The Construction Manager, at its sole expense, shall comply with all laws, ordinances, judicial decisions, orders, and regulations of federal, state, county and municipal governments, as well as their respective departments, commissions, boards and officers, which are in effect at the time of execution of this Agreement or are adopted at any time following the execution of this Agreement, including any required processes, procedures or actions necessary to assist the Owner with reimbursement or enable the Owner to seek reimbursement from FEMA if the need arises. Notwithstanding any language herein to the contrary, in the event that any laws, ordinances, judicial decisions, orders, or regulations of the federal, state, county, or municipal governments change after execution of this Agreement, Construction Manager shall be entitled to an equitable adjustment in time as applicable and price to the extent the Construction Manager's direct costs, not including labor, are affected. Any such adjustment will be determined at the time of such an occurrence and there shall only be a construction phase fee on this item if it exceeds two percent (2%) for each separate GMP.

18.17 Use of City Logo, Name, Seal, Flag and/or City Letterhead:

The Construction Manager may only use the City of Mount Dora's name, logo seal and/or flag with the express written permission of the City and consistent with any City policy related to use of the same. In addition, the Construction Manager shall not use the City's Letterhead for issuing any correspondence, for any purpose, without the express written consent of the Owner.

IN WITNESS WHEREOF, the parties hereto, by their duly authorized representatives, have executed this Agreement effective the 7 day of April, 2020.

CITY OF MOUNT DORA

COMMUNITY REDEVELOPMENT AGENCY
OF THE CITY OF MOUNT DORA

NORTHEAST COMMUNITY
REDEVELOPMENT AGENCY OF THE CITY
OF MOUNT DORA

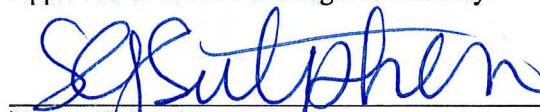


CATHERINE T. HOECHST
MAYOR of the City of Mount Dora, Florida

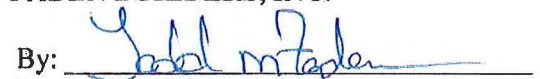
ATTEST:

For the use and reliance of the City of Mount Dora, the CRA of the City of Mount Dora and the Northeast CRA of the City of Mount Dora only. Approved as to form and legal sufficiency.

 on behalf of
GWEN KEOUGH-JOHNS, MMC
CITY CLERK


Sherry G. Sutphen
City Attorney

FADEN BUILDERS, INC.

By: 
Print: Todd M. Faden
Title: PRESIDENT

STATE OF FLORIDA
COUNTY OF Lake

The foregoing instrument was acknowledged before me by means of ☒ physical presence or ☐ online notarization of Todd M. Faden, the President of Faden Builders, Inc., who personally swore or affirmed that he/she is authorized to execute this Agreement and thereby bind the Construction Manager, who is personally known to me or who produced as identification, and who did/did not take an oath this 03 day of April, 2020.

(stamp)



JOAN D. LETOURNEAU
NOTARY PUBLIC
STATE OF FLORIDA
Comm# GG224884
Expires 6/11/2022

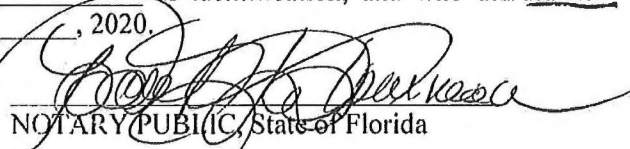

NOTARY PUBLIC, State of Florida

EXHIBIT "A"

CITY OF MOUNT DORA/CRA/Northeast CRA TASK AUTHORIZATION

In accordance with the terms and conditions of the Agreement between _____ (Construction Manager) and the City of Mount Dora/CRA/Northeast CRA, dated _____, the parties hereto agree to the scope of work, pricing/GMP, schedule, construction team and subcontractors attached hereto.

City Project Manager:

Construction Manager Contact:

Project Name:

Project Number:

NOTE: THE CONTRACTOR MAY NOT BEGIN WORK UNTIL THIS FULLY SIGNED TASK AUTHORIZATION IS DELIVERD TO THE CONTSTRUCTION MANAGER.

SUMMARY OF WORK TO BE COMPLETED	
<u>Each Task Authorization package shall include:</u> Exhibit A – Scope of Work Exhibit B – Price/GMP Breakdown Exhibit C – Basic Schedule Exhibit D – Construction Team Exhibit E – Construction Manager's Staff Exhibit F – Sub-Contractors	
Recommended By: Print: _____ Date: _____ Signature: _____	
Reviewed By (if applicable): Print: _____ Date: _____ Signature: _____	
CONTRACTOR ACCEPTANCE	
Print Name:	CITY APPROVAL
Title:	Title:
Signature:	Signature:
Date:	Date:

EXHIBIT "B"
CITY OF MOUNT DORA/CRA/Northeast CRA
AMENDMENT TO TASK AUTHORIZATION

In accordance with the terms and conditions of the Agreement between _____ (Construction Manager) and the City of Mount Dora, dated _____, and the Task Authorization dated _____ (Original Task Authorization), the parties hereto agree to the scope of work, pricing/GMP, schedule, construction team and subcontractors set forth herein. To the extent of any conflict between this Amendment and the Original Task Authorization, this Amendment shall prevail.

Amendment Number:

City Project Manager:

Construction Manager Contact:

Project Name:

Project Number:

NOTE: THE CONTRACTOR MAY NOT BEGIN WORK UNTIL THIS FULLY SIGNED AMENDMENT TO TASK AUTHORIZATION IS DELIVERED TO THE CONSTRUCTION MANAGER.

SUMMARY OF WORK TO BE COMPLETED	
<u>Each Task Authorization package shall include:</u> Exhibit A – Scope of Work Exhibit B – Price/GMP Breakdown Exhibit C – Basic Schedule Exhibit D – Construction Team Exhibit E – Construction Manager's Staff Exhibit F – Sub-Contractors	
Recommended By: Print: _____ Date: _____ Signature: _____	
Reviewed By (if applicable): Print: _____ Date: _____ Signature: _____	
CONTRACTOR ACCEPTANCE	CITY APPROVAL
Print Name:	Print Name:
Title:	Title:
Signature:	Signature:
Date:	Date:

EXHIBIT "C"
CERTIFICATE OF SUBSTANTIAL COMPLETION

PROJECT NAME:
PROJECT ADDRESS:
PROJECT NUMBER:
CONTRACT DATE:
CONSTRUCTION MANAGER:

TO OWNER:

Name
Address

TO CONSTRUCTION MANAGER:

Name
Address

Copy to:

____ Architect
____ Engineer
____ Field
____ Other

Project or portion of Project Designated for Partial Occupancy or Use:

The work performed on the Project under the Agreement has been reviewed and found, the Architect's best knowledge, information and belief to be substantially complete. Substantial Completion is the stage in the progress of the work when the work or designated portion is sufficiently complete in accordance with the Contract Documents so that the Owner can occupy or utilize the work for its intended use. The date of substantial completion of the Project or portion designated above is the date of issuance established by this Certificate of Substantial Completion, which is also the date of commencement of applicable warranties required by the Contract Documents as stated below:

Architect

By: _____

Date of Substantial Completion: _____

Print: _____

(Warranty Date of Commencement)

A Punch List of items to be completed or corrected is attached hereto. The failure to include any items on such Punch List does not alter the responsibility of the Construction Manager to complete all work in accordance with the Contract Documents. Unless otherwise agreed to in writing, the date of commencement of warranties for items on the attached list will be the date of issuance of the final Certificate of Payment or the date of final payment.

Cost Estimate of Work that is incomplete or defective: _____

The Construction Manager will complete or correct the work on the Punch List within ____ days from the above date of Substantial Completion.

Construction Manager

By: _____

Date: _____

Print: _____

The Owner hereby accepts the work or designated portions as substantially complete and will assume full possession at _____ am/pm on _____, 20__.

Owner

By: _____

Date: _____

Print: _____

The responsibilities of the Owner and Construction Manager for security, maintenance, utilities, damage and insurance are as follows:

EXHIBIT "D"
CERTIFICATE OF FINAL COMPLETION

PROJECT NAME:
PROJECT ADDRESS:
PROJECT NUMBER:
CONTRACT DATE:
CONSTRUCTION MANAGER:
SUBSTANTIAL COMPLETION DATE:
FINAL PUNCHLIST INSPECTION DATE:

The Construction Manager hereby certifies that the work and all other requirements have been completed in accordance with the Contract Documents, including, but not limited to:

 completion of all discrepancies (Punchlist Items) noted at the time of Substantial Completion
 submission of "as-built" plans and specifications, shop drawings, and other record documents
 completion of all Owner training – submission of all contractually required stock and spare parts
 submission of all final Operation & Maintenance documents and other closeout deliverables
 submission of consent of Builder's surety
 submission and approval of all remaining change order proposals, claims, and applications for payment
 payment of all costs incurred for equipment, material, labor and services against the Project

The Construction Manager further certifies that:

 no liens have been attached against the Project
 no suits are pending by reason of work on the Project under the Contract for Construction
 all Workers' compensation claims are covered by Workers' Compensation Insurance as required by law
 all insurance required of the Construction Manager beyond final payment, if any, is in effect and will not be cancelled or allowed to be expired without notice to the Owner
 all public liability claims are adequately covered by insurance and that the Construction Manager shall save, protect, defend, indemnify and hold the Owner harmless from and against any and all claims which arise as a direct or indirect result of any transaction, event, occurrence, or omission related to performance of the work on the Project contemplated under said Contract for Construction.

Upon execution below, this Project will be considered complete. This consideration does not relieve the Construction Manager from its post-construction responsibilities, including correction of discrepancies noted during the first year after Substantial Completion, warranty issues, latent defects, and other requirements of the Contract or under Florida law.

Construction Manager

By: _____

Date: _____

Print: _____

STATE OF FLORIDA

COUNTY OF _____

The foregoing instrument was executed before me this ____ day of _____, 201_, by _____, as _____ of Evergreen Construction Group of Florida, LLC, who is authorized to bind Evergreen Construction Group of Florida, LLC, and who is personally known to me OR has produced _____ as identification.

(stamp)

NOTARY PUBLIC, State of Florida

Recommend By:
Architect

By: _____

Date: _____

Print: _____

Accepted By:
Owner

By: _____

Date: _____

Print: _____

EXHIBIT “E”
Partial Pay Request Form

Application for Payment

To Owner: _____	Contractor: _____
Attn. Owner's Rep: _____	Submitted By: _____
Address: _____	Street Address: _____
City/State/Zip: _____	City/State/Zip: _____

Project/ Contract Description: _____	_____
Project Reference No: _____	Contract No: _____

Billing No.: _____	Select One: Progress _____ or Final _____
Period Covered: _____	Date Submitted: _____

FOR OWNER'S USE ONLY			\$ AMOUNT
Company Code:	Cost Center:	WBS:	
Business Area:	Account:	WBS:	
Profit Center:	Vendor No:	WBS:	

Description of Work	Scheduled Value	Completed This Month	%	Previously Completed	%	Completed To Date	%
	-	0.00	0%	0.00	100%	0.00	100%
	-	0.00	0%	0.00	100%	0.00	100%
	-	0.00	0%	0.00	0%	0.00	0%
	-	0.00	0%	0.00	0%	0.00	0%
	-	0.00	0%	0.00	0%	0.00	0%
	-	0.00	0%	0.00	0%	0.00	0%
		0.00	0%	0.00	0%	0.00	0%
		0.00	0%	0.00	0%	0.00	0%
		0.00	0%	0.00	0%	0.00	0%
TOTALS w/SALES TAX	\$0.00	0.00		0.00		0.00	

Required Signatures:	
Contractor Signature	Date
Owner's Representative	Date
Field Rep	Date
Project Manager	Date
Finance Representative	Date
Program Manager	Date
Finance Manager	Date
Director	Date

Contractor:	Accounting:	Owner:
\$0.00	Contract Total	0.00
	Allowance for Material	0.00
\$0.00	Sub Total	0.00
\$0.00	Less Retainage	0.00
\$0.00	Total Net	0.00
	Less Previous Payment	0.00
	Net Payment This Bill	0.00
	Total Paid to Date	0.00
	Contract Balance	0.00
Required Signatures: (continued)		
Vice President		Date
Sr. Vice President		Date
Executive Vice President		Date

Application for Payment

To Owner:	Contractor:	Faden Builders, Inc.
Attn. Owner's Rep:	Submitted By:	Todd M. Faden
Address:	Street Address:	1194 Camp Avenue
City/State/Zip:	City/State/Zip:	Mount Dora, FL 32757

Project/ Contract Description:		
Project Reference No:		Contract No:

Billing No.:		Select One:		Progress	☐	or Final	☐
Period Covered:			Date Submitted:				

FOR OWNER'S USE ONLY			\$ AMOUNT
Company Code:	Cost Center:	WBS:	
Business Area:	Account:	WBS:	
Profit Center:	Vendor No:	WBS:	

Description of Work	Scheduled Value	Completed This Month	%		Previously Completed	%	Completed To Date	%
	\$0.00	0.00			0.00		0.00	
	\$0.00	0.00			0.00		0.00	
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	\$0.00	0.00			0.00		0.00	
	\$0.00	0.00			0.00		0.00	
	\$0.00	0.00			0.00		0.00	
TOTALS/SALES TAX	\$0.00	0.00			0.00		0.00	

Required Signatures:	
Contractor Signature	Date 1/0/00
Owner's Representative	Date
Field Rep	Date
Project Manager	Date
Finance Representative	Date
Program Manager	Date
Finance Manager	Date
Director	Date

Contractor:		Accounting:	Owner:
\$0.00	Contract Total		0.00
	Allowance for Material		0.00
\$0.00	Sub Total		0.00
\$0.00	Less Retainage		0.00
\$0.00	Total Net		0.00
	Less Previous Payment		0.00
	Net Payment This Bill		0.00
	Total Paid to Date		0.00
	Contract Balance		0.00
Required Signatures: (continued)			
Vice President		Date	
Sr. Vice President		Date	
Executive Vice President		Date	

Exhibit “C”
Agreement with Wharton-Smith, Inc.
for construction manager at risk services on an as-needed basis
for Citywide projects which are less than Two Million Dollars
RFQ-19-GS-018

Resolution No. 2020-24
6 of 6

**AGREEMENT
BETWEEN OWNER AND CONSTRUCTION MANAGER**

THIS AGREEMENT made by and between the City of Mount Dora, a municipal corporation of the State of Florida, 510 N. Baker Street, Mount Dora, Florida 32757, the Community Redevelopment Agency of the City of Mount Dora, 510 N. Baker Street, Mount Dora, Florida 32757, the Northeast Community Redevelopment Agency of the City of Mount Dora, 510 N. Baker Street, Mount Dora, Florida 32757, hereinafter singly and collectively referred to as "Owner" and Wharton-Smith, Inc, 750 Monroe Road, Sanford, Florida 32771 hereinafter "Construction Manager".

**ARTICLE I
THE CONSTRUCTION TEAM AND EXTENT OF AGREEMENT**

The Construction Manager accepts the relationship of trust and confidence established between it and the Owner by this Agreement. The Construction Manager covenants with the Owner to furnish its best skill and judgment and to cooperate with the Architect-Engineer in furthering the interests of the Owner. The Construction Manager agrees to furnish efficient business administration and superintendence and use its best efforts to complete the various City project(s) in the soundest and most expeditious and economical manner, consistent with the interests of the Owner.

1.1 The Construction Team:

The Construction Manager, the Owner and the Architect-Engineer, called the "Construction Team", shall work jointly during design and through final construction completion and shall be available thereafter should additional services be required related to the Project. The Architect and the Construction Manager shall communicate through the Owner, except as may otherwise be provided in this Agreement or when direct communications have been specifically authorized by the Owner. The Construction Manager shall copy the Owner on all correspondence sent to or received from the Architect or any of its consultants of which the Owner was not copied.

The specific representatives of the Construction Team shall be established at the time of approval of each Task Authorization.

1.2 Extent of Agreement:

This Agreement for pre-construction and construction management services for the Project, between the Owner and the Construction Manager supersedes any prior negotiations, representations or agreements. The City will from time to time issue a Task Authorization to the Construction Manager, in the form attached hereto as **Exhibit "A"**, for individual City projects which may include either pre-construction and construction management services or construction management services only. If pre-construction services are required as part of a Project, an initial Task Authorization will be issued by the City Manager if the cost of the pre-construction services is within the City Manager's purchasing authority. Thereafter, once the drawings, specifications and other descriptive

documents for the Project are complete, an Amendment to Task Authorization in the form attached hereto as **Exhibit “B”**, will be issued following approval by the City Council of the guaranteed maximum price (GMP) for the specific construction management work to be completed for the Project. In the event pre-construction services exceed the City Manager’s purchasing authority, a Task Authorization for the pre-construction services will be issued on the appropriate form, following approval of the same by the City Council. Thereafter, once the drawings, specifications and other descriptive documents for the Project are complete, an Amendment to Task Authorization, which shall include the GMP for the specific construction management work to be completed for the Project, shall be issued on the appropriate form following approval by the City Council. In the event pre-construction services are not required for a Project, once the drawings, specifications and the other descriptive documents for a Project have been approved, a Task Authorization will be issued following approval of the GMP for the Project by the City Council. To expedite the preparation of the GMP Amendment by the Owner, the Construction Manager shall obtain two (2) sets of dated drawings, specifications and other documents upon which the GMP is based from the Architect-Engineer via the Owner. The Construction Manager shall acknowledge on the face of each set of drawings, that it is the set upon which the GMP is based. Thereafter one set of the documents shall be sent to the Owner along with the GMP proposal. This Agreement shall not be superseded by any provisions/revisions of the documents for construction and may be amended only by written instrument signed by both Owner and Construction Manager.

- 1.3 **Definitions:** The following definitions shall be applicable to this Agreement. Any words which are not set forth below but are found capitalized throughout this Agreement shall have the meanings established in the various Articles and/or Sections of this Agreement:

Architect-Engineer - To be determined by the Owner as applicable for each separate Project for which a Task Authorization is issued.

Construction Documents - This Contract, the Drawings, Specifications and related Construction Documents or any other documents incorporated herein by reference.

Construction Manager – Wharton-Smith, Inc.

Estimate - The Construction Manager's latest estimate of probable project construction costs

Final Completion - The following items have been completed or satisfied:

1. Construction of the Project is totally complete, including all work on the Contract Documents and certified as such by the Owner and Architect.
2. The Project is suitable for full use and occupancy as determined by the Owner and Architect.
3. All Punch List items have been completed or otherwise disposed of or accounted for to the Owner's satisfaction and approval.

4. A Final Certificate of Occupancy and all other permits and approvals required have been legally and validly issued.
5. Final executed Releases of Lien have been delivered to the Owner by Construction Manager.

General Conditions - Those items that are not specific to any trade and are required for the construction of the Project. Examples of General Conditions items include daily cleanup and safety rails.

Owner - City of Mount Dora, a municipal corporation of the State of Florida, on behalf of itself, the Community Redevelopment Agency of the City of Mount Dora (CRA) pursuant to Resolution 2020-24 (CRA) and the Northeast Community Redevelopment Agency of the City of Mount Dora (Northeast CRA) pursuant to Resolution 2020-24 (Northeast CRA).

Owner's Representative - The Owner's Representative is its Construction Project Manager, who is Chet Cramer, or such other individual designated, in writing, by the City Manager.

Project - The Project shall mean the total work to be performed under each Task Authorization, or Amendment thereto, issued pursuant to this Agreement. The Project may consist of pre-construction planning, design and permitting services, as well as construction and code inspection services for various construction projects which do not exceed Two Million Dollars in total construction costs.

Punch List - 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/completion.

Substantial Completion Date - The date, certified by the Architect, 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 Owner can reasonably occupy or utilize the Project, or designated portion thereof, for its intended use. Additionally, complete all items referred to as necessary for Substantial Completion.

Task Authorization or Amendment to Task Authorization - The document issued to the Construction Manager which sets forth the service expectations, schedules, pricing/GMP, construction team and subcontractors for a specified Project.

1.4 Owner's Construction Budget:

Owner's funds budgeted and requested for construction of the Project: The Owner's Construction Budget for each Project is Two Million Dollars or less, including all preconstruction services, Construction Manager fees, costs of the work and the Owner's and Construction Manager's construction and interface contingencies as defined in Articles

8 and 9. This acknowledgment of the Owner's budgeted funds is not to be construed as the Construction Manager's Guaranteed Maximum Price. A Guaranteed Maximum Price will be offered by separate documentation as outlined in Article 7.

ARTICLE 2

CONSTRUCTION MANAGER'S SERVICES

The services which the Construction Manager shall provide include, but are not limited to, those described or specified herein. The services described or specified shall not be deemed to constitute a comprehensive specification having the effect of excluding services not specifically mentioned.

2.1 Project Management Information System (PMIS):

1. General:

- A. Commencing immediately after contract award, the Construction Manager shall implement and shall utilize throughout the life of this Contract all subsystems of the Project Management Information System hereinafter referred to as PMIS.
- B. The reports, documents, and data to be provided shall represent an accurate assessment of the current status of the Project and of the work remaining to be accomplished and it shall provide a sound basis for identifying variances and problems and for making management decisions. It shall be prepared and furnished to the Owner and the Architect-Engineer monthly.
- C. If requested by the Owner, the Construction Manager shall conduct a comprehensive workshop for participants designated by the Owner and additional seminars as required, to provide instruction. This workshop and the seminars shall facilitate each participant's and the Owner's representatives' use and understanding of PMIS; shall support, in-part, the function of organizing in concert with the Architect-Engineer for the design and construction of the Project; and shall establish, with the full concurrence of the Owner and the Architect-Engineer, procedures for accomplishing the management control aspect of the Project.
- D. The PMIS shall be described in terms of the following major subsystems:
 - 1. Narrative Reporting, on a monthly basis,
 - 2. Schedule Control, on a monthly basis,
 - 3. Cost Control, and estimating,
 - 4. Project Accounting,

5. Accounting and Payment, and
6. Action Reports.

2. Narrative Reporting Subsystem:

- A. The Construction Manager shall prepare written reports as described hereunder. No other PMIS narrative reports shall be required. All reports shall be in 8.5" X 11" format, unless directed otherwise by the Owner.
- B. The Narrative Reporting Subsystem shall include the following reports:
 1. Monthly Executive Summary - which provides an overview of current issues and pending decisions, future developments and expected achievements, and any problems or delays, including code violations found by any permitting authority.
 2. Monthly Cost Narrative - describing the current construction cost estimate status of the Project.
 3. Monthly Scheduling Narrative - summarizing the current status of the overall project schedule. This report shall include an analysis of the various project schedules, a description of the critical path, and other analyses as necessary to compare planned performance with actual performance.
 4. Monthly Accounting Narrative - describing the current cost and payment status of the entire project. This report shall relate current encumbrances and expenditures to the budget allocations.
 5. Monthly Construction Progress Report - summarizing the work of the various subcontractors during the construction phase. This report shall include information from the weekly job site meetings, as applicable, such as general conditions, long lead supplies, current deliveries, safety and labor relations programs permits, construction problems and recommendations and plans for the succeeding month.
 6. Daily Construction Diary - during the construction phase describing events and conditions on the site.
- C. The reports outlined above shall be bound with applicable computer reports and submitted monthly during design and construction phases and shall be current through the end of the preceding month. Copies shall be transmitted to the Owner and the Architect-Engineer and others as designated by the Owner's Representative with the monthly pay requisition. Additional

copies of the report outlined above shall be bound separately and distributed monthly as directed by the Owner's Representative.

- D. The report outlined in Article 2.1(2)(B)(6) above shall be maintained at the site available to the Owner and Architect-Engineer. A bound copy of the complete Daily Construction Diary shall be submitted to the Owner at the conclusion of the Project

3. Scheduled Control Subsystem:

- A. Master Project Schedule - Within thirty (30) days of award of this Agreement, the Construction Manager shall submit, to the Owner for approval, a master project schedule covering the planning and design approvals, construction and Owner occupancy of the Project. This schedule shall serve as the framework for the subsequent development of all detailed schedules. The master project schedule shall be produced and updated monthly throughout the project. Revisions, activity additions, activity deletions and/or logic changes to the Master Project Schedule, or any other schedule previously approved by the Owner, shall not be made without the Owner's approval.
- B. Within thirty (30) days after the date of the Owner's issuance of a Notice to Proceed with construction, the Construction Manager shall prepare and submit for approval, to the Owner's Representative, a construction schedule in quadruplicate with sufficient detail to graphically depict the activities contemplated for completion of the Project and which shows the sequence that the Construction Manager proposes for each such activity to occur and the duration (dates of commencement and completion, respectively) of each such activity. The Owner shall determine whether the construction schedule developed and submitted by the Construction Manager meets the requirements stated herein and thereafter such determination shall be binding on the Construction Manager. Failure of the Construction Manager to develop and submit a construction schedule as set forth hereinabove shall be sufficient grounds for the Owner to find the Construction Manager in substantial default and certify that sufficient cause exists to terminate the contract or to withhold payment to the Construction Manager until a schedule acceptable to the Owner is submitted.
- C. During the period of time required to finally complete the Project, at the end of each such calendar month or at such earlier intervals as circumstances may require, the Construction Manager shall update the construction schedule to show the actual progress of the work performed and the occurrence of all events which have affected the progress of performance of the work already performed or will affect the progress of the performance of the work yet to be performed in contrast with the planned progress of performance of such work, as depicted on the original construction schedule

and all updates thereto as reflected in the updated construction schedule last submitted. Each such update to the construction schedule shall be submitted to the Owner in duplicate. Failure of the Construction Manager to update, revise and submit the construction schedule as set forth herein shall be sufficient grounds for the Owner to find the Construction Manager in substantial default, and certify that sufficient cause exists to terminate the Contract or to withhold payment to the Construction Manager until a schedule or schedule update acceptable to the Owner is submitted. No revisions, activity additions, activity deletions or logic changes shall be made without the Owner's approval, which shall not be unreasonably withheld.

D. When required by the Owner, the Construction Manager shall prepare and incorporate into the schedule database, at the required intervals, the following schedules:

1. Subcontractor Construction Schedules - Upon the award of each sub-contract, the Construction Manager shall jointly, with the subcontractor, develop a schedule which is more detailed than the pre-bid schedule included in the specifications, taking into account the work schedule of the other subcontractors. The construction schedule shall include as many activities as necessary to make the schedule an effective tool for construction planning and for monitoring the performance of the subcontractor. The construction schedule shall also show pertinent activities for material purchase orders, shop drawing schedules and material delivery schedules.
2. Occupancy Schedule - The Construction Manager shall jointly develop with the Architect-Engineer and Owner a detailed plan, inclusive of punch lists, final inspections, maintenance training and turn-over procedures, to be used for ensuring accomplishment of a smooth and phased transition from construction to Owner occupancy. The Occupancy Schedule shall be produced and updated monthly from its inception through final Owner occupancy.

E. All schedules will be provided to the Owner in an electronic format acceptable to the Owner. The Construction Manager will provide the Owner with the appropriate software, if necessary, to read the data. The cost of providing the licenses and software shall be part of the cost of construction and included as part of Article 9, Direct Costs of the Project.

4. Budget Control Subsystem:

The operation of this subsystem shall provide sufficient timely data and detail to permit the Construction Team to control and adjust the Project requirements, needs, materials, equipment and systems by building and site elements so that construction

will be completed at a cost which, together with all other Project costs, will not exceed the maximum total Project budget. Requirements of this subsystem include the following submissions at the following phases of the project:

Estimates - Prior to the start of pre-construction services, the requirement of the following estimates will be determined by the Owner:

- A. Completion of Schematic Documents.
- B. Completion of fifty percent (50%) Design Development Documents.
- C. Completion of one hundred percent (100%) Design Development Documents.
- D. One hundred percent (100%) GMP Estimate - When the Construction Documents are sufficiently complete enough to establish the GMP.

5. Project Accounting Subsystem:

The operation of this subsystem shall enable the Construction Team to monitor and control the funds available for the Project, cash flow, costs, change orders, payments and other major financial factors by comparison of budget, estimate, total commitment, amounts invoiced, amounts payable and to plan effectively. This subsystem will be produced and updated monthly and includes the following reports, which together will serve as a basic accounting tool and an audit trail. This report will also provide for accounting by building and site element.

- A. Cost Status Report - presenting the budget, estimate and base commitment for any given contract or budget line item. It shall show approved change orders for each contract which when added to the base commitment will become the total commitment. Pending change orders will also be shown to produce the total estimated probable cost to complete the work.
- B. Payment Status Report - showing the value in place, both current and cumulative, the amount invoiced (both current and cumulative), the amount retained, the amount payable (both current and cumulative) and the balance remaining. A summary of this report shall accompany each pay request.
- C. Detailed Status Report - showing the complete activity history of each item in the Project accounting structure. It shall include the budget, estimate and base commitment figures for each contract. It shall give the change order history including change order numbers, description, proposed and approved dates and proposed and approved dollar amounts. Pending or rejected change orders shall also be shown.
- D. Cash Flow Diagram - showing the projected accumulation of cash payments against the project. Cash flow projections shall be generated for anticipated monthly payments as well as cumulative payments.

- E. Job Ledger - shall be maintained as necessary to supplement the operation of the Project accounting subsystem. The Job Ledger will be used to provide construction cost accountability for general conditions work, on-site reimbursable expenses and costs requiring accounting needs.

2.2 Project Manual:

When directed by the Owner, the Construction Manager shall provide the following:

1. Upon issuance of a Task Authorization, the Construction Manager shall develop a draft comprehensive Project Manual describing the services set forth in this Contract for Owner's approval, providing a plan for the control, direction, coordination and evaluation of work performed, including identification of key personnel, responsibilities of Construction Manager, responsibilities of Owner and responsibilities of the specified Architect-Engineer, work flow diagrams and strategy for bidding the work. The Project Manual shall be updated as necessary with the Owner's approval throughout the design, construction and Owner occupancy phases. Two copies of the Project Manual and any updates shall be submitted to the Owner and Architect-Engineer. In developing the Project Manual, the Construction Manager shall coordinate with the Owner and the Architect-Engineer.
2. Contents of Project Manual - The Project Manual shall describe in detail the procedures for executing the work and the organizations participating. The Project Manual shall include as a minimum the following sections:
 - A. Project Definition - The known characteristics of the project or sub-projects shall be described in general terms which will provide the participants a basic understanding of the project or sub-projects.
 - B. Project Goals - The schedule, budget, physical, technical and other objectives for the Project shall be defined.
 - C. Project Strategy - A narrative description of the Project delivery methods being utilized to accomplish the project goals shall be listed.
 - D. Project Work Plan - A matrix display of the program of work to be performed by the Construction Manager, the Architect-Engineer and the Owner during each phase of the Project.
 - E. Project Organization - A summary organization chart showing the interrelationships between the Owner, the Construction Manager and the Architect-Engineer, and other supporting organizations and permitting review agencies. Detailed charts shall be included, one each for the Construction Manager, the Architect Engineer and the Owner, showing the organizational elements participating in the Project.

- F. Responsibility Performance Chart - A detailed matrix showing the specific responsibilities and interrelationships of the Owner, the Architect Engineer, and Construction Manager. The Responsibility Performance Chart shall indicate major responsibility, and minor responsibility, for each specific task required to deliver the project. The Construction Manager shall develop a similar chart for the personnel within his own organization who are assigned to the project, and also for the personnel of the Owner and the Architect-Engineer from data supplied by each.
- G. Flow Diagrams - Charts displaying the flow of information and the decisional process for the review and approval of shop drawings, submittals, progress and change orders.
- H. Written Procedures – Procedures for communications and coordination required between Construction Team members throughout the Project. Procedures shall cover such items as correspondence, minutes, reports, inspections, team meetings, technical reviews, design reviews and other necessary communications.

2.3 Design and Review and Recommendations:

The Construction Manager shall perform the services described in this Article. The services to be provided herein constitute the Pre-construction phase services. The parties acknowledge the Construction phase may commence before the Pre-construction phase is completed, and to a certain extent both phases may proceed concurrently.

- 1. Preliminary Evaluation - The Construction Manager shall provide a preliminary evaluation of the Owner's Project and Project budget requirements, each in terms of the other.
- 2. Consultation - The Construction Manager will jointly schedule and attend regular meetings with the Owner and Architect. The Construction Manager will consult with the Owner regarding site use and improvements, and the selection of materials, building systems and equipment. The Construction Manager will provide recommendations on construction feasibility; actions designated to minimize adverse effects of labor or material shortages; time requirements for procurement, installation, and construction completion; and factors related to construction cost including estimates of alternative designs or materials, preliminary budgets, and possible economies.
- 3. Phased Construction - The Construction Manager shall make recommendations to the Owner regarding the phased issuance of Drawings and Specifications to facilitate phased construction of the Project, if such phased construction is appropriate for the Project, taking into consideration such factors as economies, time of performance, availability of labor and materials, and provisions for temporary facilities, if applicable.

4. Review Reports - Within thirty (30) days after receiving the Construction Documents for each phase of the Project, the Construction Manager shall perform a specific review thereof, focused upon factors of a nature encompassed in Articles 2.3(1) and 2.3(2) above and on factors set out in Article 2.3(7) below. Promptly after completion of the review, the Construction Manager shall submit to the Owner, with copies to the Architect-Engineer, a written report covering suggestions or recommendations previously submitted, additional suggestions or recommendations as may be deemed appropriate, and all actions taken by the Architect-Engineer with respect to same, any comments deemed to be appropriate with respect to separating the work into separate contracts, alternative materials, and all comments called for under Article 2.3(7).

THE CONSTRUCTION MANAGER SHALL WARRANT, TO THE BEST OF THE CONSTRUCTION MANAGER'S KNOWLEDGE, WITHOUT ASSUMING ANY ARCHITECTURAL OR ENGINEERING RESPONSIBILITY, THAT THE PLANS AND SPECIFICATIONS ARE CONSISTENT, PRACTICAL, FEASIBLE AND CONSTRUCTIBLE. THE CONSTRUCTION MANAGER SHALL WARRANT THAT THE WORK DESCRIBED IN THE PLANS AND SPECIFICATIONS FOR THE VARIOUS BIDDING PACKAGES IS CONSTRUCTIBLE WITHIN THE SCHEDULED CONSTRUCTION TIME.

The recommendations and advice of the Construction Manager concerning design alternatives shall be subject to the review and approval of the Owner and Owner's professional consultants. Construction Manager shall not assume in anyway the responsibilities of the Architect, in particular, the responsibility of assuring that the drawings and specifications, which shall be identified for each Project prior to the time the GMP is determined, are in accordance with applicable laws, statutes, ordinances, Building Codes, Rules and Regulations; however, if the Construction Manager recognizes that portions of the Drawings and Specifications are inconsistent with applicable laws, statutes, ordinances, Building Codes, Rules and Regulations, the Construction Manager shall promptly notify the Architect and the Owner, in writing.

5. Long Lead Procurements - The Construction Manager shall review the design for the purpose of identifying long lead procurement items such as machinery, equipment, materials and supplies. When each item is identified, the Construction Manager shall notify the subcontractors, the Owner and the Architect-Engineer of the required procurement and schedule. Such information shall be included in the bid documents and made a part of all affected sub-contracts. The Construction Manager shall keep himself informed of the progress of the respective subcontractors or suppliers, manufacturing or fabricating such items and advise Owner and Architect-Engineer of any problems or prospective delay in delivery. The Construction Manager may recommend to the Owner a schedule for procurement of the long-lead time items, which will constitute part of the work, as required to meet the Project Schedule. If such long-lead time items are procured by the Owner, they shall be procured on terms and conditions acceptable to the

Construction Manager. Upon the Owner's acceptance of the Construction Manager's Guaranteed Maximum Price proposal, all contracts for such items shall be assigned by the Owner to the Construction Manager, who shall accept responsibility for such items as if procured by the Construction Manager. The Construction Manager shall assist in expediting the delivery of long-lead time items.

6. **Separate Contracts Planning** - Without assuming any design responsibilities, the Construction Manager shall review the design with the Architect-Engineer and make recommendations to the Owner with respect to dividing the work in such manner as will permit the Construction Manager to take bids and award separate construction sub-contracts on the current schedule while the design is being completed. He shall take into consideration such factors as natural and practical lines of severability, sequencing effectiveness, access and availability constraints, total time for completion, construction market conditions, availability of labor and materials, community relations and any other factors pertinent to saving time and cost by overlapping design and construction that are authorized by the Owner.
7. **Interfacing** -
 - A. The Construction Manager shall take such measures as are appropriate to provide that all construction requirements will be covered in the separate subcontracts for procurement of long lead items, the separate construction subcontracts and the General Conditions items performed without duplication or overlap, sequenced to maintain completion of all work on schedule. Particular attention shall be given to provide that each bid package clearly identifies the work included in that particular separate subcontract, its schedule for start and completion and its relationship to other separate contractors.
 - B. Without assuming any design responsibilities of the Architect-Engineer, the Construction Manager shall include in the reports required under Article 2.3(4) comments on overlap with any other separate subcontracts, omissions, lack of correlation between drawings, and any other deficiencies noted, in order that the Owner and Architect-Engineer may arrange for necessary corrections.
8. **Job-Site Facilities** - The Construction Manager shall arrange for all job-site facilities necessary to enable the Construction Manager and the Owner's representatives and the Architect-Engineer to perform their respective duties in the management, inspection, and supervision of construction.

Tangible personal property otherwise referred to as job-site facilities, include but are not limited to such things as trailers, toilets, computers and any other equipment necessary to carry on the Project. The method of acquiring such job-site facilities, which are planned to become the property of the Owner at the conclusion of the

Project, shall be evaluated based on cost over the life of the Project. Owning versus leasing shall be considered by the Construction Manager obtaining at least three (3) proposals for leasing and at least three (3) proposals for purchasing and then analyzing which is least expensive over the usage life of the item. The Construction Manager shall present his evaluation with recommendation to the Owner for approval.

When the Construction Manager wishes to supply job-site facilities from his own equipment pool, he shall first evaluate buy versus lease as discussed in the paragraph above. If leasing is found to be the least expensive approach, then he may lease such job-site facilities from his own equipment pool at a price not greater than the lowest of the three (3) lease proposals obtained.

For all such facilities purchased, which are to become the property of the Owner at the conclusion of the project, the Construction Manager shall maintain care and custody responsibilities of such facilities until the Project conclusion. The cost of such equipment shall be a Direct Cost of the Project, as defined in Article 9. At the conclusion of the Project, the Construction Manager shall provide the Owner with a complete inventory for each unit of equipment that has been purchased for the Owner. The inventory shall describe the equipment and identify the purchase price, serial number, model number, current location, and condition. Where said equipment has a title, said title shall be properly transferred to the Owner or to his designee.

The Construction Manager is responsible for proper care and maintenance of all equipment while in his control. At the time of transfer to the Owner, the Owner may refuse acceptance of the equipment if the Owner determines in its sole discretion that the equipment has not been properly cared for by the Construction Manager. In such event, the Construction Manager shall reimburse Owner for such item.

9. Weather Protection - The Construction Manager shall ascertain what temporary enclosures, if any, of building areas should be provided for and may be provided as a practical matter, in order to assure orderly progress of the work in periods when extreme weather conditions are likely to be experienced. The Construction Manager shall submit, to the Construction Team, recommendations as to needed requirements of this nature and as to the contract or contracts in which such weather protection requirements should be included. The Construction Manager is totally responsible for all weather protection necessary to ensure that all new construction and renovation projects are adequately protected from the normal inclement elements.
10. Market Analysis and Stimulation of Bidder Interest -
 - A. The Construction Manager shall monitor conditions in the construction market to identify factors that will or may affect costs and time for completing the Project; the Construction Manager shall make analysis as

necessary to (1) determine and report on availability of labor, material, equipment, potential bidders, and possible impact of any shortages or surplus of labor or material, and (2) in light of such determinations, make recommendations to the Owner as may be appropriate with respect to long lead procurement, separation of construction into bid packages, sequencing of work, use of alternative materials, equipment or methods, other economics in design or construction, and other matters that will promote cost savings and completion within the scheduled time.

- B. The Construction Manager shall submit to the Owner a written "Construction Market Analysis and Prospective Bidders Report" setting out recommendations and providing information as to prospective bidders. As various bid packages are prepared for bidding, the Construction Manager shall submit to the Owner and the Architect-Engineer a list of potential bidders. The Construction Manager shall be responsible to stimulate bidder interest in the local market place and identify and encourage bidding competition.
- C. The Construction Manager shall carry out an active program of stimulating interest of qualified contractors in bidding on the work and of familiarizing those bidders with the requirements of this project.

2.4 Construction Phase:

1. Construction Manager's Staff - The Construction Manager shall maintain sufficient off-site support staff, and competent full time staff at the Project site authorized to act on behalf of the Construction Manager to coordinate, inspect and provide general direction of the work and progress of the subcontractors and the Construction Manager shall provide no less than those personnel during the respective phases of construction as are identified at the time the GMP is determined. The Construction Manager shall not change any of those persons named at the time the GMP is determined unless mutually agreed to by the Owner and Construction Manager. In such case, the Owner shall have the right to approve the qualifications of any replacement personnel. Such approval will not be unreasonably withheld.
2. Lines of Authority - The Construction Manager shall establish and maintain lines of authority for its personnel, and shall provide notice of the same to the Owner and all other affected parties such as the code inspectors of the Permitting Authority, the subcontractors, the Architect-Engineer and the Owner's representatives, in order to provide general direction of the work and progress of the various phases and subcontractors. The Owner and Architect-Engineer may attend meetings between the Construction Manager and his subcontractors; however, such attendance shall not diminish either the authority or responsibility of the Construction Manager to administer the subcontractors.

3. Schedule and Project Manual Provisions - The Construction Manager shall provide subcontractors and the Owner, its representatives and the Architect-Engineer with copies of the Project Manual, a total number of copies not to exceed seven (7) hard copies and an electronic version in a format acceptable to the Owner, developed and updated as required by Article 2.2, expanded for the Construction Phase, employing the respective milestones, beginning and finishing dates, the respective responsibilities for performance and the relationships of the work with respect to subcontractors and suppliers. The Construction Manager shall also continue to provide current and up to date scheduling information, direction and coordination regarding milestones, and beginning and finishing dates. Furthermore, the Construction Manager shall be responsible for performance and the relationships of the Construction Manager's work to the work of its subcontractors and suppliers to enable the same to perform their respective tasks so that the development of construction progresses in a smooth and efficient manner in conformance with the overall project schedule. The schedule shall include all phases of the construction work, material supplies, long lease procurement, approval of shop drawings, change orders in progress, schedules for change orders, and performance testing requirements. The Construction Manager shall advise the Owner, its representatives and the Architect-Engineer of their required participation in any meetings or inspections, giving each at least one weeks-notice, unless such notice is made impossible by conditions beyond the control of the Construction Manager. The Construction Manager shall hold job-site meetings at least once each month with the Construction Team or more frequently as required by work progress, to review progress, discuss problems and solutions and to coordinate future work with all subcontractors.

4. Solicitation of Bids -

A. Without assuming responsibilities of the Architect-Engineer, the Construction Manager shall prepare invitations for bids, or requests for proposal when applicable, for all procurement of long lead items, materials and services, for Subcontractor contracts and for site utilities. Such invitations for bids shall be prepared in accordance with the following guidelines:

Those portions of the work that the Construction Manager does not customarily perform with the Construction Manager's own personnel shall be performed under subcontracts or by other appropriate agreements with the Construction Manager. The Construction Manager shall obtain bids from subcontractors, vendors, consultants and from suppliers of materials or equipment fabricated to a special design for the work. The Construction Manager shall strive to receive at least three (3) competitive bids per trade package. Should the nature of the trade package prohibit three (3) competitive bids, the Construction Manager shall notify the Owner in writing as to the reason and offer suggestions, if any, to create trade interest.

- B. The Construction Manager shall be responsible for coordinating with the Architect-Engineer and preparing all information that is the responsibility of the Construction Manager for bidding of the separate bid packages.
 - C. As part of such preparation, the Construction Manager shall review the specifications and drawings prepared by the Architect-Engineer. Ambiguities, conflicts or lack of clarity of language, use of illegally restrictive requirements, and any other defects in the specifications or in the drawings noted by the Construction Manager shall be brought to the attention of the Owner and Architect-Engineer in written form.
 - D. The Construction Manager and the Owner's Representative shall mutually agree when and if to conduct a pre-bid conference with prospective bidders and the Architect-Engineer. In the event questions are raised which require an interpretation of the bidding documents or otherwise indicate a need for clarification or correction of the invitation, the Construction Manager shall transmit these to the Owner and the Architect-Engineer and upon receiving clarification or correction in writing shall prepare an addendum to the bidding document, and issue same to all of the prospective bidders.
 - E. The Construction Manager shall not enter into contracts without the Owner reviewing the proposed successful bidder. The Owner shall promptly, within three (3) business days, review all proposals and provide comments so as not to cause delay in the award of a contract. Owner's failure to respond within this time frame shall constitute acceptance of the proposed contract. Owner shall have the right to reject any award of subcontract providing such rejection is justifiable and with cause. Should the Owner reject a proposal and should the next bondable, qualified bidder that is acceptable to the Construction Manager, be greater than the GMP budget for that work item, the Owner shall issue a change order to the Construction Manager, increasing the GMP, for the amount of the difference between the proposed award and that which the Owner has requested.
5. Bonds - In accordance with the provisions of Florida Statutes, Section 255.05, the Construction Manager shall provide to the Owner, on forms furnished by the Owner, a one hundred percent (100%) Performance Bond and a one hundred percent (100%) Labor and Material Payment Bond each in an amount not less than the total construction cost as defined in Articles 7, 8 and 9. To be acceptable to the Owner, as Surety for Performance Bonds and Labor and Material Payment Bonds, a Surety Company shall comply with the following provisions:
- A. The Surety Company shall have a currently valid Certificate of Authority, issued by the State of Florida, Department of Insurance, authorizing it to write surety bonds in the State of Florida.

- B. The Surety Company shall have currently valid Certificate of Authority issued by the United States Department of Treasury under Sections 9304 to 9308 of Title 31 of the United States Code.
- C. The Surety Company shall be in full compliance with the provisions of the Florida Insurance Code.
- D. The Surety Company shall have at least twice the minimum surplus and capital required by the Florida Insurance Code at the time a bond is issued.
- E. The Surety Company shall have at least the following minimum ratings in the latest issue of Best's Key Rating Guide.

Contract Amount	Policy Holder's Rating	Required Financial Rating
\$500,000 to \$1,000,000	A	Class IV
\$1,000,000 to \$2,500,000	A	Class V
\$2,500 000 to \$5,000 000	A	Class VI
\$5,000,000 to \$10,000 000	A	Class VII
\$10,000,000 to \$25,000,000	A	Class VIII
\$25 000 000 to \$50,000,000	A	Class IX
\$50.000,000 to \$75,000,000	A	Class X

- 6. **Quality Control** - The Construction Manager shall develop and maintain a written program, acceptable to the Owner and Architect-Engineer, to assure quality control of the construction. He shall supervise the work of all subcontractors providing instructions to each when their work does not conform to the requirements of the plans and specifications and he shall continue to exert his influence and control over each subcontractor to ensure that corrections are made in a timely manner so as to not affect the efficient progress of the work. Should disagreement occur between the Construction Manager and Architect-Engineer over acceptability of work and conformance with the requirements of the specifications and plans, the Owner shall be the final judge of performance and acceptability.
- 7. **Subcontractor Interfacing** - The Construction Manager shall be the single point of interface with all subcontractors for the Owner and all of its agents and representatives including the Architect-Engineer. He shall negotiate all change orders, field orders and request for proposals, with all affected subcontractors and shall review the costs of those proposals and advise the Owner and Architect-

Engineer of their validity and reasonableness, acting in the Owner's best interest prior to requesting approval of each change order from the Owner. Before any work begins on any change order, a written authorization from the Owner must be issued. However, when health and safety are threatened, the Construction Manager shall act immediately to remove the threat to health and safety. The Construction Manager shall carefully review all shop drawings and forward the same to the Architect for review and action. The Architect shall transmit them back to the Construction Manager who will then issue the shop drawings to the affected subcontractor for fabrication or revision. The Construction Manager shall maintain a suspense control system to promote expeditious handling. The Construction Manager shall request the Architect-Engineer via the Owner to make interpretations of the drawings or specifications requested of the Construction Manager by the subcontractors and shall maintain a suspense control system to promote timely response. The Construction Manager shall advise the Owner and Architect-Engineer when timely response is not occurring on any of the above.

8. Permits - The Construction Manager shall secure all necessary building permits from the Permitting Authority and all necessary utility connection permits, the cost of which will be considered a Direct Cost of the project, but not subject to a Construction Phase Fee, as described in Article 8.1(3).
9. Job Site Requirements -
 - A. The Construction Manager shall provide for each of the following activities as a part of its Construction Phase Cost:
 1. Maintain a log of daily activities, including manpower records, weather, delays, major decisions, etc.
 2. Maintain a roster of companies on the project with names and telephone numbers of key personnel.
 3. Establish and enforce job rules governing parking, clean-up, use of facilities and worker discipline.
 4. Provide labor relations management for a harmonious, productive project.
 5. Provide a safety program for the project to meet OSHA requirements. Monitor for subcontractor compliance without relieving any subcontractor of responsibilities to perform work in accordance with the best acceptable practices.
 6. Provide a quality control program.

7. Provide miscellaneous office supplies that support the construction efforts.
 8. Travel to and from its home office to the project site, as the project requires.
- B. The Construction Manager shall provide personnel and equipment or shall arrange for separate subcontracts to provide each of the following as a direct cost item:
1. Schedule the services of independent testing laboratories for the necessary testing of materials to ensure conformance to contract requirements.
 2. The printing and distribution of all required bidding documents and shop drawings, including the sets required by the Permitting Authority's inspectors.
10. Job Site Administration - The Construction Manager shall provide administrative functions during construction to assure proper documentation, including but not limited to such things as the following:
- A. Job Meetings - Hold weekly progress and coordination meetings to provide for an easy flowing project implementation process, assure timely submittals, expedite processing approvals and return of shop drawings and samples; Coordinate and expedite critical ordering and delivery of materials, work sequences, inspection and testing and labor allocation; Review and coordinate each subcontractor's work; Review and implement revisions to the project schedule; Monitor and promote safety requirements.
- Use the job site meeting as a tool for planning of work and enforcing schedules and for establishing procedures, responsibilities, and identification of authority for all to clearly understand.
- Identify party or parties responsible for follow up on any problems, delay items or questions and record course for solutions. Revisit each pending item at each subsequent meeting until resolution is achieved. Require all present to make any problems or delaying events known to those present for appropriate attention and resolution.
- A regular monthly project status meeting will be held between the Architect-Engineer, Owner and Construction Manager.
- B. Shop Drawing Submittals/Approvals - Provide staff to check shop drawings and to implement procedures to be approved by Owner for submittal and

transmittal to the Architect-Engineer and Owner of such drawings for action, and closely monitor their submittal and approval process.

- C. Material and Equipment Expediting - Provide staff to closely monitor material and equipment deliveries and to implement checking and follow-up procedures on supplier commitments of all subcontractors.
- D. Payments to subcontractors - Develop and implement a procedure for review, processing and payment of applications by subcontractors for progress and final payments.
- E. Document Interpretation - Refer all questions for interpretation of the documents prepared by the Architect-Engineer to the Architect-Engineer through the Owner.
- F. Reports and Project Site Documents - Record the progress of the project. Submit written progress reports to the Owner and the Architect-Engineer, including information on the subcontractor's work and the percentage of completion. Keep a daily log available to the Owner, the Architect-Engineer and the Permitting Authority inspectors.
- G. Subcontractor's Progress - Prepare periodic punch lists for the subcontractor's work including unsatisfactory or incomplete items and schedules for their completion.
- H. Substantial Completion - Ascertain when the work, or designated portions thereof, are ready for the Owner's and the Architect-Engineer's substantial completion inspection. Prior to the Owner's and Architect's pre-substantial completion inspection, the Construction Manager shall issue a list of incomplete items. After the Owner's and the Architect-Engineer's inspection, the Construction Manager shall prepare a schedule for the completion of the list, indicating completion dates for the Owner's review. The Owner and the Architect-Engineer will issue a Certificate of Substantial Completion in the format prescribed in **Exhibit "C"**, when the work on the Construction Manager's pre-substantial Punch List has been accomplished, to the best of the Construction Manager's ability.
- I. Final Completion - Monitor the Subcontractor's performance on the completion of the Project and provide notice to the Owner and Architect-Engineer that the work is ready for final inspection. Secure and transmit to the Owner, through the Architect-Engineer, all required guarantees, affidavits, releases, bonds and waivers, manuals, record drawings and maintenance books, including issuance of the Certificate of Final Completion attached as **Exhibit "D"**.

- J. Start-Up - With the Owner's personnel, direct the checkout of utilities, operations, systems and equipment for readiness and assist in their initial start-up and testing by the trade contractors.
 - K. Record Drawings - The Construction Manager shall monitor the progress of its own forces or its Subcontractors on marked up field prints, which at project completion, shall be sent to the Architect-Engineer through the Owner who will prepare the final record drawings. Continuously review "As-Built" Drawings and mark up progress prints to provide as much accuracy as possible.
11. Administrative Records - The Construction Manager may be required to maintain, at the job site, current and up to date files and records such as, but not limited to the following:

Contracts or Purchase Orders
Davis Bacon Federal Compliance Documents
ARRA / Build America Bonds Compliance Documentation
Shop Drawing Submittal/Approval Logs
Equipment Purchase/Delivery Logs
Contract Drawings and Specifications with Addenda
Warranties and Guarantees
Cost Accounting Records:
Labor Costs
Material Costs
Equipment Costs
Cost Proposal Requests
Payment Request Records
Meeting Minutes
Cost-Estimates
Bulletin Quotations
Lab Test Reports
Insurance Certificates and Bonds
Contract Changes
Purchase Orders
Material Purchase Delivery Logs
Technical Standards
Design Handbooks
"As-Built" Marked Prints
Operating & Maintenance Instruction
Daily Progress Reports
Monthly Progress Reports
Correspondence Files
Transmittal Records
Inspection Reports
Bid/Award Information

Bid Analysis and Negotiations
Punch Lists
PMIS Schedule and Updates
Suspense (Tickler) Files of Outstanding Requirements
Project Manual
Job Photographs

The Project records shall be available at all times to the Owner and Architect-Engineer for reference or review.

12. Owner Occupancy -

The Construction Manager shall:

Provide services during the design and construction phases, which will provide a smooth and successful Owner occupancy of the Project. The Construction Manager shall provide consultation and project management to facilitate Owner occupancy and provide transitional services to get the work, as completed by the contractors, "on-line" in such conditions as will satisfy Owner operational requirements.

Conduct the Construction Manager's preliminary Punch List inspection and coordinate the completion of all Punch List work to be done with Owner occupancy requirements in mind. The Construction Manager shall videotape all major equipment startup procedures and deliver videos as part of the closeout documents.

Catalog operational and maintenance requirements of equipment to be operated by maintenance personnel and convey the same to the Owner in such a manner as to promote their usability. The Construction Manager shall provide operational training, in equipment use, for all such operators.

The Construction Manager shall secure required guarantees and warranties, assemble and deliver same to the Owner in a manner that will facilitate maximum enforcement and assure meaningful implementation.

The Owner may occupy or take control of portions of the Project providing the above items discussed in this paragraph have been completed and the "Substantial Completion", "Start-Up", "Record Drawing", and "Warranty" requirements specified in Article 2.4 above have been completed to the Owner's satisfaction for the portions to be occupied, excluding the requirements for a warranty inspection eleven (11) months after Owner Occupancy.

13. Warranty -

Where any work is performed by the Construction Manager's own forces or by subcontractors under contract with the Construction Manager, the Construction Manager shall warrant that all materials and equipment included in such work will

be new except where indicated otherwise in Contract Documents, and that such work will be of good quality, free from improper workmanship and defective materials and in conformance with the Contract Documents. With respect to the same work, the Construction Manager further agrees to correct all work found by the Owner to be defective in material and workmanship or not in conformance with the Contract Documents for a period of one year from the date of Substantial Completion or partial occupancy of any portion of the building, whichever comes first, or for such longer periods of time as may be set forth with respect to specific warranties contained in the trade sections of the Specifications. The Construction Manager shall collect and deliver to the Owner any specific written warranties given by others as required by the Contract Documents. In addition, the Construction Manager shall conduct, jointly with the Owner and the Architect-Engineer, a warranty inspection in approximately eleven (11) months after the date of Owner Occupancy.

ARTICLE 3

OWNER'S RESPONSIBILITIES

3.1 Owner's Information:

The Owner shall provide full information regarding its requirements for the Project.

3.2 Owner's Representatives:

The Owner shall designate in writing any additional representatives authorized to act on the Owner's behalf with respect to the Project, not previously defined in Article 1.3, together with the scope of his/her respective authority. In no event shall any delegation of authority be contrary to state or county laws or codes. Functions to be performed by the Owner as set forth in this Agreement can be delegated by the Owner only by written notice to the Construction Manager from the Owner. The Construction Manager shall be entitled to rely on directions, and it shall be required to follow such directions, from the Owner's Representative designated in Article 1.3 and such other representatives from time to time designated in writing within the authority conferred by the City of Mount Dora City Council in this Agreement or any Amendment or Change Order to this Agreement. The City of Mount Dora City Council hereby authorizes the Article 1.3 Owner's Representative to: (1) act as the Owner's agent and execute documents associated with this Project. Examples of these documents are Construction Manager's Contingency Authorizations, Notices of Commencement, Certificates of Substantial Completion and permits from applicable agencies; (2) administer, coordinate, interpret and otherwise manage the contractual provisions and requirements of this Agreement; (3) negotiate a duly authorized Change Order on behalf of the Owner; and (4) issue a duly authorized purchase order, memorandum, letter or other instrument covering the services and work to be provided pursuant to this Agreement. Directions and decisions made by Owner's Representatives shall be binding on the Owner.

The City of Mount Dora City Council additionally authorizes the City Manager, in conjunction with the Owner's Representative, to authorize changes in the work up to \$35,000.00 (Thirty-five Thousand and 00/100 Dollars) or such other dollar amount as authorized by policy adopted by the City Council. Said work can be funded from the Owner's Contingency and shall not cause an increase to the overall project budget.

3.3 Architect-Engineer's Agreement:

The Owner shall retain an Architect-Engineer for design and to prepare Construction Documents for the Project. The Architect-Engineer's services, duties and responsibilities are described in the Agreement between the Owner and the Architect-Engineer, a copy of which will be furnished to the Construction Manager. The Agreement between the Owner and the Architect-Engineer shall not be modified without written notification to the Construction Manager.

3.4 Site Survey and Reports:

The Owner shall provide all surveys describing the physical characteristics, soil reports, and subsurface investigations, legal limitations, utility locations and a legal description for the Project.

3.5 Approvals and Easements:

The Owner shall pay for necessary approvals, easements, assessments and charges required for the construction, use or occupancy of permanent structures or for permanent changes in existing facilities.

3.6 Legal Services:

The Owner shall furnish such legal services as may be necessary for providing the items set forth in Article 3.5 and such document examination and interpretation as may require.

3.7 Drawings and Specifications:

The Construction Manager will be furnished a reproducible set of all copies of Drawings and Specifications reasonably necessary and ready for printing.

3.8 Cost of Surveys and Reports:

The services, information, surveys and reports required by the above paragraphs shall be furnished with reasonable promptness in accordance with the approved schedule at the Owner's expense, and the Construction Manager shall be entitled to rely upon the accuracy and completeness thereof.

3.9 Project Fault Defects:

If the Owner becomes aware of any fault or defect in the Project or non-conformance with the Drawings and Specifications, it shall give prompt written notice thereof to the Construction Manager and Architect-Engineer.

3.10 Funding:

The Owner shall furnish, in accordance with the established schedule, reasonable evidence satisfactory to the Construction Manager that sufficient funds will be available and committed for the cost of each part of the Project. The Construction Manager shall not commence any work, unless authorized in writing by the Owner.

3.11 Lines of Communication:

The Owner and the Architect-Engineer, through the Owner, shall communicate with the subcontractors or suppliers only through the Construction Manager while such method of communication is effective in maintaining project schedules and quality.

3.12 Permitting & Code Inspections:

The Owner recognizes and coordinates with the appropriate Permitting Authority and expects the Construction Manager to do the same.

ARTICLE 4
PERMITS, FEES AND NOTICES

- 4.1 Unless otherwise provided in the Contract Documents, the Construction Manager shall secure and pay for the building permits, which are customarily secured by a General Contractor.
- 4.2 The Construction Manager shall comply with and give notices, as required by laws, ordinances, rules, regulations and lawful orders of public authorities bearing on performance of the Project.
- 4.3 It is not the Construction Manager's responsibility to ascertain whether the Contract Documents are in accordance with applicable laws, statutes, ordinances, Building Codes and Rules and Regulations; however, if the Construction Manager observes that portions of the Contract Documents are inconsistent therewith, the Construction Manager shall promptly notify the Architect-Engineer and Owner in writing and necessary changes shall be accomplished by appropriate modification.
- 4.4 If the Construction Manager performs work knowing it to be contrary to applicable laws, statutes, ordinances, Building Codes and Rules and Regulations without such notice to the Architect-Engineer and Owner, the Construction Manager shall assume full responsibility for such work and shall bear all attributable costs and damages.

- 4.5 Cost for all re-inspections of work found to be defective and subsequently repaired, shall be borne by the Construction Manager if such defective work was performed knowingly contrary to applicable laws, statutes, ordinances, Building Codes and Rules and Regulations.

ARTICLE 5

SUBCONTRACTS

5.1 **Definition:**

A subcontractor is a person or organization who has a direct contract with the Construction Manager to perform any of the work at on the Project. Nothing contained in the Contract Documents shall create any contractual relationship between the Owner or Architect-Engineer and any subcontractor.

5.2 **Proposals:**

Subject to Article 9 and, in accordance with Article 2.4(4), the Construction Manager shall request and receive proposals from subcontractors and suppliers and will award those contracts to the qualified low bidder after reviewing all proposals with the Owner and Architect-Engineer and all are satisfied that the subcontractor/supplier is qualified to perform work or provide materials for the Project.

5.3 **Required Subcontractors' Qualifications and Subcontract Conditions:**

1. Sub-contractual Relations - The Construction Manager shall require each Subcontractor to assume all the obligations and responsibilities which the Construction Manager owes the Owner under this Agreement, to the extent of the work to be performed by the Subcontractor. Said agreements shall be made in writing and shall preserve and protect the rights of the Owner and Architect-Engineer under the Contract Documents with respect to the work to be performed by the Subcontractor so that the subcontracting thereof will not prejudice such rights. Where appropriate, the Construction Manager shall require each Subcontractor to enter into similar agreements with its sub-subcontractor.

Insurance requirements for Subcontractors shall be no more stringent than those requirements imposed on the Construction Manager by the Owner.

The Construction Manager shall make available to each proposed Subcontractor, prior to the execution of the Subcontract, copies of the Contract Documents to which the Subcontractor will be bound.

2. All subcontracts shall provide -

LIMITATION OF REMEDY- NO DAMAGES FOR DELAY

The subcontractor's exclusive remedy for delays in the performance of the contract caused by events beyond its control, including delays claimed to be caused by the Owner or Architect-Engineer or attributable to the Owner or Architect-Engineer and including claims based on breach of contract or negligence, shall be an extension of its contract time and shall in no way involve any monetary claim.

In the event of a change in the work, the Subcontractor's claim for adjustments in the contract sum are limited exclusively to its negotiated costs for such changes plus no more than seven percent (7%) for overhead, profit and bond costs.

The subcontract shall require the subcontractor to expressly agree that the foregoing constitutes the sole and exclusive remedy for delays and changes in the work and eliminates any other remedies or claims for increase in the contract price, damages, losses or additional compensation. Each subcontract shall require that any claims by the subcontractor for delay or additional cost must be submitted to the Construction Manager within the time and in the manner in which the Construction Manager must submit such claims to the Owner, and that failure to comply with the conditions for giving notice and submitting claims shall result in the waiver of such claims.

5.4 Responsibilities for Acts and Omissions:

The Construction Manager shall be responsible to the Owner for the acts and omissions of its employees, agents, subcontractors, the agents thereof and employees thereof, and all other persons performing any of the work or supplying materials for the Project under a contract to the Construction Manager.

ARTICLE 6 SCHEDULE, TIME OF COMMENCEMENT AND SUBSTANTIAL COMPLETION

- 6.1 At the time a Guaranteed Maximum Price (GMP) is established as provided for in Article 7, a Project Substantial Completion Date, a Project Final Completion Date and an Owner Occupancy Date for completion of the Project in accordance with the master project schedule, shall also be established by the Construction Team. The Construction Manager agrees to complete the construction in accordance with the agreed Substantial Completion Date, Final Completion Date and Owner Occupancy Date. The Construction Manager acknowledges that failure to complete the Project within the construction time set forth in the approved schedule will result in substantial damages to the Owner. These liquidated damages are the sole remedy for delay, shall in no way be deemed a waiver of the Owner's right to all other legal remedies in this Agreement.

In the event the Construction Manager does not achieve the Substantial Completion Date the Construction Manager shall pay the Owner, as liquidated damages and not as a penalty, in the amount of Five Hundred Dollars (\$500.00) for each calendar day the actual time of

performance exceeds the authorized Substantial Completion Date for each separate GMP as applicable.

- 6.2 The date of Owner Occupancy shall occur as described in Article 2.4(12) herein above. Warranties called for by this Agreement or by the Contract Documents shall commence on the Substantial Completion Date, unless otherwise agreed to, in writing, between the Owner and Construction Manager.

ARTICLE 7

GUARANTEED MAXIMUM PRICE FOR CONSTRUCTION

- 7.1 When the design documents are sufficiently complete to establish the scope of work for the Project, or any portion thereof, as generally defined by a design document listing to be provided by the Architect-Engineer, or at such time thereafter designated by the Owner, the Construction Manager will establish and submit in writing to the Owner for approval, a Guaranteed Maximum Price (GMP), guaranteeing the maximum price to the Owner, for the construction cost of the Project or designated part thereof. The Construction Manager acknowledges multiple GMPs may be required for the portions of the Project to support the project phasing and schedule. Such Guaranteed Maximum Price will be subject to modification for changes in the Project as provided in Article 10; however, the actual price paid for the work by the Owner shall be the actual cost of all work subcontracts, supply contracts, direct labor costs, direct supervision costs and direct job costs as defined under Article 9, plus the Construction Manager's costs and fees, or the GMP, whichever is less when the work is complete.
- 7.2 The GMP will only include those taxes, in the cost of the Project, which are legally enacted at the time the GMP is established.
- 7.3 At the time of submission of a GMP, the Construction Manager will verify the time schedule for activities and work, which were adopted by the Construction Team and used to determine the Construction Manager's cost of work. Included in the GMP will be a Contractor's Contingency, which is included for the Construction Manager to use, with the Owner's consent. The contingency is intended to cover the costs associated with Project scope that were not adequately detailed at the time of GMP. The Contractor's Contingency is also intended to protect against price increases between the GMP and the completion of the 100% construction documents, as well as for the purpose of defraying the expenses due to unforeseen circumstances relating to construction and for price increases attributable to any code compliance reviews. The Construction Manager will be required to furnish documentation evidencing expenditures charged to the Contractor's Contingency prior to the release of funds by the Owner. Documentation for use of the Contractor's Contingency shall be determined by the Construction Team, included in the Project Manual and displayed monthly in the Project Management Information System. The Architect-Engineer shall verify the actual costs. If there are funds remaining in the Contractor's Contingency at the conclusion of the Project, said funds will be returned to the Owner, through deductive change order.

- 7.4 When the Project is bid and one hundred percent (100%) of the trade contracts have been executed, the contingency within the GMP may be decreased in proportion to the percent of the work completed up to a maximum of fifty percent (50%). In other words, if ten percent (10%) of the work has been completed and the Owner requests that the contingency within the GMP be adjusted, then ten percent (10%) of the contingency within the GMP will be removed from the GMP by change order up to a maximum of fifty percent (50%) of the initial GMP contingency value. During the buyout period of the trade contracts, at a point mutually agreed upon between the Owner and Construction Manager, the net amount of the buyout will be reviewed. If the net amount of the total buyout results in excess funds being required, those funds will be taken from the Contractor's Contingency.

If the net amount of the buyout results in a savings, the savings will be assigned to the Owner's Buyout Contingency as defined in Article 7.5

If bids are not received for a portion of the work at or below the applicable line item amount in the GMP, the Construction Manager reserves the right to perform that portion of the work or negotiate for its performance for the specified line item lump sum amount or less.

- 7.5 The Owner's Buyout Contingency shall be created by the savings generated by subcontractor buyout as set forth in Article 7.4 and also by reductions in scope that otherwise could reduce the GMP. The intent of this Owner's Buyout Contingency is to allow funds already within the GMP to remain in the GMP and be used at the Owner's discretion for scope issues that may become required and/or desired during the course of the Project.

Authorizations up to Thirty-five Thousand and 00/100 Dollars (\$35,000.00), or such other dollar amount as authorized by policy adopted by the City Council, for the use of the Owner's Buyout Contingency, may be granted by the City Manager. Authorizations, for more than Thirty-five Thousand and 00/100 Dollars (\$35,000.00), will be granted by the City Council unless the City Council authorizes an increase in the City Manager's authority for the same.

ARTICLE 8

CONSTRUCTION MANAGER'S COSTS

- 8.1 In consideration of the performance of this Agreement, the Owner agrees to pay the Construction Manager as compensation for his services, costs or fees, as set forth herein.
1. Design Phase/Pre-construction Costs - For the performance of the services set forth under Article 2 and for profit and overhead related to these services, the Construction Manager shall be paid a total amount to be determined prior to the issuance of the Task Authorization. The Design Phase/Pre-construction Costs shall be paid according to the percent complete of the design phase.

The Construction Manager's personnel to be assigned during this phase and their duties and responsibilities to this project and the duration of their assignments are shown on the Task Authorization.

2. Construction Phase Costs - Prior to commencement of each Construction Phase, the Owner will direct the Construction Manager in writing to proceed into said Construction Phase. The Construction Phase Cost for work or services performed during the Construction Phase shall be an amount of *(To Be Determined at GMP)*. The Construction Phase Costs shall be paid according to the percent complete of the Project. The first monthly payment shall be due thirty (30) days following the issuance of the first Construction Authorization by the Owner's Representative and the final monthly payment shall be paid only when construction of the Project, or portion thereof, is finally completed and occupancy of the Project, or portion thereof, accepted by the Owner. If construction is authorized only for a part of the Project, the costs paid shall be proportionate to the amount of work authorized by the Owner.

A. Adjustments in Costs - For changes in the Project as provided in Article 10, the Construction Phase Costs shall be adjusted as follows:

1. The Construction Manager shall be paid an additional amount subject to negotiation if the Construction Manager is placed in charge of reconstruction of an insured or uninsured loss excluding any condition that may have been caused from negligent acts by the Construction Manager.
2. Should the construction duration for any phase extend longer than stipulated above, there shall be no additional Construction Phase Costs paid to the Construction Manager unless such delays are as defined in Article 10.2.
3. The Construction Manager will not be due any additional Construction Phase Fee on increases in the Guaranteed Maximum Price (GMP) that do not exceed a cumulative total of two percent (2%) for each separate GMP. Should a GMP be increased by more than a cumulative total of two percent (2%) under the terms of Article 10 hereinafter, due to no fault of the Construction Manager, the Construction Manager's additional Construction Phase Fee will be based on the Original GMP as set forth in the below chart for that portion of the accumulative increases in the GMP that exceed the GMP by more than two percent (2%).

GMP	Construction Manager's Fee
\$0.00 to \$150,000	14%
\$150,001 to \$500,000	12%

\$500,001 to \$750,000	9%
\$750,001 to \$1,000,000	8%
\$1,000,001 to \$1,500,000	7%
\$1,500,001 to \$2,000,000	6%

Construction Manager's Exclusive Remedy - In the event the construction Substantial or Final Completion date is extended, regardless of whether delay is caused by any act or neglect of the Owner or the Architect-Engineer, or is attributable to the Owner or the Architect-Engineer, the Construction Manager's sole and exclusive remedy is an extension of the Substantial Completion Date and payment of additional Construction Phase Costs and Construction Phase Fee as provided above.

B. Costs and Expenses Included in Construction Phase Costs – The following are included in the Construction Phase Costs for services during the Construction Phase:

1. Salaries or other compensation of the Construction Manager's employees at its principal office and branch offices.
 2. General operating expenses of the Construction Manager's principal and branch offices related to the Project.
 3. The costs of all data processing staff.
 4. Salaries or other compensation of the Construction Manager's employees at the job site.
 5. General operating expenses incurred in the management and supervision of the Project, except as expressly included in Article 9.
 6. Those services set forth in Article 2.4(9)(A).
 7. Job office supplies including but not limited to paper, pencils, paper clips, file folders, staples and janitorial supplies.
3. Construction Phase Fee - For overhead, profit and general expenses of any kind, except as may be expressly included in Article 9, for services provided during and related to the construction phase, the amount shall be based on the Original GMP as set forth in the chart below and shall be converted to a fixed amount upon acceptance of the GMP, subject to changes as described herein, and shall be paid proportionally to the ratio of the cost of the work in place, including stored materials, as it bears on the latest estimate of the total construction cost and/or to the GMP, whichever is less. The balance of the fee shall be paid when construction

of the Project, or portion thereof, is finally completed and occupancy of the Project, or portion thereof, is accepted by the Owner. If construction is authorized only for a part of the Project, the fee paid shall be proportionate to the amount of work authorized by the Owner. The Construction Manager's exclusive remedy for any adjustments in the Construction Phase Fee is provided in Article 8.1(2).

GMP	Construction Manager's Fee
\$0.00 to \$150,000	14%
\$150,001 to \$500,000	12%
\$500,001 to \$750,000	9%
\$750,001 to \$1,000,000	8%
\$1,000,001 to \$1,500,000	7%
\$1,500,001 to \$2,000,000	6%

ARTICLE 9

DIRECT COSTS OF THE PROJECT

9.1 Definition:

The term Direct Cost of the Project shall mean costs necessarily incurred in the Project during the Construction Phase for Construction Services and paid by the Construction Manager, which are not included in the Construction Phase Fee. Such costs shall include the items set forth below in this Article.

The Owner agrees to pay the Construction Manager for the Direct Costs of the Project as defined herein. Such payment shall be in addition to the Construction Phase Costs stipulated in Article 8. Invoices submitted under this Article 9 shall be submitted in detail sufficient for a proper pre-audit and post-audit thereof.

9.2 Direct Cost Items:

1. Cost of all materials, supplies and equipment incorporated in the Project, including costs of transportation and storage thereof.
2. Payments due to subcontractors from the Construction Manager or made by the Construction Manager to subcontractors for work performed pursuant to contract under this Agreement.
3. Cost including transportation and maintenance of all materials, supplies, equipment, temporary facilities and hand tools not owned by the workmen, employed or consumed in the performance of the work.
4. Rental charges on all necessary machinery and equipment, exclusive of hand tools used at the site of the Project, whether rented from the Construction Manager or other, including installation, repairs and replacement, dismantling, removal,

transportation and delivery costs thereof, which are used in the support of a subcontractor or the Construction Manager's own forces in the performance of the work, at rental charges consistent with those prevailing in the area.

5. Cost of the premiums for all insurance and cost of premiums for all bonds, which the Construction Manager is required to procure by this Agreement specifically for the construction of the Project. The cost of the work shall include any subcontractor bonds the Construction Manager deems appropriate. There shall be no Construction Phase Fee on this item.
6. Losses and expenses sustained by the Construction Manager in connection with the work, not compensated by insurance, including deductibles provided they have resulted from causes other than the negligent misconduct of Construction Manager.
7. Sales, use, gross receipts or similar taxes related to allowable direct costs of the Project imposed by any governmental authority, and for which the Construction Manager is liable.
8. The cost of corrective work, subject to the GMP, except for any corrective work made necessary because of defective workmanship or other problems caused by the negligence of the Construction Manager or its subcontractors or suppliers. No costs shall be paid by the Owner to the Construction Manager for any expenses made necessary to correct defective workmanship or to correct any work not in conformance with the Contract Documents or to correct any deficiency or damage caused by the negligent acts by the Construction Manager.
9. Costs for repairs and maintenance, which are consistent with industry standards associated with work required during the warranty period, which may be the responsibility of Construction Manager. This shall not apply to work, which is the responsibility of subcontractors, except in the case of a subcontractor's default.
10. Costs for trash and debris control and removal from the site.
11. Costs incurred due to an emergency affecting the safety of persons and property.
12. Legal costs reasonably and properly resulting from the Project on behalf of the Owner, including handling claims for changes by Subcontractors and Vendors, subject to the following limitations:
 - A. The Owner approved incurring such costs in advance, which approval shall not be unreasonably denied; and
 - B. The legal costs were not incurred as result of the Construction Manager's own negligence or default.

This paragraph does not provide for payment of legal costs incurred in preparing or asserting claim or requests, by Construction Manager itself, for change orders or in enforcing the obligations of this contract.

13. All costs directly incurred in the performance of the Project for the benefit of the Project and not included in the Construction Phase Costs as set forth in Article 8.
14. If requested by the Owner, the Construction Manager will perform all or a portion of the General Conditions work as a Direct Cost of the Project.
15. If approved by the Owner, the Construction Manager, when qualified, may perform all or a portion of the work for any item listed on the estimate or GMP breakdown where it is deemed advantageous due to schedule or economic benefit as a Direct Cost of the Project.
16. Transportation outside of Lake, Orange or Seminole for those personnel employed directly for the Project, not including relocation expenses. Such transportation must be approved in advance by the Owner, and will be in accordance with the Construction Manager's standard personnel policy.
17. Costs of all reproductions used for bidding or information purposes required by the Project to directly benefit the Project.
18. Costs for watchman and security services for the Project.
19. Costs for efficient logistical control of the site, including horizontal and vertical transportation of materials and personnel and costs for adequate storage and parking.
20. Costs for such temporary facilities and temporary protection during construction, as approved by the Owner, including temporary water, heat, power, sanitary facilities, telephones, radios and computers with software.
21. Costs for any job site items not referenced herein, not normally provided by the subcontractors, which will be provided by the Construction Manager as required to complete the Project.

ARTICLE 10

CHANGES IN THE PROJECT

10.1 Change Orders:

The Owner, without invalidating this Agreement, may order changes in the Project within the general scope of this Agreement consisting of additions, deletions or other revisions, with the GMP and the Substantial and/or Final Completion Dates being adjusted

accordingly. All changes in the Project, not covered by an authorized contingency, shall be authorized by a Change Order signed by the Owner before the change is implemented.

1. A Change Order is a written order to the Construction Manager signed by the Owner issued after the execution of this Agreement, authorizing a change in the Project, the Construction Phase Fee, or other attributable cost of the Project.
2. The increase or decrease in the GMP resulting from a change in the Project shall be determined in one or more of the following ways:
 - A. by mutual acceptance of a lump sum properly itemized and supported by sufficient substantiating data to permit evaluation by the Architect-Engineer and Owner;
 - B. by unit prices stated in the Agreement or subsequently agreed upon;
 - C. by cost as defined in Article 9 and a mutually acceptable fixed or percentage fee; or
 - D. by the method provided in Article 10.1(3).
 - E. Should any costs be required for design of an alternative system that would be advantageous to the Project and result in a deductive change order, the Construction Manager shall include the cost of the redesign services of the Architect-Engineer so that the Owner can make proper assessment of the cost of such change. Payment for additional services shall be made by the Owner.
3. If none of the methods set forth in Article 10.1(2) is agreed upon, the Construction Manager, provided it receives a written order signed by the Owner, shall promptly proceed with the work involved. The cost of such work shall then be determined on the basis of the reasonable expenditures and savings of those performing the work attributed to the change. In the event a Change Order is issued under these conditions, the Construction Manager shall establish an estimated cost of the work and the Construction Manager shall not perform any work if the cost exceeds that estimate without prior written approval by the Owner.
4. In the event of either Article 10.1(2) or Article 10.1(3) above, the Construction Manager shall keep and present, in such form as the Owner may prescribe, an itemized accounting together with appropriate supporting data, of the increase in the Direct Cost of the Project as outlined in Article 9.
5. The amount of decrease in the Guaranteed Maximum Price to be allowed by the Construction Manager to the Owner for any deletion or change which results in a net decrease in cost will be the amount of the actual net decrease.

6. If unit prices are stated in the Agreement or subsequently agreed upon, and if the quantities originally contemplated are so changed in a proposed Change Order, and that application of the agreed unit prices to the quantities of work proposed will cause substantial inequity to the Owner or the Construction Manager, the applicable unit prices and Guaranteed Maximum Price shall be equitably adjusted.
7. In the performance of the work, should concealed conditions be encountered below the surface of the ground or should concealed or unknown conditions in an existing structure be inconsistent with the conditions indicated by the Drawings, Specifications, or Owner furnished information or should unknown physical conditions exist below the surface of the ground or should concealed or unknown conditions in an existing structure of an unusual nature, differing materially from those ordinarily encountered and generally recognized as inherent in work of the character provided for in this Agreement, be encountered, the Guaranteed Maximum Price and the Substantial and/or Final Completion Dates shall be equitably adjusted by Change Order upon a request for Change Order in accordance with Article 10.2.
8. In the event the Construction Manager encounters material reasonably believed to be asbestos or polychlorinated biphenyl (PCB) which has not been rendered harmless, petroleum waste, biohazardous substances, radioactive waste or any other substance falling within the category of hazardous or toxic waste under the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) or any other state or federal environmental statute or regulation, hereinafter collectively referred to as "hazardous waste," the Construction Manager shall immediately stop work in the area affected and report the condition to the Owner in writing. Owner shall thereafter as soon as reasonably possible conduct a thorough investigation to determine if the suspected material in the affected area is in fact hazardous waste and shall certify to Construction Manager that such material is not hazardous waste or if such material is in fact hazardous waste that such hazardous waste has been abated and that it is safe to return to the affected area and resume work. The Construction Manager may require the Owner to furnish copies of reports of tests conducted by a qualified testing laboratory acceptable to Construction Manager verifying the absence of such hazardous waste before Construction Manager will be required to resume work. The Contract time and amount shall thereafter be equitably adjusted to account for the time lost due to the encountering of the hazardous waste and the reasonable cost associated therewith. The Construction Manager shall, through an analysis of network schedule, prove such time delays and associated costs.
9. The Construction Manager shall not be required to perform any work relating to hazardous waste without consent pursuant to this Article 10.

10.2 Claims for Additional Cost or Time:

All claims for additional cost or time shall be made by request for a Change Order submitted as provided in Article 16.

The Substantial Completion date shall be extended by Change Order for such reasonable time as the Construction Manager may determine. If the Construction Manager is delayed at any time in the progress of the work by any act or neglect of the Owner or the Architect-Engineer or of any employee of either or by any separate Construction Manager employed by the Owner or by any changes ordered in the work by labor disputes, fire or unusual delay in transportation, unavoidable casualties or any causes beyond the Construction Manager's control or by delay authorized by the Owner pending resolution of disputes, and such delay extends the Substantial and/or Final Completion Date, then the dates for completion may be equitably adjusted.

Only delays which are determined to extend the critical path for the schedule for constructing the Project, will result in a time extension. Neither the Owner nor the Construction Manager shall be considered to own the schedule float time.

10.3 Minor Changes in the Project:

The Owner will have authority to order minor changes in the Project not involving an adjustment in the Guaranteed Maximum Price or an extension of the Substantial and/or Final Completion Date and not inconsistent with the intent of the Contract Documents. Such changes shall be affected by written order. The Documentation of changes shall be determined by the Construction Team, included in the Project Manual and displayed monthly in the Project Management Information System. Changes shall be approved by the Owner and Architect-Engineer.

10.4 Emergencies:

In any emergency affecting the safety of persons or property, the Construction Manager shall act at its discretion, to prevent threatened damage, injury or loss. Any increase in the Guaranteed Maximum Price or extension of time claimed by the Construction Manager on account of emergency work shall be determined as provided in this Article 10.

ARTICLE 11
DISCOUNTS

All discounts for prompt payment shall accrue to the Owner to the extent the cost of the item(s) purchased is paid directly by the Owner or from a fund made available by the Owner to the Construction Manager for such payments. To the extent the cost associated with the Project is paid with funds of the Construction Manager, all cash discounts shall accrue to the Construction Manager. All trade discounts, rebates and refunds, and all returns from the sale of surplus materials and equipment, shall be credited to the cost of the Project.

ARTICLE 12
PAYMENTS TO THE CONSTRUCTION MANAGER

12.1 Monthly Statements:

The Construction Manager shall submit to the Owner a sworn statement, along with the cost reports required under Article 2.1(5), showing, in detail, all moneys paid out, cost accumulated or costs incurred during the previous period and the amount of the Construction Phase Fees due as provided in Article 8. This data shall be attached to the Partial Pay Request form shown in **Exhibit "E"**. Ten percent (10%) retainage shall be held on all payments until the contract is fifty percent (50%) complete, except when approved by the Owner certain suppliers and subcontractors may be paid the entire amount due when such payment is generally the practice of the industry. At fifty percent (50%) completion, the Owner may approve a reduction of the retainage from ten percent (10%) to five (5%) at its discretion. Retainage shall not be withheld on services or fees set forth in Article 8. Payments by the Owner to the Construction Manager shall be made as described in this Article 12. As a condition to application for a monthly partial pay requisition, the Construction Manager agrees that all as-built information will be recorded within thirty (30) days after receipt of information that a change to the Construction Documents has occurred.

12.2 Final Payment:

Final payment constituting the unpaid balance of the Construction Phase Cost of the Project and the Construction Phase Fee, shall be due and payable as described in Article 12.4 after Final Completion, provided that the Project has been finally completed, that the Construction Manager has verified by appropriate signature that it has completed all items and that this Agreement has been finally performed. However, if there should remain work to be completed, the Construction Manager, the Owner, and the Architect-Engineer shall list those items prior to receiving final payment and the Owner may retain a sum equal to the estimated cost of completing any unfinished work and portion of the Construction Manager's retainage, provided that said unfinished items are listed separately and the estimated cost of completing the unfinished items are likewise listed separately. Thereafter, Owner shall pay the Construction Manager monthly, the amount retained for each incomplete item after each such item is completed.

12.3 Payments to Subcontractors:

The Construction Manager shall promptly, within ten (10) days after receipt of payment from the Owner, pay all the amounts due to subcontractors less a retainage of ten percent (10%) until the project is fifty percent (50%) complete, and based on Construction Manager's evaluation of the subcontractor's acceptable performance, the Owner may approve a reduction in retainage from ten percent (10%) to five percent (5%) thereafter. If there should remain items to be completed, the Construction Manager, the Owner and Architect-Engineer shall list those items required for completion and the Construction Manager shall require the retainage of a sum equal to five percent (5%) of the estimated

cost of completing any unfinished items, provided that said unfinished items are listed separately and the estimated cost of completing any unfinished items are likewise listed separately. Thereafter, the Construction Manager shall pay to the subcontractors monthly, the amount retained for each incomplete item after each such item is completed. Before issuance of final payment without any retainage, the subcontractor shall submit satisfactory evidence that all payrolls, material bills and other indebtedness connected with the Project have been paid or otherwise satisfied, warranty information is complete, as-built markups have been submitted and instruction for the Owner's operating and maintenance personnel is complete.

Final payment may be made to certain select subcontractors whose work is satisfactorily completed prior to the total completion of the Project but only upon approval of the Owner.

12.4 Construction Manager's Payment Rights:

All payments for construction services shall be governed by and made in accordance with Florida's Prompt Payment Act, Florida Statutes, Section 218.735.

12.5 Payments for Materials and Equipment:

Payments will be made for material and equipment not incorporated in the work but delivered and suitably stored at a Project site or another location that is insured to protect the Owner's assets subject to prior approval and acceptance by the Owner on each occasion.

12.6 Withholding Payments to Subcontractors:

The Construction Manager shall not withhold payments to subcontractors if such payments have been made to the Construction Manager. Should this occur, the Construction Manager shall return such moneys to the Owner, adjusting pay requests and project bookkeeping as required. However, this provision shall not apply should payments to subcontractors be withheld as a result of procuring normal process paperwork in accordance with the Construction Manager's contract with said subcontractor. The Construction Manager shall, if requested by the Owner, notify the Owner in writing as to the reason for withholding payment.

ARTICLE 13

INSURANCE, INDEMNITY AND WAIVER OF SUBROGATION

13.1 Indemnity:

The Construction Manager agrees to be liable for any and all damages, losses and expenses incurred, by the Owner, in any way related to or caused by the acts and/or omissions of the Construction Manager, or any of its employees, agents, sub-contractors, representatives, volunteers or the like, to the extent stemming from the services provided by this Agreement. The Construction Manager agrees to indemnify, defend and hold the Owner harmless for any and all claims, suits, judgments, damages, losses and expenses, including

but not limited to, court costs, expert witness fees, consultation services and attorney's fees, through and including any appeals, arising from and related to any and all acts and/or omissions of the Construction Manager, or any of its employees, agents, sub-contractors, representatives, volunteers, or the like, to the extent stemming from the services provided by this Agreement. Said indemnification, defense and hold harmless activities shall not be limited by any required insurance coverage amounts set forth herein and shall survive termination or natural expiration of this Agreement.

13.2 Construction Manager's Insurance:

1. The Construction Manager shall not commence any construction work in connection with this Agreement until he has obtained all of the following types of insurance and such insurance has been approved by the Owner, nor shall the Construction Manager allow any subcontractor to commence work on its subcontract until all similar insurance required of the subcontractor has been so obtained and approved. All insurance policies shall be from insurers qualified and doing business in Florida with an AM Best Company rating of no less than A.
2. Worker's Compensation Insurance - The Construction Manager shall take out and maintain during the life of this Agreement Worker's Compensation Insurance for all his employees, and the like, connected with the work of this Project and, in case any work is sublet, the Construction Manager shall require the subcontractor similarly to provide Worker's Compensation Insurance for all of the subcontractor's employees unless such employees are covered by the protection afforded by the Construction Manager. Such insurance shall comply with Florida Worker's Compensation Law. In case any class of employees, engaged in hazardous work on the Project, is not protected under the Worker's Compensation statute, the Construction Manager shall provide adequate insurance, satisfactory to the Owner, for the protection of employees not otherwise protected. Employers' liability shall be no less than \$1,000,000/1,000,000/1,000,000.
3. Construction Manager's Public Liability and Property Damage Insurance - The Construction Manager shall take out and maintain during the life of this Agreement, Comprehensive General Liability and Comprehensive Automobile Liability Insurance to protect it from claims of damage for personal injury, including accidental death, as well as claims for property damage which may arise from its operations under this Agreement whether such operations are by the Construction Manager or by anyone directly or indirectly employed by it, and the amount of such insurance shall have the following minimum limits:
 - A. GENERAL LIABILITY: One Million Dollars (\$1,000,000.00) each occurrence; GENERAL AGGREGATE: Two Million Dollars (\$2,000,000.00). There shall not be an EFIS Exclusion Endorsement on any general liability policy;

- B. Automobile Liability Coverages, One Million Dollars (\$1,000,000.00) combined single limit, and One Million Dollars (\$1,000,000.00) for each occurrence of bodily injury and property damage;
 - C. Excess Liability, Umbrella Coverage, Two Million Dollars (\$2,000,000.00) each occurrence.
- 4. Subcontractor's Public Liability and Property Damage Insurance - The Construction Manager shall require each of its subcontractors to procure and maintain during the life of any such subcontract, insurance coverage of the types specified above or insure the activities of the subcontractors in the Construction Manager's policies, as specified above.
 - 5. "XCU" (Explosion, Collapse, Underground Damage) - The Construction Manager's Liability Policy shall provide "XCU" coverage for those classifications in which they are excluded.
 - 6. Products and completed operations Coverages - The Construction Manager's Liability Policy shall include Broad Form Property Damage Coverage, Products and Completed Operations Coverages. The products and completed operations portions of the liability coverage shall extend for a period of two (2) years after the Final Acceptance of the Project by the Owner.
 - 7. Contractual Liability Work Contracts - The Construction Manager's Liability Policy shall include Contractual Liability Coverage designed to protect the Construction Manager for contractual liabilities assumed by the Construction Manager in the performance of this Agreement.
 - 8. Indemnification Rider -
 - A. To cover to the fullest extent permitted by law, the Construction Manager shall indemnify and hold harmless the Owner and the Architect-Engineer and their agents and employees from and against all claims, damages, losses and expenses, including but not limited to attorney's fees, arising out of or resulting from the performance of the Project, provided that any such claim, damage, loss or expense (1) is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the work itself), and to the extent it (2) is caused in whole or in part by any negligent act or omission of the Construction Manager, any subcontractor, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, regardless of whether or not it is caused in part by a party indemnified hereunder. Such obligation shall not be construed to negate, abridge, or otherwise reduce any other right to obligation of indemnity which would otherwise exist as to any party or person described in this Article.

- B. In any and all claims against the Owner or the Architect-Engineer or any of their agents or employees by any employee of the Construction Manager, any subcontractor, anyone directly or indirectly employed by either or anyone for whose acts either may be liable, the indemnification obligations under this Paragraph shall not be limited in any way by any limitation on the amount or type of damages, compensation or benefits payable by or for the Construction Manager or any subcontractor under workers' or workmen's compensation acts, disability benefit acts or other employee benefit acts.
 - C. The obligations of the Construction Manager under this Article 13.2(8) shall not extend to the liability of Architect-Engineer, his agents or employees, arising out of (1) the preparation or approval of maps, drawings, opinions, reports, surveys, change orders, designs or specifications, or (2) the giving of or the failure to give directions or instruction by Architect-Engineer, its agents or employees provided such giving or failure to give is the primary cause of the injury or damage.
 - D. The Construction Manager hereby acknowledges receipt of Ten Dollars (\$10.00) and other good and valuable consideration from the Owner and acknowledges receipt of Ten Dollars (\$10.00) and other good and valuable consideration from the Architect-Engineer in exchange for giving the Owner and Architect-Engineer, respectively, the indemnification provided above in Articles 13.1 and 13.2.
9. Builder's Risk Coverage - The Construction Manager shall take out and maintain a "Builder's Risk Policy" for each assigned Project, issued to provide coverages on an "all risk" basis including theft. This coverage shall not lapse or be canceled because of partial occupancy by the Owner prior to Final Acceptance of the Project. The Owner may elect to take out and maintain this insurance coverage. Should the Owner purchase said insurance, the insurance policy shall have a deductible for each occurrence of Five Thousand and 00/100 Dollars (\$5,000.00). The Construction Manager shall be responsible for paying any deductible amount.
10. Certificate of Insurance - For every insurance policy required hereunder, the Construction Manager shall provide the Owner with a Certificate of Insurance evidencing such coverage for the duration of this Agreement, or such longer period if required hereunder. Said Certificate of Insurance shall be dated and show:
- A. The name of the insured Construction Manager;
 - B. The specified job by name and job number;
 - C. List the "CITY OF MOUNT DORA" as an Additional Insured;
 - D. Recognizes the Indemnification requirements of this Agreement;
 - E. The name of the insurer;
 - F. The number of the policy;
 - G. The effective date;

- H. The termination date;
- I. A statement that the insurer will mail notice to the CITY at least thirty (30) days prior to any material changes in the provisions or cancellation of the policy.

- 11. Receipt of certificates or other documentation of insurance or policies or copies of policies by the Owner, or by any of its representatives, which indicates less coverage than is required hereunder, does not constitute a waiver of the Construction Manager's obligation to fulfill the insurance requirements specified herein.
- 12. The Construction Manager shall ensure that any sub-contractor(s), hired to perform any of the work on any part of the Project, maintain appropriate insurance as determined by the Construction Manager. In addition, the Construction Manager shall maintain proof of same on file and made readily available upon request by the Owner.

13.3 Waiver of Subrogation:

- 1. The Owner and the Construction Manager waive all rights against each other, for damages caused by perils covered by insurance provided under Article 13.2 to the extent they are covered by such insurance except such rights as either may have to the proceeds of such insurance held by the Owner and Construction Manager as trustees. The Construction Manager shall require similar waivers from all subcontractors and their sub-subcontractors.
- 2. The Owner and Construction Manager waive all rights against each other for loss or damage to any equipment used in connection with the Project and covered by any property insurance. The Construction Manager shall require similar waivers from all subcontractors and their sub-subcontractors.
- 3. The Owner waives subrogation against the Construction Manager on all property and consequential loss policies carried by the Owner on adjacent properties and under property and consequential loss policies purchased for the Project after its completion.
- 4. If the policies of insurance referred to in this Article require an endorsement to provide for continued coverage where there is a waiver of subrogation, the Owner of such policies will cause them to be so endorsed and failure to obtain proper endorsement nullifies the waiver of subrogation.

ARTICLE 14
TERMINATION OF THE AGREEMENT AND OWNER'S RIGHT TO
PERFORM CONSTRUCTION MANAGER'S OBLIGATION

14.1 Termination by the Construction Manager:

If the Project is stopped for a period of thirty (30) days under an order of any court or other public authority having jurisdiction or as a result of an act of government, such as a declaration of a national emergency making materials unavailable, through no act or fault of the Construction Manager, or if the Project should be stopped for a period of sixty (60) days by the Construction Manager, for the Owner's failure to make payments thereon, then the Construction Manager may, upon seven (7) days written notice to the Owner, request payment for all work executed, the Construction Manager's fees earned to date, and for any proven loss sustained upon any materials, equipment, tools, construction equipment and machinery, including reasonable profit thereon and termination expenses incurred by the Construction Manager.

14.2 Owner's Right to Perform Construction Manager's Obligations and Termination by Owner for Cause:

1. If the Construction Manager fails to perform any of its obligations under this Agreement, including any obligation it assumes to perform work with its own forces, the Owner may correct any deficiencies after providing seven (7) days written notice to the Construction Manager. In such an event, the GMP, or the actual cost of the Project, whichever is less, shall be reduced by the cost to the Owner of correcting such deficiencies and the Construction Manager's Construction Phase Fee shall also be reduced by the amount required to manage the correction of such deficiencies.
2. The Owner may, without prejudice to any other right or remedy and upon providing the Construction Manager and its surety, if any, seven (7) days written notice of failures or deficiencies, terminate this Agreement with the Construction Manager and take possession of the site and of all materials, equipment, tools, construction equipment and machinery thereon, owned by the Construction Manager, and may finish the Project by whatever means or method the Owner, in its sole discretion, deems appropriate.
3. If the Construction Manager is adjudged bankrupt, or if it makes a general assignment for the benefit of its creditors, or if a receiver is appointed on account of the Construction Manager's insolvency, or if it persistently or repeatedly refuses or fails, except in cases for which an extension of time is provided, to supply enough properly skilled workmen or proper materials and fails to maintain an established schedule by falling forty-five (45) days or more behind the schedule adopted by the Construction Team, or if the Construction Manager fails to make prompt payments to subcontractors for materials or labor, or persistently disregards laws, rules, ordinances, regulations or orders of any public authority having jurisdiction, or

otherwise is in breach of a material provision of this Agreement, the Construction Manager shall not be entitled to receive any further payment until the Project is finished nor shall it be relieved from its obligations assumed under Article 6. Reasonable termination expenses incurred by the Owner may be deducted from any payments which remain owed to the Construction Manager, excluding any monies owed the Construction Manager for subcontract work.

14.3 Termination by Owner Without Cause:

1. The Owner may, at any time, terminate the Contract for the Owner's convenience and without cause take possession of the site and of all materials, equipment, tools, construction equipment and machinery thereon, owned by the Construction Manager, and may finish the Project by whatever method he may deem expedient without prejudice to any right or remedy.
2. Upon seven (7) days written notice from the Owner of such termination for the Owner's convenience, the Contractor shall:
 - A. cease operations as directed by the Owner in the notice;
 - B. take actions necessary, or that the Owner may direct, for the protection and preservation of the work; and
 - C. terminate all existing subcontracts and purchase orders and not enter into further subcontracts and purchase orders, except for work directed to be performed prior to the effective date of termination stated in the notice.
3. In case of such termination for the Owner's convenience, the Construction Manager shall be entitled to receive payment for work executed, and costs incurred by reason of such termination, along with a reasonable fee, as defined in Article 8.1(2), overhead and profit on the work performed.

ARTICLE 15
ASSIGNMENT AND GOVERNING LAW

- 15.1 Neither the Owner nor the Construction Manager shall assign its interest in this Agreement without the written consent of the other except as to the assignment of proceeds.
- 15.2 This Agreement shall be governed by the laws of the State of Florida. Venue shall be in Lake County, Florida. The parties waive all rights to trial by jury.

ARTICLE 16
NOTICE OF CLAIM; WAIVER OF REMEDIES

- 16.1 The Owner's liability to the Construction Manager for any claims arising out of or related to the subject matter of this Agreement, whether in contract or tort, including, but not

limited to, claims for extension of construction time, for payment by the Owner of the costs, damages or losses because of changed conditions under which the work is to be performed, or for additional work, shall be governed by the following provisions:

1. All claims must be submitted as a Request for Change Order in the manner as provided herein;
2. The Construction Manager must submit a Notice of Claim to Owner within twenty (20) days of the Construction Manager becoming aware of the occurrence, or the event, giving rise to the claim; and
3. Within ten (10) days of submitting its Notice of Claim, the Construction Manager shall submit to the Owner its Request for Change Order, which shall include a written statement of all the details of the claim, including a description of the work affected.

The Construction Manager agrees that the Owner shall not be liable for any claim that the Construction Manager fails to submit as a Request for Change Order as provided in this paragraph to the extent that the Owner is prejudiced by the failure of the Construction Manager to submit the Request for Change Order.

- 16.2 After receipt of a Request for Change Order, the Owner, in consultation with the Architect-Engineer, shall deliver to the Construction Manager its written determination of the claim.
- 16.3 For work the Construction Manager performs with its own forces, and in addition to the adjustments provided for in Article 8, the Construction Manager's exclusive remedy for delays in performance of the construction caused by events beyond its control, including delays claimed to be caused by or attributable to the Owner or the Architect-Engineer, including claims based on breach of contract or negligence, shall be a claim submitted in compliance with Article 16.1 above, for an extension of the scheduled construction time. In the event of a change in such work, the Construction Manager's claims for adjustments in the contract sum are limited exclusively to its actual costs for such changes plus the Construction Manager's Fee established at each Project's Original GMP. The Construction Manager expressly agrees that the foregoing constitutes its sole and exclusive remedy for delays and changes in work, and eliminates any other remedies for claims for increase in the contract price, delays, changes in the work, damages, losses or additional compensation.

ARTICLE 17
DIRECT MATERIALS ACQUISITION AND SALES TAX EXEMPT
PURCHASE PROCEDURES FOR PUBLIC PROJECTS

- 17.1 Direct Materials Acquisition by Owner - Supply Bonds:

1. The Construction Manager shall ensure that each subcontractor includes Florida state tax and other applicable sales tax for all material, supplies and equipment included in a subcontractor's bid.
2. The Owner may, if not prohibited by law, exercise a right to purchase directly, various construction materials, supplies and equipment that may be part of this Agreement or of a subcontract, provided that the Owner receives proper authorization from the State of Florida in the form of a Technical Assistance Advisement as set forth in Florida Administrative Code, Rule 12-11.003. Any materials purchased by the Owner shall be referred to as "Owner Purchased Materials" and the responsibilities of both the Owner and the Construction Manager relating to such Owner Purchased Materials shall be governed by the terms and conditions of this Article, which shall take precedence over other conditions and terms of this Agreement where inconsistencies or conflicts exist.
3. The Owner will issue its own purchase orders directly to a vendor. The Owner's Purchase Order shall contain or be accompanied by the Owner's exemption certificate and must include the Owner's name, address and exemption number with issue and expiration date shown. The materials shall be purchased from the vendors and suppliers selected by the Construction Manager or subcontractor for prices negotiated by the Construction Manager or subcontractor, as applicable. The Construction Manager will provide all the necessary information for preparation of the purchase orders by the Owner and will coordinate the purchase of the materials in a timely manner so as to not negatively impact the performance of the construction activity of the Project.
4. The subcontract amount shall be reduced by the net, undiscounted amount of these purchase orders, plus all sales taxes. Issuance of the purchase orders by the Owner shall not relieve the subcontractor or the Construction Manager of any of their responsibilities regarding material purchases, or installation, with the exception of the payments for the material so purchased. The Construction Manager and the subcontractor shall remain, with respect to materials, supplies and equipment, fully responsible for coordination, correct quantities ordered, submittals, protection, storage, scheduling, shipping, security, expediting, receiving, installation, cleaning and the management of all applicable warranties.
5. As Owner Purchased Materials are delivered to the jobsite, the Construction Manager, as Owner's representative, shall visually inspect all shipments from the suppliers, and approve the vendor's invoice for material delivered. The Construction Manager shall assure that each delivery of Owner Purchased Material is accompanied by documentation adequate to identify the purchase order against which the purchase is made. This documentation may consist of a delivery ticket and an invoice from the supplier conforming to the Purchase Order, together with such additional information as the Owner or Construction Manager may require. The Construction Manager, as Owner's representative, shall verify in writing to the Owner the accuracy of the delivery ticket. The vendor will then forward the invoice

to the Owner through the Construction Manager for payment. The invoice shall be thereupon furnished to the Owner for processing and payment in the same manner that all other Owner invoices are processed. The Owner shall have the right to assign Owner personnel to verify and audit the accuracy of all Direct Purchase documents.

6. Notwithstanding the transfer of Owner Purchased Materials by the Owner to the Construction Manager's possession, the Owner shall retain title to any and all Owner Purchased Materials.
7. The Owner shall purchase and maintain insurance which shall be sufficient to protect against any loss of or damage to Owner purchased equipment, materials or supplies. Such insurance shall cover the value of any Owner Purchased Materials not yet incorporated into the Project from the time the Owner first takes title.
8. The material supplier may be required to provide a supply bond in the amount of 100% of the purchase order price. The bond shall be from a qualified surety company authorized to do business in the State of Florida and acceptable to the Owner and the Construction Manager. If a supply bond is required, the cost of the bond will be added to the amount of the Purchase Order. The premium cost for this supply bond shall be included in the bid price. Verifying that a designated material supplier can furnish a supply bond, if required, will be the responsibility of the Construction Manager. Owner reserves the right to waive the requirement of providing a supply bond at the discretion of Owner.
9. If the State of Florida assesses any sales tax penalties and/or interest against the Construction Manager or any of its subcontractors or material suppliers relating to the direct acquisition of materials and/or equipment by Owner as authorized by this paragraph, such taxes, penalties, interest and/or any legal and administrative fees expended by the Construction Manager as a direct result of any action or assessment made by the State of Florida, shall be reimbursed by Owner to the Construction Manager in a prompt and reasonable manner and shall not be considered a Project Cost.

18.2 Sales Tax Exempt Purchasing Procedures for Public Projects:

1. The Construction Manager has included Florida sales tax and other applicable taxes in its bid for material, supplies and equipment. The Owner, being exempt from sales tax, reserves the right to make direct purchases of various construction equipment, materials or supplies included in any subcontractor's bid and/or contract.
2. Any equipment, materials or supplies directly purchased by the Owner that are included in the Construction Manager's contract or any subcontract shall be referred to as Owner Purchased Materials and the responsibilities of both the Owner and the subcontractor relating to such Owner Purchased Materials shall be governed by these procedures.

3. Material suppliers shall be selected by the Construction Manager or subcontractor, as applicable.
4. Owner purchasing of construction materials, if selected, will be administered on a deductive Change Order basis and the contract amount shall be reduced by the net undiscounted amount of the purchase orders issued by the Owner, plus all sales tax included.
5. The Construction Manager shall provide a list of all intended suppliers, vendors and materialmen for consideration as Owner Purchased materials with a description of the materials to be supplied, estimated quantities and prices. This information shall be submitted to the Owner as soon as practicable.
6. The Construction Manager or subcontractors, as applicable, shall prepare a purchase order requisition form in a form acceptable to the Owner and the Construction Manager, to specifically identify the materials, which Owner has, at its sole option, elected to purchase directly. The purchase order requisition form shall include:
 - A. the name, address, telephone number and contact person for the material supplier;
 - B. manufacturer or brand, model or specification number of the item;
 - C. estimated quantity needed;
 - D. the price quoted by the supplier for the materials identified therein;
 - E. any sales tax associated with such quote; and
 - F. delivery dates
7. Construction Manager or subcontractor shall include reference to any terms and conditions, which have been negotiated with the vendors, such as payment terms, warranties, retainage and the like. The purchase order requisition forms are to be submitted to the Owner's Representative no less than seven (7) days prior to the need for ordering such Owner Purchased Materials, in order to provide sufficient time for Owner review and approval and to assure that such directly purchased materials may be directly purchased by Owner and delivered to the Project site without any delay to the Project.
8. After receipt of the purchase order requisition form, Owner shall prepare the Purchase Order for equipment, materials or supplies which the Owner chooses to purchase directly. Pursuant to the Purchase Order, the vendor will provide the required quantities of material at the price established in the vendor's quote to the Construction Manager or subcontractor, less any sales tax associated with such

price. Promptly upon receipt of each Purchase Order, the Construction Manager shall verify the terms and conditions of the Purchase Order prior to its issuance to supplier and in a manner to assure proper and timely delivery of items. The Owner's Purchase Orders shall be accompanied by the Owner's exemption certificate and must include the Owner's name, address, and exemption number with issue and expiration date shown.

9. In conjunction with the execution of the Purchase Orders, by the suppliers, one or more deductive Change Orders shall be issued, referencing the full value of all Owner Purchased Materials to be provided by each supplier from whom the Owner elected to purchase material directly, plus all sales tax savings associated with such materials in the Construction Manager's price or subcontractor's bid.
10. Construction Manager shall be fully responsible for all matters relating to the receipt of materials furnished by the Owner in accordance with these procedures, including, but not limited to, verifying correct quantities, verifying documentation of orders in a timely manner, coordinating purchases, providing and obtaining all warranties and guarantees required by the Contract Documents, inspection and acceptance of the goods at the time of delivery, and loss or damage to equipment and materials following acceptance of items by the Owner. The Construction Manager shall coordinate delivery schedules, sequence of delivery, loading orientation and other arrangements normally required for the particular materials furnished. The Construction Manager shall provide all services required for the unloading, handling and storage of materials through installation. The Construction Manager agrees to indemnify and hold harmless the Owner from any and all claims of whatever nature resulting from non-payment of goods to suppliers arising from the actions or directions of the Construction Manager.
11. As Owner Purchased Materials are delivered to the jobsite, the Construction Manager, as Owner's representative, shall visually inspect all shipments from the suppliers and approve the vendor's invoice for material delivered. The Construction Manager shall assure that each delivery of Owner Purchased Material is accompanied by documentation adequate to identify the purchase order against which the purchase is made. This documentation may consist of a delivery ticket and an invoice from the supplier conforming to the purchase order, together with such additional information as the Owner or Construction Manager may require. The Construction Manager, as Owner's representative, shall verify in writing to the Owner the accuracy of the delivery ticket. The vendor will then forward the invoice to the Owner through the Construction Manager for payment. The invoice shall be thereupon furnished to the Owner for processing and payment in the manner all other Owner invoices are processed. The Owner shall have the right to assign Owner personnel to verify and audit the accuracy of all Direct Purchase documents.
12. The Construction Manager shall ensure that Owner Purchased Materials conform to the Specifications, and determine prior to incorporation into the work if such materials are patently defective and whether such materials are identical to the

materials ordered and match the description on the bill of lading. If the Construction Manager discovers defective or nonconformity in the Owner Purchased Material, upon such visual inspection, the Construction Manager shall not utilize such nonconforming or defective materials in the work, shall promptly take action to remedy the defect or nonconformance so as not to delay the Project and shall promptly notify the vendor of the defective or non-conforming condition in order to pursue repair or replacement of those materials without any undue delay or interruption to the Project. Additionally, the Construction Manager shall notify the Owner of such occurrence. If the Construction Manager fails to perform such inspection and otherwise incorporates defective or nonconforming Owner Purchased Materials, the condition of which it either knew or should have known by performance of an inspection, the Construction Manager shall be responsible for all damages to the Owner resulting from the incorporation of such materials into the Project, including liquidated or delay damages.

13. The Construction Manager shall maintain records of all Owner Purchased Materials it incorporates into the work from the stock of Owner Purchased Materials in its possession. The Construction Manager shall account monthly to the Owner for any Owner Purchased Materials delivered into the Construction Manager's possession, including portions of all such materials, which have been incorporated into the work.
14. The Construction Manager shall be responsible for obtaining and managing all warranties and guarantees for all materials and products. All repairs, maintenance or damage repair calls shall be handled by the Construction Manager for resolution with the appropriate supplier or vendor.
15. Notwithstanding the transfer of Owner Purchased Materials by the Owner to the Construction Manager's possession, the Owner shall retain title to any and all Owner Purchased Materials.
16. The transfer of possession of Owner Purchased Materials from the Owner to the Construction Manager shall constitute a bailment for mutual benefit of the Owner and the Construction Manager. The Owner shall be considered the bailor and the Construction Manager the bailee of the Owner Purchased Materials. Owner Purchased Materials shall be considered returned to the Owner for purposes of its bailment at such time as they are incorporated into the Project or consumed in the process of completing the project. The Construction Manager shall have the duty to safeguard, store and protect all Owner Purchased Materials.
17. The Owner shall purchase and maintain insurance which shall be sufficient to protect against any loss of or damage to Owner Purchased equipment, materials or supplies. Such insurance shall cover the full value of any Owner Purchased Materials not yet incorporated into the Project from the time the Owner first takes title.

18. The Owner shall in no way be liable for interruption or delay in the Project, for any defects or other problems with the Project, or for any extra costs or time resulting from delay in the delivery of, or defects in, Owner Purchased Materials.
19. On a monthly basis, the Construction Manager shall be required to review invoices submitted by all suppliers of Owner Purchased Materials delivered to the Project site during that month and either concur or object to the Owner's issuance of payment to the suppliers, based upon the Construction Manager's records of materials delivered to the site and any defects in such materials.
20. In order to arrange for the prompt payment to the supplier, the Construction Manager shall provide the Owner with a copy of the applicable Purchase Order, invoices, delivery tickets, written acceptance of the delivered items and such other documentation as may be reasonably required by the Owner. Upon receipt and verification of the appropriate documentation, the Owner shall prepare a check drawn to the supplier based upon the receipt of data provided. The check will be released, delivered and remitted directly to the supplier. The Construction Manager agrees to assist the Owner to immediately obtain partial or final release of lien waivers as appropriate.
21. At the end of the Project, any refund for surplus materials returned to suppliers plus applicable sales tax savings amounts shall be credited with an additive Change Order to the applicable subcontractor agreement with the Construction Manager. Salvage materials shall be the property of the Owner and stored or removed from the site by the Construction Manager at the Owner's direction.

ARTICLE 18

MISCELLANEOUS

18.1 Harmony:

1. The Construction Manager is advised and hereby agrees that it will exert every reasonable and diligent effort to assure that all labor employed by the Construction Manager and its Subcontractors for work on the Project shall work in harmony with and be compatible with all other labor being used by building and construction contractors now or hereafter on the site of the Project.
2. The Construction Manager further agrees that the above provision will be included in all contracts with the subcontractors; however, said provision shall not be interpreted or enforced so as to deny or abridge, on account of membership or non-membership in any labor union or labor organization, the right of any person to work as guaranteed by Article 1, Section 6 of the Florida Constitution.

18.2 Dispute Resolution:

1. All claims, disputes and other matters in question, hereinafter referred to as a "Controversy", between the parties to this Agreement arising out of or relating to this Agreement or the breach thereof shall be initially submitted to mediation if mutually agreeable in accordance with the Construction Mediation Rules of the American Arbitration Association ("AAA") or any other mutually agreeable mediation firm.
2. Should either the Owner or the Construction Manager feel it necessary and appropriate to take any legal action to enforce any of the terms or conditions of this Agreement, then each party shall be responsible for its own attorney's fees and costs associated with such litigation.

18.3 Construction Manager's Project Records:

The Construction Manager's Project records shall be maintained for the minimum period required by state and federal law, and shall be made available to the Owner or its authorized representative at mutually convenient times.

18.4 Consequential Damages:

The parties mutually waive all claims for consequential damages, except to the extent paid for by insurance maintained for this project.

18.5 Public Records:

1. Pursuant to Florida Statutes, Section 119.0701:

IF YOU HAVE QUESTIONS REGARDING THE APPLICATION OF FLORIDA STATUTES, CHAPTER 119, TO YOUR DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS CONTRACT, CONTACT THE CITY'S/OWNER'S CUSTODIAN OF PUBLIC RECORDS:

**CITY CLERK: GWEN JOHNS
510 NORTH BAKER STREET
MOUNT DORA, FL 32757
(352) 735-7126
JOHNSG@CITYOFMOUNTDORA.COM**

2. Construction Manager agrees to comply with public records laws, specifically to:
 - A. Keep and maintain public records required by the City/Owner to perform the services set forth herein.

- B. Upon request from the City's/Owner's custodian of public records, provide the City/Owner 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 Florida Statutes, Chapter 119, or as otherwise provided by law.
- C. Ensure that public records which 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/Owner.
- D. Upon completion of the contract, transfer, at no cost to the City/Owner, all public records in possession of the Construction Manager or keep and maintain public records required by the City/Owner to perform the services set forth herein. If the Construction Manager transfers all public records to the City/Owner upon completion of the contract, the Construction Manager shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If the Construction Manager keeps and maintains public records upon completion of the contract, the Construction Manager shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to the City/Owner, upon request from the City's/Owner's custodian of public records, in a format that is compatible with the information technology systems of the City/Owner.

18.6 Severability:

All clauses found herein shall act independently of each other. If a clause is found to be illegal or unenforceable, it shall have no effect on any other provision of this Agreement. It is understood by the parties hereto that if any part, term, or provision of this Agreement is by the courts held to be illegal or in conflict with any law of the State of Florida or the United States, the validity of the remaining portions or provisions shall not be affected, and the rights and obligations of the parties shall be construed and enforced as if the Agreement did not contain the particular part, term, or provision held to be invalid.

18.7 Waiver:

Failure of the parties to insist upon strict performance of any of the covenants, terms, provisions, or conditions of this Agreement or to exercise any right or option herein contained, shall not be construed as a waiver or a relinquishment for the future of any such covenant, term, provision, or condition, or right of election, but same shall remain in full force and effect.

18.8 Notice:

The parties hereto agree and understand that written notice, mailed or delivered to the last known mailing address, shall constitute sufficient notice to the Owner and the Construction

Manager. All notices required and/or made pursuant to this Agreement to be given to the Owner and the Construction Manager shall be in writing and given by way of the United States Postal Service, first class mail, postage prepaid, addressed to the following addresses of record:

Owner: City of Mount Dora
Attention: City Manager
510 N. Baker Street
Mount Dora, Florida 32757

with copy to: City Attorney
Bell & Roper, P.A.
2707 E. Jefferson Street
Orlando, Florida 32803

Construction Manager: Wharton-Smith, Inc.
750 Monroe Road
Sanford, Florida 32771

18.9 Modification:

The covenants, terms, and provisions of this Agreement may be modified by way of a written instrument, mutually accepted by the parties hereto. In the event of a conflict between the covenants, terms, and/or provisions of this Agreement and any written Amendment(s) hereto, the provisions of the latest executed instrument shall take precedence.

18.10 Headings:

All headings of the sections, exhibits, and attachments contained in this Agreement are for the purpose of convenience only and shall not be deemed to expand, limit, or change the provisions contained in such sections, exhibits, and attachments.

18.11 Joint Authorship:

This Agreement shall be construed as resulting from joint negotiation and authorship. No part of this Agreement shall be construed as the product of any one of the parties hereto.

18.12 Equal Opportunity Employer:

The Construction Manager is an Equal Opportunity Employer and will comply with all equal opportunity employment laws. The Construction Manager will further ensure that all sub-contractors it utilizes in providing the services required hereunder will comply with all equal opportunity employment laws. During the performance of this contract, the Construction Manager agrees as follows:

1. The Construction Manager will not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender

identity or national origin. The Construction Manager will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, sexual orientation, gender identity or national origin. Such action shall include, but not be limited to the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Construction Manager agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause.

2. The Construction Manager will, in all solicitations or advertisements for employees placed by or on behalf of the Construction Manager, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, sexual orientation, gender identity or national origin.
3. The Construction Manager will not discharge or in any other manner discriminate against any employee or applicant for employment because such employee or applicant has inquired about, discussed or disclosed the compensation of the employee or applicant or another employee or applicant. This provision shall not apply to instances in which an employee who has access to the compensation information of other employees or applicants as a part of such employee's essential job functions discloses the compensation of such other employees or applicants to individuals who do not otherwise have access to such information, unless such disclosure is in response to a formal complaint or charge, in furtherance of an investigation, proceeding, hearing or action, including an investigation conducted by the employer or is consistent with the contractor's legal duty to furnish information.
4. The Construction Manager will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice to be provided advising the said labor union or workers' representatives of the Construction Manager's commitments under this section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
5. The Construction Manager will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations and relevant orders of the Secretary of Labor.
6. The Construction Manager will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by rules, regulations and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the administering agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations and orders.

7. In the event of the Construction Manager's noncompliance with the nondiscrimination clauses of this Agreement or with any of the said rules, regulations, or orders, this Agreement may be canceled, terminated or suspended in whole or in part and the Construction Manager may be declared ineligible for further Government contracts or federally assisted construction contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation or order of the Secretary of Labor, or as otherwise provided by law.
8. The Construction Manager will include the provisions of paragraphs (1) through and including this paragraph (7) in every subcontract or purchase order unless exempted by rules, regulations or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The Construction Manager will take such action with respect to any subcontract or purchase order as necessary.

18.13 Compliance with the Davis-Bacon Act:

1. To be determined at GMP, all transactions regarding this Agreement shall be done in compliance with the Davis-Bacon Act (40 U.S.C. 3141- 3144, and 3146-3148) and the requirements of 29 C.F.R. pt. 5 as may be applicable. The Construction Manager shall comply with 40 U.S.C. 3141-3144, and 3146-3148 and the requirements of 29 C.F.R. pt. 5 as applicable.
2. The Construction Manager is required to pay wages to laborers and mechanics at a rate not less than the prevailing wages specified in a wage determination made by the Secretary of Labor.

18.14 Compliance with the Copeland "Anti-Kickback" Act:

1. The Construction Manager shall comply with 18 U.S.C. § 874, 40 U.S.C. § 3145, and the requirements of 29 C.F.R. pt. 3 as may be applicable, which are incorporated by reference into this contract.
2. The Construction Manager shall ensure that any subcontracts contain the above clause and such other clauses as FEMA may by appropriate instructions require, and also a clause requiring the subcontractors include these clauses in any lower tier subcontracts. The Construction Manager shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all such contract clauses.
3. A breach of the contract clauses above may be grounds for termination of the Agreement.

18.15 Clean Air Act:

1. The Construction Manager agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. § 7401 et seq.
2. The Construction Manager agrees to report each violation to the Owner and understands and agrees that the Owner will, in turn, report each violation as required to assure notification to the Federal Emergency Management Agency, and the appropriate Environmental Protection Agency Regional Office.
3. The Construction Manager agrees to include these requirements in each subcontract exceeding \$150,000.00, financed in whole or in part with Federal assistance provided by FEMA.

18.16 Applicable Licensing and Compliance with all Laws:

The Construction Manager, at its sole expense, shall obtain all required federal, state, and local licenses, occupational and otherwise, required to successfully provide the services set forth herein. The Construction Manager, at its sole expense, shall comply with all laws, ordinances, judicial decisions, orders, and regulations of federal, state, county and municipal governments, as well as their respective departments, commissions, boards and officers, which are in effect at the time of execution of this Agreement or are adopted at any time following the execution of this Agreement, including any required processes, procedures or actions necessary to assist the Owner with reimbursement or enable the Owner to seek reimbursement from FEMA if the need arises. Notwithstanding any language herein to the contrary, in the event that any laws, ordinances, judicial decisions, orders, or regulations of the federal, state, county, or municipal governments change after execution of this Agreement, Construction Manager shall be entitled to an equitable adjustment in time as applicable and price to the extent the Construction Manager's direct costs, not including labor, are affected. Any such adjustment will be determined at the time of such an occurrence and there shall only be a construction phase fee on this item if it exceeds two percent (2%) for each separate GMP.

18.17 Use of City Logo, Name, Seal, Flag and/or City Letterhead:

The Construction Manager may only use the City of Mount Dora's name, logo seal and/or flag with the express written permission of the City and consistent with any City policy related to use of the same. In addition, the Construction Manager shall not use the City's Letterhead for issuing any correspondence, for any purpose, without the express written consent of the Owner.

IN WITNESS WHEREOF, the parties hereto, by their duly authorized representatives, have executed this Agreement effective the 7 day of April, 2020.

CITY OF MOUNT DORA

**COMMUNITY REDEVELOPMENT AGENCY
OF THE CITY OF MOUNT DORA**

**NORTHEAST COMMUNITY
REDEVELOPMENT AGENCY OF THE CITY
OF MOUNT DORA**

Catherine T. Hoechst
CATHERINE T. HOECHST
MAYOR of the City of Mount Dora, Florida

ATTEST:

For the use and reliance of the City of Mount Dora, the CRA of the City of Mount Dora and the Northeast CRA of the City of Mount Dora only.
Approved as to form and legal sufficiency.

Gwen Keough-Johns on behalf of
GWEN KEOUGH-JOHNS, MMC
CITY CLERK

Sherry G. Stephen
Sherry G. Stephen
City Attorney

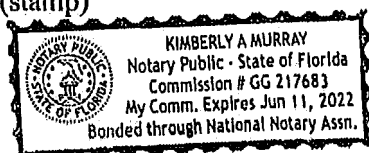
WHARTON-SMITH, INC.

By: Darin A. Crafton
Print: Darin A. Crafton
Title: Executive Vice President

STATE OF FLORIDA
COUNTY OF Seminole

The foregoing instrument was acknowledged before me by means of ☒ physical presence or [] online notarization of Darin A. Crafton, the Executive VP of Wharton-Smith, Inc., who personally swore or affirmed that he/she is authorized to execute this Agreement and thereby bind the Construction Manager, who is personally known to me or who produced _____ as identification, and who ~~did~~/did not take an oath this 9th day of April, 2020.

(stamp)



Kimberly A. Murray
NOTARY PUBLIC, State of Florida

EXHIBIT "A"

**CITY OF MOUNT DORA/CRA/Northeast CRA
TASK AUTHORIZATION**

In accordance with the terms and conditions of the Agreement between _____ (Construction Manager) and the City of Mount Dora/CRA/Northeast CRA, dated _____, the parties hereto agree to the scope of work, pricing/GMP, schedule, construction team and subcontractors attached hereto.

City Project Manager:

Construction Manager Contact:

Project Name:

Project Number:

NOTE: THE CONTRACTOR MAY NOT BEGIN WORK UNTIL THIS FULLY SIGNED TASK AUTHORIZATION IS DELIVERD TO THE CONTSTRUCTION MANAGER.

SUMMARY OF WORK TO BE COMPLETED	
<u>Each Task Authorization package shall include:</u> Exhibit A – Scope of Work Exhibit B – Price/GMP Breakdown Exhibit C – Basic Schedule Exhibit D – Construction Team Exhibit E – Construction Manager's Staff Exhibit F – Sub-Contractors	
Recommended By: Print: _____ Date: _____ Signature: _____	
Reviewed By (if applicable): Print: _____ Date: _____ Signature: _____	
CONTRACTOR ACCEPTANCE	
Print Name:	CITY APPROVAL
Title:	Print Name:
Signature:	Title:
Date:	Signature:
	Date:

EXHIBIT "B"
CITY OF MOUNT DORA/CRA/Northeast CRA
AMENDMENT TO TASK AUTHORIZATION

In accordance with the terms and conditions of the Agreement between _____ (Construction Manager) and the City of Mount Dora, dated _____, and the Task Authorization dated _____ (Original Task Authorization), the parties hereto agree to the scope of work, pricing/GMP, schedule, construction team and subcontractors set forth herein. To the extent of any conflict between this Amendment and the Original Task Authorization, this Amendment shall prevail.

Amendment Number:

City Project Manager:

Construction Manager Contact:

Project Name:

Project Number:

NOTE: THE CONTRACTOR MAY NOT BEGIN WORK UNTIL THIS FULLY SIGNED AMENDMENT TO TASK AUTHORIZATION IS DELIVERD TO THE CONTSTRUCTION MANAGER.

SUMMARY OF WORK TO BE COMPLETED	
<u>Each Task Authorization package shall include:</u> Exhibit A – Scope of Work Exhibit B – Price/GMP Breakdown Exhibit C – Basic Schedule Exhibit D – Construction Team Exhibit E – Construction Manager's Staff Exhibit F – Sub-Contractors	
Recommended By: Print: _____ Date: _____ Signature: _____	
Reviewed By (if applicable): Print: _____ Date: _____ Signature: _____	
CONTRACTOR ACCEPTANCE	CITY APPROVAL
Print Name: _____	Print Name: _____
Title: _____	Title: _____
Signature: _____	Signature: _____
Date: _____	Date: _____

EXHIBIT "C"
CERTIFICATE OF SUBSTANTIAL COMPLETION

PROJECT NAME:
PROJECT ADDRESS:
PROJECT NUMBER:
CONTRACT DATE:
CONSTRUCTION MANAGER:

TO OWNER:

Name
Address

TO CONSTRUCTION MANAGER:

Name
Address

Copy to:

____ Architect
____ Engineer
____ Field
____ Other

Project or portion of Project Designated for Partial Occupancy or Use:

The work performed on the Project under the Agreement has been reviewed and found, the Architect's best knowledge, information and belief to be substantially complete. Substantial Completion is the stage in the progress of the work when the work or designated portion is sufficiently complete in accordance with the Contract Documents so that the Owner can occupy or utilize the work for its intended use. The date of substantial completion of the Project or portion designated above is the date of issuance established by this Certificate of Substantial Completion, which is also the date of commencement of applicable warranties required by the Contract Documents as stated below:

Architect

By: _____

Date of Substantial Completion: _____

Print: _____

(Warranty Date of Commencement)

A Punch List of items to be completed or corrected is attached hereto. The failure to include any items on such Punch List does not alter the responsibility of the Construction Manager to complete all work in accordance with the Contract Documents. Unless otherwise agreed to in writing, the date of commencement of warranties for items on the attached list will be the date of issuance of the final Certificate of Payment or the date of final payment.

Cost Estimate of Work that is incomplete or defective: _____

The Construction Manager will complete or correct the work on the Punch List within ____ days from the above date of Substantial Completion.

Construction Manager

By: _____

Date: _____

Print: _____

The Owner hereby accepts the work or designated portions as substantially complete and will assume full possession at _____ am/pm on _____, 20__.

Owner

By: _____

Date: _____

Print: _____

The responsibilities of the Owner and Construction Manager for security, maintenance, utilities, damage and insurance are as follows:

EXHIBIT "D"
CERTIFICATE OF FINAL COMPLETION

PROJECT NAME:
PROJECT ADDRESS:
PROJECT NUMBER:
CONTRACT DATE:
CONSTRUCTION MANAGER:
SUBSTANTIAL COMPLETION DATE:
FINAL PUNCHLIST INSPECTION DATE:

The Construction Manager hereby certifies that the work and all other requirements have been completed in accordance with the Contract Documents, including, but not limited to:

☐ completion of all discrepancies (Punchlist Items) noted at the time of Substantial Completion
☐ submission of "as-built" plans and specifications, shop drawings, and other record documents
☐ completion of all Owner training – submission of all contractually required stock and spare parts
☐ submission of all final Operation & Maintenance documents and other closeout deliverables
☐ submission of consent of Builder's surety
☐ submission and approval of all remaining change order proposals, claims, and applications for payment
☐ payment of all costs incurred for equipment, material, labor and services against the Project

The Construction Manager further certifies that:

☐ no liens have been attached against the Project
☐ no suits are pending by reason of work on the Project under the Contract for Construction
☐ all Workers' compensation claims are covered by Workers' Compensation Insurance as required by law
☐ all insurance required of the Construction Manager beyond final payment, if any, is in effect and will not be cancelled or allowed to be expired without notice to the Owner
☐ all public liability claims are adequately covered by insurance and that the Construction Manager shall save, protect, defend, indemnify and hold the Owner harmless from and against any and all claims which arise as a direct or indirect result of any transaction, event, occurrence, or omission related to performance of the work on the Project contemplated under said Contract for Construction.

Upon execution below, this Project will be considered complete. This consideration does not relieve the Construction Manager from its post-construction responsibilities, including correction of discrepancies noted during the first year after Substantial Completion, warranty issues, latent defects, and other requirements of the Contract or under Florida law.

Construction Manager

By: _____

Date: _____

Print: _____

STATE OF FLORIDA
COUNTY OF _____

The foregoing instrument was executed before me this ____ day of _____, 201_, by _____, as _____ of Evergreen Construction Group of Florida, LLC, who is authorized to bind Evergreen Construction Group of Florida, LLC, and who is personally known to me OR has produced _____ as identification.

(stamp)

NOTARY PUBLIC, State of Florida

Recommend By:
Architect

By: _____

Date: _____

Print: _____

Accepted By:
Owner

By: _____

Date: _____

Print: _____

EXHIBIT “E”
Partial Pay Request Form

APPLICATION AND CERTIFICATE FOR PAYMENT

AIA DOCUMENT G703 (Instructions on reverse side)

TO OWNER :	PROJECT:	APPLICATION NO.:	1	Distribution to:	
		PERIOD TO:	1/0/1900	OWNER	1 of 2 PAGES
		PROJECT NOS.:		ARCHITECT	
		CONTRACT DATE:	1/0/1900	CONTRACTOR	
		W/S JOB NO.:	0		

ATTN:
FROM (CONTRACTOR):
WHARTON-SMITH, INC.
750 Monroe Rd.
Sanford, FL 32771
CONTRACT FOR:

VIA ARCHITECT:

CONTRACTOR'S APPLICATION FOR PAYMENT

Application is made for payment, as shown below, in connection with the Contract.
Continuation Sheet, AIA Document G703, is attached.

1. ORIGINAL CONTRACT SUM	\$	
2. Net change by Change Orders	\$	0.00
3. CONTRACT SUM TO DATE (Line 1 + 2)	\$	0.00
4. TOTAL COMPLETED & STORED TO DATE (Column G on G703)	\$	0.00
5. RETAINAGE:		
0.00 of Completed Work		0.00
(Columns D + E on G703)		
0.00 of Stored Material		0.00
(Column F on G703)		
Total Retainage (Line 5a + 5b or Total in Column I of G703)	\$	0.00
6. TOTAL EARNED LESS RETAINAGE (Line 4 less Line 5 Total)	\$	0.00
7. LESS PREVIOUS CERTIFICATES FOR PAYMENT (Line 6 from prior Certificates)	\$	
8. CURRENT PAYMENT DUE	\$	0.00
9. BALANCE TO FINISH, INCLUDING RETAINAGE (Line 3 less Line 6)	\$	0.00

CHANGE ORDER SUMMARY	ADDITIONS	DEDUCTIONS
Total changes approved in previous months by Owner		
Total changes approved this Month		
TOTALS		
NET CHANGES by Change Order		

The undersigned Contract certifies that to the best of the Contractor's knowledge, information and belief the Work covered by this Application for Payment has been completed in accordance with the Contract Documents, that all amounts have been paid by the Contractor for Work for which previous Certificates for Payments were issued and payments received from the Owner, and that current payment shown herein is now due.

CONTRACTOR:

By: Ronald F., Davoli -President/CEO Date: January 6, 2020

State of: FLORIDA

County of: SEMINOLE

Subscribed and sworn to before
me this January 6, 2020

Notary Public:

My Commission expires:

ARCHITECT'S CERTIFICATE FOR PAYMENT

In accordance with the Contract Documents, based on on-site observations and data comprising the above application, the Architect certifies to the Owner that the Work has progressed to the point indicated; that to the best of his knowledge, information and belief, the quality of the Work is in accordance with the Contract Documents; and that the Contractor is entitled to payment of the AMOUNT CERTIFIED.

AMOUNT CERTIFIED

(Attach explanation if amount certified differs from the amount applied for. Initial all figures on this Application and on the Continuation Sheet that are changed to conform to the amount certified.)

ARCHITECT:

By: _____ Date: _____

This Certificate is not negotiable. The AMOUNT CERTIFIED is payable only at the Contractor named herein. Issuance, payment and acceptance of payment are without prejudice to any rights of the Owner or Contractor under this Contract.

G702-1992

CONTINUATION SHEET

AIA DOCUMENT G703

AIA DOCUMENT G702, APPLICATION AND CERTIFICATION FOR PAYMENT, containing
Contractor's signed certification is attached.
In tabulations below, amounts are stated to the nearest dollar.
Use Column I on Contracts where variable retainage for line items may apply.

APPLICATION NO: 1
APPLICATION DATE: 1/6/2020
PERIOD TO: 1/0/1900
ARCHITECT'S PROJECT NO:

A ITEM NO.	B DESCRIPTION OF WORK	C SCHEDULED VALUE	D WORK COMPLETED		F MATERIALS PRESENTLY STORED (NOT IN D OR E)	G TOTAL COMPLETED AND STORED TO DATE (D+E+F)	H % (G/C)	I BALANCE TO FINISH (C-G)	M RETAINAGE (IF VARIABLE RATE)
			FROM PREVIOUS APPLICATION (D+E)	THIS PERIOD					
1		-		-		-	#DIV/0!	-	0.00
2				-		-	#DIV/0!	-	0.00
3				-		-	#DIV/0!	-	0.00
4				-		-	#DIV/0!	-	0.00
5				-		-	#DIV/0!	-	0.00
6				-		-	#DIV/0!	-	0.00
7				-		-	#DIV/0!	-	0.00
8				-		-	#DIV/0!	-	0.00
9				-		-	#DIV/0!	-	0.00
10				-		-	#DIV/0!	-	0.00
11				-		-	#DIV/0!	-	0.00
12				-		-	#DIV/0!	-	0.00
13				-		-	#DIV/0!	-	0.00
14				-		-	#DIV/0!	-	0.00
15				-		-	#DIV/0!	-	0.00
16				-		-	#DIV/0!	-	0.00
17				-		-	#DIV/0!	-	0.00
18				-		-	#DIV/0!	-	0.00
19				-		-	#DIV/0!	-	0.00
20				-		-	#DIV/0!	-	0.00
21				-		-	#DIV/0!	-	0.00
				-		-	#DIV/0!	-	0.00
	GRAND TOTALS	\$ -	\$ -	\$ -	\$ -	\$ -	#REF!	\$ -	

**CITY OF MOUNT DORA
TASK AUTHORIZATION FORM**

In accordance with the terms and conditions of the Agreement between **Faden Builders Inc** (Contractor) and the City of Mount Dora, approved under Resolution, **2020-24** dated, **April 7 2020** the parties hereto agree to the scope of work, pricing, schedule and subcontractors set forth herein.

Project Name WWTP 1 Reject Pond Repairs
Project Amount \$ 110,737.06
Budget Account Number: 425-5555-580.63-01
City Project Manager: Johnny Reynolds
Contractor: Faden Builders Inc
Contractor Project Manager: Philip Rapalje

**NOTE: THE CONTRACTOR MAY NOT BEGIN WORK UNTIL THIS FULLY SIGNED TASK
AUTHORIZATION AND A CITY PURCHASE
ORDER ARE DELIVERD TO THE CONTRACTOR.**

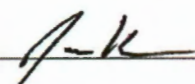
SUMMARY OF WORK TO BE COMPLETED	
<u>Each Task Authorization package shall include:</u>	
Exhibit A – Scope of Work Exhibit B – Sub-Contractors Exhibit C – Schedule Exhibit D – Compensation	
Recommended By:	
Print: <u>James Klein Utility Plants Manager</u>	Date: <u>12-8-2023</u>
Signature: <u></u>	
Reviewed By:	
Print: <u>George Marek Public Works Director</u>	Date: <u>12/8/2023</u>
Signature: <u></u>	
CONTRACTOR ACCEPTANCE	
Print Name: <u>TODD M. FADEN</u>	Print Name:
Signature: <u></u>	Signature:
Date: <u>12/11/2023</u>	Date:
CITY APPROVAL	

Exhibit A – Scope of Work

Site Work

- a. Seal off the reject diffusion box.
- b. Install and maintain (1) diesel bypass pump to pump from the reject diffusion box to the south side of the lined pond.
- c. Build (1) dirt berm dividing the pond into north and south quadrants.
- d. Install (1) diesel bypass pump suction to the Southside of the berm and discharge to the head works or closest agreed to point in the WWTP.
- e. Cut the liner away from the outlet structure of the pond.
- f. Dewater as necessary, excavate unsuitable material, backfill and compact with clean fill and 12" of lime rock under the new pad area.
- g. Form (1) 5'x5'x6" thick concrete pad around the outlet manhole with #5 rebar doweled back to the outlet structure.
- h. New concrete pad to have poly lock strips cast in to seal the new liner material to the concrete slab.
- i. Remove forms, dirt berms and restore liner with new material and welding as necessary (liner replacement scope is unknown and includes up to 1,000 square feet and (2) days of onsite welding).
- j. Install existing strainer on outlet structure.
- k. Restore up to 2,000 SF of Bahia sod.

Exhibit B – Sub-Contractors

RCM Utilities

Exhibit C – Schedule

Proposed duration schedule:

4 weeks for material procurement
2 workdays for mobilization
15 workdays for site work
2 workdays for demobilization

Exhibit D – Compensation

Price/GMP Breakdown

1. General Conditions \$ 10,641.58

2. Site Work \$ 77,735.96

Subtotal \$ 88,377.54

General Liability Insurance \$ 1,148.91

Contingency (10%) \$ 8,837.75

Contractor's Fee \$ 12,372.86

Permit Fee excluded

Performance and Payment Bond excluded

Gross Maximum Price (GMP): \$ 110,737.06



12/04/2023

Faden Proposal No. 23-S10, Rev1

Chet Cramer
Construction Project Manager
City of Mount Dora
510 N Baker Street
Mount Dora, Florida 32757

RE: WWTP#1 Reject Pond Inlet

Scope Summary: Stabilize grade and install new concrete drain collar.

Exhibit A: Scope of Work

1. General Conditions
 - a. Project Management and Supervision
 - b. Mobilization/Demobilization
2. Site Work
 - a. Seal off the reject diffusion box.
 - b. Install and maintain (1) diesel bypass pump to pump from the reject diffusion box to the south side of the lined pond.
 - c. Build (1) dirt berm dividing the pond into north and south quadrants.
 - d. Install (1) diesel bypass pump suction to the Southside of the berm and discharge to the head works or closest agreed to point in the WWTP.
 - e. Cut the liner away from the outlet structure of the pond.
 - f. Dewater as necessary, excavate unsuitable material, backfill and compact with clean fill and 12" of lime rock under the new pad area.
 - g. Form (1) 5'x5'x6" thick concrete pad around the outlet manhole with #5 rebar doweled back to the outlet structure.
 - h. New concrete pad to have poly lock strips cast in to seal the new liner material to the concrete slab.
 - i. Remove forms, dirt berms and restore liner with new material and welding as necessary (liner replacement scope is unknown and includes up to 1,000 square feet and (2) days of onsite welding).
 - j. Install existing strainer on outlet structure.
 - k. Restore up to 2,000 SF of Bahia sod.

Qualifications and Exclusions:

1. Work to be completed 1st shift, M-F, no overtime is included.
2. The scope is limited to the items listed in Exhibit A. Any other added scope items or items required by the AHJ for permitting are excluded and will be charged as a change order.
3. Civil engineering is excluded.
4. Permit fees are excluded.
5. Geotechnical testing/reports are excluded.
6. Landscaping and irrigation are excluded.
7. Watering sod to establish root system is excluded and must be done by others.
8. Painting and staining are excluded.

State Cert# CGC 060972

Mailing Address: 742 S Rossiter St. Mount Dora, FL 32757
Offices: 3390 E. Vista Blvd Lake Buena Vista, FL 32830 • 1194 Camp Ave, Mt Dora FL 32757
Phone: 352-735-9805 • Fax: 352-735-9806
www.FadenBuildersinc.com



Exhibit B: Price/GMP Breakdown

1. General Conditions	\$ 10,641.58
2. Site Work	\$ 77,735.96
Subtotal	\$ 88,377.54
General Liability Insurance	\$ 1,148.91
Contingency (10%)	\$ 8,837.75
Contractor's Fee	\$ 12,372.86
Permit Fee	excluded
Performance and Payment Bond	excluded
Gross Maximum Price (GMP):	\$ 110,737.06

The prices included in this proposal are valid for 30 days.

Exhibit C: Basic Schedule

Proposed duration schedule:

- 4 weeks for material procurement
- 2 workdays for mobilization
- 15 workdays for site work
- 2 workdays for demobilization

Project Management Information System (PMIS) will not be required for this project.

Exhibit D: Construction Team

Owner's Representative: Chet Cramer (City of Mount Dora)
Construction Manager: Todd Faden (Faden Builders)

Exhibit E: Construction Manager's Staff

Principal: Todd Faden
Project Manager: Philip Rapalje
Site Superintendent: Scott Bassett
Staff Accountant: Helen Johnson
Safety Director: Jes Pedersen
Administrative Assistant: Nicole Rakes

Exhibit F: Sub-Contractors

RCM Utilities

Please feel free to contact me with any questions. We look forward to working with you.

Best regards,

PHILIP RAPALJE

Philip Rapalje
Faden Builders, Inc.

State Cert# CGC 060972

Mailing Address: 742 S Rossiter St. Mount Dora, FL 32757
Offices: 3390 E. Vista Blvd Lake Buena Vista, FL 32830 • 1194 Camp Ave, Mt Dora FL 32757
Phone: 352-735-9805 • Fax: 352-735-9806
www.FadenBuildersinc.com



510 N. Baker St.
Mount Dora, FL 32757
352-735-7126

DATE: January 2, 2024

TO: Honorable Mayor and City Council Members

FROM: Patrick C. Comiskey, City Manager

SUBJECT: Request Ratification of Application for a \$5,000 Grant from the Mount Dora Community Trust to Provide Smoke Detectors to Low-income and Elderly Households

Introduction:

This is a request for City Council to ratify the application for a \$5,000.00 grant from Mount Dora Community Trust to provide smoke detectors to low income and elderly households.

Discussion:

Staff requests City Council ratify the application for a \$5,000.00 grant from Mount Dora Community Trust (MDCT). The grant will be used to purchase smoke detectors for the Mount Dora Fire Department Smoke Detector Campaign. Smoke Detectors will be provided to a targeted population (Low Income and Aging Population) to give these home a way to be alerted in the event of a fire. The grant application will be presented to the MDCT approval board on January 18, 2024, at the MDCT Grant Distribution Meeting.

Budget Impact:

There will be no impact on budget.

Strategic Impact:

GOAL 2: Infrastructure / Public Safety
GOAL 3: Fiscal Resources / Human Resources
Objective 3.1. Identify and seek funding sources

Recommendation:

City Council ratify the application for a \$5,000 grant from the Mount Dora Community Trust to provide smoke detectors to low income and elderly households.

Attachment(s):

1. City of Mount Dora Smoke Detector Campaign Packet

Prepared by:	HOUSE, ANGELA F	HOUSE, ANGELA F, Fire Administrative Coordinator	
Reviewed by:	Joseph Hightower, Fire Chief	Approved - 12/15/2023	
	Jeanann Hand, City Clerk	Approved - 12/27/2023	
	Patrick Comiskey, City Manager	Final Approval - 12/27/2023	

City of Mount Dora Smoke Detector Campaign

January 2024 Cycle

Mount Dora Fire Department

Mr Joseph Hightower	O: 352-735-7140
1300 N. Donnelly Street	
1300 N. Donnelly Street	
Mount Dora, FL 32757	

Mr Joseph Hightower

1300 N. Donnelly Street	hightowerj@cityofmoundora.com
Mount Dora, FL 32757	O: 352-931-0913

Application Form

Organization Information

Tax exempt or non-profit Organization?*

Yes

What is Your Organization's Mission?*

Mission, Vision, and Values

Our Mission Statement: To save lives, protect property, and promote public safety. In everything we do, we strive to make things better. By always learning, we will be well trained, deliberate and proactive. Delivering outstanding results with outstanding service.

Briefly state services and major activities of the Organization:*

The Mount Dora Fire Department delivers fire services through our 3 divisions: Administration, Fire Prevention/Education, and Operations. We provide support to the Mount Dora community through Fire and Emergency Medical Services.

What is your intended impact?*

What specifically will improve in our community with the help of this organization?

We intend to impact the Mount Dora Community by using a Smoke Detector campaign to provide smoke detectors to low income and the aging population that will provide a life safety tool to their residence by placing a smoke detector in their home to alert them in the event of a fire.

Annual Report, Brochures, Marketing Material, etc.

List Board of Directors (advisors) and their affiliation:*

Mayor - Chrissy Stile

City Manager - Patrick Comiskey

Fire Chief - Joseph Hightower

You only need to provide the below documents if not submitted to MDCT within the last three years.

Tax Exempt Status

Please upload copy of IRS Determination Letter.

By-Laws

Date and Place of Incorporation

If applicable

Articles of Incorporation

Financial Information

Annual Organizational Budget

Latest Financial Statement

Provide current sources(s) of funding for the organization:*

City Of Mount Dora

Program/Project Information

Name of Project.*

Name of Project.

City of Mount Dora Smoke Detector Campaign

Type of Request:*

Program Support

If Other: _____

Purpose of financial request:*

The grant money will be used to purchase smoke detectors for the Mount Dora Fire Department Smoke Detector Campaign.

Why is there a need for this program for the community of North Lake County?*

and is there a targeted population that this program will serve? (age, gender, ethnicity, ability, etc.)

The Fire Department often are in homes with no working smoke detectors or none at all. We will target areas in the Northeast area and the Mount Dora aging population or low income areas. Our goal is to provide homes with smoke detectors that may not be able to provide one themselves and assist with the installation.

Number of anticipated citizen households/individuals this program will impact annually?*

200

Budget for this specific Project:*

related to your request stated

\$0.00

Amount Requested*

\$5,000.00

Project Budget - by line item*

What are the major line items for this project and how much will be spent on each?*

*Please attach in bottom upload fields if it is a separate document, and state such in this box.

Smoke Detectors - \$5000.00

If this is an ongoing project needed each year, how will MDCT's grant funds be replaced?*

MDCT's grants are not intended for annual support. How will your organization increase revenue to replace the grant funds in order to continue the program?

If not applicable, please indicate this is a one-time request or N/A.

We will continue to seek a line item in the Fire Department annual budget and work with the Building Inspection division for possible funding.

Outcome measurements to be used to determine success?*

What factors will be reviewed regularly and measured? State KPI's (Key Point Indicators) to describe how you will calculate progress toward community impact (bettering of the community in future years).

We will review our campaign to see how many request for detectors there were and then how many were installed. Our goal will be to install 200+ smoke detectors during the CY24 time period.

What will happen if we are unable to fund your entire request?*

what will be the next steps in achieving this grant's mission, and what (if any) is the minimum funding level you could accept and still be able to deliver the program?

We will use what funding we receive to buy as many smoke detectors as possible.

Is aid being requested from other sources for this project?*

No

If yes, please list prospective sources

Time Schedule for Completion:*

Calendar Year 2024

Bid for Project (1)

Bid for Project (2)

Request Documents (optional)

Request Documents 2 (optional)

File Attachment Summary

Applicant File Uploads

No files were uploaded



510 N. Baker St.
Mount Dora, FL 32757
352-735-7126

DATE: January 2, 2024

TO: Honorable Mayor and City Council Members

FROM: Patrick C. Comiskey, City Manager *Patrick C. Comiskey*

SUBJECT: Request Approval of City Attorney Invoices for Services Rendered November 16, 2023 through December 15, 2023

Introduction:

This is a request for City Council to approve the City Attorney invoices for services rendered November 16, 2023 through December 15, 2023.

Discussion:

City Council retained Shepard, Smith, Kohlmyer & Hand, P.A. on or about September 19, 2023. To date, the total amount invoiced by the firm is \$52,896.50. The current month's billing totals \$33,860.50. Because the cumulative amount billed exceeds the City Manager's signature authority, staff requests City Council to approve the invoices from Shepard, Smith, Kohlmyer & Hand for services rendered from November 16, 2023 through December 15, 2023. Additionally, because the City Attorney is a direct report of City Council, future bills will be presented to City Council for approval on a monthly basis.

Budget Impact:

City attorney services are budgeted in GL# 001-1140-514.31-01.

Strategic Impact:

N/A

Recommendation:

City Council approve City Attorney invoices for services rendered November 16, 2023 through December 15, 2023.

Attachment(s):

1. Mount Dora 12.15.23_Redacted

Prepared by: Merry Lovern, Executive Assistant

Reviewed by: City Attorney, City Attorney
Jeanann Hand, City Clerk
Patrick Comiskey, City Manager

Approved - 12/27/2023
Approved - 12/27/2023
Final Approval - 12/27/2023

ATTACHMENT #1



SHEPARD, SMITH, KOHLMYER & HAND, P.A.
ATTORNEYS & COUNSELORS AT LAW

INVOICE

Shepard, Smith, Kohlmyer & Hand, PA
2300 Maitland Center Parkway, Suite 100
Maitland, FL 32751

Invoice #: 21713
Date: 12-15-2023

City of Mount Dora
510 Baker Street
Mount Dora, FL 32757

Matter Number:230152 - City of Mount Dora - General
Matter Name:City of Mount Dora

Services

Date	Atty	Description	Quantity	Rate	Total
11-16-23	DAS	Conference with Patrick Brackins re: BuyBoard Interlocal Agreement	0.20	215.00	\$43.00
11-16-23	AJH	Review purchasing policies, memo re: cooperative purchasing, confer w/ PB re: same	0.30	215.00	\$64.50
11-16-23	AJH	Review property information, begin drafting LOIs and purchase agreements re: prospective RE Purchase	2.10	215.00	\$451.50
11-16-23	PAB	Email Correspondence: Prepare email to Patrick C. and Ms. Hand re BuyBoard agreement, bylaw and agenda memo	0.10	215.00	\$21.50
11-16-23	PAB	Confer with AJH re BuyBoard; receive, analyze and reply to emails from Ms. Lovern and Ms. Hand, begin reviewing bylaws and interlocal agreement	0.50	215.00	\$107.50
11-17-23	AJH	Address prospective RE purchase, review correspondence re: same	0.30	215.00	\$64.50
11-19-23	AJH	Review and analyze matter re: insurance	0.50	215.00	\$107.50
11-20-23	AJH	Address purchasing contract matters, confer w/ Ms. Douglas re: same	1.60	215.00	\$344.00
11-20-23	AJH	Address matter re: attorney signatory, confer w/ Ms. Douglas re: same	0.30	215.00	\$64.50

ATTACHMENT #1

11-20-23	PAB	Email Correspondence: Prepare email to City Manager re firefighters voluntarily signing barrel that will be sold or raffled at a charity event	0.10	215.00	\$21.50
11-21-23	PAB	Begin preparing for CRA and Council meetings	0.50	215.00	\$107.50
11-21-23	PAB	Prepare for CRA and council meetings	1.00	215.00	\$215.00
11-21-23	PAB	Attend council and CRA meetings	2.40	215.00	\$516.00
11-25-23	AJH	Receive and review re: Lake Dora historical documents, analysis re: same	0.30	215.00	\$64.50
11-25-23	AJH	Receive and review correspondence re: Board procedure	0.30	215.00	\$64.50
11-25-23	PAB	Receive and analyze email from City Manager regarding advisory board meetings	0.10	215.00	\$21.50
11-25-23	PAB	Review and analyze second email from City Manager re advisory boards and staff attendance	0.10	215.00	\$21.50
11-25-23	PAB	Receive and analyze email from County Attorney requesting City indemnify Clerk for distribution of lien funds	0.10	215.00	\$21.50
11-27-23	PAB	Prepare for cybersecurity act meeting with staff	0.50	215.00	\$107.50
11-27-23	PAB	Prepare email to Mr. Marlar re cybersecurity meeting	0.10	215.00	\$21.50
11-27-23	AJH	Address upcoming agenda items	0.90	215.00	\$193.50
11-27-23	AJH	Analysis re: indemnification pertaining to tax claims	1.20	215.00	\$258.00
11-27-23	PAB	Attend meeting on cybersecurity laws and policy; confer with Steve Langley and Patrick Comiskey regarding Certificate of Entitlement	1.30	215.00	\$279.50
11-27-23	AJH	Review correspondence re: staff leave, reply to same and request relevant documents, review docs on file	0.40	215.00	\$86.00
11-27-23	AJH	Review correspondence re: donations	0.20	215.00	\$43.00
11-27-23	AJH	Review property information and correspondence re: potential acquisition	0.30	215.00	\$64.50
11-28-23	PAB	Prepare email to Councilman Cataldo and Messrs. Marek and Comiskey re canal and association	0.30	215.00	\$64.50
11-28-23	PAB	Review cybersecurity laws re procurement documents	0.50	215.00	\$107.50
11-28-23	PAB	Continue analyzing statutes and purchase orders under Chapter 119; prepare email to Mr. Marlar; confer with Mr. Marlar re same	1.90	215.00	\$408.50
11-28-23	PAB	Email Correspondence: Receive and analyze email from IT re purchase orders and Chapter 119	0.10	215.00	\$21.50

ATTACHMENT #1

11-28-23	PAB	Prepare additional redactions to documents; exchange multiple emails with Mr. Marlar re same and 119.0725; prepare email to Ms. Hand re procedures for publication of agenda packet	1.00	215.00	\$215.00
11-28-23	AJH	Address matter re: Cybersecurity, confer w/ PAB re: same	0.50	215.00	\$107.50
11-28-23	PAB	Email Correspondence: Prepare email to Jason Marlar re 119 redactions	0.10	215.00	\$21.50
11-28-23	AJH	Address upcoming agenda, confer w/ PB re: same	0.50	215.00	\$107.50
11-29-23	PAB	Review Copier Lease Agreement; confer with Clerk; confer with DAS; recommend item be pulled until prior comments from DAS re addendum addressed by vendor; review Bellmore Task Authorization; email Mr. Langley and Ms. Hand re same	1.00	215.00	\$215.00
11-29-23	AJH	Review and analyze materials re: conflict resolution consultation, draft contract for services, confer w/ Ms. Douglas and PB re: same	2.20	215.00	\$473.00
11-30-23	AJH	Finalize document review/contract for conflict resolution services	1.20	215.00	\$258.00
11-30-23	AJH	Review master fee schedule resolution	0.20	215.00	\$43.00
12-01-23	AJH	Legal analysis re: canal issue, review all relevant documents	2.20	215.00	\$473.00
12-03-23	PAB	Conference with AJH re multiple issues	0.10	215.00	\$21.50
12-05-23	PAB	Prepare for Council meeting	0.20	215.00	\$43.00
12-05-23	PAB	Analyze cybersecurity statutes and correspondence	0.50	215.00	\$107.50
12-05-23	PAB	Prepare for and attend City Council meeting; confer with City Manager afterwards regarding performance bond issue	2.50	215.00	\$537.50
12-05-23	PAB	Email Correspondence: Prepare email to Ms. Hand and Mr. Marlar re cyber security purchases	0.10	215.00	\$21.50
12-06-23	AJH	Address continuing contract updates, review contracts for updates, relevant terms	1.30	215.00	\$279.50
12-07-23	AJH	Respond to email from Ms. Hand re: CivicPlus agreements	0.20	215.00	\$43.00
12-11-23	AJH	Address additional leave time, review relevant policies	0.40	215.00	\$86.00
12-11-23	AJH	Address Andrew agreement, note required edits for FL law compliance	0.60	215.00	\$129.00
12-11-23	AJH	Review and analyze Mimecast agreement	0.50	215.00	\$107.50
12-11-23	AJH	Phone call from City Manager re: City business	0.50	215.00	\$107.50
12-12-23	AJH	Analysis re: reimbursement request, review correspondence re: same	0.30	215.00	\$64.50

ATTACHMENT #1

12-12-23	PAB	Email Correspondence: Receive and analyze email from Ms. Hand re removal of agenda item	0.10	215.00	\$21.50
12-12-23	PAB	Meeting with Andrew Hand re agenda items and other work for Mount Dora	1.30	215.00	\$279.50
12-12-23	AJH	Address upcoming agenda items, confer w/ PB re: City matters, investigation and pending lawsuits	0.80	215.00	\$172.00
12-12-23	AJH	Phone calls w/ Ms. Hand re: 12/19 meeting, backup for items	0.30	215.00	\$64.50
12-12-23	AJH	Review Forest Preserve TA, request additional materials, review relevant correspondence	0.40	215.00	\$86.00
12-12-23	AJH	Receive and review correspondence from Mr. Shonk re: City matters, review relevant correspondence pertaining to same	0.30	215.00	\$64.50
12-12-23	AJH	Review Milestone agreement and documents, confer w/ Ms. Hand re: addendum w/ FL specific provisions	0.30	215.00	\$64.50
12-12-23	CBS	Email Correspondence: RE: City of Mount Dora- Investigation	0.10	215.00	\$21.50
12-12-23	PAB	Review agenda items for December 19 Council Meeting	2.20	215.00	\$473.00
12-12-23	PAB	Email Correspondence: Receive and analyze email from DS re indemnification and venue provisions for lease of equipment rental - Copier	0.10	215.00	\$21.50
12-12-23	PAB	Email Correspondence: Receive, analyze and reply to email from Ms. Hand re copier lease agreement	0.10	215.00	\$21.50
12-13-23	PAB	Email Correspondence: Receive, analyze and reply to email from Ms. Hand and Mr. Marek re Task Authorization for Faden Builders, Inc. re retaining wall construction and removal of derelict tank	0.10	215.00	\$21.50
12-13-23	PAB	Continue reviewing and agenda items for 12/19	2.00	215.00	\$430.00
12-13-23	PAB	Receive, analyze and reply to multiple emails from staff re agenda; confer with Ms. Hand re Historic Preservation Board Packet; confer with Ms. Hand re adding a discussion item on the agenda re Wolf Branch Basin	0.60	215.00	\$129.00
12-13-23	AJH	Draft Milestone addendum	0.80	215.00	\$172.00
12-13-23	AJH	Confer w/ PB re: Parks and Rec Manager correspondence	0.20	215.00	\$43.00
12-14-23	AJH	Review policies, materials pertaining to 2024 holidays. Reply to Ms. Lovern re: same	0.60	215.00	\$129.00
12-14-23	AJH	Review and analyze Forres Park documents, advise for agenda	1.40	215.00	\$301.00
12-14-23	PAB	Email Correspondence: Receive and analyze email from Ms. Lovern re addition to agenda	0.10	215.00	\$21.50

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12-14-23	RGK	Review and analyze Florida Statutes re cell tower location regulations.	0.90	175.00	\$157.50
12-15-23	AJH	Confer w/ PB re: insurance defense, investigation request. Formulate legal strategy, review agenda materials re: same	0.80	215.00	\$172.00
12-15-23	PAB	Email Correspondence: Review and analyze email from City Clerk with 916 page agenda package for City Council	0.10	215.00	\$21.50
12-15-23	PAB	Confer with Mayor (6m); confer with Ms Hand (6m); review new agenda item	0.40	215.00	\$86.00
12-15-23	PAB	Confer with AJH re agenda items	0.50	215.00	\$107.50
12-15-23	CBS	Email Correspondence: Fwd: December 19th Agenda Item	0.20	215.00	\$43.00

Services Subtotal: \$10,563.50

Subtotal	\$10,563.50
Total	\$10,563.50
Payment	\$0.00
Balance Owing	\$10,563.50

Trust Account Balance \$0.00

Total Matter Balance \$10,563.50

Tax ID #32-0242557

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INVOICE

Shepard, Smith, Kohlmyer & Hand, PA
2300 Maitland Center Parkway, Suite 100
Maitland, FL 32751

Invoice #: 21714
Date: 12-15-2023

City of Mount Dora

Matter Number: 230156 - City of Mount Dora - Code Enforcement

Services

Date	Atty	Description	Quantity	Rate	Total
11-21-23	AJH	Address lien matter with Lake County, review pertinent documents	0.60	215.00	\$129.00
11-25-23	AJH	Analysis re: tax deed sale claims; legal strategy	1.50	215.00	\$322.50
11-27-23	DAS	Receive and review emails re: Tax Collector correspondence re: orders imposing fines	0.20	215.00	\$43.00
11-28-23	DAS	Receive and review draft ordinance re: code liens	0.30	215.00	\$64.50
11-28-23	DAS	Receive and review email and attachments from Adam Sumner re: Parrotte Court liens; research re: same; telephone conference with Mr. Sumner re: same	0.80	215.00	\$172.00
11-29-23	DAS	Exchange correspondence with Adam Sumner re: code liens	0.20	215.00	\$43.00
11-29-23	DAS	Revise Release of Code Enforcement Order form	0.70	215.00	\$150.50
11-30-23	DAS	Receive and review correspondence and attachment from Adam Sumner re: tree removal permit appeal; exchange correspondence with Mr. Sumner re: same	0.40	215.00	\$86.00
11-30-23	AJH	Review Finance of America Complaint asserting superior interest over lien property, review lien, draft answer	1.10	215.00	\$236.50

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11-30-23	DAS	Conference with Patrick Brackins re: Code Enforcement Order release; send email to Adam Sumner re: same	0.20	215.00	\$43.00
12-04-23	DAS	Receive and review emails and attachments re: Dora Parc swale; review Code re: same	0.50	215.00	\$107.50
12-04-23	DAS	Prepare for and attend Code Enforcement staff meeting	1.30	215.00	\$279.50
12-04-23	DAS	Receive and review email from Adam Sumner re: code enforcement liens; review Official Records re: same	0.50	215.00	\$107.50
12-04-23	DAS	Draft lien releases	0.70	215.00	\$150.50
12-05-23	AJH	Review revised answer re: foreclosure case	0.20	215.00	\$43.00
12-06-23	DAS	Telephone conference with Dave Hooker re: rental inspection program; send email and attachments to John Abner re: same	0.40	215.00	\$86.00
12-06-23	AJH	Address tax proceeds matter, confer w/ DS re: indemnification	0.60	215.00	\$129.00
12-06-23	DAS	Exchange correspondence with Andrew Hand re: code liens and indemnification of tax collector	0.20	215.00	\$43.00
12-07-23	DAS	Receive and review Code Enforcement powerpoints	0.50	215.00	\$107.50
12-14-23	DAS	Prepare for and attend Magistrate hearings	2.60	215.00	\$559.00
12-14-23	AJH	Correspond w/ County attorney re: tax deed sale proceeds, confer w/ PB re: same	0.30	215.00	\$64.50

Services Subtotal: \$2,967.00

Subtotal	\$2,967.00
Total	\$2,967.00
Payment	\$0.00
Balance Owing	\$2,967.00

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Shepard, Smith, Kohlmyer & Hand, PA
2300 Maitland Center Parkway, Suite 100
Maitland, FL 32751

Invoice #: 21715
Date: 12-15-2023

City of Mount Dora

Matter Number: 230157 - City of Mount Dora - CRA

Services

Date	Atty	Description	Quantity	Rate	Total
11-28-23	PAB	Confer with Mr. Comiskey re NE CRA agenda item	0.10	215.00	\$21.50
11-28-23	AJH	Review CRA plans re: community policing	0.30	215.00	\$64.50
11-28-23	PAB	Analyze proposed changes to ILA; review emails; confer with AJH and Ms. Hand re same	0.60	215.00	\$129.00
11-28-23	AJH	Begin analysis re: CRA matter, confer w/ PB re: same, begin reviewing files from Mr. Sumner	0.80	215.00	\$172.00
11-28-23	PAB	Prepare resolutions and first amendments to interlocal agreements for NE-CRA and CRA for 12/5	2.90	215.00	\$623.50
11-28-23	PAB	Email Correspondence: Receive, analyze and reply to email from Ms. Hand re CRA ILAs	0.10	215.00	\$21.50
12-04-23	AJH	Address Vallier contract, follow up with Mr. Sumner re: same, review commitment and property information, review documents in public record	1.40	215.00	\$301.00
12-04-23	AJH	Revise Vallier contract, review liens, relevant documents, confer w/ Mr. Sumner re: same	0.80	215.00	\$172.00
12-06-23	AJH	Address RE contract	0.40	215.00	\$86.00

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12-07-23	PAB	Receive, analyze and reply to email from Jeanann Hand re resolution for council for interlocal agreement amendments	0.10	215.00	\$21.50
12-10-23	AJH	Review Vallier terms, review relevant documents	0.80	215.00	\$172.00
12-11-23	AJH	Address Vallier contract, reply to title company re: survey, chain of title	0.70	215.00	\$150.50
12-12-23	PAB	Email Correspondence: Receive and analyze email from Jeanann Hand re CRA resolutions for Council re interlocal amendment	0.10	215.00	\$21.50
12-12-23	AJH	Review and transmit Vallier survey to title company	0.30	215.00	\$64.50
12-12-23	AJH	Analysis re: tax deed issue pertaining to Vallier property	0.40	215.00	\$86.00
12-12-23	PAB	Receive, analyze and revise Resolutions 2023-62 and 2023-63 for 12/19 agenda	0.40	215.00	\$86.00
12-12-23	PAB	Email Correspondence: Prepare email to Ms. Hand with Resolutions 2023-62 and 2023-63 for 12/19 agenda	0.10	215.00	\$21.50
12-13-23	AJH	Analysis re: title issues, prepare for call w/ title atty - Vallier	0.40	215.00	\$86.00
12-14-23	PAB	Receive, analyze and reply to email from Ms. Hand re CRA agreements; analyze documents; revise agreements (x 2)	0.40	215.00	\$86.00
12-14-23	PAB	Email Correspondence: Prepare email to Ms. Hand and Mr. Sumner re CRA agreements	0.10	215.00	\$21.50
12-14-23	AJH	Confer w/ title company re: title objections, tax deed insurability, analysis re: same re: Vallier	0.40	215.00	\$86.00
12-15-23	AJH	Address Vallier purchase, title issues	0.40	215.00	\$86.00

Services Subtotal: \$2,580.00

Subtotal	\$2,580.00
Total	\$2,580.00
Payment	\$0.00
Balance Owing	\$2,580.00

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2300 Maitland Center Parkway, Suite 100
Maitland, FL 32751

Invoice #: 21716
Date: 12-15-2023

City of Mount Dora

Matter Number: 230158 - City of Mount Dora - Fire

Services

Date	Atty	Description	Quantity	Rate	Total
11-20-23	AJH	Review and analyze correspondence re: donation	0.30	215.00	\$64.50
11-20-23	AJH	Begin review re: fire renovation agreement	1.10	215.00	\$236.50
11-20-23	PAB	Confer with AJH re fire department task authorization	0.20	215.00	\$43.00
11-20-23	PAB	Analyze task authorization and Resolution documents related to continuing contract for architectural services for Fire Station; prepare email to Ms. Lovern requesting RFP	0.70	215.00	\$150.50
11-20-23	PAB	Receive and analyze RFQ for Bentley continuing contract; prepare exhibits; prepare email to staff re Task Authorization for Bentley as to Fire Station #34	1.00	215.00	\$215.00

Services Subtotal: \$709.50

Subtotal	\$709.50
Total	\$709.50
Payment	\$0.00
Balance Owing	\$709.50

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Shepard, Smith, Kohlmyer & Hand, PA
2300 Maitland Center Parkway, Suite 100
Maitland, FL 32751

Invoice #: 21717
Date: 12-15-2023

City of Mount Dora

Matter Number: 230159 - City of Mount Dora - Human Resources

Services

Date	Atty	Description	Quantity	Rate	Total
11-27-23	AJH	Begin analysis re: add'l leave time. Review relevant personnel policies	0.50	215.00	\$107.50
12-04-23	PAB	Receive message from Ms. Helfant re employee complaint; confer with Mr. Comiskey and advise re same; confer with AJH	0.50	215.00	\$107.50
12-05-23	PAB	Confer with Ms. Helfant and Mr. Comiskey re urban forestry applications	0.30	215.00	\$64.50
12-07-23	PAB	Confer with Ms. Helfant re Meade case monitoring and employee resignations	0.20	215.00	\$43.00
12-07-23	PAB	Review 401a and erisa plan document amendment issues	0.80	215.00	\$172.00
12-07-23	AJH	Confer w/ PB re: human resources resignation	0.30	215.00	\$64.50
12-11-23	AJH	Review correspondence re: employee resignations, address matters re: same	0.50	215.00	\$107.50
12-11-23	PAB	Receive and analyze email from Ms. Helfant re EEOC Reporting certification for 2023	0.10	215.00	\$21.50
12-11-23	PAB	Analyze EEOC data	0.10	215.00	\$21.50
12-11-23	PAB	Confer with Human Resources Director (Interim) re EEOC form	0.20	215.00	\$43.00

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12-13-23	PAB	Meeting with Ms. Helfant re outside litigation, Andrew's Technologies; and other HR matters	0.40	215.00	\$86.00
12-14-23	AJH	Review, revise, and finalize UKG Andrews agreement, confer w/ Ms. Helfant re: same, review relevant correspondence	1.70	215.00	\$365.50
12-14-23	PAB	Receive and analyze multiple emails re Andrews Technologies contract	0.20	215.00	\$43.00
12-14-23	AJH	Review correspondence and documents re: employee pay	0.20	215.00	\$43.00
12-15-23	AJH	Review UKG exhibits	0.30	215.00	\$64.50

Services Subtotal: \$1,354.50

Subtotal	\$1,354.50
Total	\$1,354.50
Payment	\$0.00
Balance Owing	\$1,354.50

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2300 Maitland Center Parkway, Suite 100
Maitland, FL 32751

Invoice #: 21718
Date: 12-15-2023

City of Mount Dora

Matter Number: 230160 - City of Mount Dora - Parks & Recreation

Services

Date	Atty	Description	Quantity	Rate	Total
11-17-23	PAB	Continue working on Flock of Sea Gulls matter	0.30	215.00	\$64.50
11-17-23	AJH	Revise Snow agreement - BGI	0.80	215.00	\$172.00
11-17-23	AJH	Draft Yard Stop agreement	0.60	215.00	\$129.00
11-17-23	AJH	Draft Court Resurfacing Agreement	0.50	215.00	\$107.50
11-17-23	AJH	Review and revise Magic of Bronze Agreement	0.40	215.00	\$86.00
11-17-23	AJH	Draft Axispro agreement, review correspondence re: same	0.50	215.00	\$107.50
11-17-23	PAB	Revise Flock of Seagulls contract; prepare email to Mr. Shonk	0.40	215.00	\$86.00
11-20-23	AJH	Call from Mr. Carson re: Parks and Rec agreements	0.20	215.00	\$43.00
12-01-23	PAB	Email Correspondence: Receive, analyze and reply to email from Troy Shonk re two concessions agreements	0.20	215.00	\$43.00
12-02-23	PAB	Receive, analyze and begin revising Magical Meats catering contract	0.50	215.00	\$107.50

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12-03-23	PAB	Finalize MMB catering contract; prepare email to staff with same	0.80	215.00	\$172.00
12-03-23	PAB	Revise PCI contract and prepare email re same with clean versions; prepare additional revisions to MMB contract and prepare email to staff with same	0.50	215.00	\$107.50
12-03-23	PAB	Email Correspondence: Prepare email to Troy Shonk and Chris Carson re catering contract for PCI	0.10	215.00	\$21.50
12-06-23	AJH	Phone call w/ Mr. Carson re: event matters, review correspondence re; same	0.30	215.00	\$64.50
12-06-23	AJH	Review and revise performance agreement - Ordinary Boys	0.30	215.00	\$64.50
12-07-23	AJH	Review T-Rex agreement and reply to Mr. Shone re: same	0.20	215.00	\$43.00
12-13-23	AJH	Review and finalize performance contracts (Ordinary Boys, Blue Skye)	0.50	215.00	\$107.50
12-13-23	AJH	Confer w/ Mr. Carson re: solicitors at events	0.30	215.00	\$64.50

Services Subtotal: \$1,591.00

Subtotal	\$1,591.00
Total	\$1,591.00
Payment	\$0.00
Balance Owing	\$1,591.00

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ATTORNEYS & COUNSELORS AT LAW

INVOICE

Shepard, Smith, Kohlmyer & Hand, PA
2300 Maitland Center Parkway, Suite 100
Maitland, FL 32751

Invoice #: 21719
Date: 12-15-2023

City of Mount Dora

Matter Number: 230161 - City of Mount Dora - Police

Services

Date	Atty	Description	Quantity	Rate	Total
11-22-23	PAB	Email Correspondence: Prepare email to City Clerk requesting Golf Cart Ordinance for Police review	0.10	215.00	\$21.50

Services Subtotal: \$21.50

Subtotal	\$21.50
Total	\$21.50
Payment	\$0.00
Balance Owning	\$21.50

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ATTORNEYS & COUNSELORS AT LAW

INVOICE

Shepard, Smith, Kohlmyer & Hand, PA
2300 Maitland Center Parkway, Suite 100
Maitland, FL 32751

Invoice #: 21720
Date: 12-15-2023

City of Mount Dora

Matter Number: 230162 - City of Mount Dora - Public Works

Services

Date	Atty	Description	Quantity	Rate	Total
11-19-23	PAB	Email Correspondence: Receive and analyze email from Mr. Marek re task authorization to KH	0.10	215.00	\$21.50
11-19-23	PAB	Receive, analyze and revise proposed Task Authorization to KH re FDEP Consent Order	2.70	215.00	\$580.50
11-19-23	PAB	Email Correspondence: Prepare email to Mr. Marek and co. re Task Authorization to KH for Consent Order	0.10	215.00	\$21.50
11-19-23	PAB	Email Correspondence: Receive, analyze and reply to email from Mayor Stile re Odor Control Plan	0.10	215.00	\$21.50
11-21-23	PAB	Analyze emails and documents related to reclaimed water lines and agreement; confer with AJH	0.80	215.00	\$172.00
11-21-23	PAB	Prepare for and attend conference call with Mr. Comiskey and Mr. Marek re reclaimed water; FDEP; and Wolf Branch presentation	1.00	215.00	\$215.00
11-21-23	AJH	Prepare for and attend call w/ Mssrs. Comiskey and Marek re: utility lines	1.60	215.00	\$344.00
11-22-23	PAB	Receive and analyze Kimley Horn's proposed changes to task authorization	0.40	215.00	\$86.00
11-22-23	PAB	Prepare for and attend conference call re changes to KH FDEP task authorization	1.50	215.00	\$322.50

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11-25-23	PAB	Receive and analyze second email from County Attorney re utility lien	0.10	215.00	\$21.50
11-26-23	PAB	Receive, analyze and reply to email from CBS re reclaimed water lines in OC re Apopka	0.20	215.00	\$43.00
11-27-23	PAB	Receive, analyze and reply to email from Mr. Comiskey re "Certificate of Entitlement"	0.20	215.00	\$43.00
11-27-23	PAB	Receive and analyze email from Mr. Abbot, forwarded by Mr. Comiskey, re canal; prepare email to Andrew Hand inquiring if we had received anything about a canal	0.20	215.00	\$43.00
11-29-23	AJH	Receive call from Atty Tedrow re: Wolf Branch Capacity, confer w/ PB re: same, outline issues to address re: discussion	0.80	215.00	\$172.00
11-30-23	PAB	Email Correspondence: Receive, analyze and reply to email from Ms. Lovern and Ms. Douglas re processing purchase order	0.20	215.00	\$43.00
11-30-23	AJH	Review email from Ms. Douglas and staff report re: generator maintenance services, review agreement and amendment, analysis re: same, review solicitation	0.90	215.00	\$193.50
11-30-23	AJH	Confer w/ PB re: canal matter	0.20	215.00	\$43.00
11-30-23	AJH	Review correspondence re: wells, confer w/ PB re: same, request add'l information from public works	0.30	215.00	\$64.50
12-01-23	PAB	Email Correspondence: Receive and analyze email from county attorney's office re interlocal agreement revisions	0.10	215.00	\$21.50
12-01-23	AJH	Analysis re: Duke matter	0.40	215.00	\$86.00
12-03-23	AJH	Finalize review of generator agreements and procurement documents, draft and finalize extension	0.80	215.00	\$172.00
12-03-23	AJH	Begin reviewing bio-solids agreement and procurement documents	1.60	215.00	\$344.00
12-04-23	PAB	Email Correspondence: Receive, analyze and reply to email from Mr. Marek re revised task authorization from KH re WWTP #2	0.20	215.00	\$43.00
12-05-23	PAB	Receive, analyze, comment and revise KH proposed changes to Consent Order task authorization	0.70	215.00	\$150.50
12-05-23	PAB	Email Correspondence: Receive, analyze and reply to email from Mr. Marek re KH task authorization re Consent Order	0.10	215.00	\$21.50
12-05-23	PAB	Analyze confidentiality of utility ROW maps	0.70	215.00	\$150.50
12-05-23	PAB	Analyze interlocal agreement and revisions thereto for Eudora Road	0.50	215.00	\$107.50
12-05-23	PAB	Email Correspondence: Receive and analyze email from Mr. Marek re Interlocal Agreement Maintenance	0.10	215.00	\$21.50

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12-05-23	PAB	Email Correspondence: Receive and analyze email from Jeff Earhart re interlocal agreement	0.10	215.00	\$21.50
12-05-23	PAB	Email Correspondence: Receive and analyze email from Rachel Bartolowitze re interlocal agreement	0.10	215.00	\$21.50
12-05-23	PAB	Email Correspondence: Receive and analyze email from Vince Sandersfeld re Interlocal	0.10	215.00	\$21.50
12-05-23	PAB	Email Correspondence: Prepare email to to Mr. Marek and staff approving the amendments to interlocal agreement for Eudora Road roundabout as to form and legality	0.10	215.00	\$21.50
12-07-23	AJH	Review task authorization and related documents pertaining to Forres Park flood mitigation	1.00	215.00	\$215.00
12-07-23	AJH	Prepare for and attend conference re: Public works matters w/ Mr. Marek, PW Staff, PB	2.30	215.00	\$494.50
12-07-23	PAB	Confer with George Marek, Andrew Hand and staff re multiple public works issues; confer with AJH re capacity and other development issues	2.10	215.00	\$451.50
12-07-23	AJH	Review and analyze Chatauga information pertaining to canal	0.40	215.00	\$86.00
12-07-23	PAB	Prepare email to Mr. Marek and team re conference call task items	0.10	215.00	\$21.50
12-11-23	PAB	Receive, analyze and reply to email re paying civil penalty for consent order	0.20	215.00	\$43.00
12-12-23	AJH	Finalize Forres Park review	0.60	215.00	\$129.00
12-12-23	PAB	Receive and analyze email re reclaimed water line	0.10	215.00	\$21.50
12-13-23	PAB	Email Correspondence: Prepare email to Jeanann Hand re Interlocal Agreement with Lake County for inclusion on 12/19 agenda	0.10	215.00	\$21.50
12-13-23	AJH	Review and analyze correspondence from Mr. Marek re: water line at Kelly Park	0.20	215.00	\$43.00
12-15-23	PAB	Email Correspondence: Receive and analyze email from Mr. Marek re reclaimed water line in Orange County and development	0.10	215.00	\$21.50

Services Subtotal: \$5,203.00

Subtotal	\$5,203.00
Total	\$5,203.00
Payment	\$0.00
Balance Owing	\$5,203.00

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ATTORNEYS & COUNSELORS AT LAW

INVOICE

Shepard, Smith, Kohlmyer & Hand, PA
2300 Maitland Center Parkway, Suite 100
Maitland, FL 32751

Invoice #: 21721
Date: 12-15-2023

City of Mount Dora

Matter Number: 230163 - City of Mount Dora - City Council Members

Services

Date	Atty	Description	Quantity	Rate	Total
11-18-23	PAB	Email Correspondence: Receive and analyze email from Councilman Cataldo re Human Resources and insurance rates	0.10	215.00	\$21.50
11-19-23	PAB	Analyze email from Mayor Stile re Odor Control Plan	0.20	215.00	\$43.00
11-19-23	PAB	Receive and analyze emails from City Manager and Councilman Cataldo with questions concerning the City's Health Insurance policies for retirees and Section 112.0801, Florida Statutes	1.10	215.00	\$236.50
11-20-23	PAB	Search FDEP website for OCP issued by Landfill at request of Mayor Stile; prepare email to Mayor and City Manager with same	0.30	215.00	\$64.50
11-28-23	PAB	Prepare email to individual councilmembers re cybersecurity laws and public records exemptions and confidentiality	0.50	215.00	\$107.50
11-28-23	PAB	Receive call from Councilmember Bryant re Wolf Branch Basin resolution	0.10	215.00	\$21.50
11-30-23	PAB	Receive, analyze and reply to email from Mayor Stile re release	0.20	215.00	\$43.00
12-01-23	PAB	Confer with Mayor re "American Dream" release language and agenda, action item no. 1	0.20	215.00	\$43.00
12-05-23	PAB	Conference with Councilman Rolfson re agenda	0.30	215.00	\$64.50
12-05-23	PAB	Call with Councilman Cataldo re urban forestry position	0.10	215.00	\$21.50

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12-07-23	PAB	Conference/meeting with Mayor Stile re employee resignations	0.10	215.00	\$21.50
12-12-23	PAB	Call Councilman Rolfson requesting correspondence from Mr. Comiskey to the Council sent in June or July that was requested by Ms. Greene	0.10	215.00	\$21.50
12-13-23	PAB	Receive call from Councilman Rolfson re December 19 agenda	0.70	215.00	\$150.50
12-15-23	PAB	Conference with Councilman Cataldo re investigation	1.10	215.00	\$236.50
Services Subtotal:					\$1,096.50

Subtotal	\$1,096.50
Total	\$1,096.50
Payment	\$0.00
Balance Owing	\$1,096.50

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INVOICE

Shepard, Smith, Kohlmyer & Hand, PA
2300 Maitland Center Parkway, Suite 100
Maitland, FL 32751

Invoice #: 21722
Date: 12-15-2023

City of Mount Dora

Matter Number: 230164 - City of Mount Dora - Employee Complaints/Third-Party Investigation

Services

Date	Atty	Description	Quantity	Rate	Total
11-16-23	PAB	Email Correspondence: Prepare email to Mr. Comiskey, following up re scheduling his interview	0.10	215.00	\$21.50
11-16-23	PAB	Email Correspondence: Receive, analyze and reply to email from Ms. Baker inquiring about status of scheduling	0.20	215.00	\$43.00
11-16-23	PAB	Receive, analyze and reply to emails from subject re interview scheduling; prepare email to Ms. Greene re same	0.40	215.00	\$86.00
11-22-23	PAB	Receive confirmation from court reporter for Dec. 1st interview; prepare email to Ms. Greene and Mr. Comiskey re December 1st interview	0.20	215.00	\$43.00
11-30-23	PAB	Email Correspondence: Receive, analyze and reply to email from DG re court reporter confirmatin for Dec. 1 interview	0.10	215.00	\$21.50
11-30-23	PAB	Email Correspondence: Prepare email to Mr. Comiskey with zoom information for his counsel for 12/1 interview	0.10	215.00	\$21.50
11-30-23	PAB	Email Correspondence: Prepare email to Ms. Greene re interview for 12/1, confirming location and court reporter	0.10	215.00	\$21.50
11-30-23	PAB	Email Correspondence: Prepare email to council, individually, regarding scheduling last interview and City Attorney not responding to resident comments re investigaiton	0.20	215.00	\$43.00
11-30-23	AJH	Confer w/ PB re: investigation	0.30	215.00	\$64.50

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11-30-23	PAB	Email Correspondence: Receive, analyze and reply to email from Ms. Greene confirming scheduled interview for 12/1	0.10	215.00	\$21.50
12-01-23	PAB	Prepare facilities for interview; organize exhibits for copies following interview; confer with Court reporter re providing transcript to investigator	1.10	215.00	\$236.50
12-05-23	PAB	Email Correspondence: Prepare email to Ms. Greene regarding exhibits and timeframe for report	0.10	215.00	\$21.50
12-05-23	PAB	Confer with Ms. Greene re schedule for report	0.10	215.00	\$21.50
12-05-23	PAB	Receive and analyze message from Ms. Greene re 2 additional interviews to be scheduled on 12/8 beginning at 11:00; prepare email to Ms. Scott re availability	0.20	215.00	\$43.00
12-12-23	PAB	Receive request for documents from Ms. Greene, exchange emails with Ms. Sutphen requesting same; prepare email to Mayor requesting document	0.40	215.00	\$86.00
12-12-23	PAB	Receive, analyze and reply to email from Ms. Sutphen re document request; leave message for Vice Mayor Crail re same	0.10	215.00	\$21.50
12-12-23	PAB	Confer with Clerk to discuss document search for record requested by the investigator	0.20	215.00	\$43.00
12-12-23	PAB	Email Correspondence: Receive, analyze and reply to email from [REDACTED] re complaints and his request to forward to Council	0.10	215.00	\$21.50
12-12-23	PAB	Email Correspondence: Receive, analyze and reply to email from Mr. Comiskey with his attorneys' bills	0.20	215.00	\$43.00
12-12-23	CBS	Email Correspondence: FW: City of Mount Dora- Investigation	0.10	215.00	\$21.50
12-12-23	CBS	Email Correspondence: RE: Legal Bills	0.10	215.00	\$21.50
12-12-23	CBS	Email Correspondence: RE: Legal Bills	0.30	215.00	\$64.50
12-13-23	PAB	Continue analyzing emails from Mr. Comiskey and Mr. Shonk re investigation; confer with AJH and CBS; prepare three separate emails to council re same	2.30	215.00	\$494.50
12-14-23	PAB	Confer with Ms. Greene re requested document and date of same for search	0.20	215.00	\$43.00
12-15-23	PAB	Email Correspondence: Prepare email to Ms. Greene with requested document	0.10	215.00	\$21.50
					Services Subtotal: \$1,591.00

Expenses

12-06-23	LH	Invoice # 270801 - Court Reporter attendance for depo 12/1	1.00	342.50	\$342.50
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Expenses Subtotal: \$342.50

Subtotal	\$1,933.50
Total	\$1,933.50
Payment	\$0.00
Balance Owing	\$1,933.50

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ATTORNEYS & COUNSELORS AT LAW

INVOICE

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2300 Maitland Center Parkway, Suite 100
Maitland, FL 32751

Invoice #: 21723
Date: 12-15-2023

City of Mount Dora

Matter Number: 230166 - City of Mount Dora - Planning and Development

Services

Date	Atty	Description	Quantity	Rate	Total
11-25-23	PAB	Receive and analyze emails from Planner and City Manager re submerged lands	0.10	215.00	\$21.50
11-28-23	AJH	Revise CivicPlus Agreement	0.70	215.00	\$150.50
12-13-23	PAB	Confer with AJH and prepare for Historic Preservation Board meeting	2.00	215.00	\$430.00
12-13-23	AJH	Review correspondence re: cell tower, confer w/ Mr. Sandersfeld re: same, confer w/ RK, begin research re: options	0.80	215.00	\$172.00
12-13-23	PAB	Attend Historic Board meeting	1.40	215.00	\$301.00

Services Subtotal: \$1,075.00

Subtotal	\$1,075.00
Total	\$1,075.00
Payment	\$0.00
Balance Owning	\$1,075.00

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INVOICE

Shepard, Smith, Kohlmyer & Hand, PA
2300 Maitland Center Parkway, Suite 100
Maitland, FL 32751

Invoice #: 21724
Date: 12-15-2023

City of Mount Dora

Matter Number: 230167 - City of Mount Dora - Finance

Services

Date	Atty	Description	Quantity	Rate	Total
11-30-23	PAB	Email Correspondence: Receive, analyze and reply to email from Ms. Meade re redacting invoices	0.10	215.00	\$21.50

Services Subtotal: \$21.50

Subtotal	\$21.50
Total	\$21.50
Payment	\$0.00
Balance Owing	\$21.50

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INVOICE

Shepard, Smith, Kohlmyer & Hand, PA
2300 Maitland Center Parkway, Suite 100
Maitland, FL 32751

Invoice #: 21725
Date: 12-15-2023

City of Mount Dora

Matter Number: 230168 - City of Mount Dora - Utilities

Services

Date	Atty	Description	Quantity	Rate	Total
11-19-23	PAB	Receive, analyze and revise Pole Agreement and Bulk Permit Process document	1.00	215.00	\$215.00
11-19-23	PAB	Email Correspondence: Prepare email to Mr. Langley and Mr. Comiskey re Pole Attachment Agreement and Bulk Permit Process for Comcast	0.10	215.00	\$21.50
11-19-23	PAB	Email Correspondence: Receive and analyze email from Patrick Comiskey re Comcast Utility Pole Agreement	0.10	215.00	\$21.50
11-20-23	PAB	Receive, analyze and reply to email from Steve Langley re comcast licensee agreement	0.10	215.00	\$21.50
11-22-23	PAB	Prepare email to Mr. Langley re comcast agreement	0.10	215.00	\$21.50
11-22-23	PAB	Prepare for and attend conference call with Steve Langley re Comcast Agreement and policy modifications	0.50	215.00	\$107.50
11-27-23	PAB	Receive and analyze email from Steve Langley re purchase order for utilities	0.10	215.00	\$21.50
11-29-23	PAB	Revise WESCO agreement and Exhibit A	1.00	215.00	\$215.00
11-29-23	PAB	Email Correspondence: Prepare email to Steve Langley re WESCO	0.10	215.00	\$21.50

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11-29-23	PAB	Email Correspondence: Receive and analyze email from Mr. Langley re Bellmore Task Authorization	0.10	215.00	\$21.50
11-29-23	PAB	Email Correspondence: Receive and analyze email from City Clerk re Bellmore Task Authorization for Agenda	0.10	215.00	\$21.50
11-29-23	PAB	Receive and analyze prior resolution and underlying agreement; confer with Steve Langley; receive and analyze email from Ms. Hand with corrected resolution and underlying agreements; prepare email to Ms. Hand	0.30	215.00	\$64.50
12-11-23	PAB	Receive, analyze and reply to email re amendment to utility agreement	0.10	215.00	\$21.50
12-12-23	PAB	Email Correspondence: Receive and analyze email from Steve Langley re amendment to agreement	0.10	215.00	\$21.50
12-12-23	PAB	Email Correspondence: Receive and analyze email from Steve Langley re Amendment 1 to PW GMP agreement	0.10	215.00	\$21.50
12-12-23	PAB	Begin preparing amendment to agreement	0.60	215.00	\$129.00
12-14-23	PAB	Review contract documents, confer with Steve Langley and begin drafting amendment to CMAR contract	1.50	215.00	\$322.50
12-14-23	PAB	Email Correspondence: Prepare email to Steve Langley re AJAX amendment	0.10	215.00	\$21.50
12-14-23	PAB	Finalize Amendment 1 to AJAX agreement; prepare email to Jeanann Hand and Steve Langley re same	0.60	215.00	\$129.00
Services Subtotal:					\$1,440.50

Subtotal	\$1,440.50
Total	\$1,440.50
Payment	\$0.00
Balance Owing	\$1,440.50

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Shepard, Smith, Kohlmyer & Hand, PA
2300 Maitland Center Parkway, Suite 100
Maitland, FL 32751

Invoice #: 21726
Date: 12-15-2023

City of Mount Dora

Matter Number: 230174 - City of Mount Dora - Outside Counsel Oversight

Services

Date	Atty	Description	Quantity	Rate	Total
12-07-23	PAB	Receive call re scheduling City Manager's deposition in matter	0.10	215.00	\$21.50
12-07-23	PAB	Email Correspondence: Receive and analyze email from Ms. Helfant with Meade case files	0.10	215.00	\$21.50
12-07-23	PAB	Review Meade files	1.30	215.00	\$279.50
12-07-23	CBS	Email Correspondence: RE: Meade complaint against Mount Dora/ACP	0.30	215.00	\$64.50
12-07-23	CBS	Email Correspondence: Meade complaint against Mount Dora/ACP	0.10	215.00	\$21.50
12-07-23	CBS	Email Correspondence: FW: Meade complaint against Mount Dora/ACP	0.10	215.00	\$21.50
12-07-23	CBS	Email Correspondence: FW: Meade complaint against Mount Dora/ACP	0.10	215.00	\$21.50
12-07-23	PAB	Email Correspondence: Prepare email to Ms. Townsend re scheduling depositions in Meade v. City of Mount Dora	0.10	215.00	\$21.50

Services Subtotal: \$473.00

ATTACHMENT #1

Subtotal	\$473.00
Total	\$473.00
Payment	\$0.00
Balance Owing	\$473.00

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ATTORNEYS & COUNSELORS AT LAW

INVOICE

Shepard, Smith, Kohlmyer & Hand, PA
2300 Maitland Center Parkway, Suite 100
Maitland, FL 32751

Invoice #: 21727
Date: 12-15-2023

City of Mount Dora

Matter Number: 230179 - City of Mount Dora - City Clerk

Services

Date	Atty	Description	Quantity	Rate	Total
11-16-23	PAB	Receive, receive analyze and reply to multiple emails from City Clerk re 11/21 agenda; confer with City Clerk re same	0.40	215.00	\$86.00
11-16-23	PAB	Email Correspondence: Receive and analyze email from AJH re cooperative purchasing memo	0.10	215.00	\$21.50
11-16-23	PAB	Analyze BuyBoard Agreement and agenda memo; prepare email to Clerk and City Manager re adding agreement and bylaws to packet and editing the agenda memo	1.30	215.00	\$279.50
11-22-23	PAB	Prepare email to Ms. Hand and Mr. Comiskey re best practices when it appears there will not be a quorum for an advisory board meeting	0.20	215.00	\$43.00
11-27-23	PAB	Receive and analyze agendas for December 5, 2023 public meetings and supporting documents; exchange emails with Ms. Hand	0.40	215.00	\$86.00
11-28-23	PAB	Receive, analyze and reply to emails from City Clerk re agenda memo and agenda re cybersecurity purchases and Chapter 119.0725(b) or (d)	0.20	215.00	\$43.00
11-30-23	PAB	Email Correspondence: Receive and analyze email from Ms. Hand re agenda packets for CRA meetings	0.10	215.00	\$21.50
11-30-23	PAB	Email Correspondence: Receive, analyze and reply to email from City Clerk re resolution for review in advance of Dec. 13	0.10	215.00	\$21.50

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12-12-23	PAB	Email Correspondence: Receive, analyze and reply to email from Ms. Hand re agenda items	0.10	215.00	\$21.50
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Services Subtotal: \$623.50

Subtotal	\$623.50
Total	\$623.50
Payment	\$0.00
Balance Owing	\$623.50

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Shepard, Smith, Kohlmyer & Hand, PA
2300 Maitland Center Parkway, Suite 100
Maitland, FL 32751

Invoice #: 21728
Date: 12-15-2023

City of Mount Dora

Matter Number:230180 - City of Mount Dora - City Clerk - Public Records Requests

Services

Date	Atty	Description	Quantity	Rate	Total
11-17-23	PAB	Receive and analyze email from Ms. Meade; redact invoices per Chapters 119 and 112, Florida Statutes; prepare email to Ms. Meade with redacted invoice	0.20	215.00	\$43.00

Services Subtotal: \$43.00

Subtotal	\$43.00
Total	\$43.00
Payment	\$0.00
Balance Owing	\$43.00

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2300 Maitland Center Parkway, Suite 100
Maitland, FL 32751

Invoice #: 21729
Date: 12-15-2023

City of Mount Dora

Matter Number: 230199 - City of Mount Dora - Amco v. City of Mount Dora

Services

Date	Atty	Description	Quantity	Rate	Total
11-21-23	PAB	Analyze Amco transcript and documents; confer with Mr. Sandersfeld; confer with opposing counsel counsel; prepare email to Mr. Comiskey	3.10	215.00	\$666.50
11-21-23	AJH	Confer w/ PB re: matter, shade meeting, review relevant documents	0.80	215.00	\$172.00
11-22-23	AJH	Review correspondence and documents re: dispute	0.60	215.00	\$129.00
11-29-23	PAB	Receive, analyze and reply to emails from special magistrate and opposing counsel; prepare email to mediation team re direction	0.50	215.00	\$107.50
11-30-23	PAB	Email Correspondence: Prepare email to staff following up on scheduling SA for public hearing	0.10	215.00	\$21.50
12-01-23	PAB	Email Correspondence: Prepare email to CM re January 2 agenda	0.10	215.00	\$21.50
12-03-23	PAB	Receive relevant correspondence regarding AMCO settlement and placing on Jan 2 agenda	0.20	215.00	\$43.00
12-03-23	PAB	Email Correspondence: Receive and analyze email from Mayor re Amco matter	0.10	215.00	\$21.50
12-03-23	PAB	Email Correspondence: Prepare email to City Manager re Amco settlement agreement	0.10	215.00	\$21.50

Services Subtotal: \$1,204.00

ATTACHMENT #1

Subtotal	\$1,204.00
Total	\$1,204.00
Payment	\$0.00
Balance Owing	\$1,204.00

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ATTORNEYS & COUNSELORS AT LAW

INVOICE

Shepard, Smith, Kohlmyer & Hand, PA
2300 Maitland Center Parkway, Suite 100
Maitland, FL 32751

Invoice #: 21730
Date: 12-15-2023

City of Mount Dora

Matter Number: 230216 - City of Mount Dora - SAF NOB US 441 LLC

Services

Date	Atty	Description	Quantity	Rate	Total
11-29-23	AJH	Confer w/ Mr. Sandersfeld re: project, begin reviewing relevant documents	0.70	300.00	\$210.00
11-30-23	AJH	Review correspondence from Mr. Sandersfeld re: resolved environmental issues	0.20	300.00	\$60.00
12-13-23	AJH	Confer w/ Mr. Sandersfeld re: project, review correspondence re: same,	0.50	300.00	\$150.00
12-15-23	AJH	Review and revise ordinances, review documents staff report re: project	1.80	300.00	\$540.00

Services Subtotal: \$960.00

Subtotal	\$960.00
Total	\$960.00
Payment	\$0.00
Balance Owing	\$960.00

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510 N. Baker St.
Mount Dora, FL 32757
352-735-7126

DATE: January 2, 2024

TO: Honorable Mayor and City Council Members

FROM: Patrick C. Comiskey, City Manager

SUBJECT: Request Approval for Code Lien Waiver for 324 E. Jackson Avenue (Unsafe Home/Structure, Overgrown, and Junk/Debris)

Introduction:

This is a request for City Council to consider a lien waiver request for 324 E. Jackson Avenue.

Discussion:

***Staff Note:** This request has been placed on action item, as the recommendation contains alternatives for City Council's consideration.*

Code Case 2021-0261 was presented to the Magistrate on October 21, 2021, for fourteen (14) different code violations including unsafe structure, junk and debris, rodents, sanitation, insect infestations, overgrown weeds and occupancy of an unsafe structure. Since that time, the property has not been brought into compliance and, per the code compliance process, a lien has been recorded in accordance with the magistrate's orders. Currently, those liens total \$78,485.94. Per our City ordinance, the liens can not exceed the value of the property. This city did board up the property in an effort to keep trespassers out of the property and stop vandalism of the property.

Existing status photos taken of the site on November 8, 2023, by staff.

Per the attached lien waiver request, Mr. Asberry Johnson IV is the son of the previous owner. Mr. Johnson IV has been mowing the property recently and been making an effort to clean up the property. Mr. Johnson IV would like to demolish the home and keep the land at this point in time. Mr. Johnson IV has owned the property since July 16th 2021. However, in the attached lien waiver request, Mr. Johnson IV states he has only had possession of the property for approximately three months.

As of December 28, 2023, the owner has demolished the structure pursuant to a demolition permit (No.23-12-0012), which has cured the code issue.

Budget Impact:

Code enforcement fines owed to the City are not budgeted as anticipated revenues. The full reduction and waiver total is \$78,485.94. Staff recommendation is for reduction to \$5,000.00 to cover actual costs incurred in abating the property and staff time invested in the enforcement action.

Strategic Impact:

1.3.2. Promote residential development and redevelopment within the Northeast CRA

Recommendation:

City Council to consider the following options:

1. Approve a full lien waiver of the code enforcement lien for 324 E. Jackson Avenue and authorize the City Manager to execute the appropriate documents; or
2. Deny the lien waiver request for 324 E. Jackson Avenue (full payment due); or
3. Reduce the lien request for 324 E. Jackson Avenue and authorize the City Manager to execute the appropriate documents with the following conditions: Due to the number of violations, the seriousness and severity of the violations, and the amount of time the violations have persisted, staff recommends reducing the liens to \$5,000. Demolition payment must occur within 90 days. After removal of the structure, the owner must provide a ground covering such as hydro-seed with proper maintenance of the existing vegetation. This lien amount will cover staff time associated with this case, recording fees, costs incurred for the boarding of the structure and a fine for the impact on the neighborhood.

Attachment(s):

1. Attachment #1.Lien Waiver request (3attach 1)
2. Attachment #2.Code Lien File (attach 2)
3. Attachment #3 .Photos (Existing Conditions) Taken 11-8-2023 at 324 E Jackson St attach 3 (1)
4. Attachment #4 .324 E Jackson Site Inspection 12272023 (002)

Prepared by: Merry Lovern, Executive Assistant
Reviewed by: Adam Sumner, CRA Administrator
Aneta Barton, Budget Director
City Attorney, City Attorney
Jeanann Hand, City Clerk
Patrick Comiskey, City Manager

Approved - 12/15/2023
Approved - 12/18/2023
Approved - 12/28/2023
Approved - 12/28/2023
Final Approval - 12/28/2023

ATTACHMENT #1

From: Sarah Lamoureux <sarahsellingflorida@gmail.com>
Sent: Tuesday, October 24, 2023 12:38 PM
To: Lovern, Merry <LovernM@ci.mount-dora.fl.us>
Subject: Fwd: Request for Code Enforcement Lien Reduction

**** This message originated outside of the City of Mount Dora network. Please think before you click. ****

Hi Merry,
Thanks for your help in this matter. It looks like I tried to send it to the wrong email address for you originally. Not sure if the email addresses on the city's website are correct or not.

Mr. Johnson's father(original owner) is in a nursing home and he only recently took over the property. He is willing to have the home demolished in order to remedy the code enforcement violations and has a contractor ready to apply for permits. Please let me know if there is anything we can do to expedite the process, as the fees are still accruing daily. If the city council is willing to reduce the fines, he would like to get them taken care of and begin demolition right away. Our first request to be added to the docket was 09/20.

Thank you
Sarah Lamoureux
Amerivest Realty
(352)217-6079 cell

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

From: Sarah Lamoureux <sarahsellingflorida@gmail.com>
Date: Wed, Sep 20, 2023 at 12:58 PM
Subject: Request for Code Enforcement Lien Reduction
To: abj_32757@yahoo.com <abj_32757@yahoo.com>, <jeanann.hand@cityofmountdora.com>, <lovernmm@cityofmountdora.com>, <hand.j@cityofmountdora.com>

Patrick Comiskey
City Manager
and
City Counsel of the City of Mount Dora

I am writing in regard to the code enforcement liens assessed on the property located at 324 E Jackson Ave. I have been in possession of the property for approximately three months. It was left to me by my father, Asberry Johnson III. My desire is to restore the property in accordance with the city's vision for our community.

I have cleaned up and maintained the yard, which I believe to be one source of the fines accrued. I have learned after speaking with Mr. Sumner of the Community Redevelopment Agency that the structural integrity of the home has been compromised and needs to be remedied. I am prepared to do so, however, the current liens are up to the amount of \$55,000. I do not have the means to pay such an amount.

ATTACHMENT #1

I am requesting a reduction of the amount of liens. I ask that the City Counsel take into consideration the amount of time that I have been in control of the property and the work that I have done to maintain the outside of the property in that time. Please contact me for any questions or concerns that may arise.

Sincerely,
Asberry Johnson IV
(352)257-0572
abj_32757@yahoo.com

--

Sarah Lamoureux
Amerivest Realty
(352)217-6079 cell
(352)343-2077

ATTACHMENT #2

PREPARED BY:

Asbury Johnson III
3001 Javens Cir #24
Mt.Dora, FL 32757

**RECORDING REQUESTED BY
AND WHEN RECORDED MAIL TO:**

Asberry Johnson IV
103 Bryant St
Stockbridge, GA 30281

MAIL TAX STATEMENTS TO:

Asberry Johnson IV
103 Bryant St
Stockbridge, GA 30281

SPACE ABOVE THIS LINE FOR RECORDER'S USE ONLY

QUITCLAIM DEED

KNOW ALL MEN BY THESE PRESENTS THAT:

THIS QUITCLAIM DEED, made and entered into on the 16th day of July, 20 21, between Asbury Johnson III, an unmarried person, whose address is 3001 Ravens Cir #24, Mt. Dora, Florida 32757, and Camilla Johnson, an unmarried person, whose address is 3001 Ravens Cir #24, Mt. Dora, Florida 32757 ("Grantors"), and Asberry Johnson IV, whose address is 103 Bryant St, Stockbridge, Georgia 30281 ("Grantee").

For and in consideration of the sum of Ten Dollars (\$10.00) and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Grantors hereby Remise, Release, AND FOREVER Quitclaim to Grantee, the property located in Lake County, Florida, described as:

324 e Jackson ave

SUBJECT TO all, if any, valid easements, rights of way, covenants, conditions, reservations and restrictions of record.

Grantors grant all of the Grantors' rights, title and interest in and to all of the above described property and premises to the Grantee, and to the Grantee's heirs and assigns forever in fee simple, so that neither Grantors nor Grantors' heirs legal representatives or assigns shall have, claim, or demand any right or title to the property, premises, or appurtenances, or any part thereof.

Tax/Parcel ID Number: 2919270700-113-00101

ATTACHMENT #2

IN WITNESS WHEREOF the Grantors have executed this deed on the 16th day of July, 2021.

7-16-21
Date

Asbury Johnson III
Asbury Johnson III, Grantor

Witnessed by:

Printed name: Lois S Johnson
Address: 3001 Javens cir #24
Mt. Dora, FL 32757

Printed name: Christine Harris
Address: 402 Jackson
Mt. Dora, FL 32757

7-16-21
Date

Camilla Johnson
Camilla Johnson, Grantor

Witnessed by:

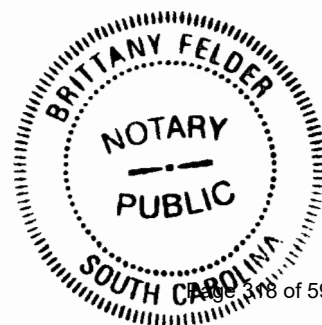
Printed name: Lois S Johnson
Address: 3001 Javens cir #24
Mt. Dora, FL 32757

Printed name: Christine Harris
Address: 402 Jackson
Mt. Dora, FL 32757

STATE OF South Carolina COUNTY OF Richland

The foregoing instrument was acknowledged before me by means of [☒] physical presence or [☐] online notarization, this July 16, 2021 (date) by Asbury Johnson III and Camilla Johnson, who are personally known to me or who have produced Drivers License (type of identification) as identification.

Brittany Felder
Signature of Notary/Deputy Clerk



ATTACHMENT #2

Brittany Elder Printed Name of Notary/Deputy Clerk

My Commission expires: March 23, 2031

LEGAL DESCRIPTION

MOUNT DORA, DONNELLY'S SUB E 1/2 OF LOTS 1, 2, 3, BLK 113-- LESS ST R/W--, S 12 FT OF JACKSON ST LYING N OF SAID LOTS PB 4 PG 7 ORB 2059 PG 0871

LOCATION

Book, page, item:	2059-0871-
Geo number:	29-19-27-0700-113-00101
Range:	27
Township:	19
Section:	29
Block:	113
Lot:	00101
Use code:	00100
Total acres:	0.188

ATTACHMENT #2

Return this Instrument to:

City of Mount Dora, Office of City Manager

510 North Baker Street

Mount Dora, Florida 32757

Tax Parcel Identification Number: 29-19-27-0700-113-00101

Alt. Key Number: 1665434

IN AND FOR THE CITY OF MOUNT DORA,
LAKE COUNTY, FLORIDA

CITY OF MOUNT DORA,

Petitioner,

CASE NO:

2021-0261

v.

ASBURY JOHNSON III and
CAMILA JOHNSON,

Respondents.

ASBURY JOHNSON III and
CAMILA JOHNSON
3001 JAVENS CIRCLE #24
MOUNT DORA, FL 32757

____ Respondent Present

XXX Respondent Not Present

____ Represented by Counsel or Other

Name of Representative _____

Written Authorization Received _____

Relationship _____

FINDING OF FACT/CONCLUSION OF LAW/
ORDER IMPOSING FINE

THIS CAUSE having come before the undersigned Magistrate for the City of Mount Dora on the 21st day of October, 2021, and said Magistrate having heard testimony, accepted evidence and being otherwise fully advised in the premises hereof finds as a matter of fact that the above named Respondents were properly noticed of the subject proceeding and are found to have violated of the following City of Mount Dora Codes:

1. City of Mount Dora Code of Ordinances, Section 10-21(a), International Property Maintenance Code (IPMC), 108.1.1 Unsafe structures. An unsafe structure is one that is found to be dangerous to the life, health, property or safety of the public or the occupants of the structure by not providing minimum safeguards to protect or warn occupants in the event of fire, or because such structure contains

11/3/2021
1010 hrs

January 2, 2024 City Council Regular Session Agenda Packet

Served to: Johnson (wife)
By m Miles

ATTACHMENT #2

unsafe equipment or is so damaged, decayed, dilapidated, structurally unsafe or of such faulty construction or unstable foundation, that partial or complete collapse is possible.

2. **City of Mount Dora Code of Ordinances, Section 10-21(a), International Property Maintenance Code (IPMC), 108.1.2 Unsafe equipment.** Unsafe equipment includes any boiler, heating equipment, elevator, moving stairway, electrical wiring or device, flammable liquid containers or other equipment on the premises or within the structure which is in such disrepair or condition that such equipment is a hazard to life, health, property or safety of the public or occupants of the premises or structure.
3. **City of Mount Dora Code of Ordinances, Section 10-21(a), International Property Maintenance Code (IPMC), 108.1.3 Structure unfit for human occupancy.** A structure is unfit for human occupancy whenever the code official finds that such structure is unsafe, unlawful or, because of the degree to which the structure is in disrepair or lacks maintenance, is insanitary, vermin or rat infested, contains filth and contamination, or lacks ventilation, illumination, sanitary or heating facilities or other essential equipment required by this code, or because the location of the structure constitutes a hazard to the occupants of the structure or to the public.
4. **City of Mount Dora Code of Ordinances, Section 10-21(a), International Property Maintenance Code (IPMC), 302.1 Sanitation.** All exterior property and premises shall be maintained in a clean, safe and sanitary condition. The occupant shall keep that part of the exterior property which such occupant occupies or controls in a clean and sanitary condition.
5. **City of Mount Dora Code of Ordinances, Section 10-21(a), International Property Maintenance Code (IPMC), 302.4 Weeds.** All premises and exterior property shall be maintained free from weeds or plant growth in excess of *Twelve (12) inches*. All noxious weeds shall be prohibited. Weeds shall be defined as all grasses, annual plants and vegetation, other than trees or shrubs provided; however, this term shall not include cultivated flowers and gardens. Upon failure of the owner or agent having charge of a property to cut and destroy weeds after service of a notice violation, they shall be subject to prosecution as prescribed by the authority having jurisdiction. Upon failure to comply with the notice of violation, any duly authorized employee of the jurisdiction or contractor hired by the jurisdiction shall be authorized to enter upon the property in violation and cut and destroy the weeds growing thereon, and the costs of such removal shall be paid by the owner or agent responsible for the property.
6. **City of Mount Dora Code of Ordinances, Section 10-21(a), International Property Maintenance Code (IPMC), 302.5 Rodent harborage.** All structures and exterior property shall be kept free from rodent harborage and infestation. Where rodents are found, they shall be promptly exterminated by approved processes which will not be injurious to human health. After extermination, proper precautions shall be taken to eliminate rodent harborage and prevent re-infestation.
7. **City of Mount Dora Code of Ordinances, Section 10-21(a), International Property Maintenance Code (IPMC), 304.4 Structural members.** All structural members shall be maintained free from deterioration, and shall be capable of safely supporting the imposed dead and live loads.

ATTACHMENT #2

8. **City of Mount Dora Code of Ordinances, Section 10-21(a), International Property Maintenance Code (IPMC), 304.6 Exterior walls.** All exterior walls shall be free from holes, breaks, and loose or rotting materials; and maintained weatherproof and properly surface coated where required to prevent deterioration.
9. **City of Mount Dora Code of Ordinances, Section 10-21(a), International Property Maintenance Code (IPMC), 304.13 Window, skylight and door frames.** Every window, skylight, door and frame shall be kept in sound condition, good repair and weather tight.
10. **City of Mount Dora Code of Ordinances, Section 10-21(a), International Property Maintenance Code (IPMC), 305.1 General.** The interior of a structure and equipment therein shall be maintained in good repair, structurally sound and in a sanitary condition. Occupants shall keep that part of the structure which they occupy or control in a clean and sanitary condition.
11. **City of Mount Dora Code of Ordinances, Section 10-21(a), International Property Maintenance Code (IPMC), 307.1 Accumulation of rubbish or garbage.** All exterior property and premises, and the interior of every structure, shall be free from any accumulation of rubbish or garbage.
12. **City of Mount Dora Code of Ordinances, Section 10-21(a), International Property Maintenance Code (IPMC), 308.1 Infestation.** All structures shall be kept free from insect and rodent infestation.
13. **City of Mount Dora Code of Ordinances, Section 10-21(a), International Property Maintenance Code (IPMC), 502.1 Dwelling units.** Every dwelling unit shall contain its own bathtub or shower, lavatory, water closet and kitchen sink which shall be maintained in a sanitary, safe working condition. The lavatory shall be placed in the same room as the water closet or located in close proximity to the door leading directly into the room in which such water closet is located. A kitchen sink shall not be used as a substitute for the required lavatory.
14. **City of Mount Dora Code of Ordinances, Section 10-21(a), International Property Maintenance Code (IPMC), 704.2 Smoke alarms.** Single or multiple-station smoke alarms shall be installed and maintained in Groups R-2, R-3, R-4 and in dwellings not regulated in Group R occupancies, regardless of occupant load at all of the following locations:
 - On the ceiling or wall outside of each separate sleeping area in the immediate vicinity of bedrooms.
 - In each room used for sleeping purposes. In each story within a dwelling unit, including basements and cellars but not including crawl spaces and uninhabitable attics. In dwellings or dwelling units with split levels and without an intervening door between the adjacent levels, a smoke alarm installed on the upper level shall suffice for the adjacent lower level provided that the lower level is less than one full story below the upper level. Single or multiple-station smoke alarms shall be installed in other groups in accordance with the *Florida Fire Prevention Code*.

Said violations involve that property located at 324 East Jackson Avenue, Mount Dora, Lake County, Florida [Tax Parcel Identification #29-19-27-0700-113-00101; Alt. Key # 1665434] (Property).

ATTACHMENT #2

Respondents are hereby ordered to bring the Property into compliance with violation (5) IPMC 302.4 and violation (11) IPMC 307.1 by abating the same no later than **8:00 a.m., on the 1st day of November, 2021**. Failure to comply by the date specified herein will result in the imposition of a civil penalty in the amount of \$150.00, for each and every day thereafter that either of the violations remain.

Respondents are hereby ordered to bring the Property into compliance with the remaining aforementioned City Codes, including securing any required permits, by no later than **8:00 a.m., on the 20th day of December, 2021**. Failure to comply by the date specified herein will result in the imposition of a civil penalty in the amount of \$250.00, for each and every day thereafter that the violation remains.

The City is under no obligation; however, may abate any of the violations set forth herein, in any manner which it deems appropriate, and record an affidavit of its costs along with this Order in the official records of Lake County, Florida, and the same shall constitute a lien against the Respondents and any property owned by Respondents. In the event of abatement by the City, the daily fine imposed shall cease as of the date the violation is so abated.

RESPONDENTS MUST CONTACT THE CODE ENFORCEMENT OFFICER LISTED BELOW TO ARRANGE A DATE AND TIME FOR INSPECTION IN ORDER TO VERIFY COMPLIANCE. COMPLIANCE MUST BE VERIFIED IN PERSON AND WILL NOT BE VERIFIED UNTIL RESPONDENTS CONTACT:

Code Enforcement Department
1300 Donnelly Street
Mount Dora, Florida 32757
Phone: (352) 735-7177

A Compliance Hearing related to this matter is scheduled for:

10:00 a.m., on December 9, 2021, and shall be held to determine Respondents' compliance with this Order. This public hearing will be held at:

Mount Dora City Hall
510 N. Baker Street
Mount Dora, Florida 32757

It shall be the responsibility of the Respondents to provide an interpreter if translation is required for any City of Mount Dora Code Enforcement Magistrate proceeding.

If you are a person with a disability who needs any accommodation in order to participate in any City of Mount Dora Code Enforcement Magistrate proceeding, you are entitled, at no cost to you, to the provision of certain assistance. Please contact Alivia Rehn (Alivia.Rehn@cityofmoundora.com), at least seven (7) days before your scheduled appearance, or

ATTACHMENT #2

immediately upon receiving this notification if the time before the scheduled appearance is less than seven (7) days.

Any person wishing to appeal any decision made by the Magistrate with respect to any matter considered at such hearing will need a record of the proceeding, and for such purposes, may need to ensure that a verbatim record of the proceedings is made, which record includes the testimony and evidence upon which the appeal is to be based.

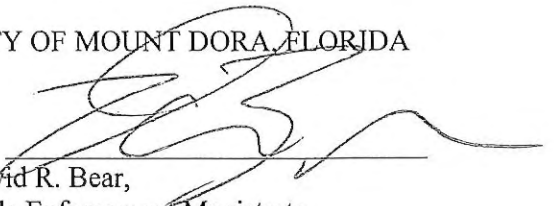
IF THE RESPONDENTS DO NOT COMPLY WITHIN THE TIME SPECIFIED, ABOVE THE FINES WILL BEGIN TO ACCRUE AND A COPY OF THIS ORDER AND AN ORDER RATIFYING THE CONTINUED VIOLATION SHALL BE RECORDED IN THE PUBLIC RECORDS OF LAKE COUNTY, FLORIDA, AND ONCE RECORDED, SHALL CONSTITUTE A LIEN AGAINST THE PROPERTY UPON WHICH THE VIOLATION EXISTS AND UPON ANY OTHER REAL AND/OR PERSONAL PROPERTY, OWNED BY RESPONDENTS, UNTIL SUCH TIME AS SAID LIEN IS SATISFIED OR EXPIRES PURSUANT TO FLORIDA LAW.

In order to fully satisfy any fine imposed in accordance with this Order, applicable recording fees will be charged.

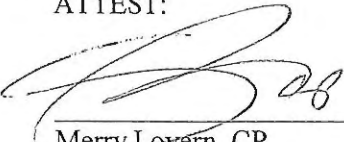
ANY FUTURE VIOLATION, OF THE SAME CODE OR ORDINANCE AS SET FORTH HEREIN, BY THE ABOVE NAMED RESPONDENTS, REGARDLESS OF THE PROPERTY LOCATION IN THE CITY'S JURISDICTION AND WHICH OCCURS WITHIN A PERIOD OF 5 YEARS FROM THE DATE HEREOF, MAY BE CHARGED AS A REPEAT VIOLATOR SUBJECT TO A PENALTY OF UP TO \$500.00 PER DAY PER VIOLATION.

DONE AND ORDERED this 21st day of October, 2021.

CITY OF MOUNT DORA, FLORIDA

By: 
David R. Bear,
Code Enforcement Magistrate

ATTEST:


Merry Lovern, CP
Certified Paralegal

Copies To:

Code Enforcement Department
Respondent Received Copy _____
Respondent Mailed Copy J

ATTACHMENT #2



ATTACHMENT #2



ATTACHMENT #2



ATTACHMENT #2



Return this Instrument to:

City of Mount Dora, Office of City Manager
510 North Baker Street
Mount Dora, Florida 32757
Tax Parcel Identification Number: 29-19-27-0700-113-00101
Alt. Key Number: 1665434

**IN AND FOR THE CITY OF MOUNT DORA,
LAKE COUNTY, FLORIDA**

CITY OF MOUNT DORA,

Petitioner,

CASE NO: 2021-0261

v.

ASBURY JOHNSON III and
CAMILA JOHNSON,

Respondents.

_____ /

ASBURY JOHNSON III and
CAMILA JOHNSON
3001 JAVENS CIRCLE #24
MOUNT DORA, FL 32757

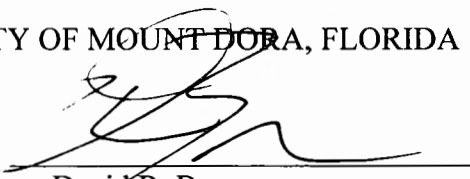
____ Respondent Present
XX Respondent Not Present
____ Represented by Counsel or Other
Name of Representative _____
Written Authorization Received _____
Relationship _____

ORDER RATIFYING NON-COMPLIANCE

THIS CAUSE having come before the undersigned Magistrate on the 10th day of February, 2022, and said Magistrate having heard testimony, accepted evidence and being otherwise fully advised in the premises hereof, finds as a matter of fact that Respondent remains in violation of its Finding of Fact/Conclusion of Law/Order Imposing Fine dated October 21, 2021, and all directives set forth therein are hereby ratified.

DONE AND ORDERED this 10th day of February, 2021.

CITY OF MOUNT DORA, FLORIDA

By: 
David R. Bear,
Code Enforcement Magistrate

ATTACHMENT #2

ATTEST:



Merry Lovern, CP
Certified Paralegal

Copies To:

Code Enforcement Department

Respondent Received Copy _____

Respondent Mailed Copy ☒ _____

324 Jackson
ATTACHMENT #2

LOWE'S HOME CENTERS, LLC

18795 US HIGHWAY 441

MT. DORA, FL 32757 (352) 385-3600

Board
up
house

- SALE -

SALES#: S2577UT1 1781507 TRANS#: 88816285 12-23-22

1147938 RSS 5/16X3-IN 1/8 100CT 46.48

49.98 DISCOUNT EACH -3.50

2132075 1/4X2-1/4 HEX TITENTURBO 25.09

26.98 DISCOUNT EACH -1.89

12231 11/32 CAT BC PINE ULX EXT 462.15

38.23 DISCOUNT EACH -2.68

13 @ 35.55

SUBTOTAL: 533.72

TOTAL TAX: 0.00

INVOICE 01346 TOTAL: 533.72

VISA: 533.72

TOTAL DISCOUNT: 40.23

VISA:XXXXXXXXXXXX0364 AMOUNT:533.72 AUTHCD:023151

CHIP REFID:257701210590 12/23/22 12:23:48

CUSTOMER CODE: builddept

APL: Visa Credit TUR: 0080008000

AID: A0000000031010 TSI: E800

STORE: 2577 TERMINAL: 01 12/23/22 12:25:12

OF ITEMS PURCHASED: 15

EXCLUDES FEES, SERVICES AND SPECIAL ORDER ITEMS



THANK YOU FOR SHOPPING LOWE'S.

FOR DETAILS ON OUR RETURN POLICY, VISIT

LOWES.COM/RETURNS

A WRITTEN COPY OF THE RETURN POLICY IS AVAILABLE

AT OUR CUSTOMER SERVICE DESK

STORE MANAGER: KRZYSZTOF ROGOWSKI

LOWE'S PRICE PROMISE

FOR MORE DETAILS, VISIT LOWES.COM/PRICEPROMISE

SHARE YOUR FEEDBACK!

ENTER FOR A CHANCE TO BE

ONE OF FIVE \$500 WINNERS DRAWN MONTHLY!

¡ENTRE EN EL SORTEO MENSUAL

PARA SER UNO DE LOS CINCO GANADORES DE \$500!

ENTER BY COMPLETING A SHORT SURVEY

WITHIN ONE WEEK AT: www.lowes.com/survey

Y O U R I D # 013467 257723 577404

NO PURCHASE NECESSARY TO ENTER OR WIN.

* VOID WHERE PROHIBITED. MUST BE 18 OR OLDER TO ENTER. *

* OFFICIAL RULES & WINNERS AT: www.lowes.com/survey *

January 2023 City Council Regular Session
STORE: 2577 TERMINAL: 01 12/23/22 12:25:12

ATTACHMENT #2

Return this Instrument to:
City of Mount Dora, Office of City Manager
510 North Baker Street
Mount Dora, Florida 32757
Tax Parcel Identification Number: 29-19-27-0050-370-00001
Alt. Key Number: 1468965

INSTRUMENT #2023124424
OR BK 6224 PG 622 - 624 (3 PGS)
DATE: 10/9/2023 3:46:15 PM
GARY J. COONEY, CLERK OF THE CIRCUIT COURT
AND COMPTROLLER, LAKE COUNTY, FLORIDA
RECORDING FEES \$27.00

IN AND FOR THE CITY OF MOUNT DORA,
LAKE COUNTY, FLORIDA

CITY OF MOUNT DORA,

Petitioner,

CASE NO: 2021-0261

v.

**ASBURY JOHNSON III & CAMILA JOHNSON
& ASBERRY JOHNSON IV**

Respondent.

AFFIDAVIT OF COSTS AND NOTICE OF ASSESSMENT OF LIEN

BEFORE ME, the undersigned, duly authorized to administer oaths and take acknowledgments, personally appeared Adam Sumner, Code Compliance Manager for City of Mount Dora, Florida, who after being duly sworn, deposes and says:

1. My name is Adam Sumner.
2. I am over eighteen (18) years of age.
3. I am the Code Compliance Manager for the City of Mount Dora, Florida.
4. I have firsthand knowledge of the facts contained in this Affidavit.
5. On October 21, 2021, the Code Compliance Magistrate for the City of Mount Dora entered a Finding of Fact/Conclusion of Law/Order Imposing Fine in the above which required the Respondent, Asbury Johnson III and Camila Johnson, to bring the property of 324 E Jackson St., Mount Dora, Florida into compliance with the City of Mount Dora Code of Ordinances, Sections 10-21 (a) 108.1.1 Unsafe Structures; Section 10-21 (a) IPMC I 08. I .2 Unsafe Equipment; Section 10-21 (a) IPMC 108.1.3 Structure unfit for human occupancy;

Page 1 of 3

ATTACHMENT #2

Section 10-21 (a) IPMC 302.1 Sanitation; Section 10-21 (a) IPMC 302.4 Weeds; Section 10-21 (a) IPMC 302.5 Rodent harborage; Section 10-21 (a) IPMC 304.4 Structural members; Section 10-21 (a) IPMC 304.6 Exterior walls; Section 10-21 IPMC 304.13 Window, skylight and door frames; Section 10-21 (a) IPMC 305.1.

General; Section 10-21 (a) IPMC 307.1 Accumulation of rubbish or garbage; Section 10-21 (a) IPMC 308.1 Infestation; Section 10-21 (a) IPMC 502.1 Dwelling units; Section 10-21 (a) IPMC 704.2 Smoke alarms. The Magistrate ordered failure to comply by the date of November 01, 2021, no later than 8:00 A.M., for violation of Section 10-21 (a) IPMC 302.4 Weeds, would result in the assessment of a civil penalty in the amount of \$150.00, for each and every day thereafter that the violation remains. The Magistrate ordered failure to comply by the date of December 20, 2021, no later than 8:00 A.M., for violation of the remaining violations. would result in the assessment of a civil penalty in the amount of \$250.00. for each and every day thereafter that the violation remains. The City of Mount Dora, FL abated the property by boarding up the residence on December 27, 2022 resulting in an abatement cost of \$533.72. Which is to be paid by the respondent.

6. As of August 14th, 2023, the Respondents, Asbury Johnson III & Camila Johnson, has not obtained the proper permits and has not come into compliance with the terms of the order referenced.

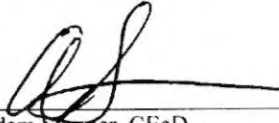
7. The City of Mount Dora does hereby assess against the Respondent, the amount of two hundred fifty dollars a day (\$250.00) and the amount of one hundred fifty dollars a day (\$150.00) until compliance is met and abatement cost of five hundred thirty three dollars and seventy two cents (\$533.72) and does hereby claim a lien, to-wit:

a. Owner(s): ASBURY JOHNSON III & CAMILA JOHNSON.

ATTACHMENT #2

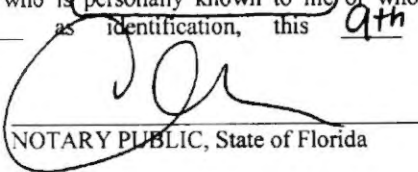
AMOUNT: \$78,467.44, plus interest and \$18.50 recording fee
OWNER(S): Palms of Mount Dora Condominium Association Inc.
LEGAL DESCRIPTION: 3891785
PARCEL ID#: 25-19-26-0200-000-00000

THIS AFFIANT FURTHER SAYETH NOT.


Adam Sumner, CECd

STATE OF FLORIDA
COUNTY OF LAKE

The foregoing instrument was acknowledged before me by means of ☒ physical presence or ☐ online notarization of Adam Sumner, who personally swore or affirmed that he is authorized to execute this Affidavit, and who is personally known to me or who produced as identification, this 9th day of October, 2023.

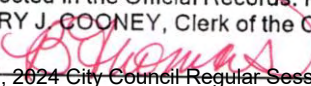

NOTARY PUBLIC, State of Florida



Page 3 of 3



I certify that the foregoing is a true and accurate copy of the document as reflected in the Official Records. Portions may be redacted as required by law.
GARY J. COONEY, Clerk of the Circuit Court and Comptroller, Lake County, Florida

By  Deputy Clerk 10/9/2023 3:43:46 PM
January 2, 2024 City Council Regular Session Agenda Packet

Page 335 of 592

ATTACHMENT #2

Return this Instrument to:
City of Mount Dora, Office of City Manager
510 North Baker Street
Mount Dora, Florida 32757
Tax Parcel Identification Number: 29-19-27-0050-370-00001
Alt. Key Number: 1468965

INSTRUMENT #2023124423
OR BK 6224 PG 619 - 621 (3 PGS)
DATE: 10/9/2023 3:43:40 PM
GARY J. COONEY, CLERK OF THE CIRCUIT COURT
AND COMPTROLLER, LAKE COUNTY, FLORIDA
RECORDING FEES \$27.00

IN AND FOR THE CITY OF MOUNT DORA,
LAKE COUNTY, FLORIDA

CITY OF MOUNT DORA,

Petitioner,

CASE NO: 2021-0261

v.

**ASBURY JOHNSON III & CAMILA JOHNSON
& ASBERRY JOHNSON IV**

Respondent.

_____ /

AFFIDAVIT OF COSTS AND NOTICE OF ASSESSMENT OF LIEN

BEFORE ME, the undersigned, duly authorized to administer oaths and take acknowledgments, personally appeared Adam Sumner, Code Compliance Manager for City of Mount Dora, Florida, who after being duly sworn, deposes and says:

1. My name is Adam Sumner.
2. I am over eighteen (18) years of age.
3. I am the Code Compliance Manager for the City of Mount Dora, Florida.
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ATTACHMENT #2

Section I 0-21 (a) IPMC 302.1 Sanitation; Section 10-21 (a) IPMC 302.4 Weeds; Section 10-21 (a) IPMC 302.5 Rodent harborage; Section 10-21 (a) IPMC 304.4 Structural members; Section 10-21 (a) IPMC 304.6 Exterior walls; Section I 0-21 IPMC 304.13 Window, skylight and door frames; Section I 0-21 (a) IPMC 305.1.

General; Section 10-21 (a) IPMC 307.1 Accumulation of rubbish or garbage; Section 10-21 (a) IPMC 308.1 Infestation; Section I 0-21 (a) IPMC 502.1 Dwelling units; Section I 0-21 (a) IPMC 704.2 Smoke alarms. The Magistrate ordered failure to comply by the date of November 01, 2021, no later than 8:00 A.M., for violation of Section 10-21 (a) IPMC 302.4 Weeds, would result in the assessment of a civil penalty in the amount of \$150.00, for each and every day thereafter that the violation remains. The Magistrate ordered failure to comply by the date of December 20, 2021, no later than 8:00 A.M., for violation of the remaining violations. would result in the assessment of a civil penalty in the amount of \$250.00. for each and every day thereafter that the violation remains. The City of Mount Dora, FL abated the property by boarding up the residence on December 27, 2022 resulting in an abatement cost of \$533.72. Which is to be paid by the respondent.

6. As of August 14th, 2023, the Respondents, Asbury Johnson III & Camila Johnson, has not obtained the proper permits and has not come into compliance with the terms of the order referenced.

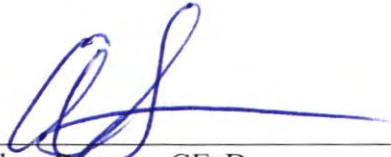
7. The City of Mount Dora does hereby assess against the Respondent, the amount of two hundred fifty dollars a day (\$250.00) and the amount of one hundred fifty dollars a day (\$150.00) until compliance is met and abatement cost of five hundred thirty three dollars and seventy two cents (\$533.72) and does hereby claim a lien, to-wit:

a. Owner(s): ASBURY JOHNSON III & CAMILA JOHNSON.

ATTACHMENT #2

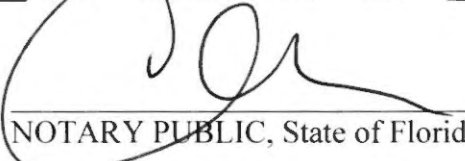
AMOUNT: \$78,467.44, plus interest and \$18.50 recording fee
OWNER(S): Palms of Mount Dora Condominium Association Inc.
LEGAL DESCRIPTION: 3891785
PARCEL ID#: 25-19-26-0200-000-00000

THIS AFFIANT FURTHER SAYETH NOT.


Adam Sumner, CEcD

STATE OF FLORIDA
COUNTY OF LAKE

The foregoing instrument was acknowledged before me by means of ☒ physical presence or [] online notarization of Adam Sumner, who personally swore or affirmed that he is authorized to execute this Affidavit, and who is personally known to me or who produced as identification, this 9th day of October, 2023.


NOTARY PUBLIC, State of Florida



ATTACHMENT #2



Nov 8, 2023 at 4:44:55 PM
324 E Jackson Ave
Mount Dora FL 32757
United States



Nov 8, 2023 at 4:44:47 PM
324 E Jackson Ave
Mount Dora FL 32757
United States

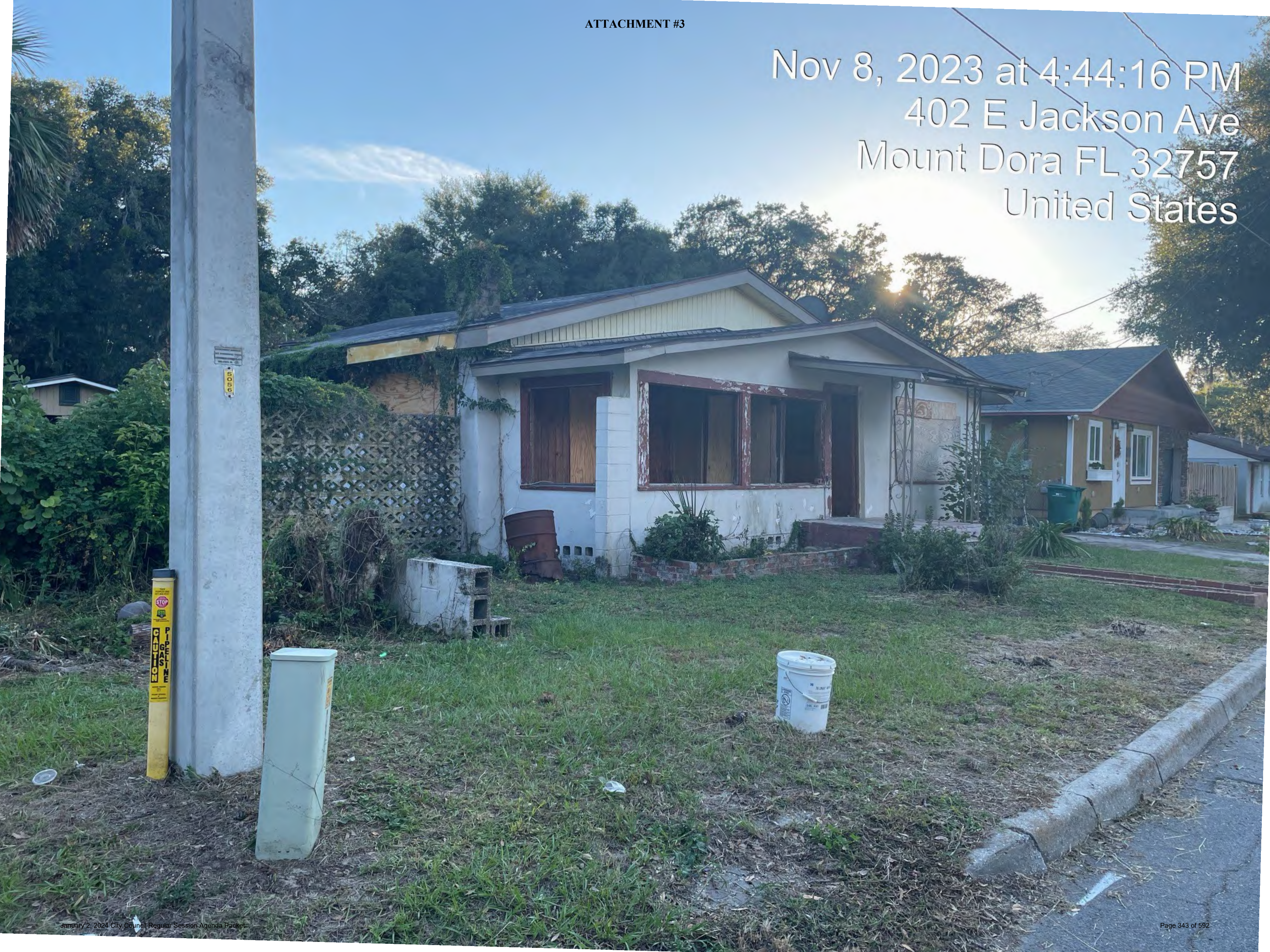
ATTACHMENT #3



Nov 8, 2023 at 4:44:27 PM
324 E Jackson Ave
Mount Dora FL 32757
United States



Nov 8, 2023 at 4:44:16 PM
402 E Jackson Ave
Mount Dora FL 32757
United States



Nov 8, 2023 at 4:44:02 PM
402 E Jackson Ave
Mount Dora FL 32757
United States



Nov 8, 2023 at 4:43:49 PM
402 E Jackson Ave
Mount Dora FL 32757
United States



Nov 8, 2023 at 4:43:37 PM
402 E Jackson Ave
Mount Dora FL 32757
United States



ATTACHMENT #4



ATTACHMENT #4





510 N. Baker St.
Mount Dora, FL 32757
352-735-7126

DATE: January 2, 2024

TO: Honorable Mayor and City Council Members

FROM: Patrick C. Comiskey, City Manager

SUBJECT: Request Issuance of a Purchase Order to Lewis Tree Service Inc for Utility Tree Trimming and Vegetation Management Services

Introduction:

This is a request for City Council to approve the issuance of a purchase order in the amount of \$350,000 to Lewis Tree Service under the master services agreement with Florida Municipal Power Agency (FMPA) related to Utility Tree Trimming and Vegetation Management Services.

Discussion:

A vegetation management program is critical to the reliability and safety of the electric system. The City Electric Utility has historically utilized a qualified contractor to perform these services, maintaining 44 miles of distribution lines, on a two-year trim cycle. This contractor focuses on clearing vegetation that could adversely affect the reliability of the City's electric distribution system while insuring National Electric Safety Code clearances. This management plan has successfully enabled the City to report a fully compliant program to the Florida Public Service Commission as part of the FL Storm Hardening Rule 25-6.03043 FAC since 2006.

The City of Mount Dora is a member of the Florida Municipal Power Agency (FMPA), a municipal electric joint action agency formed according to section 163.01, and exercises powers pursuant to section 163.01 and Chapter 361 part II, Florida Statutes, and is considered an intergovernmental cooperative. FMPA issued a competitive solicitation for Utility Tree Trimming and Vegetation management. In response, FMPA received proposals from 3 bidders with awards to ABC Professional Tree Service of Webster, Texas; Kendall Vegetation Services of Lawrenceville, GA; and Lewis Tree Service of West Henrietta, NY.

FMPA approved a Master Services Agreement on October 1, 2020, to October 1, 2025, with Lewis Tree Service Inc. FMPA addendum #1, dated October 19, 2023, added the City as a participating member to the solicitation. Lewis Tree Service Inc. is a company offering to perform these services more fully outlined in the Master Services Agreement and Schedule A. The City of Mount Dora Electric Utilities Department has reviewed the master agreement and recommends issuance of a purchase order in the amount of \$350,000 to Lewis Tree Service Inc. under the Master Services Agreement with FMPA.

Budget Impact:

The expected cost for this budget year will be \$350,000. The Electric Department will utilize Fund Balance for the additional amount needed and process change orders according to policy. A budget amendment will be forthcoming at mid-year if necessary.

Strategic Impact:

Reliability and Safety - Maintain reliable and safe electric service to City customers by pruning trees around power lines.

Recommendation:

City Council approve the issuance of a purchase order to Lewis Tree Service Inc. in the amount of \$350,000 under the master services agreement with FMPA related to Utility Tree Trimming and Vegetation Management Services.

Attachment(s):

1. Attachment #1.a_Tree-Trimming-Vegetation-Management-Bid-Award
2. Attachment #2.b_Tree-Trimming-Vegetation-Management-RFP
3. Attachment #3.d_Mount Dora Vegetation Management Specification
4. Attachment #4.c_Lewis Tree-FMPA Agreement - Full Packet (2)

Prepared by: Wayne Zimmerman, Deputy Electric Utility Director

Reviewed by: Steve Langley, Electric Utility Director
Aneta Barton, Budget Director
City Attorney, City Attorney
Jeanann Hand, City Clerk
Patrick Comiskey, City Manager

Approved - 12/19/2023

Approved - 12/21/2023

Approved - 12/27/2023

Approved - 12/27/2023

Final Approval - 12/27/2023

ATTACHMENT #1



Sharon Samuels
Member Services Programs and Procurement Administrator

MEMORANDUM

To: FMPA Members
From: Sharon Samuels 
Date: September 30, 2020
Re: Award of the Utility Tree Trimming and Vegetation Management Services
RFP# 2020-036

The members participating in the Utility Tree Trimming and Vegetation Management Services RFP have reviewed the bid submittals. These bids were received in response to the FMPA RFP# 2020-036.

FMPA received bids from ABC Professional Tree Services of Webster, TX; Kendall Vegetation Services of Lawrenceville, GA; and Lewis Tree Service of Henrietta, NY.

Pursuant to Section 29, Reserved Rights of the RFP document, the recommended award is for three (3) bidders: ABC Professional Tree Services; Kendall Vegetation Services, Inc.; and Lewis Tree Service.

These awarded bidders will extend the bid prices and terms to other FMPA Members as stated in our RFP document. This bid award is effective October 1, 2020 through October 31, 2025; at that time the award may be extended by mutual consent.

Below is the contact information for the awarded bidders:

ABC Professional Tree Serv.	Kendall Vegetation Services	Lewis Tree Service
201 Flint Ridge Rd., Ste. 201	P.O. Box 831	300 Lucius Gordon Dr.
Webster, TX 77598	Lawrenceville, GA 30046	West Henrietta, NY 14586
P: 713-644-8808	P: 770-963-6017	P: 941-662-7391

If you have any questions or concerns, please feel free to contact me.

cc: Bidders



**JOINT PURCHASE PROJECT
REQUEST FOR PROPOSALS
FOR
UTILITY TREE TRIMMING
&
VEGETATION MANAGEMENT
SERVICES**

Florida Municipal Power Agency
8553 Commodity Circle
Orlando, Florida 32819-9002
(407) 355-7767
www.fmpa.com

ATTACHMENT #2



FLORIDA MUNICIPAL POWER AGENCY

**REQUEST FOR PROPOSALS
FOR
UTILITY TREE TRIMMING AND VEGETATION MANAGEMENT SERVICES**

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Proposer Information Form	AOC- 2
Draft MSA Agreement	MSA - 1
Statement of No Proposal	SONB-1

ATTACHMENT #2

REQUEST FOR PROPOSALS

(This is not an order)

R
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R
N

Florida Municipal Power Agency
TO: 8553 Commodity Circle
Orlando, Florida 32819
Attn: Sharon Samuels

RFP FMPA 2020-036

Date Issued: August 19, 2020

Telephone: (407) 355-7767

NOTICE: Because purchases pursuant to this RFP may qualify for Federal Emergency Management Agency ("FEMA") financial assistance, this Request for Proposal and subsequent purchase orders are intended to comply with federal competitive selection and contractual requirements, including the requirements of 2 C.F.R. §§ 200.31-.326.

SEALED PROPOSALS MUST PHYSICALLY BE IN THE FLORIDA MUNICIPAL POWER AGENCY OFFICE PRIOR TO PROPOSAL OPENING AT 1:30 P.M. ON SEPTEMBER 15, 2020, WHICH WILL BE IN THE FMPA BOARD ROOM LOCATED IN THE FMPA BUILDING AT 8553 COMMODITY CIRCLE, ORLANDO, FLORIDA 32819.

- Proposals shall be submitted on the forms provided and must be manually signed.
- Proposals shall be sealed in an envelope with the proposal number, opening date, and time clearly indicated.
- Proposals received after the opening date and time may be rejected and returned unopened.
- The attached Invitation shall become part of any purchase order resulting from this Request for Proposal.

DESCRIPTION

AUGUST 2020

**Florida Municipal Power Agency
JOINT PURCHASE PROJECT**

Proposals for UTILITY TREE TRIMMING AND VEGETATION MANAGEMENT SERVICES

See attached Request for Proposals, General Conditions, Specifications, and Proposal Forms for detailed description.

It is the intent and purpose of the Florida Municipal Power Agency that this Request for Proposal promotes competitive bidding. It shall be the proposer's responsibility to advise if any language, requirements, etc. or any combination thereof, inadvertently restricts or limits the requirements stated in this Request for Proposal to a single source. Such notification must be submitted in writing and must be received by not later than ten (10) days prior to the proposal opening date.

ATTACHMENT #2

ADVERTISEMENT

Proposal For

August 2020

FLORIDA MUNICIPAL POWER AGENCY

PROPOSALS FOR UTILITY TREE TRIMMING AND VEGETATION MANAGEMENT SERVICES

REQUEST FOR PROPOSALS

FMPA 2020-036

Sealed proposals will be received by the Florida Municipal Power Agency (FMPA), 8553 Commodity Circle, Orlando, Florida 32819 until 1:30 p.m., September 15, 2020, when at that time Proposals will be opened publicly by a FMPA representative.

The proposal is for Utility Tree Trimming and Vegetation Management Services as more fully described in the Request for Proposals package.

RFP packages for this project may be obtained from FMPA at the above address, by telephone (407) 355-7767, via e-mail request to bidinfo@fmpa.com, or via Internet download at www.fmpa.com.

No proposal may be altered, withdrawn, or resubmitted after the scheduled closing time for receipt of proposals. Proposals received after the day and time stated above may not be considered.

Proposals will be accepted for Utility Tree Trimming and Vegetation Management Services from companies who have established, through demonstrated expertise and experience that they are qualified to provide the services as specified.

The Florida Municipal Power Agency reserves the right to reject any and all proposals in total or in part and to waive defects in proposals.

Jacob Williams
General Manager
Florida Municipal Power Agency

ATTACHMENT #2

FLORIDA MUNICIPAL POWER AGENCY Request for Proposals for Utility Tree Trimming and Vegetation Management Services

1. Introduction - FMPA Description

The Florida Municipal Power Agency (FMPA) was formed in 1978 for the purpose of providing a means for its members to benefit from a joint association of fellow municipally-owned utilities, including joint purchasing of services, materials, supplies, and equipment utilized in the generation, transmission, and distribution of electricity.

In July of 1994 by action of its Board of Directors FMPA created a Project for the joint purchasing of services, materials, supplies, and equipment utilized in the generation, transmission, and distribution of electricity.

Those FMPA members desiring to share in the benefits of joint purchasing of services, materials, supplies and equipment are a Participating Member of the Project.

FMPA's role, on behalf of FMPA Members is to administer the Project for the selection, bidding, and awarding of services, materials, supplies, and equipment utilized by the Project Participating Member and for the Project Participating Member to secure services, materials, supplies, and equipment through this Project, thus enjoying the benefits resulting from bulk purchasing.

2. General Description of Services Sought

FMPA is seeking to select one or more entities to provide delivery of Utility Tree Trimming and Vegetation Management Services from qualified vendors with a minimum of three-years experience working in proximity of energized 7,200, 12,470, 13,200, 13,800, and 22,860 phase distribution systems and high voltage transmission systems 69kV and 138kV.

Services shall include the performance of all vegetation management services required by Participants including initial clearing, emergency tree cutting, maintenance, chemical treatment, mowing, right of way clearing, dead/disease tree removals, tree removal and replacement, non-electric trimming, and maintenance of transmission and distribution areas. The successful bidder will provide the minimum clearance, as required by the National Electric Safety Code (NESC) and IEEE for tree limbs, vines, or brush, surrounding all communications and electrical cables on the distribution circuit and transmission towers.

The successful bidder will be required to obtain this clearance through industry standards of good workmanship procedures of trimming and/or cutting limbs, and if necessary removing trees. The successful bidder will also be required to work in locations inaccessible by trucks. Therefore, personnel should be capable of climbing trees to perform trimming and/or cutting. The crews will be required to trim trees within services territories from the Florida panhandle to Key West (from Key West to Sunshine Key-Miles Marker 0 through Mile Marker 42).

The term of this agreement shall be for five (5) years, followed by up to two (2) one-year extension periods by mutual consent. Prices as stated herein will be firm for the first three years of the agreement.

ATTACHMENT #2

3. Overview

This is a joint solicitation issued by the Florida Municipal Power Agency (FMPA) as agent to solicit and award on behalf of the following Participating Members:

Beaches Energy Services	City of Bartow
City of Bushnell	City of Clewiston
City of Green Cove Springs	City of Homestead
City of Lake Worth Beach	City of Leesburg
City of Newberry	City of Wauchula
Keys Energy Services	Town of Havana

4. Participating Members

This RFP is requesting proposals for Utility Tree Trimming and Vegetation Management Services to be provided to Participating Members. It is anticipated that municipal electrical systems other than those "Participating Members" listed in Section 3 may also wish to purchase the Utility Tree Trimming and Vegetation Management Services. Therefore, the awarded Proposer(s) is also requested to extend its quoted price to any municipal system. In that event, all of the applicable terms and conditions of this RFP shall apply. A map showing the FMPA members is included in Attachment A.

5. Purchasing Services

Subsequent to the award, the Project Participating Members named above, will through their own initiative issue purchase orders to the Contractor (s) awarded the agreement pursuant to this Request for Proposal. For those Participating Members, FMPA is acting as a "Solicitation Agent" only and shall not be held liable for any costs, or damages incurred pursuant to any agreement (purchase order) entered into by them with the successful proposer or offeror to this solicitation.

6. FMPA's Responsibility

FMPA is responsible to administer the solicitation of the bids and the subsequent recommendation for award. FMPA has sole authority to modify the specification prior to bid opening and resolve disputes arising from interpretation thereof.

7. Indemnity

After notification of award, the successful bidder shall indemnify and save harmless FMPA from and against all claims, suits, actions, damages, or causes or action arising during the terms of the resulting agreement for any personal injury, loss of life, or damage to property sustained by reason of a result of the performance of the services or delivery of goods for which the resulting agreement was entered into, or its agents, employees, invitees, and all other persons, and for and against any orders, judgements, or decrees, which may be entered thereto, and from and against all costs, attorney's fees, expenses and liabilities incurred in or by reason the defense of any such claim, suit or action, and the investigation therefor.

Nothing in the award, resulting agreement, contract or Purchase Order shall be deemed to affect the rights, privileges and immunities of FMPA as set forth in Florida Statute 768.28.

ATTACHMENT #2

The successful bidder(s) covenants and agrees to indemnify and save harmless FMPA and to defend from all cost, expenses, damages, attorney's fees, injury or loss to which FMPA may be subjected by any person, firm, corporation, or organization by reason of any wrongdoing, misconduct, want, or need of care or skill, negligence or default or breach of contract, guaranty, or warranty, by the successful bidder(s), his employees, his agents or assigns.

8. Notice to Proposers

Sealed proposal packages will be received until 1:30 P.M. EST on September 15, 2020 ("Proposal Due Date") at the offices of Florida Municipal Power Agency. Each proposer is required to submit a Proposer Information Form (included in this RFP package), other forms included in this package as appropriate, and all other information necessary to allow a complete evaluation of the proposal. Registered proposers will be notified through the issue of RFP addenda of any change in the Proposal Due Date or other necessary revision to information contained in this RFP. FMPA reserves the right to reject all proposals received after the Proposal Due Date.

One original and one (1) copy of the proposal response package should be sealed and delivered to the following address:

Ms. Sharon Samuels
Member Services Programs & Procurement Administrator
Florida Municipal Power Agency
8553 Commodity Circle
Orlando, Florida 32819

Clearly legible on the outside of the sealed envelope shall be " UTILITY TREE TRIMMING AND VEGETATION MANAGEMENT SERVICES, FMPA RFP 2020-036".

9. Duration of Offer

Proposals submitted in response to this RFP are irrevocable for 90 days. This period may be extended at FMPA's request only by written agreement of the proposer. The content of this RFP and the proposal of the successful proposer will be included by reference in any resulting contract.

10. Right of Rejection

This RFP is not an offer establishing any contractual rights. This solicitation is solely an invitation to submit proposals.

FMPA reserves the right to:

- Reject any and all proposals received in response to this RFP;
- Waive any requirement in this RFP;
- Not disclose the reason for rejecting a proposal;
- Not select the proposal with the lowest price; and
- Seek and reflect clarifications to proposals.

11. Performance Bond/Surety

Neither a bid nor a performance bond or surety is required pursuant to this Request for Proposal.

12. Budgetary Constraints

The Florida Municipal Power Agency and the Participating Members reserve the right to reduce or increase the quantity, retract any item from the bid, or upon notification, terminate entire agreement without any obligations or penalty based upon availability of funds.

13. Interpretations and Addenda

All questions regarding interpretation of this RFP, technical or otherwise, must be submitted in writing to the following:

By Fax: Ms. Sharon Samuels
(407) 355 - 5796

By Mail or Courier: Ms. Sharon Samuels
Florida Municipal Power Agency
8553 Commodity Circle
Orlando, Florida 32819

By E Mail: *sharon.samuels@fmpa.com*

Only written responses provided by FMPA to proposers' questions will be considered official. A verbal response by FMPA will not be considered an official response. Written responses to questions and requests for interpretations will be provided to all potential proposers. Copies of all addenda issued in connection with this RFP will be sent to all potential proposers.

14. Errors, Modifications or Withdrawal of Proposal

Each proposer should carefully review the information provided in the RFP prior to submitting a response. The RFP contains instructions which must be followed by all proposers. Modifications to proposals already received by FMPA will only be accepted prior to the Proposal Due Date. Proposals may be withdrawn by giving written notice to FMPA prior to the Proposal Due Date.

15. Proprietary Confidential Business Information

All proposals shall become property of FMPA. FMPA will not disclose to third parties any information that is clearly labeled "Proprietary Confidential Business Information" in a proposal unless, in the opinion of counsel for FMPA, such disclosures are required by law or by order of the court or government agency having appropriate jurisdiction. Each page of Proprietary Confidential Business Information must be clearly labeled "PROPRIETARY CONFIDENTIAL BUSINESS INFORMATION" at the top of the page. FMPA reserves the right to disclose information contained in proposals to its consultant(s) for the sole purpose of assisting in the proposal evaluation process. FMPA will require the consultant(s) to maintain the confidentiality of the document.

16. Default and Damages Provisions

FMPA will negotiate standard terms and conditions for default and damages with the awarded proposer(s). All proposers are requested to include proposed default and damages provisions in their proposals. However, individual Participating Members may choose the standard terms and conditions, or negotiate different terms and conditions with the awarded proposer(s), depending on local requirements.

17. Public Entity Crimes Statement

Pursuant to Section 287.133(2)(a), FLORIDA STATUTES, all proposers should be aware of the following:

"A person or affiliate who has been placed on the convicted vendor list following a conviction for a public entity crime may not submit a bid on a contract to provide any goods or services to a public entity, may not submit a bid on a contract with a public entity for the construction or repair of a public building or public work, may not submit bids on leases of real property to a public entity, may not be awarded or perform work as a contractor, supplier, subcontractor, or consultant under a contract with any public entity, and may not transact business with any public entity in excess of the threshold amount provided in Section 287.017, for CATEGORY TWO for a period of 36 months from the date of being placed on the convicted vendor list."

18. Collusion

By offering a submission pursuant to this RFP, the proposer certifies the proposer has not divulged, discussed, or compared his proposal with other proposers and has not colluded with any other proposer or parties to this proposal whatsoever. Also, the proposer certifies, and in the case of a joint proposal, each party thereto certifies, as to his own organization, that in connection with this proposal:

- (1) Any prices and/or cost data submitted have been arrived at independently, without consultation, communication, or agreement for the purpose of restricting competition, as to any matter relating to such prices and or cost data, with any other proposer or with any competitor
- (2) Any prices and/or cost data quoted for this proposal have not knowingly been disclosed by the proposer and will not knowingly be disclosed by the proposer prior to the scheduled opening directly or indirectly to any other proposer or to any competitor
- (3) No attempt has been made or will be made by the proposer to induce any other person or firm to submit or not to submit a proposal for the purpose of restricting competition
- (4) The only person or persons interested in this proposal, principal or principals is/are named therein and that no person other than therein mentioned has any interest in this proposal or in the contract to be entered into and

ATTACHMENT #2

- (5) No person or agency has been employed or retained to solicit or secure this contract upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee excepting bona fide employees or established commercial agencies maintained by the Proposer for the purpose of doing business.

19. Drug Free Workplace

A Drug-Free Workplace Statement must be completed, signed, and returned prior to award of proposal. This form will be used whenever two or more proposals that are identical with respect to price, quality, delivery, and service are received; a proposal received from a business that certifies that it has implemented a drug-free workplace program shall be given preference in the award process.

20. Subcontracted Services

Proposal should indicate which, if any, of the services to be provided would be subcontracted by the proposer to independent contractors.

21. Pre-Proposal Preparation

This request for proposal does not commit FMPA or Participating Members to pay any cost incurred in the preparation and submission of the proposal or to pay any other costs incurred prior to award.

22. Award

The Florida Municipal Power Agency and the Participating Members reserve the right to make a single or multiple awards for all proposal items, or to make separate awards for a single proposal item or any combination of such items. However, it is our preference to award to a single bidder; proposals will be evaluated on this premise.

OTHER BASIS FOR AWARD

Other factors that will be considered besides the lowest price are:

- Quality of workmanship as represented by references
- Relevant Experience
- Qualified Personnel
- Capabilities to perform to the contractual requirements.
- Capabilities to perform technical requirements
- Willingness to adhere to FMPA Terms and Conditions

Exceptions to the bid may be considered if determined minor in nature and acceptable to FMPA's application. All exceptions shall be noted on the attached "Proposer Information" form.

23. Definitions

The words and terms defined in this document shall have the following meanings as used throughout.

ACCEPTANCE – Written acknowledgement by the Participating Member’s authorized representative that the Work has been completed in a manner consistent with the terms, conditions and specifications of a Participant Contract or Purchase Order.

CONTRACTOR – The business entity (and its affiliates and authorized assigns), which has been awarded by FMPA or executed a contract with a Participating Member shall include any and all subcontractors, affiliates and authorized assigns that provide or perform any or all of the Work. This entity may also be referred to as the Contractor, successful bidder, or successful proposer.

PARTICIPATING CONTRACT – The aggregation of all documents that constitute the binding agreement between the Contractor and a Participating Member. The Participant Contract may include but shall not be limited to The Award or Agreements that result from this solicitation, Participant Blanket Orders, Participant Purchase Orders, Order Releases, and all attachment agreements.

PARTICIPATING MEMBER – A FMPA Member engaged in the specific procurement activity specified in the Request for Proposal, Invitation to Bid, Award, or agreement. The actual Participating Member may change over the term of the Award and new Participants may be added or removed. The terms Participating Member and Participants may be used interchangeable throughout this document.

PURCHASE ORDER (PO) – A Work authorization, issued by a Participating Member, which is issued subject to the terms and conditions of the Award or Agreement and a Participant Contract. The term “Purchase Order” shall also include “blanket order releases” and any other ordering methodology agreed to in writing by a Participant and Contractor.

WORK – Labor, materials, supplies, equipment, goods, and services including any related documentation, software, reports, testing, transport, administration, management, tools and any and all other requirements to be furnished or performed by Contractor under this Agreement and/or a Participant Contract together with all other additional necessities that are not specifically recited in this Agreement or Participant Contract but which could be reasonably inferred as necessary to complete all obligations and fully satisfy the intent of this Agreement and/or a Participant Contract

24. Entire Contract

These General Terms and Conditions, the Master Agreement between FMPA and the selected Contractor(s), and the Participating Member Purchase Order (PO) for which they are being provided (including attachments thereto) constitute the entire agreement between Participating Member and the Contractor.

25. Acceptance of Services

Services shall be subject to Participating Member's inspection at any time. Participating Member may reject Services within a reasonable time after completed, if such Services do not comply with the requirements of the Purchase Order or (if provided by Participating Member) the specifications for the Services. The making or failure to make any inspection of, or payment for or acceptance of Services shall in no way impair Participating Member's right to reject or revoke its acceptance of nonconforming Services, or to avail itself of any other remedies to which Participating Member may be entitled, notwithstanding Participating Member's knowledge of the nonconformity, its substantiality or ease of discovery.

Final acceptance of the Services and Work Product for purposes of the Purchase Order shall be the date upon which Participating Member confirms that all Services and Work Product have been completed in accordance with the terms of the Purchase Order ("Final Acceptance").

26. Term of Agreement

The term of the bid award shall be a five-year period from the date of award, and the initial five-year term shall be followed by up to two (2) one-year extension periods by mutual agreement between the Participating Member(s) and the Successful Bidder(s). Any and all extensions shall be executed in writing by both parties. The extensions shall be a continuance of the same terms, conditions and principles of the original award, unless changes are mutually agreed upon in writing and become part of the extended Award or an amendment to the Bid Award.

Participating Members' decision to renew will be based on the performance of the Successful Bidder(s) and current market conditions at that time. At the end of the initial term and each renewal term, if any, Participating Member(s) will evaluate prices as well as other performance measures. Should any Bidder(s) choose not to renew their portion of the bid award, the project Participating Member reserves the right to terminate the Award with that supplier(s) and re-advertise or select a second supplier.

Price Adjustments - Prices will remain firm for an initial 3-year term. Pricing updates are to be submitted to FMPA and Participating Members annually for consideration and approval for subsequent years; see Escalation/De-escalation section below. Participating Member(s), in general, expects to see a decline in total cost in renewals as renewal periods incur no startup costs, the Successful Bidder(s) should be already familiar with the Work, and the Successful Bidder(s) shall have had the opportunity to engage in process and performance improvement actions with members related to the Work.

ESCALATION/DE-ESCALATION

Bid prices shall remain firm for a period of three years from the date of award. Each subsequent year and at the time the option to renew is to be exercised, the bid prices may be changed for the following reasons:

- 1) Manufacturer's production cost may be justification for price change; however, this shall not be construed in any way to increase vendor's margin of profit.
- 2) Approved (Florida P.S.C.) freight rate changes may change the total bid prices.

ATTACHMENT #2

- 3) Florida Department of Transportation monthly index shall be recognized and approved, when applicable.
- 4) All written requests for price increases must include a back-up documentation as to the nature of the increase and shall be submitted to FMPA at least 30 days prior to renewal of contract. Approval of each request shall be by written confirmation from FMPA. If FMPA should consider said increase unwarranted or unreasonable, FMPA reserves the right to terminate the contract with the vendor and re-advertise or select a second supplier. Any price decreases at the provider and/or manufacturer's level shall be reflected in an immediate reduction of the bid prices and the vendor shall notify FMPA and the Participating Member(s) of said decrease.

27. Responsibilities

Bidder Responsibility

Bidders are instructed to carefully read and comply with all requirements as specified in the Terms and Conditions, Technical Specifications, and Bid Forms.

The Awarded Bidder shall:

- At its expense, obtain all required licenses and permits for operating a business in the state of Florida as well as any necessary surrounding counties.
- At its expense, obtain all necessary licenses and permits as described in these specifications. Contract employees requiring licensing by City, County or State Codes, shall not be allowed to work until said licenses are obtained.
- The Awarded Bidder shall obtain, at its expense, permits or agreements from the proper governmental entities or the state of Florida to execute work.
- Provide proof of Insurance
- Adhere to FMPA's Terms and Conditions, Technical Specifications, and Bid Forms
- Ensure that Bidder and any subcontractor(s) adhere to these terms and FEMA requirements (Section 47-57), if Bidder Work falls into FEMA eligible work.

Additional Awarded Bidder Responsibilities:

- Bidder shall be responsible for all loss, damage, vandalism, theft, etc. for all equipment, tools, materials, etc. left on the job site.
- At completion of demobilization, Contractor shall remove all materials, waste, demolition debris, excess materials, temporary installation, etc. that have not been specifically turned over and accepted by participating utility.
- Shall be responsible for any and all costs for cleanup of oil or gasoline spills which result from his equipment or from any work performed as part of this contract.
- Shall bear full responsibility for the transportation, use and disposal of any hazardous or toxic substance under the Bidder's or, if any, subcontractor's control during the performance of the Work. Bidder and Subcontractors shall comply with all federal, state, and local environmental permits, licenses, rules and regulations. Contractor shall provide documentation showing proper disposal of hazardous or toxic substances.
- Permit violations or environmental damage caused by the Bidder or bidder's subcontractor shall be mitigated or repaired by the Bidder, at the Bidder's expense, to the satisfaction of the governing authority citing such damage.

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- Bidder shall assume total responsibility of materials, delivery to/from job site, installation, etc.
- Bidder is to provide all required Safety and Traffic Control equipment as required by FDOT, city and county MOT. Personnel are required to be trained in MOT as required. Bidder is to provide copies of certification of MOT training.
- Bidder shall bear sole responsibility for the safety and adequacy of its materials, working force, and equipment used during the performance of the Work.
- It is the responsibility of the Bidder to examine the site to determine the nature and location of the Work and geological and physical conditions. The Bidder shall carefully examine any drawings, specifications, and other documents and data pertaining to the Work and be familiar therewith. The Awarded Bidder shall not, after acceptance and award of bid, make any claims alleging incorrectly assumed conditions, nor claim misunderstanding with regard to the nature, conditions, or character of the Work to be done under this RFP.
- The Awarded Bidder, shall notify Participating Member(s) of any errors, omissions, or discrepancies which the Awarded Bidder may discover in specifications.

Participating Member(s) Responsibility

The Members will be responsible for the following requirements:

- 1. Provide utility service area information.
- 2. Designate utility personnel to serve as key point of contact.
- 3. Coordinate the start time schedule with the Bidder.
- 4. Make work assignments to the Bidder as needed to assure an even flow of work and compliance with the Member's trimming methods selected (Methods may be changed for each work assignment);
- 5. Provide access to the assigned clearing and maintenance sites as needed by the Contractor;
- 6. Monitor the Work and progress by the Contractor;
- 7. Member may negotiate, on an individual basis, the terms of an Emergency Response Plan agreeable to both the Member and the Contractor.

28. Honoring Prices

Bidder warrants, by virtue of bidding, that any orders placed within the specified period shall be honored at the prices, terms, and conditions quoted.

29. Reserved Rights

FMPA reserves the right to: 1) reject any and all bids or parts of bids, to waive irregularities and technicalities and to request re-bids; 2) recommend the award based on criteria other than price; 3) recommend the award of multiple suppliers; 4) recommend the award that FMPA deems will best serve its Members interests; and, 5) recommend award of the contract according to one of the following:

- a) On a total order basis
- b) On a city by city basis
- c) On a by zone basis
- d) On a service type basis

ATTACHMENT #2

FMPA also reserves the right to accept all or any part of the bids and to increase or decrease quantities to meet additional or reduced requirements of FMPA Participating Members. Any sole response received may or may not be rejected by FMPA depending on available competition and timely needs of FMPA Participating Members.

To be responsive, a bidder shall submit a bid, which conforms in all material respects to the requirements set forth in the RFP. To be a responsible bidder, the bidder shall have the capability in all respects to perform fully to contract requirements, and the tenacity, perseverance, experience, integrity, reliability, capacity, facilities, equipment, and credit which will assure good faith performance.

FMPA reserves the right to make such investigation as it deems necessary to make this determination. Such information may include but shall not be limited to: current financial statement, verification of availability of equipment and personnel, and past performance records.

30. Quantities and Usage

The participating utilities listed foresee a projected need of this service and have provided MINIMUM ESTIMATED REQUIREMENTS; therefore, the purchase of the services are not guaranteed. Quantities and/or projected need of this service are made in good faith and are based on projected usage, but it is specifically understood and agreed that supplier shall not have any claim against the participating member(s) for quantities or usage less than the estimated amounts; and, participating member(s) shall purchase their requirements from the contract awardee(s) only unless awardee is unable to meet all the terms and conditions specified (including delivery) or a bona fide condition of emergency exists.

31. Down Time

Delays (down time) caused by the Participating Member shall be paid for on an labor/equipment/material basis, Only the inactive labor and equipment already assigned to perform Units or Work affected by the delay will be paid.

32. Suspension of Work

Participating Member(s) may suspend the Work under the Award or any portion thereof at anytime. Participating Member(s) may at any time reduce Crews, Equipment, and Staffing.

33. Liquidated Damages

If Awarded Bidder fails to complete specified Work on or before the dates specified by a Participating Member, in a particular Participant Contract or Purchase Order, Awarded Bidder shall pay Participant the amounts listed below for each and every calendar day, including Sundays and holidays (as specified by the Participating Member), starting on the day following the date specified by Participating Member, until the date the Work is completed and Accepted by the Participating Member.

<u>Activity</u>	<u>Amount</u>
a) Delivery of service	\$1,000.00
b) Other	\$100.00

ATTACHMENT #2

Awarded Bidder understands and agrees that said daily sum is to be paid not as a penalty but as compensation to the Participating Member for fixed and reasonable liquidated damages due to losses that Participating Member will suffer because of such default, whether through increased administrative and engineering cost, interference with Participating Member's normal operation, other tangible and intangible costs, or otherwise, which costs will be impossible or impractical to measure or ascertain with any reasonable specificity.

Liquidated damages may, at Participating Member's sole discretion, be deducted from any monies held by Participating Member that are otherwise payable to Awarded Bidder.

Awarded Bidder's payment of liquidated damages shall in no way relieve the Awarded Bidder of any other obligations under this agreement, a Participant Contract or Purchase Order.

34. Bid Exceptions/Deviations to Specifications

All deviations from the specifications must be noted in detail by the bidder, in writing, at the time of submittal of formal bid. The absence of a written list of specification deviations at the time of submittal of the bid will hold the bidder strictly accountable to FMPA specifications as written. Any deviation from the specifications as written not previously submitted, as required by the above, will be grounds for rejection of the material and/or equipment when delivered.

For purpose of bid evaluation, bidders must indicate any and all variance to requirements, terms, and conditions as stated in this document no matter how slight. If variations are not stated on the Affidavit of Compliance form attached herein, it shall be construed that the bid fully complies with the requirements, terms, and conditions.

The contract resulting from this solicitation will be awarded to that responsible offeror whose offer, conforming to the invitation is determined most advantageous to the Project Participating Members, price, delivery and other factors considered. The offeror's proposal shall be in the form prescribed by this invitation and shall contain a response to each of the areas identified, which affects the evaluation factors for award.

35. Insurance Requirements

Before starting and until Acceptance of Work by Participating Member, and without further limiting Supplier's liability under this Agreement or a Participant contract, the Supplier shall procure and maintain, at its sole expense, insurance of the types and in the amounts stated below:

Schedule	Amount
<u>Workers Compensation</u> Statutory Coverage Employers's liability including appropriate Federal Acts	Statutory Limits \$500,000 each occurrence
<u>Commercial General Liability</u> Premises, Operations Products Completed, Operations Contractual Liability Independent Suppliers	\$2,000,000 each occurrence \$4,000,000 aggregate – bodily injury and property damage, combined single limit
<u>Automobile/Vehicle Liability</u> All vehicles – Owned, non-owned, hired	\$1,000,000 each occurrence, combined single limit
<u>Excess/Umbrella Liability</u>	\$2,000,000 each occurrence and annual aggregate

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Supplier's Commercial General Liability policy shall remain in effect for at least two years after all work is complete.

Supplier shall specify Participating Members as additional insureds for all coverage except Worker's Compensation and Employer's Liability. Such insurance shall be primary to any and all other insurance or self-insurance maintained by Participating Members.

The Supplier shall require their insurance carrier to waive all rights of subrogation against the Participating Member, their employees, directors and officers, where and to the extent permissible by law except to the extent the loss is caused by the negligence, gross negligence or willful misconduct of the Participating Member, or any indemnitee.

All deductibles for insurance specified herein shall be paid by supplier.

All Subcontractors performing Work pursuant to this bid shall procure the insurance required under this bid during the life of the subcontract. The subcontractor insurance may be provided through separate coverage or by endorsement under insurance provided by supplier. Supplier shall submit Subcontractor's certificates of insurance to Participating Member prior to allowing Subcontractor to perform Work at any site or Work Area.

Additional Insured - All insurance coverages furnished under this contract, with the exception of workers compensation and employer's liability shall include the Participating Member as an additional insured with respect to the activities of the Contractor.

Contractor shall furnish Participating Member with certificates of insurance as evidence that the policies required under the Purchase Order is in full force and effect.

BIDDER'S ENVIRONMENTAL IMPAIRMENT RESPONSIBILITY

A. The Bidder acknowledges that the performance of this contract is, or may be, subject to Federal, State, and Local laws and regulations enacted for the purpose of protecting, preserving, or restoring the environment. The Bidder shall, at his sole cost, will be responsible for full compliance with any such laws or regulations.

B. The Bidder's performance under this contract shall include, but not be limited to:

1. Performance in a manner to minimize disturbance of or damage to the environment.
2. To the extent caused by the performance of this contract by or on behalf of the Bidder, the clean-up, repair or restoration of the environment to the extent required by any Federal, State, or Local laws or regulations.

C. The Bidder shall be responsible for any fines, penalties, damage, or assessments made against the Bidder or Participating Members resulting from the performance of this contract by or on behalf of the Bidder.

D. The Bidder's obligation under paragraph B and C above shall survive the contract and shall not be limited in any manner by acceptances of final payments.

36. Services Warranties

Warranty of Services

Contractor warrants that the Services performed hereunder will reflect competent professional knowledge and judgment. If Participating Members gives Contractor notice within a reasonable period after the Services are completed that any Services are defective Contractor shall re-perform such nonconforming Services.

Remedy

If Contractor breaches the warranty of care, Contractor shall upon Notice from Participating Member and without additional compensation, correct or revise any errors or deficiencies in the Work Products, and other Services.

37. Payment of Invoices

Payment of each Contractor invoice by Participating Member shall be made within thirty (30) Days after the date of receipt of Contractor's invoice and verification of compliance of the Services with the terms of the Specifications of the Bid Package. Participating Member reserves the right to withhold payment for any non-conforming Services provided by Contractor.

38. Termination for Default

Any failure by Contractor to perform or comply with the terms and conditions of the Purchase Order which continues for ten (10) calendar days after written notice from Participating Member to Contractor demanding that such failure to perform be cured, shall be deemed an event of default by Contractor. Upon the occurrence of any such event of default, Participating Member may terminate the Purchase Order and pursue any remedies available at law or in equity.

39. Termination for Participating Member's Convenience

Participating Member shall have the right in its sole discretion to terminate by written notice, in whole or in part, the Purchase Order for its convenience. Participating Member shall pay Contractor for any Services performed under the Specifications of the Bid Package prior to the termination date.

40. Licenses/Compliance with Laws

Contractor shall be responsible for obtaining and maintaining any licenses, permits, and/or other authorizations of any kind required for the performance of the Services. Contractor shall pay all costs of such licenses, permits and authorizations and all costs and expenses incurred in obtaining and maintaining them. The Contractor shall comply with the standards of the NESC and OSHA as well as all federal, state and local laws, and rules and regulations that are applicable to the performance of the services requested by Participating Member.

41. Variance with Applicable Law

If the Bidder observes that the specifications are at variance with any applicable law, ordinance, rule or regulation, he shall promptly notify FMPA in writing and any necessary changes shall be made. If the Vendor performs any work contrary to such law, ordinance, rules and regulations, and does not comply with the procedure above, he shall bear all cost incident to such violation.

42. Hazardous Materials of Contractor

Any Hazardous Materials used by Contractor in the performance of the Services shall be packaged, shipped, handled, labeled and disposed of by Contractor in a manner that complies with all federal, state and local laws or regulations applicable to Hazardous Materials. No Hazardous Materials shall be stored by Contractor at the Participating Member's Facility before, during or after the performance of Services hereunder. Contractor shall, at its expense, remove, transport and dispose of all Hazardous Materials (i) brought by Contractor to the Facility or (ii) disturbed by Contractor's performance of Services or created by Contractor's use, handling or combination of non-hazardous materials brought by Contractor to the Facility during the performance of Services. For purposes of the Purchase Order, the term "Hazardous Materials" shall mean any substance which by law requires special handling, containment or disposal, including without limitation "hazardous substances" as defined in the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended (42 USC Sections 9601, et seq.), the Hazardous Materials Transportation Act, as amended (49 USC Sections 5101, et seq.), "hazardous wastes" as defined in the Resource Conservation and Recovery Act, as amended (42 USC Sections 9601, et seq.), "toxic substances" as defined in the Toxic Substance Control Act as amended (15 USC Section 2601 et seq.), as amended and in the regulations adopted, published, and promulgated pursuant thereto. Contractor shall be responsible for obtaining and maintaining any licenses, permits, and/or other authorizations of any kind required for the performance of the Services. Contractor shall pay all costs of such licenses, permits and authorizations and all costs and expenses incurred in obtaining and maintaining them. The Contractor shall comply with all federal, state and local laws, and rules and regulations that are applicable to the performance of the services requested by Participating Member.

43. Safety and Protection

Contractor shall be solely responsible for initiating, maintaining and supervising all safety precautions and programs in connection with work under this RFP. Contractor shall take all necessary precautions for the safety of, and shall provide the necessary protection to prevent damage, injury or loss to:

44. Control of Work and Subcontractors

Contractor shall be solely responsible for all construction means, methods, techniques, sequences, procedures, and safety programs in connection with the performance of the Work. In addition, Contractor shall be solely responsible for the engagement and management of any subcontractors used to perform any portion of the Work.

45. Manufacturers

FMPA will accept bids for products manufactured by the "Approved Manufacturers" and items that are "Or Equal" to the items listed in the Technical Specification. Items bid must meet or exceed the technical and performance standards of the approved items. Bids submitted for products not approved or equal to approved manufactured item will be rejected.

46. Minority Business Utilization

Bidders are encouraged to utilize certified and qualified minority and women-owned (M/WBE) firms as subcontractors/suppliers where performance of the Work will not be adversely affected and such firms are competitive in price and product/service quality. Bidder shall provide report to the Participating Member(s) in bid submittal and thereafter, which details product/service is provided by qualified M/WBE firms.

47. FEMA Reimbursement

This is an acknowledgement that Federal Emergency Management Agency ("FEMA") financial assistance may be used to fund this agreement. Contractor will comply with all applicable federal law, regulations, executive orders, FEMA policies, procedures, and directives. However, the Federal Government is not a party to this contract and is not subject to any obligations or liabilities to FMPA, Contractor, or any other party pertaining to any matter resulting from the contract. Contractor acknowledges that 31 U.S.C. Chap. 38 (Administrative Remedies for False Claims and Statements) applies to the Contractor's actions pertaining to this contract.

48. Remedies

Unless otherwise provided in this contract, all claims, counter-claims, disputes and other matters in question between the local government and the contractor, arising out of or relating to this contract, or the breach of it, will be decided by arbitration, if the parties mutually agree, or in a Florida court of competent jurisdiction located in Leon County, Florida.

49. Equal Employment Opportunity

During the performance of this contract, Contractor agrees as follows:

(a) Contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. Contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, or national origin. Such action shall include, but not be limited to the following: Employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause.

(b) Contractor will, in all solicitations or advertisements for employees placed by or on behalf of Contractor, state that all qualified applicants will receive considerations for employment without regard to race, color, religion, sex, or national origin.

(c) Contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice to be provided advising the said labor union or workers' representatives of Contractor's commitments under this section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

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(d) Contractor will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.

(e) Contractor will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the administering agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

(f) In the event of Contractor's noncompliance with the nondiscrimination clauses of this contract or with any of the said rules, regulations, or orders, this contract may be canceled, terminated, or suspended in whole or in part and Contractor may be declared ineligible for further Government contracts or federally assisted construction contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions as may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

(g) Contractor will include the portion of the sentence immediately preceding paragraph (a) and the provisions of paragraphs (a) through (g) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. Contractor will take such action with respect to any subcontract or purchase order as the administering agency may direct as a means of enforcing such provisions, including sanctions for noncompliance: Provided, however, That in the event a contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the administering agency Contractor may request the United States to enter into such litigation to protect the interests of the United States.

50. Contract Hours and Safety Standards Act

(1) Overtime requirements. No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.

(2) Violation; liability for unpaid wages; liquidated damages. In the event of any violation of the clause set forth in paragraph (1) of this section the contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (1) of this section, in the sum of \$10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (1) of this section.

ATTACHMENT #2

(3) Withholding for unpaid wages and liquidated damages. The (write in the name of the Federal agency or the loan or grant recipient) shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the contractor or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (2) of this section.

(4) Subcontracts. The contractor or subcontractor shall insert in any subcontracts the clauses set forth in paragraph (1) through (4) of this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs (1) through (4) of this section.”

51. Clean Air Act

(a) Contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. § 7401 et seq.

(b) Contractor agrees to report each violation to FMPA and understands and agrees that FMPA will, in turn, report each violation as required to assure notification to the Florida Department of Environmental Protection, FEMA, and the appropriate Environmental Protection Agency Regional Office.

(c) Contractor agrees to include these requirements in each subcontract exceeding \$100,000 financed in whole or in part with Federal assistance provided by FEMA.

52. Federal Water Pollution Control Act

(a) Contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251 et seq.

(b) Contractor agrees to report each violation to FMPA and understands and agrees that FMPA will, in turn, report each violation as required to assure notification to the Florida Department of Environmental Protection, FEMA, and the appropriate Environmental Protection Agency Regional Office.

(c) Contractor agrees to include these requirements in each subcontract exceeding \$100,000 financed in whole or in part with Federal assistance provided by FEMA.

53. Access to Records

(a) Contractor agrees to provide FMPA, the FEMA Administrator, the Comptroller General of the United States, or any of their authorized representatives access to any books, documents, papers, and records of Contractor which are directly pertinent to this contract for the purposes of making audits, examinations, excerpts, and transcriptions.

ATTACHMENT #2

(b) Contractor agrees to permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed.

(c) Contractor agrees to provide the FEMA Administrator or his authorized representatives access to construction or other work sites pertaining to the work being completed under the contract.

54. Suspension and Debarment

(a) This contract is a covered transaction for purposes of 2 C.F.R. pt. 180 and 2 C.F.R. pt. 3000. As such the contractor is required to verify that none of the contractor, its principals (defined at 2 C.F.R. § 180.995), or its affiliates (defined at 2 C.F.R. § 180.905) are excluded (defined at 2 C.F.R. § 180.940) or disqualified (defined at 2 C.F.R. § 180.935).

(b) The contractor must comply with 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C and must include a requirement to comply with these regulations in any lower tier covered transaction it enters into.

(c) This certification is a material representation of fact relied upon by (_____). If it is later determined that the contractor did not comply with 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C, in addition to remedies available to (name of state agency serving as recipient and name of subrecipient), the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment.

(d) The bidder or proposer agrees to comply with the requirements of 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C while this offer is valid and throughout the period of any contract that may arise from this offer. The bidder or proposer further agrees to include a provision requiring such compliance in its lower tier covered transactions.

55. Byrd Anti-Lobbying Amendment

Contractors who apply or bid for an award of \$100,000 or more shall file the required certification. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant, or any other award covered by 31 U.S.C. § 1352. Each tier shall also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the recipient.

56. Procurement of Recovered Materials

(a) In the performance of this contract, the Contractor shall make maximum use of products containing recovered materials that are EPA- designated items unless the product cannot be acquired—

- (i) Competitively within a timeframe providing for compliance with the contract performance schedule;
- (ii) Meeting contract performance requirements; or
- (iii) At a reasonable price.

(b) Information about this requirement, along with the list of EPA-designate items, is available at EPA's Comprehensive Procurement Guidelines web site, <https://www.epa.gov/smm/comprehensive-procurement-guideline-cpg-program>.

57. DHS Seal, Logo, and Flags

The contractor shall not use the DHS seal(s), logos, crests, or reproductions of flags or likenesses of DHS agency officials without specific FEMA pre- approval.

58. Experience Requirements

The Bidder shall furnish documentation of the minimum qualifications and training for each classification of working employees. Participating Members generally require the following minimums requirements when considering selecting a qualified bidder:

1. Tree Trimmer – Minimum of three years experience as a qualified tree trimmer in this field, as defined by OSHA, in this field and a minimum of one year in this position.
2. Grounds Person/General Helper – Minimum of one year experience in this field.
3. General Foreperson –(Optional) Minimum three years experience overseeing tree trimming crews and a minimum of three years experience as a qualified tree trimmer in this field, as defined by OSHA, in this field.

A resume needs to be submitted for each employee performing the above positions.

59. Bid Submittal Requirements

In addition to the bid forms and required forms (BF-1, DF-1, and AOC-1 – AOC-7), bidders must also submit:

- 1) Licenses and certifications (to include herbicide and arborist requirements).
- 2) Proof of Insurance. See Section 35.
- 3) Documentation of 3+ yrs. company history of providing service in proximity to energized lines; with emphasis on work for electric utilities in the state of Florida.
- 4) A list of references (Can be the same as utilities provided for history documentation.)
- 5) Resumes for positions listed in Section 58.
- 6) Description of Safety Program

LOCATION OF FMPA MEMBERS State of Florida



TECHNICAL SPECIFICATION & DELIVERABLES

FMPA Technical Specification and Requirements

Utility Tree Trimming and Vegetation Management Services

1. SCOPE

This specification covers the delivery of Utility Tree Trimming and Vegetation Management Services from qualified vendors with a minimum of three-years experience working in proximity of energized 7,200, 12,470, 13,200, 13,800, and 22,860 phase distribution systems and high voltage transmission systems 69kV and 138kV.

Services shall include the performance of all vegetation management services required by Participants including initial clearing, emergency tree cutting, maintenance, chemical treatment, mowing, right of way clearing, dead/disease tree removals, tree removal and replacement, non-electric trimming, and maintenance of transmission and distribution areas. The successful bidder will provide the minimum clearance, as required by the National Electric Safety Code (NESC) and IEEE for tree limbs, vines, or brush, surrounding all communications and electrical cables on the distribution circuit and transmission towers.

The successful bidder will be required to obtain this clearance through industry standards of good workmanship procedures of trimming and/or cutting limbs, and if necessary removing trees. The successful bidder will also be required to work in locations inaccessible by trucks. Therefore, personnel should be capable of climbing trees to perform trimming and/or cutting. The crews will be required to trim trees within services territories from the Florida panhandle to Key West (from Key West to Sunshine Key-Miles Marker 0 through Mile Marker 42).

This service will include blue skies scheduled work as well as storm related services.

Services shall include, but not limited to:

- Distribution systems clearance and vegetation management
- Transmission systems clearance and vegetation management
- Herbicide/Chemical applications
- Billboard vegetation management
- Emergency and storm related services

Participating Members requirements are detailed below:

Beaches Energy Services:

Distribution-26,40

Transmission – 138kV

45 Sq. Miles of Area

- Distribution lines services
- Storm related services

City of Bartow:

Distribution-12,470 KV

115 Distribution Miles

- Distribution lines
- Storm related services

City of Bushnell:

Distribution-12,470/7,200KV

8 Sq. Miles of Area

- Distribution area
- Storm related services

City of Clewiston:

Distribution-13,800KV

4 Sq. Miles of Area

- Distribution area
- Storm related services

ATTACHMENT #2

City of Green Cove Springs:

Distribution-13,200/7620 KV

15 Sq. Miles of Area

- Distribution area
- Storm related services

City of Leesburg:

Distribution-7,200 KV

68 Sq. Miles of Area

- Distribution area
- Storm related services
- Chemical applications

City of Lake Worth Beach:

Distribution-4kV & 26kV

Transmission – 138kV

12 Sq. Miles of Area

- Distribution area
- Transmission area
- Storm related services

City of Newberry:

Distribution-12,470/7,200 KV

4 Sq. Miles of Area

32 Miles of overhead lines

- Distribution area
- Storm related services

Homestead Energy Services:

Transmission-138 KV

Distribution-13200/7620 KV

- 14.5 Sq. Miles of Area
- Distribution area
- Transmission area
- Storm related services

Keys Energy Services

Transmission – 138kV & 69kV

Distribution-7,970/13,800kV

- 66.5 Miles of transmission
- 235 Miles of distribution
- Distribution area
- Transmission area
- Storm related services

Town of Havana

Transmission-69,000 KV

Distribution-7,200 kV

- 2300 Sq. Miles of distribution in air
- Distribution area
- Transmission area
- Storm related services

City of Wauchula:

Distribution-2,400/7,200 KV

48.95 Distribution Miles

4.7 Sq. Miles of Area

- Distribution area
- Storm related services

2. REFERENCE STANDARDS

Performance shall be as required by all Occupational Safety and Health Act ("OSHA") standards, American National Standards Institute ("ANSI"), National Electric Safety Code (NESC) and IEEE standards governing the Work described within these specifications. These include but are not limited to: National Electric Safety Code ("NESC") Section 21 Part 2 Rule 218, ANSI pruning standards A300 Part 1, Part 7 & Z-133 as well as the special companion publication, Best Management Practices -Utility Pruning of Trees

Reference to standards or specifications herein shall be interpreted to mean the latest revisions unless noted. Permission for deviation from these specifications or standards shall be obtained in writing from the Participating Member in advance.

ATTACHMENT #2

3. METHODS

The Members have varying requirements for the clearance from the power line and shall be discussed and approved by Participating Member(s) for their specific location prior to starting work.

Vines growing on Facilities shall be cut at ground level and as high up the pole as can practically and safely be reached; after which they shall be chemically treated to prevent re-growth. Vines should not be cut at conductor level.

The Contractor shall remain in compliance with all other Federal, State and Municipal rules, regulations, and ordinances governing the Work described within these specifications.

Every effort shall be made to eliminate all weak, diseased, or dead limbs which may fall onto or be blown into power lines.

Every effort shall be made to remove hazard trees, which is defined as a dead, damaged, or diseased trees which may fall onto or be blown into power lines.

All hangers and severed limbs that interfere with power lines, or are a result of trimming, shall be removed from trees.

Every effort shall be made to regain and/or improve the quality of clearance obtained from the last time the Facilities were trimmed.

Brush and debris shall be handled in such a manner as to avoid obstructing roads, sidewalks, trails, driveways, or waterways.

Branches, brush, and debris resulting from the trimming shall be collected and disposed of in suitable disposal areas. The premises of the property owner shall be left as neat as they were before the Work started.

No wood or chips are to be left within jurisdictional wetland areas, where such action could constitute a dredge and fill violation.

For purposes of this Specification, a tree shall be identified as having a minimum diameter at breast height ("d.b.h.") (diameter 4.5 feet above ground) of 4 inches. Vegetation smaller than this shall be referred to as "brush" and shall be quantified in increments of one linear foot, twenty feet wide.

All stumps shall be cut within 2 inches of the existing ground line, except where alternative written instructions are given by the property owner or Participating Member(s).

All cut stumps are to be treated with an approved cut stump treatment, to inhibit sprouting.

ATTACHMENT #2

All mechanically operated electrical devices shall be cleared of vegetation from ground to sky to ensure personnel can safely operate the device from the ground position. Mechanically operated electrical devices include, but are not limited to, transformers, fuses, switches, capacitor banks, oil circuit reclosers (OCRs) and automatic circuit reclosers (ACRs), etc.

CHEMICAL APPLICATION SPECIFICATIONS

Contractor shall furnish, handle, store, and apply all chemicals and shall secure only branded products from reliable manufacturers.

Contractor shall be licensed in the State of Florida and shall be capable of training employees in the safe storage, handling, and use of any and all types of industrial herbicides.

TRIMMING

The Members have varying requirements for the clearance from the power line and shall be discussed and approved by Participating Member(s) for their specific location prior to starting work.

Trimming clearances are generally as follows:

- A. Five feet from nearest conductor, ground to sky. Under this specification, all vegetation except grass will be removed from ground to sky on each side of the power line for a distance measured horizontally five feet from the power line conductor closest to the edge of the resulting right-of-way. All tree stumps will be removed to a height no greater than two inches above ground level.
- B. Five feet from all conductor, starting with the lowest electric system conductor and continuing upward to include all overhanging limbs. Under this specification, all vegetation will be removed to produce five feet of clearance from all primary and secondary lines, and leave the lower material cut flat at a horizontal distance of five feet below the lowest power line conductor.
- C. Five feet measured horizontally from the nearest power line conductor, ground to sky, except that overhanging limbs more than fifteen feet above the highest power line conductor are not removed. Under this specification, all vegetation is removed from ground to a height of approximately fifty-five feet above ground.
- D. Ten feet from nearest conductor, ground to sky. Under this specification, all vegetation except grass will be removed from ground to sky on each side of the power line for a distance measured horizontally ten feet from the power line conductor closest to the edge of the resulting right-of-way. All tree stumps will be removed to a height no greater than two inches above ground level.
- E. Ten feet from all conductor, starting with the lowest electric system conductor and continuing upward to include all overhanging limbs. Under this specification, all vegetation will be removed to produce ten feet of clearance from all primary and secondary lines, and leave the lower material cut flat at a horizontal distance of ten feet below the lowest power line conductor.

ATTACHMENT #2

- F. Ten feet measured horizontally from the nearest power line conductor, ground to sky, except that overhanging limbs more than fifteen feet above the highest power line conductor are not removed. Under this specification, all vegetation is removed from ground to a height of approximately fifty-five feet above ground, and ten feet measure horizontally from the closest power line conductor.
- G. Fifteen feet from the centerline of the power line, ground to sky. Under this specification, all vegetation except grass will be removed from ground to sky on each side of the power line for a distance measured horizontally fifteen feet from the center line of the power line to the edge of the resulting right-of-way. All tree stumps will be removed to a height no greater than two inches above ground level.
- H. Fifteen feet from the center line measured above and to each side of the line, starting five feet below with the lowest electric system conductor and continuing upward to include all overhanging limbs. Under this specification, all vegetation will be removed to produce fifteen feet of clearance from all primary and secondary lines, and leave the lower material cut flat at a horizontal distance of five feet below the lowest power line conductor.
- I. Fifteen feet measured horizontally from the nearest power line conductor, ground to sky, except that overhanging limbs more than fifteen feet above the highest power line conductor are not removed. Under this specification, all vegetation is removed from ground to a height of approximately fifty-five feet above ground.

EQUIPMENT

- 1) All equipment shall be properly maintained and ready for operation at the beginning of each work shift.
- 2) All equipment shall be guarded and properly equipped with safety devices.
- 3) Equipment shall not be greater than 5 years old and shall be replaced as needed through the duration of the Contract.
- 4) Contractor shall have spare equipment readily available. Replacement equipment in like kind shall be on-site and ready for use within 48 hours of an equipment malfunction.
- 5) All down-time incurred due to equipment malfunction shall be the responsibility of the Contractor.
- 6) The Awarded Contractor shall incorporate a vehicle location and or tracking system to help track and dispatch crews.

WORK ACCEPTANCE

The Participating Members' designated representative shall make final inspection(s) for review and acceptance of the work performed.

ATTACHMENT #2

Transmission vegetation clearances are generally as follows (*Awarded vendor(s) must obtain specific utility requirements*):

Transmission Vegetation Clearances Requirement R1.2				
Subject	69kV	115kV	138kV	230kV
Minimum Approach Distances IEEE 516-2003 4.2.2.3 Table 5	2.4'	2.4'		5.15'
NESC Minimum Design Clearance	19.2 ft	20.1 ft	22.5 ft	22.5 ft
Minimum Vegetation Clearance 1	Side: 15 ft. Floor: 15 ft.	Side: 15 ft. Floor: 15 ft.	Side: 15 ft. Floor: 15 ft.	Side: 15 ft. Floor: 15 ft.
Minimum Vegetation Clearance 2	Side: 10 ft. Floor: 10 ft.	Side: 10 ft. Floor: 10 ft.	Side: 10 ft. Floor: 10 ft.	Side: 10 ft. Floor: 10 ft.
Rural Transmission Vegetation Management Strategy Listed as "Outer Loops"	1. Preserve acceptable vegetation less than 3' in height, utilize herbicide treatment To remove non-compatible (invasive species) on the ROW corridor. 2. Utilize herbicide treatment of tree and shrub vegetation ranging from 3' to 6'. 3. Utilize cutting and herbicide treatment of tree and shrub vegetation above 6'. 4. Prune or remove trees to distances specified on sides of the right-of-way to provide appropriate side clearance of 21 feet. 5. All vegetation debris which may later create a fire hazard or impede ROW corridor mowing shall be properly disposed of. 6. Anticipated maximum growth rates within a 3 year cycle should not Exceed 12'.			
Range of ROW Width Maintained	Varies from 20' to 60'	Varies from 20' to 100'	Varies from 20' to 100'	180'
Ground Inspection	Annually	Annually	Annually	Annually
Aerial Inspection	Annually	Annually	Annually	Annually
Maintenance Cycle	3 Years	3 Years	3 Years	3 Years
Urban Transmission Vegetation Management Strategy Listed as "Inner Loops"	1. Prune or remove trees in close proximity to distances specified under and on sides of the right-of-way to provide appropriate side clearance of 18 feet. 2. In areas where applicable (Natural vegetation not owned nor planted by customers) preserve acceptable vegetation less than 3' in height; utilize herbicide treatment to remove non-compatible (invasive species) on the ROW corridor. 3. Shrub vegetation which exceeds 12' in height will be trimmed to a maximum height of 12', species which have been listed with maximum heights less than 15' are exempt, unless height exceeds 15', whereas trimming will be brought to a maximum 13'. Herbicide treatment shall not be used. 4. Shrub vegetation meeting the above criteria shall be marked with address, asset # & GPS location.			
Alternative Vegetation Management Strategy	Where restrictions due to easement limitations, legal prohibitions or other impediments do not allow tree removal, prune trees under the wires to a minimum of 15 feet of clearance and inject ground with tree growth retardant.			
Range of ROW Width Maintained	Varies from 20' to 60'	Varies from 20' to 100'	Varies from 20' to 100'	180'
Ground and Aerial Inspection	Annually	Annually	Annually	Annually
Maintenance Cycle	1 Year	1 Year	1 Year	1 Year

ATTACHMENT #2

4. INSPECTIONS AND TESTS

4.1 GENERAL

- 4.1.1 Tests, certifications, or inspections may be required for services or products offered as substitutes for those currently being used to ensure they meet or exceed the Members' operational performance requirements and adherence to specification requirements.
- 4.1.2 Certified test reports on all material shall be available to the Participating Member upon request.
- 4.1.3 Participating Member(s) and their designated representatives shall have access to the Work at all times and may provide inspection to determine whether the Work conforms to the specifications.
- 4.1.4 Participating Member(s) inspection of the Work or its failure to inspect the Work will not relieve Contractor of its obligation to fulfill the requirements of the award agreement. Participating Member(s) inspection of the Work or failure to inspect the Work will not be construed as acceptance of the Work by Participating Member(s).

4.2 REJECTION OF MATERIAL/SERVICE

Any material or service delivered under these specifications which, in the opinion of the Participating Member, does not meet the requirements set forth herein with regard to material or performance shall be remedied in a manner satisfactory to the Participating Member and consistent with the specifications.

5. GENERAL GUIDELINES

Contractor shall designate a single point of contact to oversee all Work and daily operations. The General Foreman shall be readily available for safety briefings, crew inspections, progress updates, and problem resolution.

The Contractor shall assure that all subcontractors have English-speaking supervisors or representatives available at all times to communicate with utility personnel.

Contractor understands that transmission and distribution circuits are intended to continue normal operations at all times, and Contractor shall carefully guard against interfering with the normal operation of each circuit.

Contractor shall be available to support crew call-out requests made by Participating Member(s) for support of power restoration or related activities. This will require periodic mandatory overtime conditions during periods of inclement weather.

Contractor shall be responsible for assuring that all line clearance activities are performed on the correct circuits.

ATTACHMENT #2

Contractor shall be required to provide twenty-four (24) hour written advance notice to Participating Member(s) prior to conducting activities unrelated to the Work when conducted during billable business hours. Activities include, but are not limited to, equipment assessments, management and safety inspections.

5.1 GENERAL NOTIFICATION GUIDELINES

- 5.1.1 Prior to beginning Work on any property, Contractor shall attempt to make contact with the property owner to provide notification that the crew is there to complete the required line clearance maintenance activity. Should the property owner not be home the crew shall nevertheless complete the Work as noted on the notification log.
- 5.1.2 Notification shall be by direct customer contact or by leaving a notification card/door hanger. Door hangers may or may not be provided by Participating Member(s).
- 5.1.3 Notification is the responsibility of the General Foreman.
- 5.1.4 In conjunction with placement of the door hanger, the following information is to be recorded on the notification log.
 - A. The address where the door hanger was placed.
 - B. The date the door hanger was placed.
 - C. The Work required to be completed at that address, including the number and species of trees to be trimmed or removed
- 5.1.5 Upon completion of the circuit the completed notification log shall be submitted to Participating Member(s) along with all other documentation associated with the line clearance maintenance activities performed on that circuit

6. LICENSES

All Crew Leaders and Supervisor, providing herbicide scope of work, must have State of Florida restricted use herbicide license.

Arborist Requirement - Qualified bidders shall have a minimum of one certified arborist on staff available to oversee their crew's work as required at the request of the cities.

7. CLEAN UP

The Awarded Bidder shall leave Job Site in a clean and neat condition. The Bidder shall take all steps necessary to protect shrubs, grass, et cetera, adjacent to the Job Site. The Bidder is responsible for disposing of all chips, wood, etc. Participating Member will try to negotiate a location for disposal of said debris other than on Participant's property. The Bidder shall not sell or offer for sale any material generated by any work performed on or around Participant's property.

ATTACHMENT #2

All brush, limbs, logs, etc. shall be chipped and or removed daily. **Under no circumstances** shall brush be left over the weekend or overnight. Participating Member **will** impose Liquidated Damages when brush is left without customer's permission.

8. VEGETATION MANAGEMENT SCHEDULE

Some Participating Member do not have existing distribution and/or transmission maintenance schedules. The Successful Bidder shall work with those Participating Member(s) to create maintenance plans and schedules.

9. PROJECT SCHEDULING AND STATUS

The Bidder shall maintain a current Project status reporting system to aid the Participating Member(s) in scheduling other activities. Bidder shall coordinate work schedules and locations with the Participating Member(s) designated representative.

10. WORK WEEK, HOURS OF OPERATION AND SCHEDULING

Routine Service (normal hours): Work to be accomplished during normal hours; excluding holidays. Typically hours for Participating Members range from 7:00 a.m. to 5:30 p.m., Monday through Friday. Work will be paid at rate(s) provided on bid response page.

The straight time hourly rates for labor shall apply for all standard hours worked. Any hours worked in excess of forty (40) standard hours per week will be billed at the overtime rate.

Routine Service (overtime): Work in excess of forty (40) hours, to be accomplished Monday through Sunday.

Emergency Service (on-call): Work to be accomplished twenty-four (24) hours a day, seven (7) days a week. Response time within two (2) hours of emergency call-out.

The Participating Member(s) reserves the right to adjust and or modify the hours of operation, work week, crew schedule and crew size as needed to meet the work requirements.

Some Participating Members have noise ordinances in place typically 8am to 6pm.

11. STORM RESTORATION WORK

Contractor shall be willing to work 16 or more hours per day until the storm restoration is complete if requested by the Participating Member(s).

Weekly time sheets are required by Participating Member(s).

Overtime will only be paid for those hours worked in excess of 40 hours per employee.

Keep accurate records and provide copies to Participating Member(s) if requested.

The Contractor shall supply the Participating Member(s) with any and all documentation required for the Participating Member(s) to receive reimbursement from FEMA including but not limited to, truck and trailer registrations, disposal tickets, work logs, time sheets, and any other data required for FEMA and State reimbursement applications.

ATTACHMENT #2

11.1 ACCEPTANCE AND PAYMENT FOR WORK COMPLETED

Weekly time and charge sheets must be submitted to the Participating Member once per week during the Work period. The weekly charge sheets must be for a complete work week, and shall be submitted no later than two working days after the end of the work week. These weekly time and charge sheets will be used for comparison of all invoices. Invoices for completed Work will be accepted by the Participating Member once per month.

11.2 EMERGENCIES

It is possible that some time during the term of this Award agreement, an emergency could arise in which one or more FMPA Members, whether participating directly in this RFP or not will need as much available help as possible (hurricane, et cetera). If such an event occurs, FMPA expects the Awarded Bidder to supply as many crews as it has available and/or to import additional crews and equipment as requested.

11.3 WORK STOPPAGE

Work stoppage/slowdown will not be tolerated. Should this occur, the Contractor will be notified by registered mail to return to work within five calendar days from receipt of notice. If the Contractor does not return as notified, the Contract may be terminated. Participating Member(s) at its sole option may award to another Offerer or apply Liquidated Damages. Contractor shall be responsible for the cost difference between their bid and whichever contractor obtains the work performed under these specifications for the duration of the subject contract if awarded to another bidder.

At no time will contractor relocate any equipment and/or personnel off of a Participating Member's System without approval of the Participating Member or their designee. If so, then Participating Member will consider this as a Work stoppage/slowdown. See Liquidated Damages

RIGHT OF WAY CLEARING SPECIFICATIONS:

1. Existing right-of-way shall be cleared to the same width as the previous clearing unless otherwise specified by the Participating Member.
2. Unless otherwise specified by the Participating Member, all cutting for existing and new right-of-way clearing shall be as close to the ground line as the topography and type of soil will allow, with a maximum remaining height of four inches for brush stubs and six inches for tree stumps.
3. Trees adjacent to cleared right-of-way which constitutes a hazard to the wires shall be removed as directed by the Participating Member.
4. Brush, logs, and debris shall be handled in such a manner as to avoid obstructing roads, paths, or waterways.
5. Contractor shall exercise extreme care when cutting brush or trees that are close to or touching wires to prevent breaking, contacting, or wrapping the wires together or otherwise interrupting service. If any such trouble should occur, the Participating Member shall be notified of the location and circumstances of such trouble as quickly as possible.

ATTACHMENT #2

6. Individual requests by property owners for special handling of brush shall be granted where reasonable. If any doubt exists as to the action to be taken, the requests shall be referred to the Participating Member.
7. Where clearing includes the removal of trees, the logs and limbs shall be disposed of as designated by Participating Member; or if not designated, such logs and limbs shall be piled at the edge of the right-of-way in such a manner that they will not interfere with foot or vehicular traffic.
8. No charge for equipment or labor shall be made for work stoppages in excess of thirty minutes, which are due to mechanical failures or weather conditions.
9. The Contractor is responsible for determining if any substances furnished, used, applied, or stored under this contract are within the provisions of the referenced statute. Copies of the statute and the Florida Substance List are available from the Secretary of the Florida Department of Labor and Employment Security.
10. The Contractor upon request by Participating Member shall remove vegetation debris from areas blocking roadways.

ATTACHMENT #2

BID FORMS

ATTACHMENT #2

PROPOSAL TO FURNISH UTILITY TREE TRIMMING AND VEGETATION MANAGEMENT SERVICES FOR THE FLORIDA MUNICIPAL POWER AGENCY JOINT PURCHASE PROJECT

I have carefully examined the Request for Proposal, Terms and Conditions, Technical Specifications, Bid Forms, and any other documents accompanying or made a part of this Invitation. With full knowledge and understanding of the aforesaid, I agree to abide by all terms and conditions of this bid; exceptions have been noted on Proposer Form.

I hereby propose to furnish the materials/services specified in the Invitation at the prices quoted in my bid as indicated in the appropriate spaces on this and the attached sheets BF-2 and BF-8.

I certify that I am duly authorized to submit this bid on behalf of the vendor and that the vendor is ready, willing and able to perform if awarded the bid.

Prompt Payment Discount ____% for payment made within ____ days of delivery.

I agree to deliver to the designated place within each zone as appropriate as indicated in my submittal on Bid Form BF-2 and BF-8.

Prices quoted shall remain firm and irrevocable for a period of 3-year term.

ADDENDA. The undersigned bidder acknowledges receipt of the following addenda, which have been considered in preparing this proposal (if applicable).

Number	_____	Dated	_____
Number	_____	Dated	_____

Respectfully submitted:

Company Name: _____

Signature: _____

(Authorized Representative)

(Type or Print Name of Signer)

Address: _____

E-Mail Address: _____

Telephone Number: _____

Toll Free Number: _____

Date: _____

ATTACHMENT #2

FMPA RFP 2020-036 Distribution System Pricing

Contractor Company Name: _____

Authorized Signature: _____ Date: _____

PRICING:

Please provide general pricing information for the following services. This pricing will be used for comparative purposes to evaluate proposals in conjunction with qualifications provided in the bid submittals.

We recognize that specific crew sizes, crew composition, equipment and other project-specific details will vary based on the project.

Awarded Bidder(s) will be required to submit a specific Scope of Work and pricing for each project as requested by Participating Member(s). All project-specific cost estimates must be consistent with the pricing as quoted below:

DISTRIBUTION

Distribution System Work To Include Labor, Equipment, Materials and Disposal.	
Description (<u>Higher</u> Vegetation Foliage)	Unit Price (per mile)
Mileage Rate for 3-person crew ¹ , including aerial lift	\$
Non-truck Accessible – Climbing Crew Trimming	\$
Truck Accessible Street Access 3-person crew ¹ – w/ aerial lift	\$
Limited Access (Not Maintained Roadway) w/ Crew	\$
¹ For estimation purposes, a 3-person crew must include a minimum: 1 Tree Trimmer, 1 Groundsman, 1 General Foreperson.	
Description (<u>Lower</u> Vegetation Foliage)	Unit Price (per mile)
Mileage Rate for 3-person crew ¹	\$
Mileage Rate for 3-person crew ¹ , including aerial lift	\$
Non-truck Accessible – Climbing Crew Trimming	\$
Truck Accessible Street Access 3-person crew ¹ – w/ aerial lift	\$
Limited Access (Not Maintained Roadway) w/ Crew	\$
¹ For estimation purposes, a 3-person crew must include a minimum: 1 Tree Trimmer, 1 Groundsman, 1 General Foreperson.	
If there is an adder price for areas of <i>extremely</i> dense foliage, please list cost here (per mile).	\$
If there is an adder price for water ways or other terrain, please list cost here (per mile).	\$

ATTACHMENT #2

Distribution System Work TREE REMOVAL To Include Labor, Equipment, Materials and Disposal.	
Diameter Breast Height	Unit Price Per Tree
0" to 6"	\$
6" to 8"	\$
9" to 18"	\$
19" to 24"	\$
24+"	\$
Tree Stump Grinding	\$

CHEMICAL APPLICATION PRICING	
	Unit Price
Low Vol Backpack Foliar <i>(Per acre)</i>	\$
Basal Treatment <i>(Per acre)</i>	\$
Soil Injection <i>(per tree)</i>	\$

EQUIPMENT			
Item	Unit Price	Item	Unit Price
Aerial Lift	\$	All Terrain Tree Trimmer	\$
Chipper	\$	Lift Truck-mileage	\$
Power Saw	\$	Pickup Truck-mileage	\$
Back Yard Lift	\$	Truck Left Behind	\$
Trailer	\$	Chipper Left Behind	\$
Split Dump	\$	Weed Eater	\$
Pole Power Saw	\$	Prentice Loader	\$
Full-size Pick-up	\$	Heavy Brush Cutter	\$
4WD Pick-up	\$	Stump Grinder	\$
Tractor	\$	Off-Road Aerial Lift	\$
Bush Hog	\$		

ATTACHMENT #2

Hourly Labor Rates (\$/Hr)				
	Standard Rate	Overtime Rate	Other Rate if applicable	Other Rate if applicable
Tree Trimmer				
Groundsman				
Supervisor				
General Foreman				
Climber				
Mowing Grounds Person				
Spray Technician				
Other				
Other				
Certified Arborist				

In reference to Section 3, of the terms and conditions, please indicate if you are **unable** to provide service in a particular zone by listing the zone number(s) here.

Mobilization				
Below, please indicate the total travel cost, including mileage and manhours, from your facility to each zone (please see zone map).				
Zone 1	Zone 2	Zone 3	Zone 4	Zone 5

Mobilization and Other Charges	
	Unit Price
Charge if work is cancelled <u>prior</u> to mobilization	\$
Charge if work is cancelled <u>after</u> to mobilization	\$
Per diem rate if overnight stay is required	\$
Charge if there is adder for Call-Out work	\$

☐ Check here if you decline to bid on **Distribution** System Work

ATTACHMENT #2

TRANSMISSION

Transmission System Work To Include Labor, Equipment, Materials and Disposal.	
Description	Unit Price (per acre)
Mowing of ROW (Transmission Corridor, Rural, Floor Clearance)	\$
Mowing w/ Limited Access	\$

If there is an adder price for areas of <i>extremely</i> dense foliage, please list cost here (per mile).	\$
If there is an adder price for other terrains, please list cost here (per mile).	\$

CHEMICAL APPLICATION PRICING	
Description	Unit Price (per acre)
Mowing & Herbicide (Transmission Corridor, Rural, Floor Clearance)	\$
Mowing & Herbicide w/ limited access	\$

EQUIPMENT			
Item	Unit Price	Item	Unit Price
Aerial Lift 75'	\$	Lift Truck-mileage	\$
Aerial Lift 75' 4WD	\$	Pickup Truck-mileage	\$
Aerial Lift 50'	\$	4WD Pick-up	\$
Aerial Lift 50' 4WD	\$	Tractor	\$
Aerial Lift 37'	\$	Bush Hog	\$
Brush Chipper	\$	Heavy Brush Cutter	
Disc Chipper	\$	Weed Eater	
Power Saw	\$	Prentice Loader	
Mower Bat Wing – minimum width 15'	\$	Spray Truck	\$
Dump truck	\$	Stump Grinder	\$
Foreman Vehicle	\$	Off-Road Aerial Lift	\$

ATTACHMENT #2

Hourly Labor Rates (\$/Hr)				
	Standard Rate	Overtime Rate	Other Rate if applicable	Other Rate if applicable
Groundsman				
Supervisor				
General Foreman				
Mowing Grounds Person				
Spray Technician				
Trimmer				
Other				
Other				

In reference to Section 3, of the terms and conditions, please indicate if you are **unable** to provide service in a particular zone by listing the zone number(s) here.

Mobilization

Below, please indicate the total travel cost, including mileage and manhours, from your facility to each zone (please see zone map).

Zone 1	Zone 2	Zone 3	Zone 4	Zone 5

Mobilization and Other Charges	
	Unit Price
Charge if work is cancelled <u>prior</u> to mobilization	\$
Charge if work is cancelled <u>after</u> to mobilization	\$
Per diem rate if overnight stay is required	\$
Charge if there is adder for Call-Out work	\$

☐ Check here if you decline to bid on **Transmission** System Work

ATTACHMENT #2

EMERGENCY RESPONSE AND STORM RELATED SERVICES

Distribution System Work To Include Labor, Equipment, Materials.	
Description	Unit Price (per mile)
Mileage Rate for 3-person crew ¹ , including aerial lift	\$
Non-truck Accessible – Climbing Crew Trimming	\$
Truck Accessible Street Access 3-person crew ¹	\$
Limited Access w/ 3-person crew ¹	\$
¹ For estimation purposes, a 3-person crew must include a minimum: 1 Tree Trimmer, 1 Groundsman, 1 General Foreperson.	

TREE REMOVAL To Include Labor, Equipment, Materials.	
Diameter Breast Height	Unit Price Per Tree
0" to 6"	\$
6" to 8"	\$
9" to 18"	\$
19" to 24"	\$
24+"	\$
Tree Stump Grinding	\$

Hourly Labor Rates (\$/Hr)				
	Standard Rate	Overtime Rate	Other Rate if applicable	Other Rate if applicable
Tree Trimmer				
Groundsman				
On-Site Storm Coordinator				
General Foreman				
Safety Personnel				
Climber				
Other				

ATTACHMENT #2

In reference to Section 3, of the terms and conditions, please indicate if you are **unable** to provide **Emergency** Service in a particular zone by listing the zone number(s) here.

Mobilization

Below, please indicate the total travel cost, including mileage, and manhours, from your facility to each zone (please see zone map).

Zone 1	Zone 2	Zone 3	Zone 4	Zone 5

Mobilization and Other Charges

	Unit Price
Travel Rate per Mile	\$
Charge if work is cancelled <u>prior</u> to mobilization	\$
Charge if work is cancelled <u>after</u> to mobilization	\$
Per diem rate if overnight stay is required	\$
Other:	\$

☐ Check here if you decline to bid on **Emergency Response Services**

ATTACHMENT #2

REFERENCES:

Below or on an attached sheet, list your references specifically pertaining to this type of work within the last 3 years.

1. Name: _____

Address: _____

Phone: _____

Fax: _____

Contact: _____

2. Name: _____

Address: _____

Phone: _____

Fax: _____

Contact: _____

3. Name: _____

Address: _____

Phone: _____

Fax: _____

Contact: _____

ATTACHMENT #2

COMPLIANCE FORMS

ATTACHMENT #2

PROPOSER INFORMATION FORM Exceptions & Clarifications FMPA RFP 2020-236

✓	
	We DO NOT take exception to any items included in the RFP or Master Services Agreement.

	We TAKE exception as follows:

Company Name:	
Authorized Signature:	
Print/Type Name of Signer:	
Company Address:	
Telephone Number:	
Contact Email Address:	
Date:	

Minority Business Status: Yes ☐ No ☐ If yes, please indicate type and certificate # below

ATTACHMENT #2

Anti-Lobbying Declaration **Certification for Contracts, Grants, Loans and Cooperative Agreements** APPENDIX A, 44 C.F.R. PART 18 – CERTIFICATION REGARDING LOBBYING

Certification for Contracts, Grants, Loans, and Cooperative Agreements (To be submitted with each bid or offer exceeding \$100,000)

The undersigned [Contractor/bidder] certifies, to the best of his or her knowledge and belief, that:

1. No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.
2. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form- LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.
3. The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly. This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by 31, U.S.C. § 1352 (as amended by the Lobbying Disclosure Act of 1995). Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

The Contractor/Bidder, _____, certifies or affirms the truthfulness and accuracy of each statement of its certification and disclosure, if any. In addition, the Contractor understands and agrees that the provisions of 31 U.S.C. § 3801 *et seq.*, apply to this certification and disclosure, if any.

Signature of Contractor's Authorized Official

Name and Title of Contractor's Authorized Official

Date

ATTACHMENT #2

Compliance Declaration

Certification for Contracts, Grants, Loans, and Cooperative Agreements
(To be submitted with each bid or offer exceeding \$100,000)

Regarding Sections 47 through 57 of this Request for Proposal, the undersigned [Contractor/Bidder] certifies to the best of his or her knowledge, agrees, complies with the following FEMA requirements.

FEMA Reimbursement

Remedies

Equal Employment Opportunity

Contract Hours and Safety Standards Act

Clean Air Act

Federal Water Pollution control Act

Access to Records

Suspension and Debarment

Byrd Anti-Lobbying Amendment

Procurement of Recovered Materials

DHS Seal, Logo, and Flags

Signature of Contractor's Authorized Official

Name and Title of Contractor's Authorized Official

Date

ATTACHMENT #2

DECLARATIONS AND SIGNATURES

The undersigned hereby declares that only the persons or firms interested in this Proposal as principal or principals are named herein, and that no other persons or firms than herein mentioned have any interest in this Proposal or in the contract to be entered into; that this Proposal is made without connection with any other person, company, or parties likewise submitting a proposal or proposal; and that it is in all respects for and in good faith, without collusion or fraud.

Dated at _____ this _____ day of _____, 20____.

Proposer _____

By _____
Signature Printed or Typed Name

Title _____

Complete Business Address of Proposer: _____

State of Incorporation _____

Complete Address of Principal Office _____

Name, Address, and Telephone Number of Person to Contact Regarding this Proposal. Include Both Mail and Street Addresses:

Telephone (____) _____ Fax (____) _____

E-Mail _____

ATTACHMENT #2

SWORN STATEMENT UNDER SECTION 287.133(3) (a), FLORIDA STATUTES, ON PUBLIC ENTITY CRIMES

(To be signed in the presence of a notary public or other officer authorized to administer oaths.)

STATE OF _____

COUNTY OF _____

Before me, the undersigned authority, personally appeared _____, who, being by me first duly sworn, made the following statement:

1. The business address of _____
[name of bidder or contractor]
is _____.

2. My relationship to _____
[name of bidder or contractor]
is _____
[relationship such as sole proprietor, partner, president, vice president].

3. I understand that a public entity crime as defined in Section 287.133 of the Florida Statutes includes a violation of any state or federal law by a person with respect to and directly related to the transaction of business with any public entity in Florida or with an agency or political subdivision of any other state or with the United States, including, but not limited to, any bid or contract for goods or services to be provided to any public entity or such an agency or political subdivision and involving antitrust, fraud, theft, bribery, collusion, racketeering, conspiracy, or material misrepresentation.

4. I understand that "convicted" or "conviction" is defined by the statute to mean a finding of guilt or a conviction of a public entity crime, with or without an adjudication of guilt, in any federal or state trial court of record relating to charges brought by indictment or information after July 1, 1989, as a result of a jury verdict, nonjury trial, or entry of a plea of guilty or nolo contendere.

5. I understand that "affiliate" is defined by the statute to mean (1) a predecessor or successor of a person or a corporation convicted of a public entity crime, or (2) an entity under the control of any natural person who is active in the management of the entity and who has been convicted of a public entity crime, or (3) those officers, directors, executives, partners, shareholders, employees, members, and agents who are active in the management of an affiliate, or (4) a person or corporation who knowingly entered into a joint venture with a person who has been convicted of a public entity crime in Florida during the preceding 36 months.

6. Neither the bidder or contractor nor any officer, director, executive, partner, shareholder, employee, member or agent who is active in the management of the bidder or affiliate of the bidder or contractor nor any affiliate of the bidder or contractor has been convicted of a public entity crime subsequent to July 1, 1989.

[Draw a line through paragraph 6 if paragraph 7 below applies.]

ATTACHMENT #2

7. There has been a conviction of a public entity crime by the bidder or contractor, or an officer, director, executive, partner, shareholder, employee, member or agent of the bidder or contractor who is active in the management of the bidder or contractor or an affiliate of the bidder or contractor. A determination has been made pursuant to Section 287.133(3) by order of the Division of Administrative Hearings that it is not in the public interest for the name of the convicted person or affiliate to appear on the convicted vendor list. The name of the convicted person or affiliate is

_____. A copy of the order of the Division of Administrative Hearings is attached to this statement.

[Draw a line through paragraph 7 if paragraph 6 above applies.]

Sworn to and subscribed before me in the state and county first mentioned

above on the _____ day of _____, 20____.

Notary Public

(Affix Seal)

My Commission Expires

Type or Printed Name

ATTACHMENT #2

DISPUTE DISCLOSURE

Answer the following questions by placing an "X" in the appropriate "YES" or "NO" box. If you answer "YES", please explain in the space provided, or via attachment.

Has your firm, or any of its officers, received a reprimand of any nature or been suspended by the Department of Professional Regulation or any other regulatory agency or professional association within the last five (5) years?

YES ☐

NO ☐

Has your firm, or any member of your firm, been declared in default, terminated or removed from a contract or job related to the services your firm provides in the regular course of business within the last five (5) years?

YES ☐

NO ☐

Has your firm had filed against it or filed any requests for equitable adjustment, contract claims or litigation in the past five (5) years that is related to the services your firm provides in the regular course of business?

YES ☐

NO ☐

If yes, state the nature of the request for equitable adjustment, contract claim or litigation, a brief description of the case, the outcome or status of suit and the monetary amounts or extended contract time involved.

I hereby certify that all statements made are true and agree and understand that any misstatement or misrepresentation or falsification of facts shall be cause for forfeiture of rights for further consideration of this project:

Project: FMPA RFP# 2020-236

Firm

Date

Authorized Signature

Officer Title

Printed or Typed Name

DRUG-FREE WORKPLACE COMPLIANCE FORM

Preference shall be given to businesses with drug-free workplace programs. Pursuant to Section 287.087, Florida Statutes, whenever two or more proposals which are equal with respect to price, quality, and service are received by the State or by any political subdivision for the procurement of commodities or contractual services, a proposal received from a business that certifies that it has implemented a drug-free workplace program shall be given preference in the award process.

The undersigned proposer in conformity with Florida Statute 287.087 hereby certifies that
_____ does:

(Name of business)

1. Publish a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in the workplace and specifying the actions that will be taken against employees for violations of such prohibition.
2. Inform employees about the dangers of drug abuse in the workplace, the business's policy of maintaining a drug-free workplace, any available drug counseling, rehabilitation, and employee assistance programs, and the penalties that may be imposed upon employees for drug abuse violations.
3. Give each employee engaged in providing the commodities or contractual services that are under proposal a copy of the statement specified in Subsection 1.
4. In the statement specified in Subsection 1, notify the employees that, as a condition of working on the commodities or contractual services that are under proposal, the employee will abide by the terms of the statement and will notify the employer of any conviction of, or plea of guilty or nolo contendere to, any violation of Chapter 893 or of any controlled substance law of the United States or any state, for a violation occurring in the workplace no later than five (5) days after such conviction.
5. Impose a sanction on, or require the satisfactory participation in a drug abuse assistance or rehabilitation program if such is available in the employee's community, by any employee who is so convicted.
6. Make a good faith effort to continue to maintain a drug-free workplace through implementation of this section.

As the person authorized to sign the statement, I certify that the undersigned complies fully with the above requirements.

Signature

Name of Proposer

Date

**DRAFT
MASTER SERVICES AGREEMENT**

ATTACHMENT #2

Master Services Agreement

This Master Services Agreement is entered into on this ____ day of _____, 2020, and is by and between Florida Municipal Power Agency, a governmental joint action agency organized and existing pursuant to Florida law, with its office located at 8553 Commodity Circle, Orlando, Florida 32819, ("FMPA") and _____, with its principle place of business located at _____, ("Contractor").

FMPA is a municipal electric joint action agency formed pursuant to section 163.01, Florida Statutes, and exercises powers pursuant to section 163.01 and chapter 361, part II, Florida Statutes.

FMPA's members are 31 municipal electric systems within the state of Florida.

Contractor is a company offering Utility Tree Trimming and Vegetation Management Services.

The parties desire for Contractor to perform the services more fully described in this agreement and Schedule A.

Now therefore, for and in consideration of the premises and mutual covenants made herein, the parties agree as follows:

Section 1. Scope of Services

FMPA is entering into this Master Services Agreement on behalf of its members for Contractor to provide its services as described in Schedule A to this agreement, which is attached hereto and incorporated into this agreement by this reference (the "Services"). For FMPA's members that desire for Contractor to furnish Services under this agreement ("Participating Members"), FMPA is acting as a "Solicitation Agent" only. Each Participating Member will issue a Purchase Order with project- specific technical specifications. In addition, the Participating Member's Purchase Order may carry additional terms and conditions as required by the Participating Member. All project-specific direction, guidance and invoicing will be conducted between the Participating Member and Contractor.

In the event that any terms or conditions provided in Schedule A conflict with any terms or conditions of this agreement, or with the terms and conditions of a Participating Member's Purchase Order, the hierarchy will be as follows: 1) the terms of the Participating Member's Purchase Order, 2) the terms of this agreement, 3) the terms provided in Schedule A.

Section 2. Term & Termination

This agreement shall become effective upon the date stated in the introductory clause of this agreement, and shall remain in effect for a period of five years from the effective date. Thereafter, this agreement may be renewed on an annual basis upon mutual consent of the parties, for up to two additional one-year terms. Either party wishing to extend this agreement must notify the other party in writing no later than 60 days prior to the end of the then-current contract term of its desire to renew. If the other party does not respond to the renewal notification within 30 days of receipt, it will be deemed that the party consents to the renewal of the agreement.

ATTACHMENT #2

At any time, FMPA may terminate this contract, in whole or in part, for failure of Contractor to perform in accordance with the terms of this contract, or for any reason, at FMPA's sole discretion, upon 30 days prior written notice. Contractor may terminate this contract for cause upon 30 days prior written notice.

Any failure by Contractor to perform or comply with the terms and conditions of a Purchase Order issued under this agreement which continues for 10 calendar days after written notice from Participating Member to Contractor demanding that such failure to perform be cured, shall be deemed an event of default by Contractor. Upon the occurrence of any such event of default, Participating Member may terminate the Purchase Order and pursue any remedies available at law or in equity. Participating Member shall have the right in its sole discretion to terminate by written notice, in whole or in part, the Purchase Order for its convenience. Participating Member shall pay Contractor for any Services performed under the Purchase Order prior to the termination date.

Section 3. Compensation and Payment

Participating Members will through their own initiative issue project-specific Purchase Orders to Contractor. For those Participating Members, FMPA is acting as a "Solicitation Agent" only and shall not be held liable for any costs or damages incurred pursuant to any Purchase Order entered into by them with Contractor.

Prices as stated in Schedule A will be firm for the first three years of this agreement, with pricing updates considered for years thereafter. Any price changes must be agreed to in writing at least 60 days prior to becoming effective.

Section 4. Independent Contractor Status

It is understood and agreed that Contractor is an independent contractor, is not an agent or employee of FMPA, and is not authorized to act on behalf of FMPA. Contractor agrees not to hold him or herself out as, or give any person any reason to believe that he or she is an employee, agent, or partner of FMPA. Contractor will not be eligible for any employee benefits, nor will FMPA make deductions from any amounts payable to Contractor for taxes or insurance. All payroll and employment taxes, insurance, and benefits shall be the sole responsibility of Contractor. Contractor retains the right to provide services for others during the term of this Agreement and is not required to devote his or her services exclusively for FMPA. Contractor agrees that it shall bear the responsibility for verifying the employment status, under all applicable immigration laws, of all persons it employs in the performance of this contract. For purposes of this Section 4, the term FMPA includes FMPA's Participating Members.

Section 5. Standard of Care

The Services and any deliverables provided pursuant to this agreement shall be free from material defect. Contractor represents that the Services shall be performed with reasonable care in a diligent and competent manner and in accordance with generally accepted professional practices. Contractor will re-performing at Contractor's expense any Services performed by Contractor which have failed to meet the above warranty, if such failure is promptly reported to Contractor not later than one (1) year following completion of the applicable

ATTACHMENT #2

Services. With respect to any equipment and/or materials provided pursuant to the Services, such shall be provided on an “as-is, where-is, with all-faults” basis, provided that Contractor shall pass through any manufacturer warranties available for assignment to FMPA and/or the applicable FMPA Participating Member with respect to any such equipment and/or materials. The foregoing remedy shall be client’s sole remedy for any failure of company to comply with its warranty obligations.

Section 6. Insurance

The Contractor shall acquire and maintain at all times during the performance of Services the insurance coverage set forth below. Insurance Carrier Rating Coverages provided by the Contractor must be underwritten by an insurance company deemed acceptable by the Participating Member. Insurance coverage shall be provided by companies rated A- or better by Best’s Insurance Rating. The Participating Member reserves the right to reject all or any insurance carrier(s) with an unacceptable financial rating. Contractor shall furnish Participating Members a copy of the insurance certificate prior to starting any work on site:

(a) **Workers Compensation and Employers Liability.** This insurance shall protect the Contractor against all claims under applicable state workers’ compensation laws. Contractor shall also be protected against claims for injury, disease, or death to employees which, for any reason, may not fall within the provisions of a state workers compensation law. The policy shall include an “all states” or “other states” endorsement. The liability limits shall be, at a minimum, as follows: Workers’ Compensation- Statutory; Employer’s Liability- \$500,000 each.

(b) **Commercial General Liability.** This insurance shall be written on an occurrence type policy and shall protect the Contractor and the Participating Member (to the extent of Contractor’s indemnity obligations in this agreement) against claims for personal injury including bodily injury and death and property damage. This policy shall include a contractual liability endorsement to insure the contractual liability assumed by the Contractor under this agreement and a completed operations and products liability endorsement to remain in effect for 2 years after final payment. Limits of liability will not be less than \$2 million combined single limit per occurrence / \$4 million general annual aggregate for bodily injury and property damage.

(c) **Automobile Liability Policy.** This insurance shall be written on an occurrence type policy and shall protect the Contractor and the Participating Member (to the extent of Contractor’s indemnity obligations in this agreement) against all claims for injuries arising out of use of any auto including own, hired, or non-owned autos. Limits of liability will not be less than \$1 million in combined single limits for bodily injury and property damage.

(d) **Additional Insured.** All insurance coverages furnished under this contract, with the exception of workers compensation and employer’s liability shall include the Participating Member as an additional insured with respect to the activities of the Contractor. Any party named an additional insured pursuant to this Agreement shall be an additional insured where permissible by law but only to the extent the loss in question is caused by the negligent act or omission of the Contractor, and only to the extent necessary to provide coverage for the indemnity obligations expressly assumed by Contractor under this Agreement, and not in respect to any act or omission or operation of the Participating Member. It is the express intent and understanding of the Parties that the insurance and indemnity obligations under this Agreement are dependent upon one another and are not separate and distinct.

ATTACHMENT #2

(e) **Waiver of Subrogation.** The Contractor shall require their insurance carrier to waive all rights of subrogation against the Participating Member, their employees, directors and officers, where and to the extent permissible by law except to the extent the loss is caused by the negligence, gross negligence or willful misconduct of the Participating Member, or any indemnitee.

Contractor shall furnish Participating Member with certificates of insurance as evidence that the policies required under any applicable Purchase Order is in full force and effect.

Section 7. Indemnification

To the fullest extent permitted by law, the Contractor, its heirs, successors and assigns shall indemnify and hold harmless FMPA, its successors and assigns, and its employees, against any and all claims, suits or actions at law, including the bodily injury or death of Contractor during the performance of the Services regardless of cause and/or all damages, costs and judgments (including reasonable attorneys' fees), incurred by FMPA to the extent arising from the negligence, gross negligence, and/or intentional or willful misconduct of Contractor while performing work under this Agreement. The liability of the Contractor is full and complete in all respects and subcontracting any part of the work shall not relieve it of primary liability. The indemnity and hold harmless obligations, however, shall not apply to the extent of FMPA's or a Participating Member's negligence, gross negligence, and/or intentional or willful misconduct. Neither party shall be liable to the other party for any incidental, indirect, special, punitive or consequential damages (including without limitation any damages relating to lost profits, revenue or loss of use) arising in connection with this agreement or any Purchase Order. The Contractor and its affiliates' maximum liability shall not exceed the greater of (i) the price set forth in the applicable Purchase Order, or (ii) the sum of the insurance policy limits required herein.

Section 8. General Terms and Conditions

(a) Any notices given pursuant to this agreement shall be in writing, delivered to the address set forth in the introductory clause of this agreement, and shall be considered given when received.

(b) No term of this agreement shall be deemed waived, and no breach of this agreement excused, unless the waiver or consent is in writing signed by the other party granting such waiver or consent.

(c) If any provision of this agreement is determined to be illegal or unenforceable, such term or provision shall be deemed stricken, and all other terms and provisions shall remain in full force and effect.

(d) This agreement shall be governed by the laws of the State of Florida. All controversies, claims or disputes arising out of this agreement shall be brought exclusively in appropriate court in Leon County, Florida.

(e) In the event that either party is required to enforce the terms of this agreement by court proceedings or otherwise, the prevailing party of such proceedings shall be entitled to recover

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from the non-prevailing party all fees and costs incurred, including reasonable attorney's fees and costs and expenses for trial, alternative dispute resolution and appellate proceedings.

IN WITNESS WHEREOF, the parties have duly executed this agreement as of the date first stated in the introductory paragraph.

FLORIDA MUNICIPAL POWER AGENCY

CONTRACTOR

By: _____

By: _____

ATTACHMENT #2

Schedule A

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as a place holder for RFP and awarded contractor's pricing information.

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STATEMENT OF NO PROPOSAL

Sharon Samuels
Florida Municipal Power Agency
8553 Commodity Circle
Orlando, FL 32819

We, the undersigned, have declined to submit a proposal on your Request for Proposals Number 2020-236, August 2020, Florida Municipal Power Agency Utility Tree Trimming and Vegetation Management Services - for the following reasons:

- ☐ We do not offer this service/product.
- ☐ Our schedule would not permit us to perform.
- ☐ Unable to meet specifications.
- ☐ Unable to meet bond requirements.
- ☐ Other

We understand that if the Statement of No Proposal letter is not executed and returned, our name may be deleted from the list of qualified proposers of the Florida Municipal Power Agency.

Company Name: _____

By: _____
Authorized Person's Signature)

(Print or type name and title of signer)

Company Address: _____

Telephone Number: _____

Toll Free Number: _____

Fax Number: _____

Date: _____



Thanks for your interest in serving our Members.

CITY OF MOUNT DORA ELECTRIC UTILITIES VEGETATION MANAGEMENT

SECTION I - GENERAL REQUIREMENTS AND SPECIFICATIONS

STATEMENT OF PURPOSE

The City of Mount Dora (CITY), is an electrical municipal utility serving approximately 6100 citizens in Mount Dora, Florida.

SCOPE OF WORK

The City requires sufficient contractor resources to trim 45 miles of distribution power miles on a two-year cycle using line-mile rates. Vegetation management will be scheduled and administered by the Contractor in conjunction Designated Representative in accordance with these specifications. In addition one work-order crew will be requested on an as needed and or emergency response basis. The Contractor may be requested to provide back-up support for storm / hurricane restoration twenty-four hours a day / Seven days a week (24/7)

CONTRACT SPECIFICATIONS

Vegetation maintenance of distribution facilities is composed of foliage treatment as outlined by NESC Rule 218, and anticipated growth rates over the scheduled maintenance cycle. Pruning methods shall conform to ANSI A300 (Part 1) and supervised by qualified utility Certified Arborists by the International Society of Arboriculture. The contract includes a unit price cost to provide production mileage based power line clearance and dedicated work order crews based on time and material rates. Specific clearances and pruning methods are on pages 10-19.

The work performed under this contract will be performed near energized electrical conductors of the CITY's Electric Distribution System. The Contractor will establish and conform to safe work practices appropriate for such work. The Contractor will comply with operating procedures established by the CITY for such work and all procedures used to perform such work shall conform to federal OSHA, ANSI Z-133, State of Florida Bill 980, and local government requirements such as historic canopy areas. It is the responsibility of the Contractor to document instruction and training of their employees of possible hazards involved in working around energized conductors.

The Contractor shall coordinate their schedule based on all work locations with the CITY representative in order to assure continuity and maximum benefit. Fueling and icing of crew vehicles will be completed on Contractor's own time.

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WORK ORDER CREW STRUCTURE – TIME AND MATERIALS (AS REQUESTED)

The total available crew structure currently requires one crews capable of both bucket and rear lot climbing work for the purpose of time and material based trimming or unit removal work orders. Crew requirements may be requested for both seasonal and projected long term requirements by the CITY Designated Representative. The following are the minimum requirements for the production crew structure; modifications to this structure must be approved in writing by the CITY Designated Representative.

A. Work Order Crew, Time and Material

Two (2) man aerial lift trimming crews consisting of the following:

- One (1) Foreman
- One (1) Trimmer
- One (1) 50 ft. minimum working height fully articulating
aerial lift with its normal compliment of tools
- One (1) chipper (disc) 12"
- One (1) medium chain saw
- One (1) small chain saw
- One (1) pole clip
- One (1) pole saw

In addition to the above specified equipment and tools, the Contractor shall furnish all other items such as: ropes, climbing equipment, and all miscellaneous items required to perform the work described in these specifications. The price for equipment shall include fuels, lubricant and maintenance, but is not limited to these items. No charges shall be made for equipment while it is down for repairs, transporting vehicles for routine maintenance, fueling or general maintenance.

CREW SAFE WORK PROCEDURES

The work performed under this contract will be performed near energized electrical conductors of CITY's Distribution and Transmission System. The Contractor shall establish and conform to safe work practices appropriate for such work. The Contractor shall comply with operating procedures established by the Commission for such work and all procedures used to perform such work shall conform to federal OSHA, IEEE STD 516-2003, State of Florida, and local requirements. It is the responsibility of the Contractor to document the instruction and training of all their employees regarding the hazards involved in working around energized conductors.

Before starting work in an area where energized primary conductors are involved, the Contract Supervisor or someone assigned the responsibility by him will notify the Line Supervisor of the circuit number, work location and crew doing the work. If the Contractor Foreman feels the conditions warrant, he shall arrange with the Commission representative to have the automatic recloser turned off with the Line Supervisor. If this action is taken, it is imperative that the crews remain in contact with the Mount Dora Line Supervisor in the event there is an accidental trip-out so electric service can be restored in the shortest possible time. At the end of the work day the Mount Dora Line

ATTACHMENT #3

Supervisor will be notified of the crews leaving the area. If crews are working behind an automatic field recloser, which warrants the recloser being turned off, this request will be made through the Line Supervisor to co-ordinate with an Operations Switchman. The switching order will be returned to normal as soon as conditions warrant. In the event of severe weather entering our service area, every effort must be made to restore all circuits to normal operating conditions as soon as possible. Safe work practices will be followed at all times and where special requirements or hazards exist, they will be made known to the CITY representative and worked in the safest manner practical.

Line clearance crews shall verify and have the CITY power line circuit number they are working on displayed in a location easily observed on the exterior of the vehicle.

In the event of a serious accident where assistance is needed, the Contractor's crew shall notify the Line Supervisor of the type of assistance needed; the location, and the crew number, emergency aid shall also be solicited from the 911 emergency response system. The caller will remain in communications with Line Supervisor until all the information necessary in order to get emergency equipment to their location.

CREW PLACE OF REPORTING

The crew reporting location(s) for work Order, time and material crews must meet CITY's Designated Representative's approval. There will be (1) reporting locations in CITY. All costs will be borne by the Contractor. Crews will report to location closest to their work area. A Supervisor or General Foreman will be present at reporting locations at the beginning and end of each day. CITY reserves the right to change the place of reporting to best meet the needs of the Commission. This does not apply to Production Unit Crews.

DESIGNATION OF CREWS AND EQUIPMENT

To insure contract effectiveness and efficiency, the Contractor shall evaluate and determine the necessary size and composition of crews for distribution line clearance and work orders.

MAPS

The CITY will provide the Contractor with necessary copies of the distribution system. One copy of these maps should be retained by the supervisor as a record showing when specific areas were trimmed. The crew foreman shall annotate, sign and date a copy of the Tree Trim Area Map and return to the CITY Designated Representative when the work is completed in that area. Any field observations in the accuracy will be appropriately marked and brought to the attention of the Designated Representative. Additionally, the Contractor's supervisor will be provided an electronic copy of the primary system line maps in Adobe reader.

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INVOICING and PAYMENT

Invoices shall be rendered monthly for payment via electronic media and shall be supplemented with hard copies. An Aged trial balance reflecting any outstanding invoices shall be submitted monthly.

Invoices shall contain the following information at a minimum:

- A. Invoice period
- B. Production Circuit or Work Order
- C. Mileage associated with Production Circuits
- D. Total invoice amounts
- E. Any explanation deemed necessary
- F. Date
- G. Printed name and signature of inspector
- H. Completed Work Order accompanying invoice

TARIFFS, TOLLS, TAXES, PERMITS, AND LICENSES

It shall be the Contractor's responsibility to determine the applicable tariffs, tolls, taxes, permits, and licenses. If the Contractor is in doubt as to whether or not a tariff, tax, permit or license is applicable, they shall state in their Proposal whether this item has been included in their proposal price and the amount of the applicable tariff, tax, permit or license in question

REMOVAL/DISPOSAL OF TRASH, DEBRIS AND SOIL

Upon completion of work in distribution ROW's (right of way), each property, shall be raked and refuse shall be properly disposed of. Any damage to customer property will be reported immediately to Contractor supervision and the CITY Designated Representative. Any damage caused by the Contractor is the responsibility of the Contractor, and shall be restored to the customer's satisfaction within forty-eight (48) hours of the end of that workday.

Unless otherwise approved, all line clearing refuse shall be disposed of at an approved disposal facility and the cost shall be included in the per-mile cost. The Contractor shall be responsible for identifying, transport and disposal of all clearing refuse. The disposal of all refuse shall be documented in daily reports which shall include the amount of refuse disposed. Copies of disposal receipts shall be submitted with associated invoices

Before the work in a specific location is considered complete, all rubbish and unused material due to, or connected with, the work must be removed and the premises left in a

ATTACHMENT #3

condition satisfactory to the Commission. All property, public or private, disturbed or damaged during the execution of the work shall be restored to its former condition.

All necessary right-of-way utilization permits required in the performance of this contract, whether State, County, City or private, shall be provided by the CITY. Contractor shall be responsible for notification to all applicable permitting agencies before commencement of work and receipt of any required validation numbers issued by such agencies.

Regarding all other required permits for the performance of the work within this specification, the Contractor shall be responsible for obtaining all necessary permits/Licenses to ensure compliance with all applicable federal, state and municipal statutes. CITY will not reimburse the Contractor their costs for application or renewal of any necessary permits/Licenses.

TRAFFIC CONTROL

The Contractor will be responsible for all traffic control devices such as barricades, lights, steel plates, warning signs, flagmen, arrow boards or any other means of warning to prevent accident and injury to persons and property. The use of such devices shall be considered incidental to the overall project and the cost for the use of such devices shall be included in the unit prices. Concrete barriers are not included.

Contractor will post signs five (5) working days prior to any construction activity in areas, which is not having construction activities by other public agencies to inform the public. In residential areas the Contractor shall also go door to door and hand out notification of pending work 48 hours prior to the start of such work. The Contractor shall furnish the signs, however CITY project Administrator or their designee shall furnish to the Contractor the blank door notification notices.

The Contractor shall provide all traffic control plans required by CITY or governing agency. Work zone requiring traffic control will be in accordance with Manual on Uniform Traffic Control Devices and the State of Florida Utility Accommodation Guide. The Contractor will provide the necessary trained traffic control personnel as set forth in the Utility Accommodation Guide. The cost of this plan shall be considered incidental to the cost of the project.

The Contractor shall comply with Maintenance of Traffic Training, Sections 33.044, 334-048, 337.401 and 316.0745, Florida Statutes, Florida Administrative Code Rule 14-15.010 and 14-46.001, Federal-Aid Policy Guide 23 CFR Parts 630J and 655F (Federal Regulations).

To include Intermediate Traffic Control Course and Basic Flaggers Course, copies of current certificates will be supplied to the CITY project Administrator or their Designated representative annually.

DAMAGE TO THE WORK AND SURROUNDING AREA

ATTACHMENT #3

The Contractor shall take all necessary precautions against damage to the work from the elements or any other causes whatsoever. The Contractor shall rebuild, repair, restore or make good, without charge to CITY, damages to any portion of the materials and work before its completion and acceptance.

Precautions to prevent erosion and weather related damage to trenches shall be the Contractor's responsibility. The Contractor will be responsible for damages that might occur due to lack of adequate precautions.

All existing trees, fences, pipes, conduits, wire, manholes, embankments, or other structures in the vicinity of the work will be supported and protected from damage by the Contractor during the work. The Contractor will be liable for all damage done to such structures, as above provided and will save CITY harmless from any liability for expense or injuries, damages, or repairs. Mailboxes, signs, newspaper boxes, etc., may be removed and replaced.

REPORTING OF CREW LOCATIONS

Contractor shall provide daily reports to the CITY Designated Representative as directed regarding the location and transfer all crews. Additionally, the Contractor shall report every instance of ending the workday before the scheduled time and must provide justification of such occurrence(s). Reports shall be transmitted to the CITY Contractor Administrator via email before work for each day commences.

EMERGENCY RESPONSE/RESTORATION

The Contractor crews shall be able to respond to after hour emergencies no longer than two hours after receiving a call from the CITY's Project Manager, their designee or CITY dispatch. Response is defined as being at the requested job-site location.

Contractor shall provide first right of refusal to the CITY for any additional backup crews for storm restoration work. The availability of backup crews shall be twenty-four hours seven days a week, if necessary. Contractor crew response time will be a factor in proposal evaluation process. The intent of emergency work is to provide line clearance in the restoration of power in a quick, safe, efficient manner to the CITY's customers.

CUSTOMER NOTIFICATION

Contractor shall notify property City's prior to trimming on customers' property. The Contractor shall be responsible for a courtesy notification to the property City's of the actual date(s) that trimming is to be performed. Trimming notification (door hanger) shall be sent out at least 48 hours prior to trimming. Trimming notification (direct mail) shall be sent out at least 10 days prior to trimming. Customers notified more than ninety (90) days prior to start of the work must be re-notified at least 48 hours prior to the start of work. E-mail notification to the Designated Representative and designated customer

ATTACHMENT #3

service representative shall be performed 30 days prior to scheduled work of a production circuit. This will allow ample time for a billing insert to give customer a first notification of vegetation maintenance.

Contractor shall document every instance where Contractor is unable to secure permission from property City's to trim on their property, and proceed to trim as much as acceptable by property CITY. Contractor shall make every effort to secure the desired clearances. Contractor should always notify the resident prior to conducting any trimming activities. Contractor shall notify the CITY Designated Representative whenever permission to trim on private property is not granted.

TREE TRIMMING



The City of Mount Dora Electric Utilities primary goal for trimming trees away from power lines is **PUBLIC SAFETY**.

- When trimming a tree more than 10' from the power line, or any limb larger than 4" diameter breast height (DBH), the tree crew shall initiate customer contact prior to trimming.
- If the customer is not present, a door hanger shall be left, and Davey will wait three days before trimming to give the customer time to call.

A photograph of a large tree in a residential yard. A red circle with a red arrow points to a limb of the tree, with the text "10'" next to it. A yellow dashed line outlines a 10-foot clearance zone around the tree. A yellow arrow points from the text "COMMUNICATE FIRST" to the tree.

ANY TREE TRIMMING MORE THAN 10' FROM POWER LINES OR ANY LIMB LARGER THAN 4" DBH REQUIRES CUSTOMER CONTACT FIRST.

Why we are trimming?
To insure public safety by providing 10' of clearance from energized power lines.

Why are we requesting to trim more than 10'?
We normally trim an extended branch back to the main branch, to insure the health of the tree. These pruning practices are recommended by the Internal Society of Arboriculture. These cuts are called branch collar cuts.

Trees within the designated 10' defined clearance area, or dangerous/hazardous trees where the property CITY refuses permission to trim or remove, must be reported in writing to the CITY Designated Representative. A "Permission for Tree Trimming," can be used for this purpose with suitable notations that a property CITY refused permission. The Contractor shall retain a copy of this form for his records.

Customer's Refusal to Grant Permission

ATTACHMENT #3

Every effort must be made by the Contractor to obtain permission from the customer to trim trees prior to the start of any work. Efforts to contact customers for permission to trim trees shall be in the form of mailers, door hangers, and customer visits to include three (3) subsequent successful visits (meeting with the customer in person) to obtain permission. However, if permission is not granted prior to completing the trimming on the entire feeder, CITY staff will intervene and attempt to obtain permission. If permission is granted within the six (6) months of completion of the circuits, trimming will be included within production unit rates.

Customer Complaints

Contractor shall contact all customer complaints within two working days of the initial complaint, and resolve any reasonable complaint or claim. CITY's Designated Representative shall be kept informed of the status of all complaints.

CREW TOOLS AND EQUIPMENT

The Contractor shall furnish all labor, tools, equipment, transportation and materials. Trucks and equipment used in Time and Material work orders shall not be more than 7 years old, all other tools, trucks and equipment used within the contract shall be of high quality in every respect, their appearance and operability should reflect acceptable maintenance and shall be new or in like new condition. Contractor's employees shall be clean and present as good an appearance as the job conditions permit. Crews shall conduct themselves in a professional and courteous manner. Contractor's equipment shall be kept in neat appearance and in good operating condition at all times. Modern tools shall be used and kept in good working order. Adequate first aid supplies shall be available in all vehicles. CITY shall provide decals identifying the Contractor as a CITY vendor; the decal shall be attached to all vehicles where it is clearly visible. CITY shall not be responsible nor be charged any fees because of inoperative equipment. The rates for downtime credits shall be in accordance with the Proposal Data section of these documents.

VEGETATION IN SCHOOLS AND PARKS

Trees should be trimmed in a manner so as to discourage climbing by anyone and to provide maximum safety against possible wire contact. Trees in playgrounds, schoolyards, and parks should receive particular attention to reduce the accessibility of wires to persons climbing the trees.

MITIGATION PLANS

If a Contractor is released for hurricane damage relief work at another utility, upon return, a hurricane relief mitigation plan will be agreed upon to enable CITY to stay on schedule. If weather or ROW (right of way) access conditions obstruct proper treatment during the maintenance schedule, a mitigation plan will be outlined and reviewed with

ATTACHMENT #3

the Contractor to maintain the CITY schedule and CITY commission goals.

QUALITY CONTROL

All work performed by the Contractor is subject to inspection and approval by the Commission. Any work not meeting Commission or generally accepted line clearance standards or turned in falsely will be redone at no cost to the Commission. The actual cost of the second inspection will be billed to Contractor. A pre-inspection and post inspection shall be conducted to insure overall consistency and quality control of vegetation maintenance. The Contractor shall maintain a weekly contract maintenance schedule indicating treatment progress. A formal review of production progress shall be conducted quarterly.

STORM SUPPORT

City of Mount Dora may need efficient, reliable storm recovery services during the hurricane season. Contractor shall establish a storm Administrator and be prepared to provide emergency support services in storm restoration at the direction of CITY utilizing those crews that routinely provide services to CITY. CITY may request more help should it be available.

Contractor shall appoint an On-Site Storm Administrator and be prepared to provide emergency support services before, during, and after severe weather conditions at the direction of CITY.

Invoicing for such activities shall be at the Time and Material Rates as proposed and established in this contract. Overtime is established at 1.5 times the hourly rate. There is no premium on equipment rental. Meals, lodging, tolls, or miscellaneous expenses legitimately incurred will be reimbursed or provided by CITY.

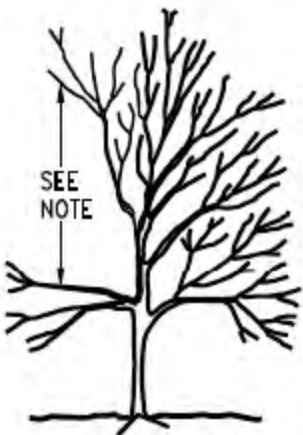
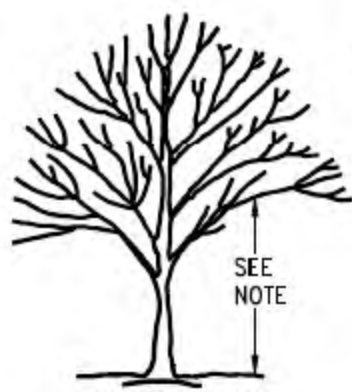
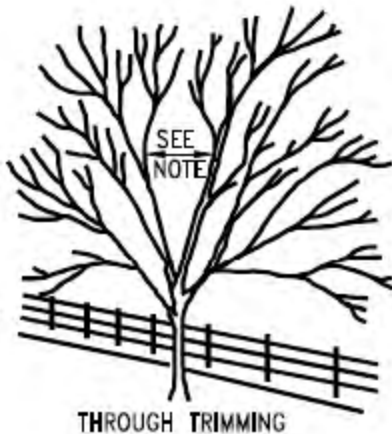
All such storm related restoration activities shall be specifically requested and monitored by CITY in lieu of the routine services that are the basis for this contract.

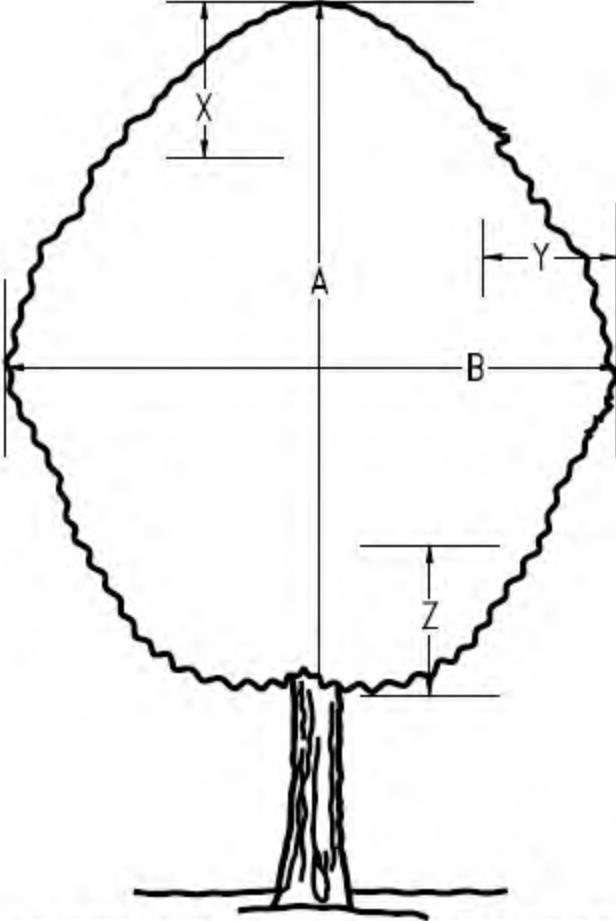
The Proposer is cautioned that it is the Proposer's sole responsibility to submit information related to the evaluation categories and that CITY is under no obligation to solicit such information if it is not included with the proposal. Failure of the Proposer to submit such information may cause an adverse impact on the evaluation of the proposal.

ATTACHMENT #3

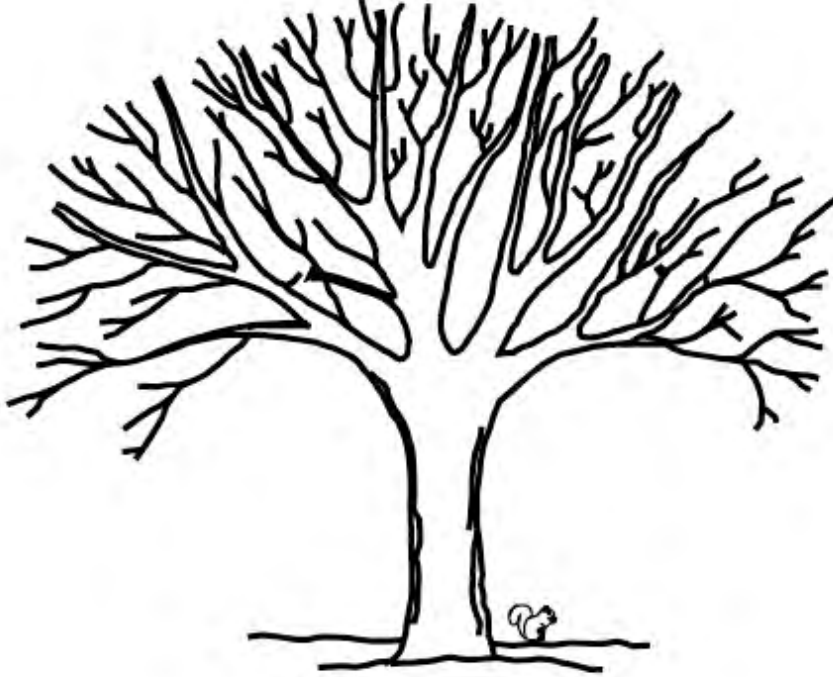
VEGETATION CLEARANCES AND PRUNING METHODS

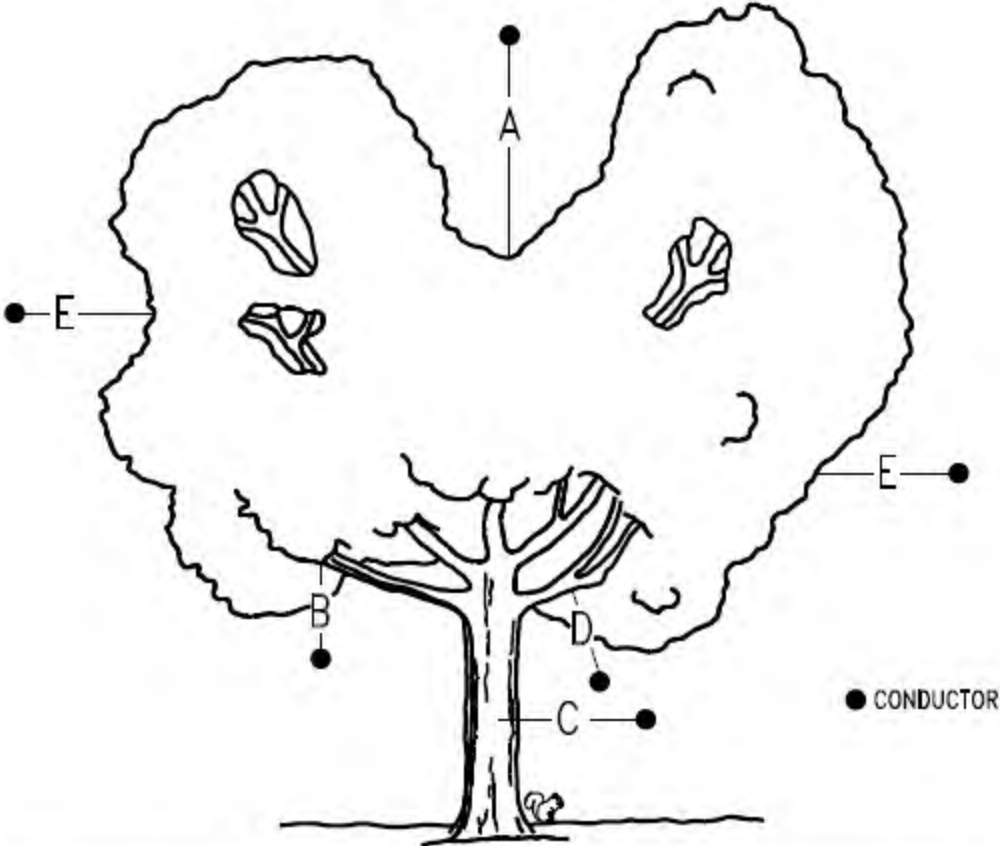
VEGETATION CLEARANCE FOR DISTRIBUTION				13			
NOTES: 1. MINIMUM INDICATES CLEARANCE REQUIRED AT ALL TIMES. 2. THE MOTION OF POLES, CONDUCTORS AND TREES UNDER ADVERSE WEATHER CONDITIONS MUST BE CONSIDERED IN MAINTAINING MINIMUM CLEARANCES. 3. DEFINITION: READILY CLIMBABLE - HAVING SUFFICIENT HANDHOLDS AND FOOTHOLDS TO PERMIT AN AVERAGE PERSON TO CLIMB EASILY WITHOUT USING A LADDER OR OTHER SPECIAL EQUIPMENT.							
DISTRIBUTION VEGETATION MANAGEMENT							
01	03/21/07	REVISION 1 AS PER MARK-UPS	WRZ	Drawn by	Checked by	Approved by	Date
No.	Date	Revision	Ck.	JLJ	WRZ	W ZIMMERMAN	12/05/06

NATURAL PRUNING				XX								
 SEE NOTE SIDE TRIMMING  SEE NOTE UNDER TRIMMING  SEE NOTE THROUGH TRIMMING THE "NATURAL PRUNING" METHOD OF TREE TRIMMING WILL BE USED FOR SIDE TRIMMING, UNDER TRIMMING, & THROUGH TRIMMING. <u>SIDE TRIMMING</u> WILL BE DONE SELECTIVELY CUTTING OF SECONDARY MAIN LEADERS BACK TO A STRONG JUNCTION OF A LARGE LIMB OR THE MAIN TRUNK. REMOVE AS MANY OVERHANGING LIMBS AS PRACTICAL REMOVE ALL DEAD AND WEAK LIMBS. <u>UNDER TRIMMING</u> WILL BE DONE BY REMOVING ALL DEAD WOOD ABOVE THE LINE AND SELECTIVE TRIMMING OF LOWER BRANCHES TO ALLOW PROPER CONDUCTOR CLEARANCE. <u>THROUGH TRIMMING</u> WILL BE DONE BY REMOVING BRANCHES WITHIN THE CROWN TO ALLOW CONDUCTOR CLEARANCE THROUGH THE CENTER OF THE TREE SELECTIVELY TRIM DEAD AND WEAK LIMBS ABOVE THE CONDUCTORS. NOTE: REFER TO SEC. 19 PG. 1 FOR RECOMMENDED MINIMUM CLEARANCES OF CONDUCTORS AT TIME OF TRIMMING.												
DISTRIBUTION VEGETATION MANAGEMENT												
No.	Date	Revision	Ck.	<table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 25%;">Drawn by</td> <td style="width: 25%;">Checked by</td> <td style="width: 25%;">Approved by</td> <td style="width: 25%;">Date</td> </tr> <tr> <td style="text-align: center;">XX</td> <td style="text-align: center;">X</td> <td style="text-align: center;">X</td> <td style="text-align: center;">XX-XX-XX</td> </tr> </table>	Drawn by	Checked by	Approved by	Date	XX	X	X	XX-XX-XX
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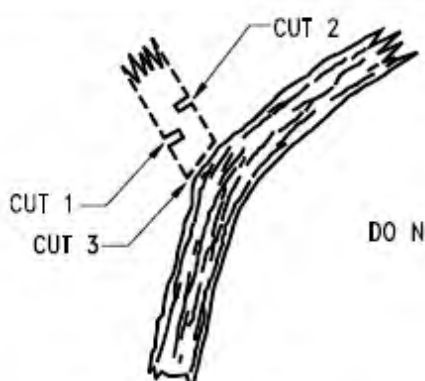
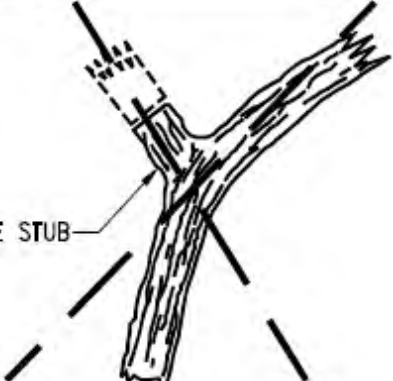
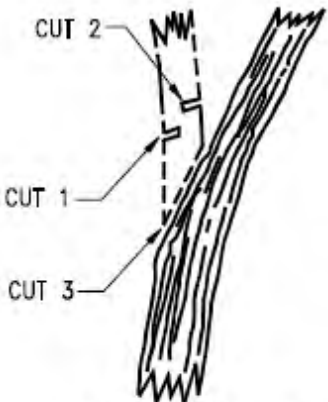
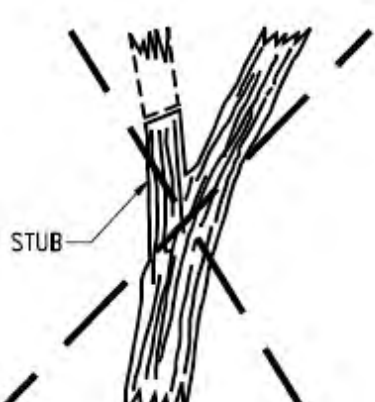
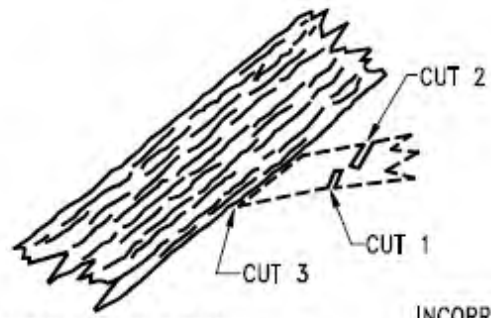
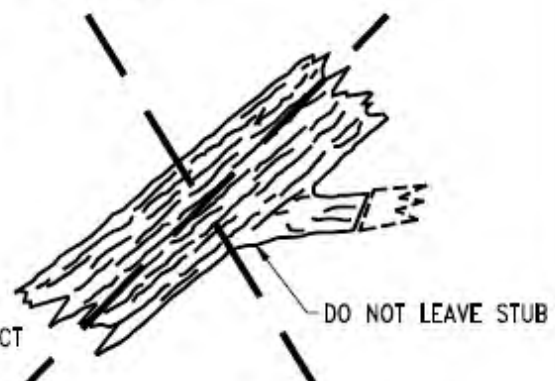
TREE SHADE REDUCING LIMITS				XX			
GENERAL LIMITS FOR REDUCING SHADE TREES AT TIME OF LINE CONSTRUCTION  TOPPING (X) AND UNDERCUT (Z) MAY EACH BE A MAXIMUM OF 20% OF (A) SIDE CUT (Y) MAY BE A MAXIMUM OF 15% OF (B). NOTE: THIS SKETCH INDICATES THE EXTENT TO WHICH THE AVERAGE SHADE TREE MAY BE REDUCED IN SIZE TO PROVIDE CLEARANCE AT TIME OF OVERHEAD LINE CONSTRUCTION. ABOVE SPECIFICATIONS ARE NOT GENERALLY APPLICABLE TO FOREST TYPE TREES.							
DISTRIBUTION VEGETATION MANAGEMENT ALSO SEE THE DISTRIBUTION VEGETATION MANAGEMENT							
No.	Date	Revision	Ck.	Drawn by	Checked by	Approved by	Date
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ATTACHMENT #3

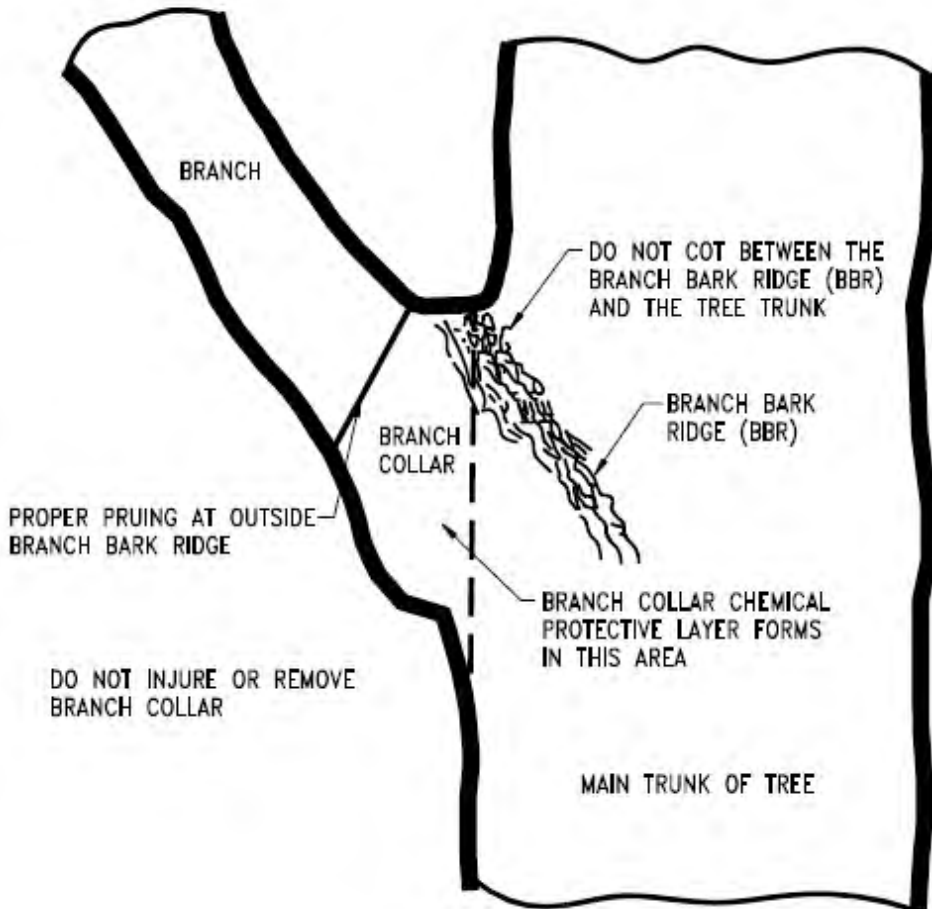
ROUND OVER OR FORMAL PRUNNING				XX			
ALTERNATE METHOD OF TRIMMING FOR TREES LOCATED DIRECTLY BENEATH A POWER LINE (NOT ROUTINE)							
							
THE ROUND OVER METHOD OF TRIMMING SHOULD BE AVOIDED WHENEVER POSSIBLE. WHEN IT IS NECESSARY TO DO THIS TYPE OF TRIMMING, AN EFFORT SHOULD BE MADE TO SELECTIVELY THIN OUT THE TREE.							
				DISTRIBUTION VEGETATION MANAGEMENT COMMISSIONER			
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No.	Date	Revision	Ck.	XX	X	X	XX-XX-XX

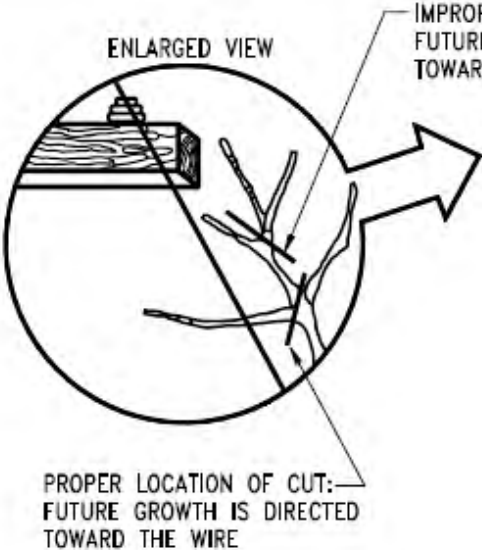
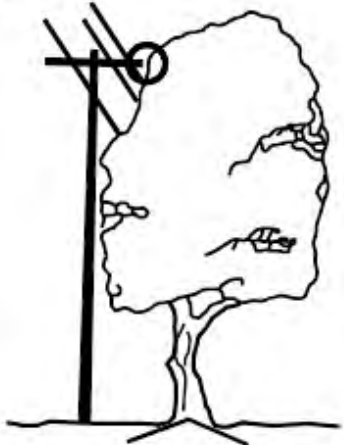
MINIMUM CLEARANCES OF CONDUCTOR				XX			
RECOMMENDED MINIMUM CLEARANCE OF CONDUCTORS AT TIME OF TRIMMING FEET  ● CONDUCTOR							
DISTANCE FROM CONDUCTOR				SECONDARY		PRIMARY	
(A) TO TOP OF TREE				5'		8'	
(B) TO OVERHANGING LIMB:							
SHORT LIMB				3'		5'	
LONG LIMB				5'		10'	
				SAG OF LINE PLUS			
(C) TO MAIN TRUNK				2'		4'	
(D) TO MAIN LIMB				4'		4'	
(E) TO BRANCHES				5'		5'	
DISTRIBUTION VEGETATION MANAGEMENT							
No.	Date	Revision	Ck.	Drawn by XX	Checked by X	Approved by X	Date XX-XX-XX

TREE TRIMMING METHODS CONTINUED				XX			
● THE TREE SHOULD BE PRUNED TO ELIMINATE ALL STUBS ● IDENTIFY THE BRANCH COLLAR AND THE BRANCH BARK RIDGE ● PRUNE ALL BRANCHES SO AS TO PROTECT THE BRANCH COLLAR AND THE BRANCH BARK RIDGE ● DO NOT CUT THE BRANCHES FLUSH WITH THE TRUNK THE DROP CROTCH PRUNING PRINCIPLE REQUIRES THAT THE PORTION OF THE BE REMOVED AT A LATERAL BRANCH AT LEAST ONE THIRD THE SIZE OF THE PART BEING REMOVED							
DISTRIBUTION VEGETATION MANAGEMENT							
No.	Date	Revision	Ck.	Drawn by	Checked by	Approved by	Date
				XX	X	X	XX-XX-XX

TREE TRIMMING METHODS				XX			
 CUT 1 CUT 2 CUT 3 PROPER DROP CROTCH  DO NOT LEAVE STUB INCORRECT  CUT 1 CUT 2 CUT 3 PROPER DROP CROTCH  DO NOT LEAVE STUB INCORRECT  CUT 1 CUT 2 CUT 3 PROPER DROP CROTCH  DO NOT LEAVE STUB INCORRECT							
DISTRIBUTION VEGETATION MANAGEMENT							
No.	Date	Revision	Ck.	Drawn by	Checked by	Approved by	Date
				XX	X	X	XX-XX-XX

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TREE TRIMMING PROPER PRUNING				XX			
PROPER PRUNING: IMPORTANCE OF BRANCH COLLAR 							
DISTRIBUTION VEGETATION MANAGEMENT							
				Drawn by	Checked by	Approved by	Date
No.	Date	Revision	Ck.	XX	X	X	XX-XX-XX

ROUND OVER OR FORMAL PRUNING				XX			
 IMPROPER LOCATION OF CUT: FUTURE GROWTH IS DIRECTED TOWARD THE WIRE ENLARGED VIEW PROPER LOCATION OF CUT: FUTURE GROWTH IS DIRECTED TOWARD THE WIRE  PRUNING CUTS SHOULD BE LOCATED TO DIRECT GROWTH AWAY FROM THE WIRES  A) PRUNING AT A ON A SPREADING LIMB WILL ENCOURAGE UPRIGHT GROWTH  B) PRUNING AT B ON UPRIGHT GROWING LIMBS WILL ENCOURAGE MORIZONTAL SPREADING GROWTH							
DISTRIBUTION VEGETATION MANAGEMENT							
				Drawn by	Checked by	Approved by	Date
No.	Date	Revision	Ck.	XX	X	X	XX-XX-XX

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TRIMMING BENEATH POWER LINES				XX			
PREFERRED METHOD OF TRIMMING FOR TREES LOCATED DIRECTLY BENEATH A POWER LINE "NATURAL PRUNING"   CUT BRANCHES FLUSH AT A SUITABLE PARENT LIMB BACK TOWARD THE CENTER OF THE TREE LARGE BRANCHES SHOULD BE REMOVED TO LATERALS AT LEAST 1/3 THE DIAMETER OF THE BRANCH BEING REMOVED.							
DISTRIBUTION VEGETATION MANAGEMENT							
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No.	Date	Revision	Ck.	XX	X	X	XX-XX-XX

ATTACHMENT #3

A. Distribution Pricing Line Mile

Unit price cost per mile for distribution vegetation maintenance per RFP specifications and contract documents in the Mount Dora service Area.

CIRCUIT	MILES	CYCLE YEAR		Cost per Mile	Circuit Total Cost
		1	2		
M598	7.4	7.4		\$13,434.0	\$99,411.60
M593	9.2	9.2		\$13,434.0	\$123,592.80
M594	3.5	3.5		\$13,434.0	\$47,019.0
M595	8.0		8.0	\$13,434.0	\$107,472.0
M596	8.4		8.4	\$14,544.0	\$122,169.60
M597	8.2		8.2	\$14,544.0	\$119,260.80
Total Miles	44.7	20.1	24.6	Total System Cost	\$618,925.8

The Contractor shall provide the production unit supervisor and the necessary equipment for field e-mail capability (wireless laptop shall be the method for field e-mail capability) to be included in the unit per line mile cost.

B. Pricing Work Order Crews

Time and material rates shall apply to Work Order crews when they are requested for work orders, occasional storm work or other CITY scheduled demand work. The Contractor shall provide a General Foreman for supervision of Work Order crews capable of both bucket and rear lot climbing work. Additional crews may be requested for both seasonal and projected long term requirements by the CITY Designated Representative. The Work Order General Foreman shall have the necessary equipment for field e-mail capability (wireless laptop shall be the method for field e-mail capability). Contractor Job Description Class and minimum length of experience must be submitted for all personnel proposed for work under this contract. The CITY Designated Representative shall authorize time and material rates for emergency conditions, call-out and or work orders outside of scheduled maintenance. Overtime shall be paid at a rate of 1.5 per hour on an exception basis with prior approval from the CITY Designated Representative.

ATTACHMENT #4**Master Services Agreement**

This Master Services Agreement is entered into on this 1 day of October 2020, and is by and between Florida Municipal Power Agency, a governmental joint action agency organized and existing pursuant to Florida law, with its office located at 8553 Commodity Circle, Orlando, Florida 32819, ("FMPA") and Lewis Tree Service, Inc., with its principle place of business located at 300 Lucius Gordon Drive, West Henrietta, NY 14586, ("Contractor").

FMPA is a municipal electric joint action agency formed pursuant to section 163.01, Florida Statutes, and exercises powers pursuant to section 163.01 and chapter 361, part II, Florida Statutes.

FMPA's members are 31 municipal electric systems within the state of Florida.

Lewis Tree Service, Inc. is a company offering Utility Tree Trimming and Vegetation Management Services.

The parties desire for Lewis Tree Service, Inc. to perform the services more fully described in this agreement and Schedule A.

Now therefore, for and in consideration of the premises and mutual covenants made herein, the parties agree as follows:

Section 1. Scope of Services

FMPA is entering into this Master Services Agreement on behalf of its members for Lewis Tree Service, Inc. to provide its services as described in Schedule A to this agreement, which is attached hereto and incorporated into this agreement by this reference (the "Services"). For FMPA's members that desire for Lewis Tree Service, Inc. to furnish Services under this agreement ("Participating Members"), FMPA is acting as a "Solicitation Agent" only. Each Participating Member will issue a Purchase Order with project-specific technical specifications. In addition, the Participating Member's Purchase Order may carry additional terms and conditions as required by the Participating Member. All project-specific direction, guidance and invoicing will be conducted between the Participating Member and Lewis Tree Service, Inc.

In the event that any terms or conditions provided in Schedule A conflict with any terms or conditions of this agreement, or with the terms and conditions of a Participating Member's Purchase Order, the hierarchy will be as follows: 1) the terms of the Participating Member's Purchase Order, 2) the terms of this agreement, 3) the terms provided in Schedule A.

Notwithstanding any provision or specification of this agreement to the contrary, Lewis Tree Service, Inc. shall not be required to handle, store, transport, apply, or dispose of any product containing N-(phosphonomethyl) glycine (or "Glyphosate") or any of its chemical

ATTACHMENT #4

derivatives as part of its performance obligations under this agreement; any subsequent amendment to this agreement or any document that is incorporated herein by reference and is contrary to the foregoing restriction shall only take effect upon the specific written approval of FMPA and Lewis Tree Service, Inc.'s Chief Financial Officer or Risk Manager, or his or her designee.

Section 2. Term & Termination

This agreement shall become effective upon the date stated in the introductory clause of this agreement, and shall remain in effect for a period of five years from the effective date. Thereafter, this agreement may be renewed on an annual basis upon mutual consent of the parties, for up to two additional one-year terms. Either party wishing to extend this agreement must notify the other party in writing no later than 60 days prior to the end of the then-current contract term of its desire to renew. If the other party does not respond to the renewal notification within 30 days of receipt, it will be deemed that the party consents to the renewal of the agreement.

At any time, FMPA may terminate this contract, in whole or in part, for failure of Lewis Tree Service, Inc. to perform in accordance with the terms of this contract, or for any reason, at FMPA's sole discretion, upon 30 days prior written notice. Lewis Tree Service, Inc. may terminate this contract for cause upon 30 days prior written notice.

Any failure by Lewis Tree Service, Inc. to perform or comply with the terms and conditions of a Purchase Order issued under this agreement which continues for 10 calendar days after written notice from Participating Member to Lewis Tree Service, Inc. demanding that such failure to perform be cured, shall be deemed an event of default by Lewis Tree Service, Inc. Upon the occurrence of any such event of default, Participating Member may terminate the Purchase Order and pursue any remedies available at law or in equity. Participating Member shall have the right in its sole discretion to terminate by written notice, in whole or in part, the Purchase Order for its convenience. Participating Member shall pay Lewis Tree Service, Inc. for any Services performed under the Purchase Order prior to the termination date.

Section 3. Compensation and Payment

Participating Members will through their own initiative issue project-specific Purchase Orders to Lewis Tree Service, Inc. For those Participating Members, FMPA is acting as a "Solicitation Agent" only and shall not be held liable for any costs or damages incurred pursuant to any Purchase Order entered into by them with Lewis Tree Service, Inc.

The total price for Services shall be as agreed to between Lewis Tree Service, Inc. and Participating Member(s) as set forth in the individual Purchase Order(s), which may include a not-to-exceed price set forth by the Participating Member(s). Lewis Tree Service, Inc. shall not exceed any such not-to-exceed price without the prior written agreement of the Participating Member(s).

ATTACHMENT #4

Prices as stated in Schedule A will be firm for the first three years of this agreement, with pricing updates considered for years thereafter. Any price changes must be agreed to in writing at least 60 days prior to becoming effective.

Section 4. Independent Contractor Status

It is understood and agreed that Lewis Tree Service, Inc. is an independent contractor, is not an agent or employee of FMPA, and is not authorized to act on behalf of FMPA. Lewis Tree Service, Inc. agrees not to hold him or herself out as, or give any person any reason to believe that he or she is an employee, agent, or partner of FMPA. Lewis Tree Service, Inc. will not be eligible for any employee benefits, nor will FMPA make deductions from any amounts payable to Lewis Tree Service, Inc. for taxes or insurance. All payroll and employment taxes, insurance, and benefits shall be the sole responsibility of Lewis Tree Service, Inc. Lewis Tree Service, Inc. retains the right to provide services for others during the term of this Agreement and is not required to devote his or her services exclusively for FMPA. Lewis Tree Service, Inc. agrees that it shall bear the responsibility for verifying the employment status, under all applicable immigration laws, of all persons it employs in the performance of this contract. For purposes of this Section 4, the term FMPA includes FMPA's Participating Members.

Section 5. Standard of Care

The Services and any deliverables provided pursuant to this agreement shall be free from material defect. Lewis Tree Service, Inc. represents that the Services shall be performed with reasonable care in a diligent and competent manner and in accordance with generally accepted professional practices. Lewis Tree Service, Inc. will re-performing at Lewis Tree Service, Inc.'s expense any Services performed by Lewis Tree Service, Inc. which have failed to meet the above warranty, if such failure is promptly reported to Lewis Tree Service, Inc. not later than one (1) year following completion of the applicable Services. With respect to any equipment and/or materials provided pursuant to the Services, such shall be provided on an "as-is, where-is, with all-faults" basis, provided that Lewis Tree Service, Inc. shall pass through any manufacturer warranties available for assignment to FMPA and/or the applicable FMPA Participating Member with respect to any such equipment and/or materials. The foregoing remedy shall be client's sole remedy for any failure of company to comply with its warranty obligations.

Section 6. Insurance

The Lewis Tree Service, Inc. shall acquire and maintain at all times during the performance of Services the insurance coverage set forth below. Insurance Carrier Rating Coverages provided by the Lewis Tree Service, Inc. must be underwritten by an insurance company deemed acceptable by the Participating Member. Insurance coverage shall be provided by companies rated A- or better by Best's Insurance Rating. The Participating Member reserves the right to reject all or any insurance carrier(s) with an unacceptable financial rating. Lewis Tree Service, Inc. shall furnish Participating Members a copy of the insurance certificate prior to starting any work on site:

ATTACHMENT #4

(a) **Workers Compensation and Employers Liability.** This insurance shall protect the Lewis Tree Service, Inc. against all claims under applicable state workers' compensation laws. Lewis Tree Service, Inc. shall also be protected against claims for injury, disease, or death to employees which, for any reason, may not fall within the provisions of a state workers compensation law. The policy shall include an "all states" or "other states" endorsement. The liability limits shall be, at a minimum, as follows: Workers' Compensation- Statutory; Employer's Liability- \$500,000 each.

(b) **Commercial General Liability.** This insurance shall be written on an occurrence type policy and shall protect the Lewis Tree Service, Inc. and the Participating Member (to the extent of Lewis Tree Service, Inc.'s indemnity obligations in this agreement) against claims for personal injury including bodily injury and death and property damage. This policy shall include a contractual liability endorsement to insure the contractual liability assumed by the Lewis Tree Service, Inc. under this agreement and a completed operations and products liability endorsement to remain in effect for 2 years after final payment. Limits of liability will not be less than \$2 million combined single limit per occurrence / \$4 million general annual aggregate for bodily injury and property damage.

(c) **Automobile Liability Policy.** This insurance shall be written on an occurrence type policy and shall protect the Lewis Tree Service, Inc. and the Participating Member (to the extent of Lewis Tree Service, Inc.'s indemnity obligations in this agreement) against all claims for injuries arising out of use of any auto including own, hired, or non-owned autos. Limits of liability will not be less than \$1 million in combined single limits for bodily injury and property damage.

(d) **Additional Insured.** All insurance coverages furnished under this contract, with the exception of workers compensation and employer's liability shall include the Participating Member as an additional insured with respect to the activities of the Lewis Tree Service, Inc. Any party named an additional insured pursuant to this Agreement shall be an additional insured where permissible by law but only to the extent the loss in question is caused by the negligent act or omission of the Lewis Tree Service, Inc., and only to the extent necessary to provide coverage for the indemnity obligations expressly assumed by Lewis Tree Service, Inc. under this Agreement, and not in respect to any act or omission or operation of the Participating Member. It is the express intent and understanding of the Parties that the insurance and indemnity obligations under this Agreement are dependent upon one another and are not separate and distinct.

(e) **Waiver of Subrogation.** The Lewis Tree Service, Inc. shall require their insurance carrier to waive all rights of subrogation against the Participating Member, their employees, directors and officers, where and to the extent permissible by law except to the extent the loss is caused by the negligence, gross negligence or willful misconduct of the Participating Member, or any indemnitee.

Lewis Tree Service, Inc. shall furnish Participating Member with certificates of insurance as evidence that the policies required under any applicable Purchase Order is in full force and effect.

ATTACHMENT #4**Section 7. Indemnification**

To the fullest extent permitted by law, the Lewis Tree Service, Inc., its heirs, successors and assigns shall indemnify and hold harmless FMPA, its successors and assigns, and its employees, against any and all claims, suits or actions at law, including the bodily injury or death of Lewis Tree Service, Inc. during the performance of the Services regardless of cause and/or all damages, costs and judgments (including reasonable attorneys' fees), incurred by FMPA to the extent arising from the negligence, gross negligence, and/or intentional or willful misconduct of Lewis Tree Service, Inc. while performing work under this Agreement. The liability of the Lewis Tree Service, Inc. is full and complete in all respects and subcontracting any part of the work shall not relieve it of primary liability. The indemnity and hold harmless obligations, however, shall not apply to the extent of FMPA's or a Participating Member's negligence, gross negligence, and/or intentional or willful misconduct. Neither party shall be liable to the other party for any incidental, indirect, special, punitive or consequential damages (including without limitation any damages relating to lost profits, revenue or loss of use) arising in connection with this agreement or any Purchase Order. The Lewis Tree Service, Inc. and its affiliates' maximum liability shall not exceed the greater of (i) the price set forth in the applicable Purchase Order, or (ii) the sum of the insurance policy limits required herein.

Section 8. General Terms and Conditions

- (a) Any notices given pursuant to this agreement shall be in writing, delivered to the address set forth in the introductory clause of this agreement, and shall be considered given when received.
- (b) No term of this agreement shall be deemed waived, and no breach of this agreement excused, unless the waiver or consent is in writing signed by the other party granting such waiver or consent.
- (c) If any provision of this agreement is determined to be illegal or unenforceable, such term or provision shall be deemed stricken, and all other terms and provisions shall remain in full force and effect.
- (d) This agreement shall be governed by the laws of the State of Florida. All controversies, claims or disputes arising out of this agreement shall be brought exclusively in appropriate court in Leon County, Florida.
- (e) In the event that either party is required to enforce the terms of this agreement by court proceedings or otherwise, the prevailing party of such proceedings shall be entitled to recover from the non-prevailing party all fees and costs incurred, including reasonable attorney's fees and costs and expenses for trial, alternative dispute resolution and appellate proceedings.

ATTACHMENT #4

IN WITNESS WHEREOF, the parties have duly executed this agreement as of the date first stated in the introductory paragraph.

FLORIDA MUNICIPAL POWER AGENCY

LEWIS TREE SERVICE, INC.

Signature: Jacob Williams
30475220FC51407...

Signature: [Handwritten Signature]

By: Jacob Williams
Gen. Mgr. & CEO

By: Robert A. Petrone SVR/CFO

ATTACHMENT #4

Schedule A

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as a place holder for awarded contractor's pricing information to follow.

ATTACHMENT #4

PROPOSAL TO FURNISH UTILITY TREE TRIMMING AND VEGETATION MANAGEMENT SERVICES FOR THE FLORIDA MUNICIPAL POWER AGENCY JOINT PURCHASE PROJECT

I have carefully examined the Request for Proposal, Terms and Conditions, Technical Specifications, Bid Forms, and any other documents accompanying or made a part of this Invitation. With full knowledge and understanding of the aforesaid, I agree to abide by all terms and conditions of this bid; exceptions have been noted on Proposer Form.

I hereby propose to furnish the materials/services specified in the Invitation at the prices quoted in my bid as indicated in the appropriate spaces on this and the attached sheets BF-2 and BF-8.

I certify that I am duly authorized to submit this bid on behalf of the vendor and that the vendor is ready, willing and able to perform if awarded the bid.

Prompt Payment Discount 0 % for payment made within days of delivery.

I agree to deliver to the designated place within each zone as appropriate as indicated in my submittal on Bid Form BF-2 and BF-8.

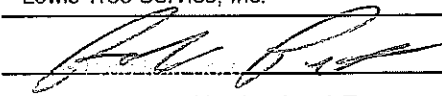
Prices quoted shall remain firm and irrevocable for a period of 3-year term.

ADDENDA. The undersigned bidder acknowledges receipt of the following addenda, which have been considered in preparing this proposal (if applicable).

Number None Dated
Number Dated

Respectfully submitted:

Company Name: Lewis Tree Service, Inc.

Signature: 

(Authorized Representative)

Robert A. Petrone - CFO/VP

(Type or Print Name of Signer)

Address: 300 Lucius Gordon Drive

West Henrietta, New York 14586

E-Mail Address: Robert.Petrone@lewistree.com

Telephone Number:

Toll Free Number: (800) 333-1593

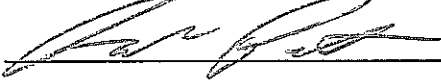
Date: 9/14/2020

BF - 1

ATTACHMENT #4

FMPA RFP 2020-036 Distribution System Pricing

Contractor Company Name: Lewis Tree Service, Inc.

Authorized Signature:  Date: 9/14/20

PRICING:

Please provide general pricing information for the following services. This pricing will be used for comparative purposes to evaluate proposals in conjunction with qualifications provided in the bid submittals.

We recognize that specific crew sizes, crew composition, equipment and other project-specific details will vary based on the project.

Awarded Bidder(s) will be required to submit a specific Scope of Work and pricing for each project as requested by Participating Member(s). All project-specific cost estimates must be consistent with the pricing as quoted below:

DISTRIBUTION

Distribution System Work To Include Labor, Equipment, Materials and Disposal.	
Description (Higher Vegetation Foliage)	Unit Price (per mile)
Mileage Rate for 3-person crew ¹ , including aerial lift	\$ See cover letter
Non-truck Accessible – Climbing Crew Trimming	\$ See cover letter
Truck Accessible Street Access 3-person crew ¹ – w/ aerial lift	\$ See cover letter
Limited Access (Not Maintained Roadway) w/ Crew	\$ See cover letter
¹ For estimation purposes, a 3-person crew must include a minimum: 1 Tree Trimmer, 1 Groundsman, 1 General Foreperson.	
Description (Lower Vegetation Foliage)	Unit Price (per mile)
Mileage Rate for 3-person crew ¹	\$ See cover letter
Mileage Rate for 3-person crew ¹ , including aerial lift	\$ See cover letter
Non-truck Accessible – Climbing Crew Trimming	\$ See cover letter
Truck Accessible Street Access 3-person crew ¹ – w/ aerial lift	\$ See cover letter
Limited Access (Not Maintained Roadway) w/ Crew	\$ See cover letter
¹ For estimation purposes, a 3-person crew must include a minimum: 1 Tree Trimmer, 1 Groundsman, 1 General Foreperson.	
If there is an adder price for areas of <i>extremely</i> dense foliage, please list cost here (per mile).	\$ N/A
If there is an adder price for water ways or other terrain, please list cost here (per mile).	\$ N/A

ATTACHMENT #4

Distribution System Work TREE REMOVAL To Include Labor, Equipment, Materials and Disposal.	
Diameter Breast Height	Unit Price Per Tree
0" to 6"	\$ 197.79
6" to 8"	\$ 208.72
9" to 18"	\$ 961.05
19" to 24"	\$ 1,815.31
24+"	\$ Hourly
Tree Stump Grinding	\$ 158.40

CHEMICAL APPLICATION PRICING	
	Unit Price
Low Vol Backpack Foliar <i>(Per acre)</i>	\$ 185.50
Basal Treatment <i>(Per acre)</i>	\$ 220.00
Soil Injection <i>(per tree)</i>	\$ 201.00 *

* With a minimum of \$ 25,000 worth of work. This is due to the cost of the product, equipment, and logistics of crew training

EQUIPMENT			
Item	Unit Price	Item	Unit Price
Aerial Lift	\$ 24.66	All Terrain Tree Trimmer	\$ 77.98
Chipper	\$ 6.68	Lift Truck-mileage	\$ 1.91
Power Saw	\$ 1.57	Pickup Truck-mileage	\$ 1.43
Back Yard Lift	\$ 21.25	Truck Left Behind	\$ 12.33
Trailer	\$ 3.96	Chipper Left Behind	\$ 3.34
Split Dump	\$ 13.79	Weed Eater	\$ 1.57
Pole Power Saw	\$ 1.57	Prentice Loader	\$ 61.91
Full-size Pick-up	\$ 12.63	Heavy Brush Cutter	\$ 103.19
4WD Pick-up	\$ 15.54	Stump Grinder	\$ 27.95
Tractor	\$ 26.87	Off-Road Aerial Lift	\$ 24.20
Bush Hog	\$ 17.20		

ATTACHMENT #4

Hourly Labor Rates (\$/Hr)				
	Standard Rate	Overtime Rate	Other Rate if applicable	Other Rate if applicable
Tree Trimmer	\$36.94	\$49.87		
Groundsman	\$32.72	\$44.18		
Supervisor	\$59.87	\$80.83		
General Foreman	\$47.82	\$64.56		
Climber	\$36.94	\$49.87		
Mowing Grounds Person	\$40.17	\$54.23		
Spray Technician	\$47.82	\$64.56		
Other Crew Foreman	\$40.17	\$54.23		
Other				
Certified Arborist	\$47.82	\$64.56		

In reference to Section 3, of the terms and conditions, please indicate if you are unable to provide service in a particular zone by listing the zone number(s) here.

Unable in Zones 2, 3, 4, 5

Mobilization

Below, please indicate the total travel cost, including mileage and manhours, from your facility to each zone (please see zone map).

Zone 1	Zone 2	Zone 3	Zone 4	Zone 5
Hourly Crew Price				

Mobilization and Other Charges

	Unit Price
Charge if work is cancelled <u>prior</u> to mobilization	\$Hourly Rate x 4 hours
Charge if work is cancelled <u>after</u> to mobilization	\$Hourly rate x 8 hours
Per diem rate if overnight stay is required	\$ See Clarifications
Charge if there is adder for Call-Out work	\$N/A

☐ Check here if you decline to bid on **Distribution System Work**

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ATTACHMENT #4

TRANSMISSION

Transmission System Work To Include Labor, Equipment, Materials and Disposal.	
Description	Unit Price (per acre)
Mowing of ROW (Transmission Corridor, Rural, Floor Clearance)	\$
Mowing w/ Limited Access	\$

If there is an adder price for areas of <i>extremely</i> dense foliage, please list cost here (per mile).	\$
If there is an adder price for other terrains, please list cost here (per mile).	\$

CHEMICAL APPLICATION PRICING	
Description	Unit Price (per acre)
Mowing & Herbicide (Transmission Corridor, Rural, Floor Clearance)	\$
Mowing & Herbicide w/ limited access	\$

EQUIPMENT			
Item	Unit Price	Item	Unit Price
Aerial Lift 75'	\$	Lift Truck-mileage	\$
Aerial Lift 75' 4WD	\$	Pickup Truck-mileage	\$
Aerial Lift 50'	\$	4WD Pick-up	\$
Aerial Lift 50' 4WD	\$	Tractor	\$
Aerial Lift 37'	\$	Bush Hog	\$
Brush Chipper	\$	Heavy Brush Cutter	
Disc Chipper	\$	Weed Eater	
Power Saw	\$	Prentice Loader	
Mower Bat Wing -- minimum width 15'	\$	Spray Truck	\$
Dump truck	\$	Stump Grinder	\$
Foreman Vehicle	\$	Off-Road Aerial Lift	\$

ATTACHMENT #4

Hourly Labor Rates (\$/Hr)				
	Standard Rate	Overtime Rate	Other Rate if applicable	Other Rate if applicable
Groundsman				
Supervisor				
General Foreman				
Mowing Grounds Person				
Spray Technician				
Trimmer				
Other				
Other				

In reference to Section 3, of the terms and conditions, please indicate if you are unable to provide service in a particular zone by listing the zone number(s) here.

Mobilization				
Below, please indicate the total travel cost, including mileage and manhours, from your facility to each zone (please see zone map).				
Zone 1	Zone 2	Zone 3	Zone 4	Zone 5

Mobilization and Other Charges	
	Unit Price
Charge if work is cancelled <u>prior</u> to mobilization	\$
Charge if work is cancelled <u>after</u> to mobilization	\$
Per diem rate if overnight stay is required	\$
Charge if there is adder for Call-Out work	\$

☒ Check here if you decline to bid on **Transmission** System Work

ATTACHMENT #4

EMERGENCY RESPONSE AND STORM RELATED SERVICES

Distribution System Work To Include Labor, Equipment, Materials.	
Description	Unit Price (per mile)
Mileage Rate for 3-person crew ¹ , including aerial lift	\$ Hourly
Non-truck Accessible – Climbing Crew Trimming	\$ Hourly
Truck Accessible Street Access 3-person crew ¹	\$ Hourly
Limited Access w/ 3-person crew ¹	\$ Hourly
¹ For estimation purposes, a 3-person crew must include a minimum: 1 Tree Trimmer, 1 Groundsman, 1 General Foreperson.	

TREE REMOVAL To Include Labor, Equipment, Materials.	
Diameter Breast Height	Unit Price Per Tree
0" to 6"	\$ Hourly
6" to 8"	\$ Hourly
9" to 18"	\$ Hourly
19" to 24"	\$ Hourly
24+"	\$ Hourly
Tree Stump Grinding	\$ Hourly

Hourly Labor Rates (\$/Hr)				
	Standard Rate	Overtime Rate	Other Rate if applicable <u>Double Time</u>	Other Rate if applicable
Tree Trimmer	\$38.68	\$54.15	\$65.75	
Groundsman	\$29.71	\$41.60	\$50.51	
On-Site Storm Coordinator	\$59.38	\$83.12	\$100.93	
General Foreman	\$51.57	\$72.19	\$87.65	
Safety Personnel	\$51.57	\$72.19	\$87.65	
Climber	\$35.34	\$49.48	\$60.08	
Other				

ATTACHMENT #4

In reference to Section 3, of the terms and conditions, please indicate if you are **unable** to provide **Emergency Service** in a particular zone by listing the zone number(s) here.

Unable in Zones 2, 3, 4, 5

Mobilization

Below, please indicate the total travel cost, including mileage, and manhours, from your facility to each zone (please see zone map).

Zone 1	Zone 2	Zone 3	Zone 4	Zone 5
Mileage Rate				

Mobilization and Other Charges

	Unit Price
Travel Rate per Mile	\$
Charge if work is cancelled <u>prior</u> to mobilization	\$
Charge if work is cancelled <u>after</u> to mobilization	\$
Per diem rate if overnight stay is required	\$
Other:	\$

☐ Check here if you decline to bid on **Emergency Response Services**

ATTACHMENT #4

REFERENCES:

Below or on an attached sheet, list your references specifically pertaining to this type of work within the last 3 years.

- 1. Name:** City of Leesburg, Florida

Address: 501 West Meadow Street

Leesburg, Florida 34749

Phone: 352-728-9819

Fax:

Contact: Greg David - Greg.David@leesburgflorida.gov

- 2. Name:** Flint Energies

Address: 3 South Mason Street

Reynolds, Georgia 31076

Phone: 478-847-5124

Fax:

Contact: Jamie Grantham - jgrantham@flintemc.com

- 3. Name:** Duke Energy - Florida

Address: 2166 Palmetto Street

Clearwater, Florida 33765

Phone: 727-893-9702

Fax:

Contact: Todd Fountain - Todd.Fountain@duke-energy.com

ATTACHMENT #4

COMPLIANCE FORMS

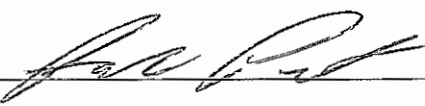
AOC - 1

ATTACHMENT #4

PROPOSER INFORMATION FORM Exceptions & Clarifications FMPA RFP 2020-236

✓	
	We DO NOT take exception to any items included in the RFP or Master Services Agreement.

✓	We TAKE exception as follows:
1. See PDF titled "FMPA Cover Letter - Lewis Tree Service 11AUG20" for clarification on Distribution System Work and Emergency Response & Storm Related Services pricing 2. Mobilization will be billed at the hourly crew labor and equipment pricing 3. Per Diem Rate if Overnight Stay is Required: a. Invoicing for meals while traveling to and from will be at the rate of \$20.00 per meal. A meal shall be allowed after every five (5) hour period not to exceed three (3) meals per twenty-four (24) hour period. b. Invoicing for hotels will be a pass through with documentation attached. c. Invoicing for meals, lodging, tolls, and other reasonable costs are at actual cost with documentation attached.	

Company Name:	Lewis Tree Service, Inc.
Authorized Signature:	 SVR/CF0
Print/Type Name of Signer:	Robert Petrone
Company Address:	300 Lucius Gordon Drive West Henrietta, NY 14586
Telephone Number:	(800) 333-1593
Contact Email Address:	robert.petrone@lewistree.com ; bids@lewistree.com
Date:	9/14/20

Minority Business Status: Yes ☐ No ☒ If yes, please indicate type and certificate # below

AOC - 2

ATTACHMENT #4

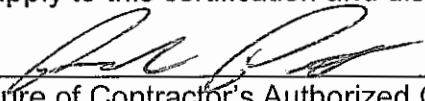
Anti-Lobbying Declaration Certification for Contracts, Grants, Loans and Cooperative Agreements APPENDIX A, 44 C.F.R. PART 18 – CERTIFICATION REGARDING LOBBYING

Certification for Contracts, Grants, Loans, and Cooperative Agreements (To be submitted with each bid or offer exceeding \$100,000)

The undersigned [Contractor/bidder] certifies, to the best of his or her knowledge and belief, that:

1. No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.
2. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form- LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.
3. The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly. This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by 31, U.S.C. § 1352 (as amended by the Lobbying Disclosure Act of 1995). Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

The Contractor/Bidder, Robert Petrone certifies or affirms the truthfulness and accuracy of each statement of its certification and disclosure, if any. In addition, the Contractor understands and agrees that the provisions of 31 U.S.C. § 3801 *et seq.*, apply to this certification and disclosure, if any.



Signature of Contractor's Authorized Official

Robert Petrone - CFO/SVP

Name and Title of Contractor's Authorized Official

9/14/2020

Date

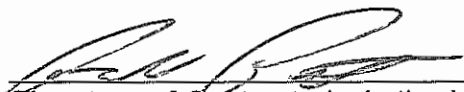
ATTACHMENT #4

Compliance Declaration

Certification for Contracts, Grants, Loans, and Cooperative Agreements
(To be submitted with each bid or offer exceeding \$100,000)

Regarding Sections 47 through 57 of this Request for Proposal, the undersigned [Contractor/Bidder] certifies to the best of his or her knowledge, agrees, complies with the following FEMA requirements.

FEMA Reimbursement
Remedies
Equal Employment Opportunity
Contract Hours and Safety Standards Act
Clean Air Act
Federal Water Pollution control Act
Access to Records
Suspension and Debarment
Byrd Anti-Lobbying Amendment
Procurement of Recovered Materials
DHS Seal, Logo, and Flags



Signature of Contractor's Authorized Official

Robert Petrone - CFO/SVP

Name and Title of Contractor's Authorized Official

9/14/20

Date

ATTACHMENT #4

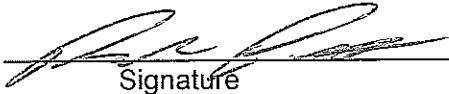
DECLARATIONS AND SIGNATURES

The undersigned hereby declares that only the persons or firms interested in this Proposal as principal or principals are named herein, and that no other persons or firms than herein mentioned have any interest in this Proposal or in the contract to be entered into; that this Proposal is made without connection with any other person, company, or parties likewise submitting a proposal or proposal; and that it is in all respects for and in good faith, without collusion or fraud.

Dated at West Henrietta, NY this 14th day of September, 2020.

Proposer Lewis Tree Service, Inc.

By


Signature

Robert Petrone

Printed or Typed Name

Title CFO/SVP

Complete Business Address of Proposer: 300 Lucius Gordon Drive

West Henrietta, New York 14586

State of Incorporation

New York

Complete Address of Principal Office

300 Lucius Gordon Drive

West Henrietta, New York 14586

Name, Address, and Telephone Number of Person to Contact Regarding this Proposal. Include Both Mail and Street Addresses:

Thomas Meyer

300 Lucius Gordon Drive

West Henrietta, New York 14586

Telephone (800) 333-1593

Fax () _____

E-Mail bids@lewistree.com

ATTACHMENT #4

SWORN STATEMENT UNDER SECTION 287.133(3) (a), FLORIDA STATUTES, ON PUBLIC ENTITY CRIMES

(To be signed in the presence of a notary public or other officer authorized to administer oaths.)

STATE OF New York

COUNTY OF Monroe

Before me, the undersigned authority, personally appeared Robert A. Petrone, who, being by me first duly sworn, made the following statement:

1. The business address of Lewis Tree Service, Inc.
is Lucius Gordon Drive, West Henrietta, NY 14586 [name of bidder or contractor]

2. My relationship to Lewis Tree Service, Inc.
is CFP/SVP [name of bidder or contractor]
[relationship such as sole proprietor, partner, president, vice president].

3. I understand that a public entity crime as defined in Section 287.133 of the Florida Statutes includes a violation of any state or federal law by a person with respect to and directly related to the transaction of business with any public entity in Florida or with an agency or political subdivision of any other state or with the United States, including, but not limited to, any bid or contract for goods or services to be provided to any public entity or such an agency or political subdivision and involving antitrust, fraud, theft, bribery, collusion, racketeering, conspiracy, or material misrepresentation.

4. I understand that "convicted" or "conviction" is defined by the statute to mean a finding of guilt or a conviction of a public entity crime, with or without an adjudication of guilt, in any federal or state trial court of record relating to charges brought by indictment or information after July 1, 1989, as a result of a jury verdict, nonjury trial, or entry of a plea of guilty or nolo contendere.

5. I understand that "affiliate" is defined by the statute to mean (1) a predecessor or successor of a person or a corporation convicted of a public entity crime, or (2) an entity under the control of any natural person who is active in the management of the entity and who has been convicted of a public entity crime, or (3) those officers, directors, executives, partners, shareholders, employees, members, and agents who are active in the management of an affiliate, or (4) a person or corporation who knowingly entered into a joint venture with a person who has been convicted of a public entity crime in Florida during the preceding 36 months.

6. Neither the bidder or contractor nor any officer, director, executive, partner, shareholder, employee, member or agent who is active in the management of the bidder or affiliate of the bidder or contractor nor any affiliate of the bidder or contractor has been convicted of a public entity crime subsequent to July 1, 1989.

[Draw a line through paragraph 6 if paragraph 7 below applies.]

ATTACHMENT #4

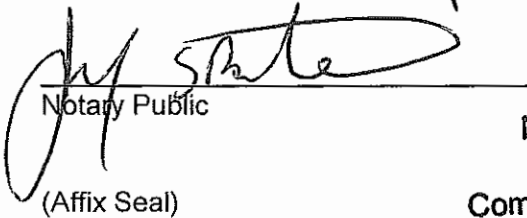
~~7. There has been a conviction of a public entity crime by the bidder or contractor, or an officer, director, executive, partner, shareholder, employee, member or agent of the bidder or contractor who is active in the management of the bidder or contractor or an affiliate of the bidder or contractor. A determination has been made pursuant to Section 287 133(3) by order of the Division of Administrative Hearings that it is not in the public interest for the name of the convicted person or affiliate to appear on the convicted vendor list. The name of the convicted person or affiliate is~~

~~_____~~. A copy of the order of the Division of Administrative Hearings is attached to this statement.

[Draw a line through paragraph 7 if paragraph 6 above applies.]

Sworn to and subscribed before me in the state and county first mentioned

above on the 14th day of September, 2020.


Notary Public
(Affix Seal)

Jenny S. Brewster
Notary Public, State of New York
Monroe County, 01BR6130726
Commission expires 7-18-21

7-18-21
My Commission Expires

Jenny S Brewster
Type or Printed Name

ATTACHMENT #4

DISPUTE DISCLOSURE

Answer the following questions by placing an "X" in the appropriate "YES" or "NO" box. If you answer "YES", please explain in the space provided, or via attachment.

Has your firm, or any of its officers, received a reprimand of any nature or been suspended by the Department of Professional Regulation or any other regulatory agency or professional association within the last five (5) years?

YES ☐

NO ☒

Has your firm, or any member of your firm, been declared in default, terminated or removed from a contract or job related to the services your firm provides in the regular course of business within the last five (5) years?

YES ☐

NO ☒

Has your firm had filed against it or filed any requests for equitable adjustment, contract claims or litigation in the past five (5) years that is related to the services your firm provides in the regular course of business?

YES ☐

NO ☒

If yes, state the nature of the request for equitable adjustment, contract claim or litigation, a brief description of the case, the outcome or status of suit and the monetary amounts or extended contract time involved.

I hereby certify that all statements made are true and agree and understand that any misstatement or misrepresentation or falsification of facts shall be cause for forfeiture of rights for further consideration of this project:

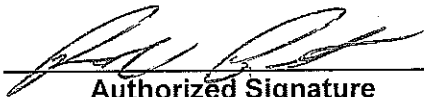
Project: FMPA RFP# 2020-236

Lewis Tree Service, Inc.

Firm

9/14/20

Date



Authorized Signature

CFO/SVP

Officer Title

Robert Petrone

Printed or Typed Name

DRUG-FREE WORKPLACE COMPLIANCE FORM

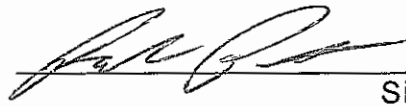
Preference shall be given to businesses with drug-free workplace programs. Pursuant to Section 287.087, Florida Statutes, whenever two or more proposals which are equal with respect to price, quality, and service are received by the State or by any political subdivision for the procurement of commodities or contractual services, a proposal received from a business that certifies that it has implemented a drug-free workplace program shall be given preference in the award process.

The undersigned proposer in conformity with Florida Statute 287.087 hereby certifies that
Lewis Tree Service, Inc. does:

(Name of business)

1. 1. See Florida Statute 287.087(1)(b) for the standard for the manufacture, distribution, possession, or use of a controlled substance is prohibited in the workplace and specifying the actions that will be taken against employees for violations of such prohibition.
2. Inform employees about the dangers of drug abuse in the workplace, the business's policy of maintaining a drug-free workplace, any available drug counseling, rehabilitation, and employee assistance programs, and the penalties that may be imposed upon employees for drug abuse violations.
3. Give each employee engaged in providing the commodities or contractual services that are under proposal a copy of the statement specified in Subsection 1.
4. In the statement specified in Subsection 1, notify the employees that, as a condition of working on the commodities or contractual services that are under proposal, the employee will abide by the terms of the statement and will notify the employer of any conviction of, or plea of guilty or nolo contendere to, any violation of Chapter 893 or of any controlled substance law of the United States or any state, for a violation occurring in the workplace no later than five (5) days after such conviction.
5. Impose a sanction on, or require the satisfactory participation in a drug abuse assistance or rehabilitation program if such is available in the employee's community, by any employee who is so convicted.
6. Make a good faith effort to continue to maintain a drug-free workplace through implementation of this section.

As the person authorized to sign the statement, I certify that the undersigned complies fully with the above requirements.


 Signature

Lewis Tree Service, Inc. - Robert Petrone

Name of Proposer

9/14/2020

Date



ATTACHMENT #4 CERTIFICATE OF LIABILITY INSURANCE

11/1/2020

DATE (MM/DD/YYYY)
9/9/2020

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must have ADDITIONAL INSURED provisions or be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER Lockton Companies 444 W. 47th Street, Suite 900 Kansas City MO 64112-1906 (816) 960-9000	CONTACT NAME: PHONE (A/C, No, Ext): E-MAIL ADDRESS:	FAX (A/C, No):	
	INSURER(S) AFFORDING COVERAGE		
INSURED 1480476 LEWIS TREE SERVICE, INC. DBA CAROLINA TREE CARE P.O. BOX 1118 CONCORD NC 28026	INSURER A: ACE American Insurance Company		NAIC # 22667
	INSURER B: The Continental Insurance Company		35289
	INSURER C: Indemnity Insurance Co of North America		43575
	INSURER D:		
	INSURER E:		
INSURER F:			

COVERAGES CERTIFICATE NUMBER: 16942735 REVISION NUMBER: XXXXXXXX

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL INSR	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
A	☒ COMMERCIAL GENERAL LIABILITY ☐ CLAIMS-MADE ☒ OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: ☐ POLICY ☒ PRO-JECT ☐ LOC OTHER:	Y	Y	HDOG71233224	11/1/2019	11/1/2020	EACH OCCURRENCE \$ 2,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 1,000,000 MED EXP (Any one person) \$ 10,000 PERSONAL & ADV INJURY \$ 2,000,000 GENERAL AGGREGATE \$ 20,000,000 PRODUCTS - COMP/OP AGG \$ 4,000,000 \$
A	☒ AUTOMOBILE LIABILITY ☒ ANY AUTO ☐ OWNED AUTOS ONLY ☒ HIRED AUTOS ONLY ☐ SCHEDULED AUTOS ☒ NON-OWNED AUTOS ONLY	Y	N	ISAH25292753	11/1/2019	11/1/2020	COMBINED SINGLE LIMIT (Ea accident) \$ 3,000,000 BODILY INJURY (Per person) \$ XXXXXXXX BODILY INJURY (Per accident) \$ XXXXXXXX PROPERTY DAMAGE (Per accident) \$ XXXXXXXX \$ XXXXXXXX
B	☒ UMBRELLA LIAB ☒ EXCESS LIAB ☐ CLAIMS-MADE DED ☒ RETENTION \$ 10,000	N	N	6043343632	11/1/2019	11/1/2020	EACH OCCURRENCE \$ 10,000,000 AGGREGATE \$ 10,000,000 \$ XXXXXXXX
C A	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below	Y/N N	N/A	WLRC66046485(AOS) WLRC66046527(MA)	11/1/2019 11/1/2019	11/1/2020 11/1/2020	☒ PER STATUTE ☐ OTHER E.L. EACH ACCIDENT \$ 1,000,000 E.L. DISEASE - EA EMPLOYEE \$ 1,000,000 E.L. DISEASE - POLICY LIMIT \$ 1,000,000

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)

FLORIDA MUNICIPAL POWER AGENCY IS AN ADDITIONAL INSURED ON THE GENERAL LIABILITY AND AUTO LIABILITY COVERAGE, ON A PRIMARY, NON-CONTRIBUTORY BASIS, AS REQUIRED BY WRITTEN CONTRACT. WAIVER OF SUBROGATION IN FAVOR OF THE ADDITIONAL INSURED APPLIES ON THE GENERAL LIABILITY AND AUTO LIABILITY COVERAGE, AS REQUIRED BY WRITTEN CONTRACT AND WHERE ALLOWED BY LAW. COVERAGE IS SUBJECT TO THE TERMS AND CONDITIONS OF THE POLICY.

CERTIFICATE HOLDER

16942735
FLORIDA MUNICIPAL POWER AGENCY
8553 COMMODITY CIRCLE
ORLANDO FL 32819-9002

CANCELLATION

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.

AUTHORIZED REPRESENTATIVE

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ATTACHMENT #4

3.0 Trimmer

Qualifications:

- A total of twelve months experience working on tree trimming crews or clearing crews.
- Have a valid driver's license, CDL and/or medical certification as required for the vehicle being operated. Have valid First Aid and CPR cards.
- Have a basic knowledge of trees including identification, growth habits and correct arboriculture techniques for the trimming, pruning, repairing, maintaining and removing, as applicable to working in close proximity to energized conductors.
- Know and understand all AOP's that apply to the Advanced Trimmer Trainee description.
- Must successfully complete an Advanced Trimmer Trainee Technical Knowledge & Skills Certification.
- Must have and maintain a Herbicide and Applicators or operations certification and license as required by Lewis Tree Service Policy and state, local and federal law. Must have met all qualifications of Trimmer Trainee.

Nature of duties:

- Performs actual work functions as a Line Clearance Tree Trimmer while under direct supervision of a Crew Leader or a qualified Line Clearance Tree Trimmer. Removal of trees and brush, cleanup and disposal of debris.
- Operation of power equipment, such as trucks, chippers, aerial lifts, power saws, sprayers, use of ladders and hand tools.
- Spraying of brush and stumps, mixing proper application of spray chemicals to prevent damage to desirable vegetation.
- Responsible for the inspection and proper working conditions of all tools and equipment assigned to the worker by the crew leader.
- Safeguards employees and public from hazards in and around the working area. Helps enforce on the job safety practices.
- In addition to the above, performs other duties as required or as assigned.

ATTACHMENT #4

1.0 Ground person

Qualifications:

- Have valid driver's license, CDL and/or medical certification as required for the vehicle being operated. Must be able to hear, speak and see, with ability to walk one mile or more.
- Must be able to obtain and maintain Herbicide Certification and licensing as required by Lewis Tree Service Policy and state, local and federal laws.
- Must be able to perform physical labor such as lifting a minimum of 50 lbs. to shoulder height or more.
- Must be capable of operating two handed equipment (chain saw, circular saw, etc) and have the physical ability to endure extreme climate variances.
- Must obtain and maintain CPR and First Aid cards.
- Must successfully complete the Ground person Technical Knowledge & Skills Certification.

Nature of Duties:

- Trims and/or removes trees by climbing or with aid of an aerial lift, but only under the direct supervision of a crew leader or qualified line clearance tree trimmer.
- Loads and unloads trucks with logs, brush and debris and/or feeds brush into brush chipper.
- Uses hand lines to lower limbs and equipment.
Keeps work area picked up and orderly.
- Carries and lays out materials, tools and equipment at work site.
Use and maintenance of small power tools at ground level.
- Sprays stumps and brush.
- Drives and operates trucks and other equipment as assigned.
- Keeps trucks and other assigned equipment in a neat and orderly fashion. Reports the need for repairs to truck and equipment to crew leader.

ATTACHMENT #4

- Safeguards employees and public from hazards in and around the working area.
Helps enforce on the job safety practices.
- Performs other related work as assigned.

ATTACHMENT #4

11.0 General Foreman

Qualifications for a general foreman.

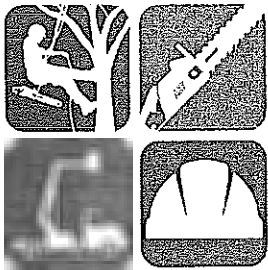
- Must have a minimum of four (4) years experience as a Crew Leader.
- Must have a valid drivers license.
- Know, understand, and positively communicate with the public, customers, fellow workers, superiors, and corporate personnel.
- Must demonstrate the ability to effectively communicate with the public, customers, fellow workers, superiors and corporate personnel.
- Well-groomed and properly dressed.
- Understands the hours of service as a General Foreman will exceed that of a Crew Leader classification.
- Have a working knowledge of all equipment associated with line clearance activities.
- Have knowledge of climbing skills and other aspects of electrical line clearance operations, which may include having a pesticide applicator license.
- Must have a thorough knowledge of proper pruning techniques.
- Must be honest, trustworthy, and portray the Company in a positive light.
- Must be extremely safety conscious.
- Must have met all qualifications and nature of duties of a Crew Leader.

Responsibilities

- Visits crews on a minimum of a weekly basis giving guidance, instructions and necessary supplies.
- Supervises Crew Leaders making sure they are fulfilling the Crew Leader qualifications and nature of duties.
- Observes, supports, and gives guidance to Crew Leaders for achieving maximum results in operational priorities.
- Calls on existing customers to assure customer satisfaction.
- Responsible to see that equipment repairs, preventative maintenance, and purchasing policies and procedures are properly followed.
- Works directly with Risk Management Department to ensure all safety procedures are followed and proper safety equipment is being worn.

ATTACHMENT #4

- Conducts incident analysis directly after incidents occur, working in conjunction with Risk Management guidelines.
- Assist manger in the bidding process.
- Attends internal and external training courses which pertain to improving abilities toward human relations skills, business management and technical aspects of the tree industry.
- Keeps manager informed of crew activities, results, equipment problems, employee and customer concerns.
- Performs other duties as assigned by supervisor.



HUMAN PERFORMANCE



2020 Lewis Tree Services Safety and Human Performance Plan



"We believe learning is key to keeping people safe."



Beth Lay

June 2020

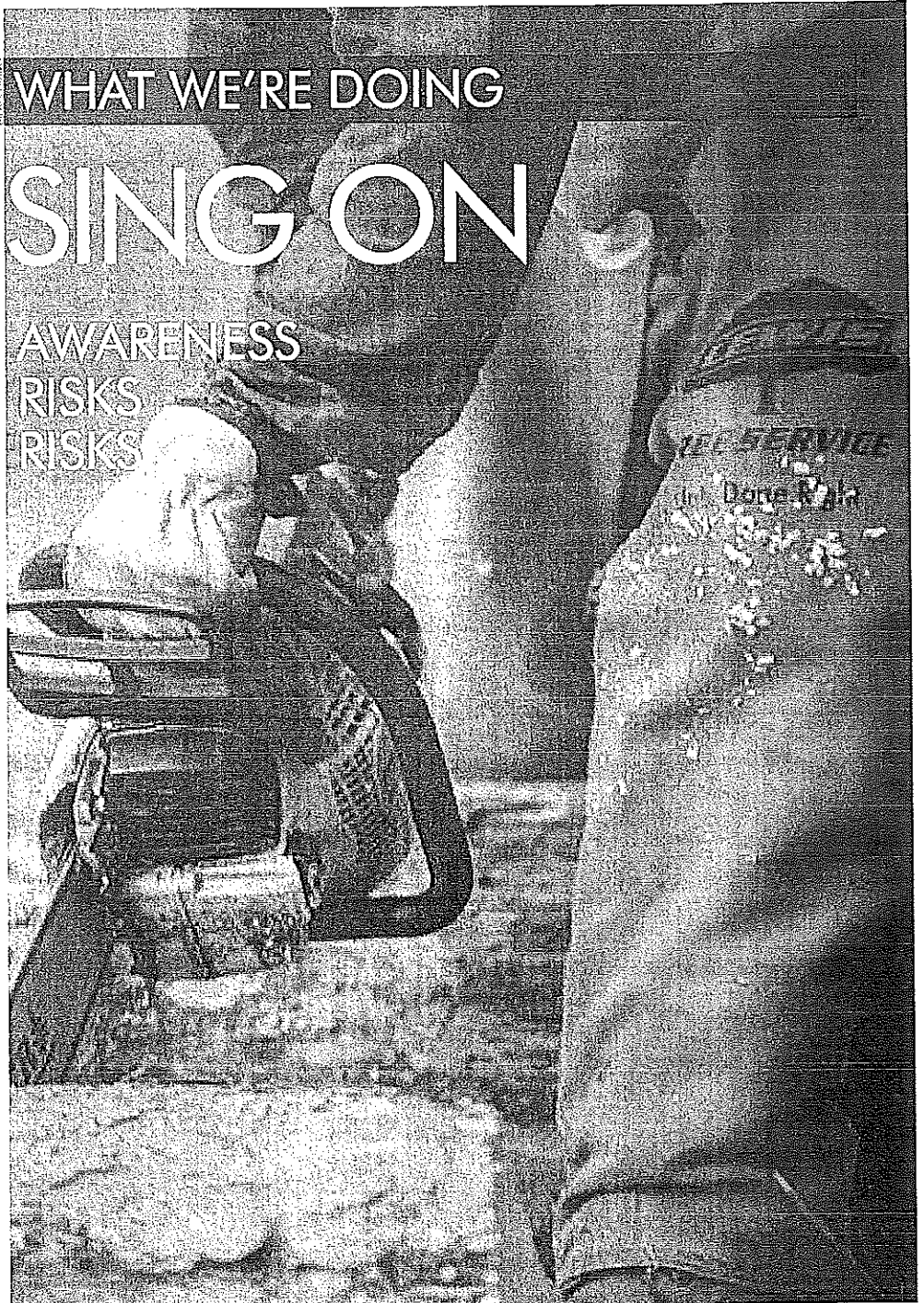
Serious injury potential risks. Promote learning.

Act to create safety.

WHAT WE'RE DOING FOCUSING ON

SITUATION AWARENESS
STRUCK-BY RISKS
LINE OF FIRE RISKS

*We're breaking our
big goal—to reduce
Serious Injury Potential
(SIP) events—into
small parts so we can
improve on each
and get an even greater
overall gain.*





Key actions we take to support and lead our Safety Plan:

- 1) Field Observations conducted by both safety and operations leadership (mandatory number of observations required)
- 2) Observation tool is an app that helps us trend data , and push observed risks or violations of our 9 to Know critical behaviors.
- 3) Dedicated Team of Safety professionals
- 4) Monday morning incident review call
- 5) Monday morning Safety Leadership call
- 6) Tuesday morning significant close call review call.
- 7) Learning plan (see pg. 17).



9 to Know

- Maintain Drop Zone
- Use Fall Protection 100% of the time, in lift and climbing
- Maintain Minimum Approach Distance
- 360 Degree Walk Around and Spotter when backing
- Wear Seat Belts
- Establish Work Zone
- No One-Handed Chainsaw Use
- Wear Leg Protection (chaps or chainsaw pants) While cutting on the Ground
- Chipping With Harness On Prohibited



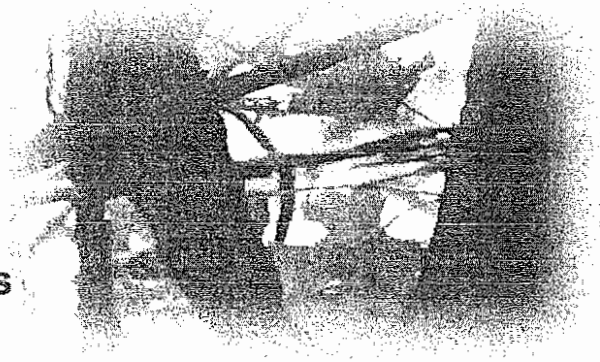
People are a source of success.

A NEW VIEW OF SAFETY

Learning from Success: Jobs Done Right

"Stopped and assessed ...get 2nd opinion. ...limbs had pushed phase wires secondaries to be within 3" to 4" from touching. Because we brought in another set of eyes, we discovered that the neutral wire had 2 to 3 strands of wire broken, leaving only a couple of strands holding it together. ...requested an outage."

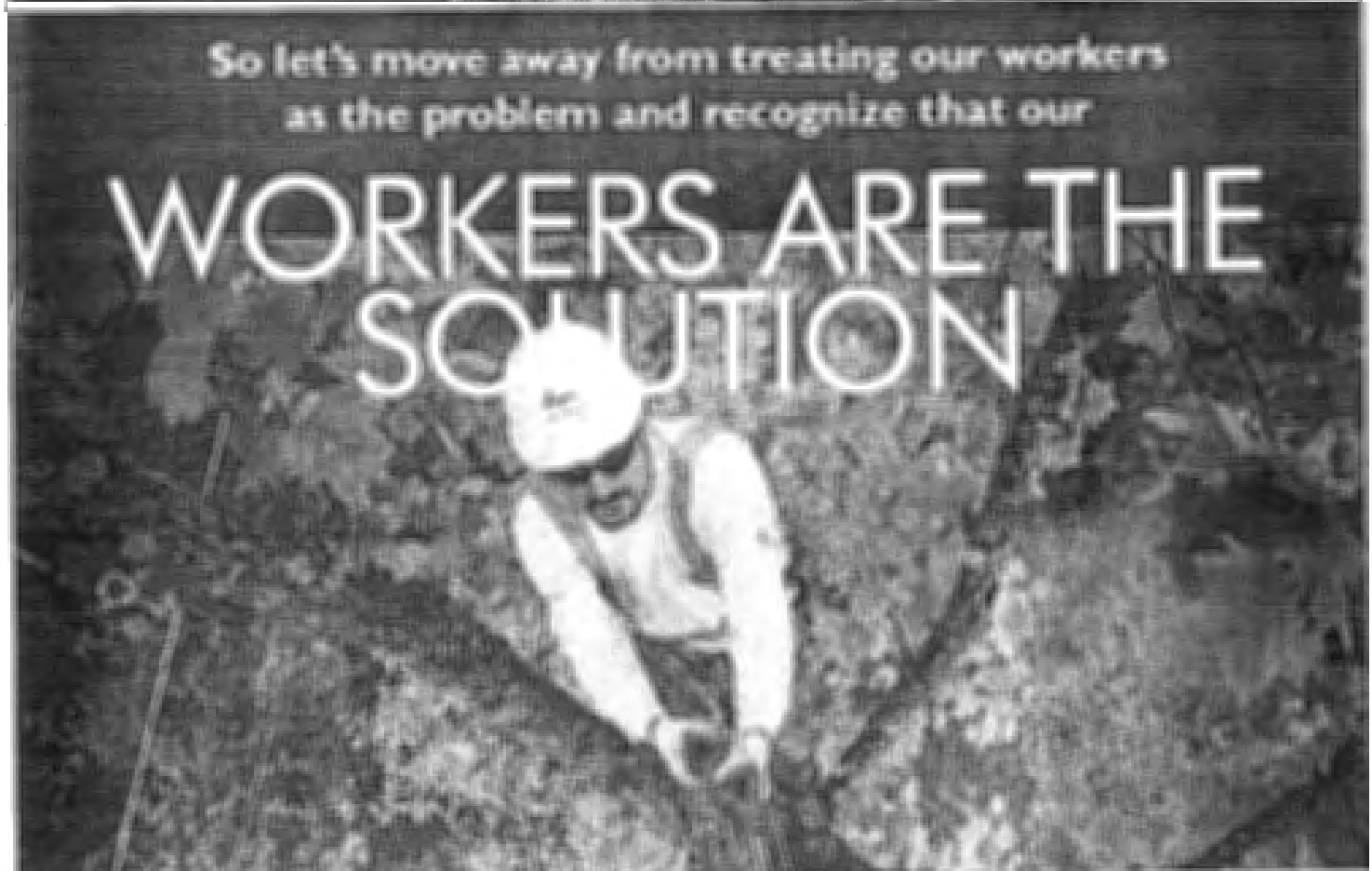
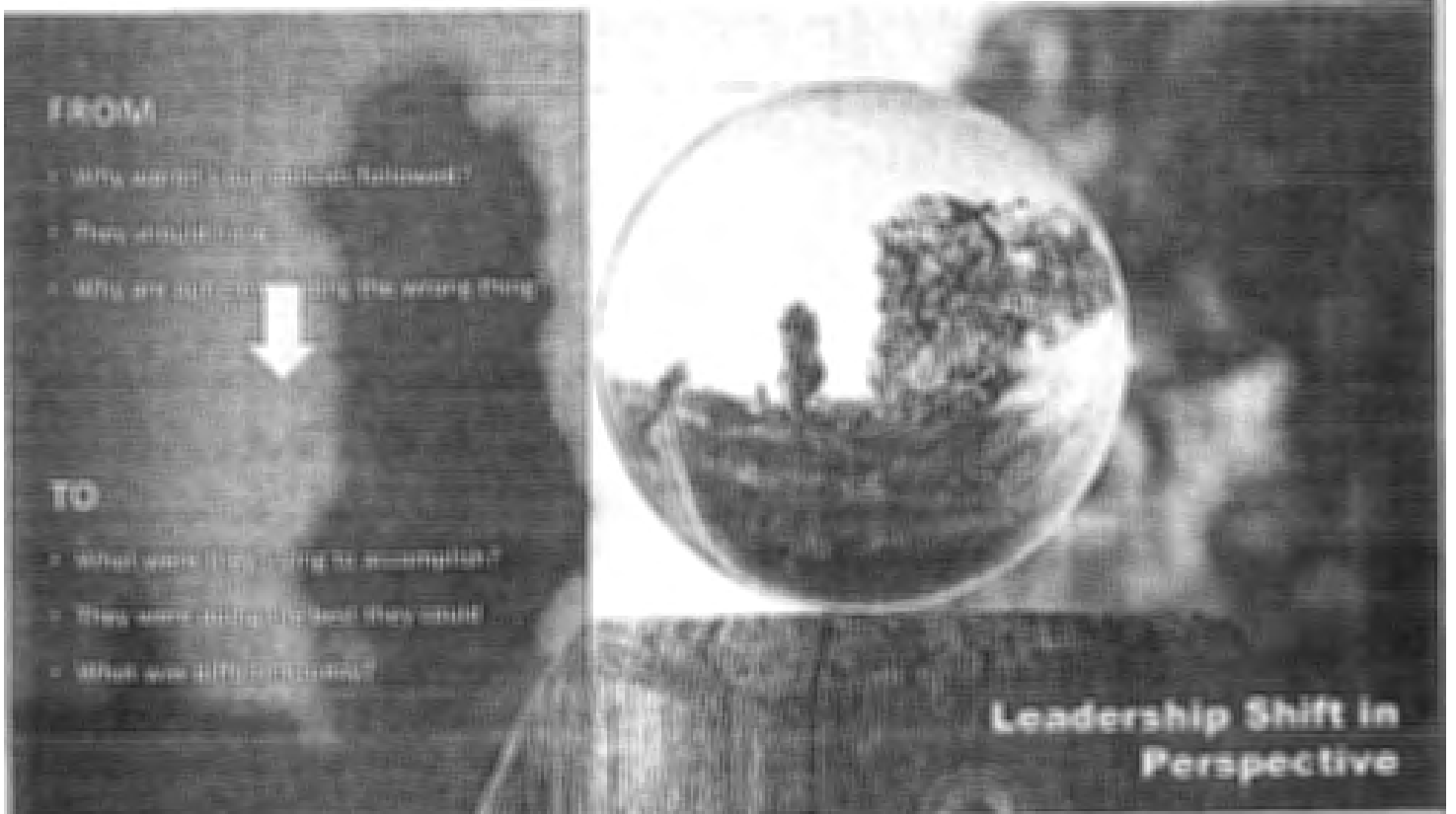
- Noticing weak signals, critical cues, high risk situations, emergent risk.
- Pausing.
- Seeking "fresh set of eyes".
- Asking questions to probe risks.
- Taking actions to lower risks.
- Learning from **After Action Reviews**



"I believe we are witnessing a change in our safety culture, happening right before of our eyes."

Safety Specialist

Shift in Perspective





Line clearance work has extraordinary level of variability.

A NEW VIEW OF HUMAN PERFORMANCE



How Lewis
Differs from
Traditional HuP

1

**safe + reliable
+ resilient**

(Surprise happens.)

How Lewis
Differs from
Traditional HuP

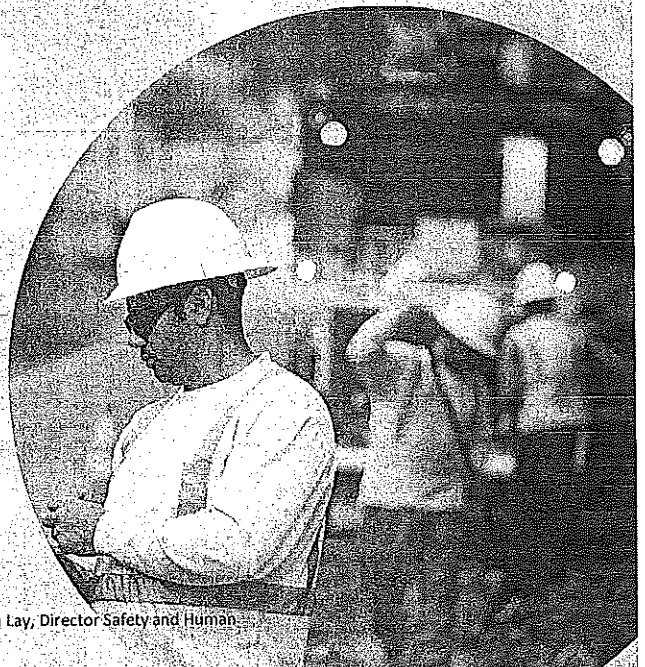
2

**error management
+ adaptive capacity**

Adaptive Capacity

Having the flexibility and resources
(time, materials, money, space, knowledge, skills, etc.)
to change the way a person, team, or unit operates

Usually occurs in response to variability and surprise
(i.e., options to respond when your boundaries are
challenged)



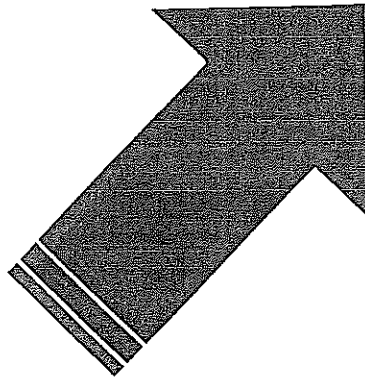


Our Definition of Human Performance

**Building Adaptive
Capacity**

Operational Excellence

Being in continuous practice to deepen knowledge and enable us to adapt, improvise and overcome



Operational Discipline

Preventing errors we can prevent & keeping non-preventable errors from resulting in serious events

**Adhering to Policies &
Procedures**





FIVE KEY PRINCIPLES

Error is normal. Even the best make mistakes.

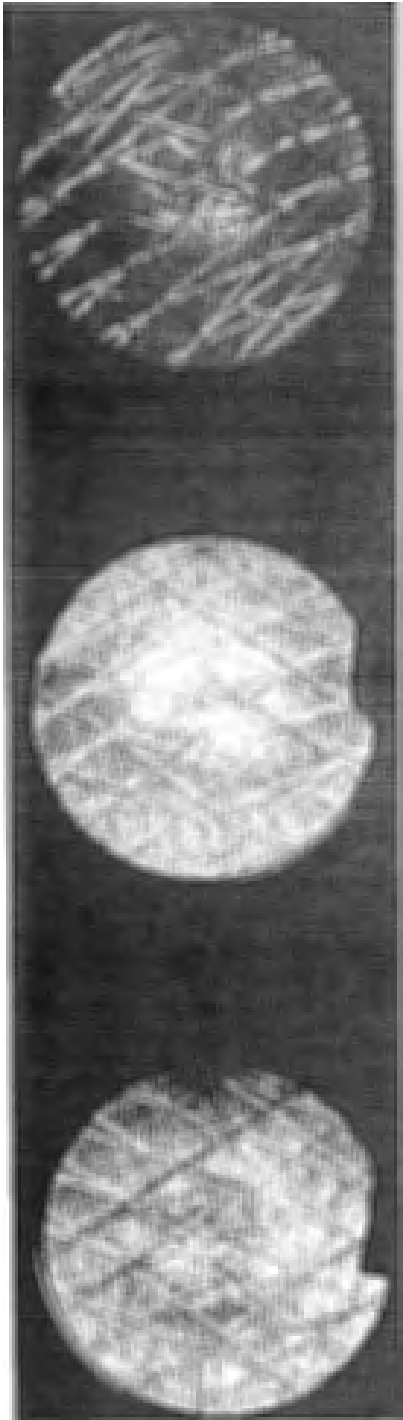
Blame fixes nothing.

Learning and improvement are vital.
Learning is deliberate.

Context influences behavior. Systems drive outcomes.

How you respond to failure matters.

Credit: Todd Conklin



VARIABILITY IS INEVITABLE.

Factors that indicate increased risk:

- Changing phases of work (e.g., making the last cut when others think we're already done)
- Workers are inexperienced or new to the team and don't notice the cues
- It's just before a break or the end of the day
- Something is hung (e.g., limb, piece of tree, saw)
- The tree has a heavy lean or is in poor condition
- Dead or decayed wood is present
- There are heavy vines or entwined canopies
- The crew member is in an awkward position (e.g., bracing to make a cut on an incline)

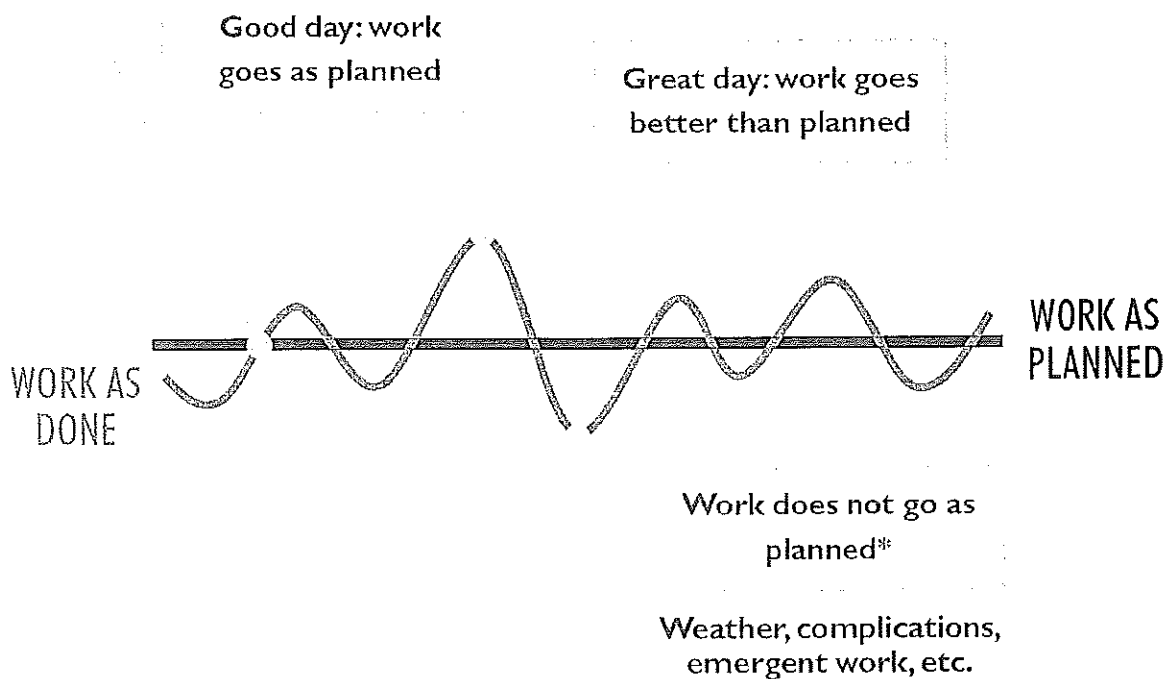
Compared with factory safety,
there is little a tree worker
has control over. The level of
variability is extraordinary.

And, most of our incidents
are the unintended result of
“friendly fire.”

(Accidently hurting one's own team.)

There are 100 ways to take down a tree.

LEARNING FROM WORK AS DONE



***Work does not go as planned BUT most of the time is still successful.**



LEARNING PLAN AND EXAMPLE TOOLS & PRACTICES



Human Performance and New View Safety Learning Plan (began 10/2019)

Safety and Operations team to design and implement a Learning Plan to provide direction and align actions as we go forward in learning about new view safety and human performance.

Strategy: We begin with Human Performance Tools including the safety science and “why” behind each tool, cycling through a focus on our most serious risks. Learning occurs through: leaders teaching those who report to them (cascade), conversations on the corporate safety call, interactive Tactical Tailgate stories during morning meetings, and action-oriented learning via “drill day”.

The plan is “learner led”, this means opening-up time frames, flexibly, based on where learning is happening and where it’s not, with solutions on how to move it. The plan is living / fluid, we’ve made many adjustments as we’ve learned what works (ex. stories – but keep stories short, drills) and what doesn’t work (ex. external speakers who are academic, quick moving schedule).

We are practicing human performance tools:

We are spending a lot of time on **After-Action Reviews** as this tool is critical in shifting culture from “telling” to “learning and thinking”.

Serious Injury Potential Close Call Mining (with storytelling coach)

Press Pause – situation awareness tool, uniquely designed for our work, based in current cognitive and safety science

We cycle through these **high-risk types of work** and are also guided by SIP close call and incident trending:

Managing drop zone / avoiding struck-by

Avoiding line of fire

Working safely at elevations

Safe equipment operation

Every week, a team comprised of a regional vice president, safety specialist, and safety manager design and lead us through the Corporate Safety call, policy review, tactical tailgate story, and drill for hands-on learning.

Sample Learning Plan Structure:					
	Week 1	Week 2	Week 3	Week 4	Week 5
	Avoiding struck-by/managing drop zone	Avoiding struck-by/managing drop zone	Avoiding line of fire	Avoiding line of fire	Flex week
	Policy + Tactical Tailgate Story (incident learning)	Safety science + drill	Policy + Tactical Tailgate Story (incident learning)	Safety science + drill	Safety call + Reflect and review, make-up missed stories, hear voice of field
Tues.		Drill		Drill	Reflect, review, hear voice of field

Drill Day



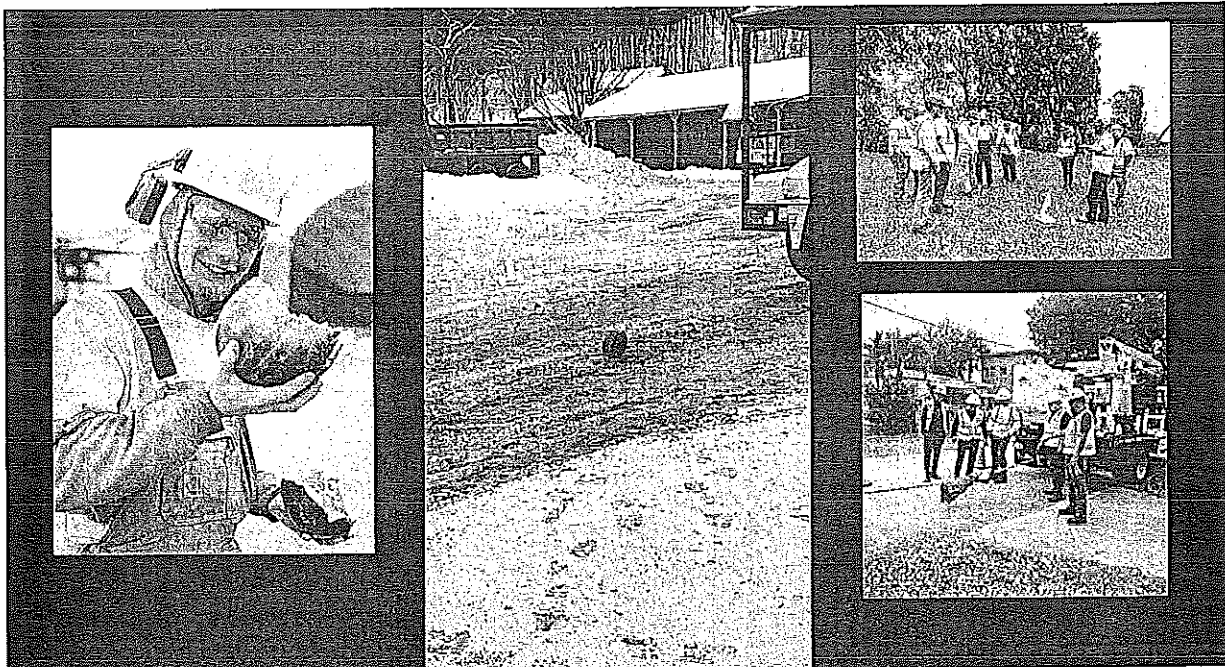
Teams who excel... teams who win...have one thing in common: they practice...a lot. They practice the fundamentals over and over until they become automatic.

Lesson: Don't assume people know how to do the basics the safest, most efficient way.

We are getting back to the basics for our highest risk work in our drills. We are creating the space to practice and discover ways to do things better.

Drill Day helps:

- Discover gaps in our system
- people experience the physicality
- Provide an opportunity for new workers to ask questions and understand the WHY
- Build team relationships
- Work through how to handle variability
- Engage leadership around "work as done"
- Bring safety and operations close together (not delegating safety)



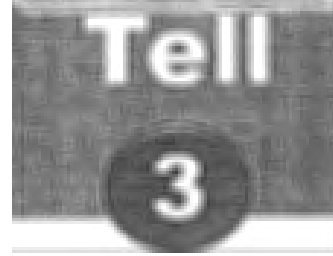


Stories build collective memory

**“We keep having
the same incidents over and over”**

Why? Relaying the facts—not telling the story!

Tactical Tailgate Story



- Probe the extremes: (worst, best, first, last, hardest, proudest, scariest)
- Get to the emotion
- Engage the senses
- Build suspense
- Lead quickly with something that matters
- Prepare ahead of time
- Prime the audience to listen for clues
- Share as a conversation

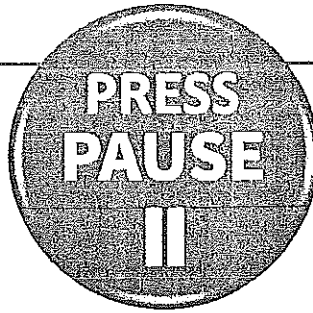


The Job	Told from a groundman's perspective. It was hot outside, hotter than it had been for a long time. I had been with the company for about three months and usually worked with a climbing crew. Today was different - I was with a bucket crew - and I was excited about it because I would get to learn something new. We were given the job information, where we were going and what trees were going to be trimmed, and then we headed to the jobsite. While we were on route, the crew leader and I really hit it off and I was able to have a great conversation with him about what to expect when working with a bucket crew. When we arrived at the jobsite, we did a quick Pre-Job Hazard Survey. We did not spend a lot of time on it through, because we had a lot to get done and needed to get started on the trimming. The crew leader started to trim, and we started making headway, working hard and finishing the spans very quickly. We got to a span where the crew leader could reach multiple trees in one setup. He trimmed one part of the span, and then moved the boom to trim another section. I wanted to hurry up and get the limbs stacked so that they were ready to chip up once we were ready to start chipping.
Questions - STOP and involve all crews in these questions.	• As you are reading, what do you think affected this crew's ability to notice hazards? • Are there any strong or weak signals you see that could lead to a serious injury potential? If so, what would you do? • When doing the PHS, what is your process to ensure everyone on the team understands and is aware of what is on the PHS and the work plan?
The Event	I looked up to make sure the crew leader was not trimming anything near me before I entered the Drop Zone, something I was used to doing in order to finish the job faster. After I had checked a few times, I stopped checking to see if it was clear when I went to grab more branches. The trimmer forgot one branch. He boomed back over and made a cut but didn't check to see if it was clear before he let the limb fall. I was still getting brush and was completely unaware of my surroundings. When the trimmer realized I was underneath him, he yelled "Watch Out!" I froze and started to look up, but before I could raise my head all the way the limb hit the front brim of my hard hat. My hard hat flew off my head and I was completely shocked. The limb was thirteen inches in diameter. All I could think was how lucky I had been, seeing the force that the limb hit my hardhat with. My crew leader came down and made sure I was okay. "Yes, I'm okay," I said. I thank God that it did not take a horrible accident for me to learn from my mistake, just a close call.
Lessons and Opportunities for Improvement	1. As a Crew leader/ Crew member, what is your responsibility to ensure your crew's safety? 2. At what point in the story would you have called an all stop? Would you have called an all stop? 3. Have you ever had a close call when entering the Drop zone? If so explain: Why did you enter? What was the reason? Was it peer pressure? What lead up to it? As leaders of this discussion, please listen, do not add "I would have done this" or "why didn't he do it this way..." Just listen to what the group has to say and everyone discuss ways to learn and improve.

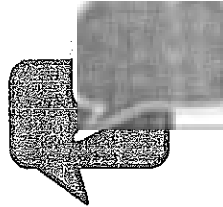
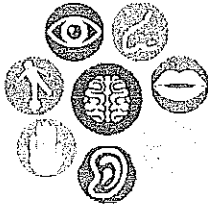


Moises,
Safety
Specialist

Situation Awareness is
Noticing, Understanding
and Forecasting.



Situation Awareness is
spotting a problem
before it happens.



Pause, **NOTICE**

What is going on around us?

Pause, **UNDERSTAND**

Assess the scene, what could it mean?

Pause, **FORECAST**

What could happen next?

ASK

- What are my teammates doing now?
- Where are they?
- What's making me uneasy?
- What can I see:
 - From aloft?
 - From the ground?
 - What can I NOT see?
- What do I need to pay close attention to?

- What tree/experience/situation is this most like?
 - What can I learn from that situation to help me here?
 - What's different? (Remember: risk hides in the differences)
- What do I know?
 - What do I not know?
 - What else could it be?
- Who can I ask to take a look?

- What are my teammates going to do next?
- Where are they going to be?
- Where's the line of fire?
 - What could hit me?
 - What could hit my teammates?
- How could we be surprised?

DELIBERATE
PRACTICES

- Scan and focus.
- Trust your gut.
- Shift perspective.
- Look for critical cues and hidden traps.

- Get a fresh set of eyes.
- Question and challenge.
- Probe uncertainty.
- Gain varied experiences.

- Make actions predictable.
- Broadcast intentions.
- Have options ready.
- Monitor for weak signals.

Scan and Focus.

Focus and Scan.

Scan and Focus.

Focus and Scan.

Scan and Focus.

Focus and Scan.



**HUMAN
PERFORMANCE**

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Team Situation Awareness Make Actions Predictable

Knowing what is going on around us and with our team:

- **Noticing** what's going on around us
 - What are my teammates doing now?
 - Where are they?
- **Understanding** what's happening
- **Forecasting** what's next
 - What are my teammates going to do next?
 - Where are they going to be?

Use standard phrases: "All clear . . ."

Communicate when changing phases of work: "I'm making the last cut."

Over communicate with the new guy:

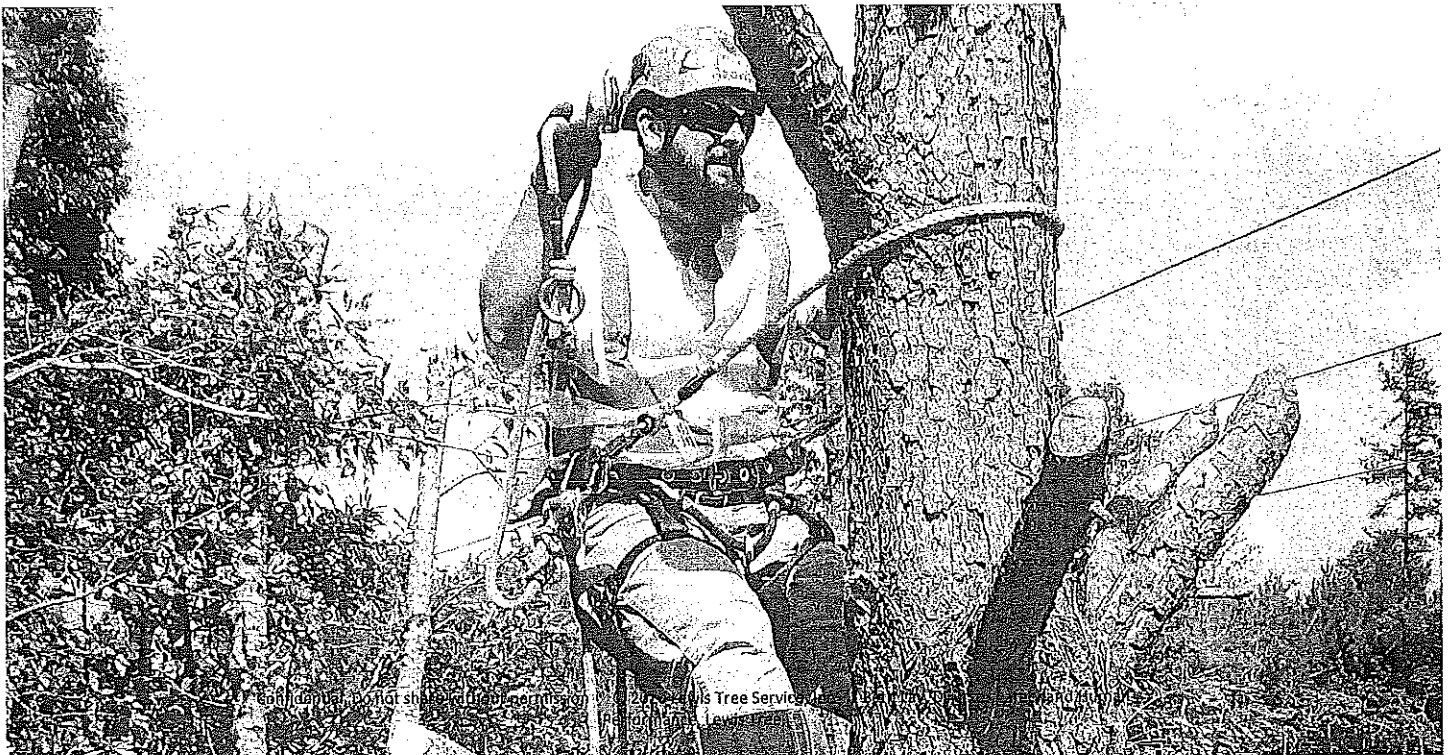
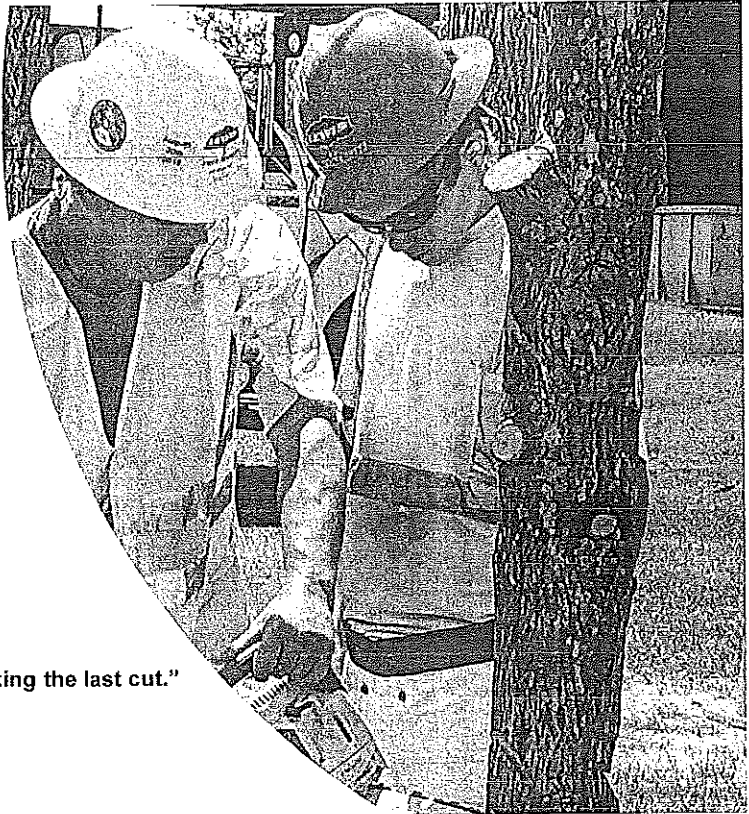
"Stand over there as I make this cut."

Make sure you can hear each other
Imagine work from other points
of view

What does it look like from bucket?

What does it look like from ground?

What does it look like from inexperienced spotter?



ATTACHMENT #4

ADDENDUM NO 1

ADDENDUM NO 1

FLORIDA MUNICIPAL POWER AGENCY

RFP# 2020-036
October 19, 2023

FMPA Request for Proposal Number 2020-036, Provision of Utility Tree Trimming and Vegetation Management Services, has changed to reflect the following additions, deletions, and/or modifications:

Item No. 1

Addition to the list of Participating Members

City of Mount Dora has been added as a Participating Member to Section 3 of the RFP Document.

Item No. 2

Modification to the pricing structure

Awarded Bidder, Lewis Tree Service, will accept FMPA's specification to price distribution services on a per mile basis. Clarification has been made by Lewis Tree to accept the FMPA per mile price structure; utilizing visual inspections of each Member's location to determine pricing, as each location may differ in density and other factors.

All other aspects of the bid document remain the same.

* * * * *



510 N. Baker St.
Mount Dora, FL 32757
352-735-7126

DATE: January 2, 2024

TO: Honorable Mayor and City Council Members

FROM: Patrick C. Comiskey, City Manager

SUBJECT: Request Approval of Piggyback Agreement Between City of Mount Dora and WESCO Distribution Inc. Related to the Purchase of Electric Distribution Material

Introduction:

This is a request for City Council to approve a piggyback agreement to the WESCO / Orlando Utilities Commission (OUC) Alliance Agreement for the option to purchase Electric Distribution material from WESCO Distribution Inc.

Discussion:

This Alliance Agreement between OUC and WESCO Distribution was effective Jan 1, 2009, and includes seven amendments through Jan 6, 2020. Entering into an agreement with WESCO gives Mount Dora a cost-effective means and availability to purchase electric materials, primarily transformers, to help maneuver through the supply chain issues. In the past 2.5 years, the availability of material items used in construction of Electric distribution facilities has become constrained. Significant economic growth, global inflationary impact, and allocations of precious metals are just a few of the contributing factors.

The impact on the City has been increasingly longer material, especially transformer, lead times. This has been up to a year and, in some cases, two years until delivery. To insure planned City projects, new customer projects, and maintenance replacements, the Electric Utility Department recommends piggybacking this agreement with a nonexclusive clause. The City and OUC have the same distribution voltage, and therefore very similar product material specifications.

This agreement is an excellent opportunity for the City of Mount Dora. It is our understanding that WESCO has an alliance with only Jacksonville Electric Authority and OUC to supply their transformers and now WESCO is giving Mount Dora the opportunity to participate, as long as we agree to the same transformer specifications as OUC.

Approval of the piggyback agreement with WESCO will strengthen our future purchasing capabilities and help us maneuver through the supply chain disruptions while providing economies of scale.

Budget Impact:

The purchase of electric material is part of the Electric CIP and operating budget. It is anticipated that material cost will be moderated based on defined cost in the agreement.

Strategic Impact:

Infrastructure – This agreement will enhance efficiency, quality, reliability and functionality of material goods.

Recommendation:

City Council approve the piggyback agreement with WESCO Distribution Incorporated for the purchasing of electric distribution material.

Attachment(s):

1. Piggyback Agreement. WESCO(pab CLEAN)-signed

Prepared by: Steve Langley, Electric Utility Director

Reviewed by: Wayne Zimmerman, Deputy Electric Utility Director

Steve Langley, Electric Utility Director

Aneta Barton, Budget Director

Jeanann Hand, City Clerk

City Attorney, City Attorney

Patrick Comiskey, City Manager

Approved - 8/15/2023

Approved - 8/16/2023

Approved - 9/22/2023

Approved - 10/5/2023

Approved - 12/22/2023

Final Approval - 12/27/2023

AGREEMENT

THIS AGREEMENT is made by and between the CITY OF MOUNT DORA, a municipal corporation of the State of Florida, hereinafter referred to as the “CITY”, and WESCO DISTRIBUTION, INC., hereinafter referred to as the “CONTRACTOR” (collectively, the “Parties”).

WITNESSETH:

WHEREAS, the CITY has determined that it is in its best interest to make purchases, utilizing that certain Alliance Agreement between Orlando Utilities Commission and the CONTRACTOR, dated January 9, 2009, as amended from time to time, including as amended by the First Amendment dated November 14, 2011, the Second Amendment dated December 15, 2011, the Third Amendment dated September 27, 2012, the Fourth Amendment dated November 14, 2013, the Fifth Amendment dated November 18, 2016, the Sixth Amendment dated November 18, 2016, and the Seventh Amendment dated January 6, 2020, and the Tenth Amendment dated April 3, 2023, attached hereto as **Exhibit “A”**, all made a binding part hereof by this reference, and hereinafter collectively referred to as the “**Cooperative Contract**,” which was competitively solicited for and negotiated by Orlando Utilities Commission (“OUC”); and

WHEREAS, the term of the Cooperative Contract is through March 31, 2028, as amended by the Tenth Amendment thereto; and

WHEREAS, the CONTRACTOR has exhibited by its response to the solicitation that it is capable of providing the services required by the CITY; and,

WHEREAS, pursuant to Section 3.4-1(F), of the CITY’s Purchasing Policy Manual, dated October 5, 2021, and adopted by Resolution 2021-107, the CITY may utilize intergovernmental purchasing through cooperative purchase agreements where the City will be extended the pricing and terms of a competitively solicited active contract of another governmental entity and, therefore, it is appropriate for the CITY to utilize the Alliance Agreement in this manner; and

NOW, THEREFORE, in consideration of the mutual covenants, terms and provisions contained herein, the parties agree as follows:

SECTION 1. RECITALS.

The recitals set forth above are adopted by reference as if set forth fully herein.

SECTION 2. TERM.

The term of this Agreement shall begin on the date of execution by the CITY and, pursuant to the Tenth Agreement to the Cooperative Contract shall extend through March 31, 2028. This Agreement may be extended through written amendment provided the Cooperative Contract is also extended by OUC and remains active.

SECTION 3. SERVICES AND PRICING.

The CONTRACTOR will provide services and pricing to the CITY as set forth in the Cooperative Contract, **Exhibit “A”** attached hereto, including its Appendices and Amendments, with the exception of Power Partners overhead transformers, described therein, as WESCO is not permitted

to sell those to the City of Mount Dora.

SECTION 4. CONTRACT PROVISIONS.

The parties hereto agree to be bound by all of the terms and conditions of the Cooperative Contract unless otherwise modified or specified herein.

SECTION 5. NOTICE.

The parties hereto agree and understand that written notice, mailed, emailed or delivered to the last known mailing address, shall constitute sufficient notice to the CITY and the CONTRACTOR. All notices required and/or made pursuant to this Agreement to be given to the CITY and the CONTRACTOR shall be in writing and given by way of the United States Postal Service, first class mail, postage prepaid, addressed to the following addresses of record with copy by electronic mail:

CITY: City of Mount Dora
Attn: City Manager
510 N. Baker Street
Mount Dora, Florida 32757
CMOffice@cityofmountdora.com

Copy to: City of Mount Dora
Attn: City Attorney
510 N. Baker Street
Mount Dora, Florida 32757
pbrackins@shepardfirm.com
ahand@shepardfirm.com

CONTRACTOR: WESCO Distribution, Inc.
5971 Pershing Avenue
Orlando, Florida 32822
Renee.lackey@wescodist.com

SECTION 5. MODIFICATION.

The covenants, terms, and provisions of this Agreement may be modified by way of a written instrument, mutually accepted by the parties hereto, and executed with the same formalities as this Agreement. In the event of a conflict between the covenants, terms, and/or provisions of this Agreement and any written Amendment(s) hereto, the provisions of the latest executed instrument shall take precedence.

SECTION 6. CONFLICT.

To the extent of any conflict between this Agreement or a CITY issued Purchase Order related to this Agreement and the terms and conditions of Exhibit A attached hereto or any other CONTRACTOR issued invoice or the like, the terms and conditions of this Agreement or of any CITY issued Purchase Order shall prevail.

SECTION 7. FUND AVAILABILITY AND USE OF CONTRACTOR.

Services to be performed in accordance with this Agreement are subject to the annual appropriation of funds by the CITY. In its sole discretion, the CITY reserves the right to forego use of the CONTRACTOR for any project which may fall within the scope of services listed herein.

SECTION 8. JOINT AUTHORSHIP.

This Agreement shall be construed as resulting from joint negotiation and authorship. No part of this Agreement shall be construed as the product of any one of the parties hereto.

SECTION 9. EQUAL OPPORTUNITY EMPLOYER.

The CONTRACTOR is an Equal Opportunity Employer and will comply with all equal opportunity employment laws. The CONTRACTOR will further ensure that all sub-contractors it utilizes in providing the services required hereunder will comply with all equal opportunity employment laws.

SECTION 10. PUBLIC RECORDS.

A. Pursuant to Florida Statutes, Section 119.0701:

IF YOU HAVE QUESTIONS REGARDING THE APPLICATION OF FLORIDA STATUTES, CHAPTER 119, TO YOUR DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS CONTRACT, CONTACT THE CITY'S CUSTODIAN OF PUBLIC RECORDS:

**CITY CLERK: JEANANN HAND
510 NORTH BAKER STREET
MOUNT DORA, FL 32757
(352) 735-7126
HANDJ@CITYOFMOUNTDORA.COM**

B. CONTRACTOR agrees to comply with public records laws, specifically to:

1. Keep and maintain public records required by the CITY for the scope of this Agreement.
2. Upon request from the CITY's custodian of public records, provide the CITY 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 allowed by law.
3. Ensure that any 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 CONTRACTOR does not transfer the records to the CITY.
4. Upon completion of this contract, transfer, at no cost, to the CITY all public records in the CONTRACTOR's possession or keep and maintain the public records as required by the CITY. If the CONTRACTOR transfers all public records to the CITY upon completion of this 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 CITY, upon request, in a format that is compatible with the information technology systems of the CITY.

SECTION 11. EMPLOYMENT ELIGIBILITY VERIFICATION (E-VERIFY).

Pursuant to Florida Statutes, Section 448.095, the CONTRACTOR shall be registered with and utilize the U.S. Department of Homeland Security's E-Verify system to verify the employment eligibility status of all employees performing work under this Agreement as well as all newly hired employees. In addition, the CONTRACTOR shall require any and all subcontractors performing work in accordance with this Agreement to register with and utilize the U.S. Department of Homeland Security's E-Verify system to verify the employment eligibility status of all employees performing work under this Agreement as well as all newly hired employees. Any such subcontractor shall provide an affidavit to the CONTRACTOR stating that the subcontractor does not employ, contract with or subcontract with any ineligible individuals and the CONTRACTOR must keep a copy of said affidavit for the duration of this Agreement. Violation of this section is subject to immediate termination of this Agreement by the CITY without regard to any notice otherwise required herein. In the event the CITY incurs costs as a result of the CONTRACTOR'S breach of this provision, any and all such costs shall be paid by the CONTRACTOR immediately upon receipt of notice of the same from the CITY.

Information on registration for and use of the E-Verify Program may be obtained at the Department of Homeland Security website: <http://www.dhs.gov/E-Verify>.

SECTION 12. 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 the 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. This section shall not limit any remedies as specifically contained in this Agreement.

SECTION 13. TERMINATION.

Either party may terminate this Agreement, with or without cause, given thirty (30) days written notice to the other party.

SECTION 14. USE OF CITY NAME, LOGO, SEAL, FLAG AND/OR LETTERHEAD

The CONTRACTOR may only use the CITY'S name, logo, seal and/or flag with the express written permission of the City and consistent with any CITY policy related to the same. In addition, the CONTRACTOR shall not use the CITY'S letterhead, or any attempted rendition thereof, for issuing any correspondence related to this Agreement without the express written permission of the CITY.

SECTION 15. **ELECTRONIC SIGNATURE.**

This Agreement may be executed in multiple counterparts, each one of which shall be deemed an original, but all of which together shall constitute the same Agreement. Electronic signatures shall be valid and sufficient to bind any party to this Agreement. Signatures to this Agreement transmitted by facsimile, email or other electronic transmission (for example, through the use of a Portable Document Format or “pdf” file) shall be valid and effective to bind the party so signing. All such signatures will be deemed to be original signatures for all purposes.

Signatures on Following Page

IN WITNESS WHEREOF, the parties hereto, by their duly authorized representatives,
have executed this Agreement effective this ____ day of _____, 2023.

CITY OF MOUNT DORA

CRISSY STILE

MAYOR of the City of Mount Dora, Florida

ATTEST:

JEANANN HAND
CITY CLERK

For the use and reliance of City of Mount Dora only
Approved as to form and legal sufficiency

Patrick Brackins
City Attorney

CONTRACTOR

WESCO DISTRIBUTION INC

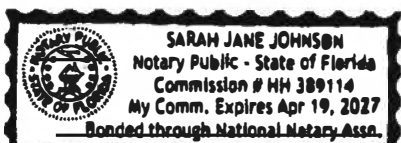
Print: JESSE MORE

Title: DIRECTOR OPERATIONS

STATE OF FLORIDA
COUNTY OF ORANGE

The foregoing instrument was acknowledged before me by means of ☒ physical presence
or [] online notarization of JESSE MORE, as DIRECTOR OPS,
of WESCO DIST., who personally swore or affirmed that he/she is
authorized to execute this Agreement and thereby bind the Contractor, and who is personally
known to me or who produced LICENSE as identification,
and who did/did not take an oath this 19th day of December, 2023.

(stamp)



[Signature]
NOTARY PUBLIC

Exhibit “A”
Cooperative Contract between the
Orlando Utility Commission and
WESCO Distribution, Inc.

Senior Counsel

ALLIANCE AGREEMENT

COPY

BETWEEN ORLANDO UTILITIES COMMISSION AND WESCO DISTRIBUTION, INC

THIS ALLIANCE AGREEMENT (this "Agreement") is entered into and shall be the only Alliance Agreement to govern henceforth until termination or otherwise documented and is entered into and shall become effective this 1st day of January, 2009, by and between the ORLANDO UTILITIES COMMISSION (herein referred to as "OUC"), a public agency created by Special Act of the Florida Legislature, and WESCO DISTRIBUTION, INC. (herein referred to as "WESCO"), (OUC and WESCO are jointly referred to as the "Parties").

The purpose and intent of this Agreement are as follows:

This Agreement is hereby created to provide an economic savings and timely delivery of Electric Distribution Material (herein after referred to as "Goods") by WESCO to OUC's designated location in accordance with the terms herein.

OUC desires to improve the efficiency, cost, quality, reliability, and functionality of the Goods in order to enhance OUC's operating profile.

WESCO shall commit resources and expertise to aid OUC in achieving its objective.

The parties intend to work together in order to establish a mutually beneficial long term business relationship, the purpose of which is to identify for each of the parties herein complementary business opportunities and methods to reduce the life-cycle cost of Electric Distribution Materials and to develop a plan to achieve their objective(s).

In furtherance of the above stated purposes and for the development of a mutually beneficial business relationship between the parties, OUC and WESCO agree to the following:

1. WESCO shall supply electric materials to OUC in accordance with OUC's specifications and time requirements. These specifications and requirements are delineated and defined in the Appendices to this Agreement. At present the following Appendices are included in this Agreement:

- Appendix A – General Terms and Conditions
- Appendix B – ABB, WESCO and OUC Transformer Alliance Agreement
- Appendix C – Electric Distribution Materials
- Appendix D – Electric Meters and Components
- Appendix E – Transmission Insulators
- Appendix F – Miscellaneous items such as Linemen Protection

2. Any additions, deletions or modifications of Appendices to this Agreement shall be via an Addendum/Addenda and dually executed by an authorized OUC representative, and a WESCO representative who each have the authority to enter its organization into an Agreement.
3. WESCO shall provide support staff, advice and assistance to OUC Logistics to plan, strategize, and implement processes to decrease the total life cycle cost of electric materials.
4. The Administrative costs incurred by the implementation of this Agreement shall be offset by the savings under this Agreement. In support of this directive, WESCO shall provide a quarterly report to Supply Chain Management and a semi-annual report documenting the cost savings of the preceding six months to the Executive Committee.

NOW THEREFORE, in consideration of the mutual agreements herein contained and in consideration of what is described in appendices, the parties hereto agree OUC for itself and its successors, and WESCO respectively for themselves or their successors and assigns, that all goods and deliveries are as required herein.

In witness whereof, the Parties hereto have caused their duly authorized representatives, to execute this Agreement as of the day and year first above written,

ATTEST:

By: Sharon Knudsen

ORLANDO UTILITIES COMMISSION

By: [Signature]
Kenneth J. Sioneck
General Manager, CEO

WITNESSES:

By: [Signature]
Print Name: Don Hutmeyer

WESCO DISTRIBUTION, INC.

By: [Signature]
Print Name: ANDREW BENEDICT

Approved as to form and legality
OUC Legal Department

DATE: 12-15-08 BY: [Signature]

APPENDIX A

General Terms and Conditions

This Alliance shall be governed by the following terms:

Section 1. Length of Agreement:

This second term of the WESCO-OUC Alliance and all obligations under this revised Agreement shall commence on the effective date and continue in effect for a period of five (5) years from the effective date unless terminated pursuant to the terms hereof outlined in Section 4 of this Appendix ("The" Initial Term). At the end of this five year term, OUC reserves the option to extend the Agreement for an additional five (5) year term.

Section 2. Services and Duties:

OUC shall purchase from WESCO standard electrical material requirements for the operation of electrical distribution with the exception of the items as stated on page C-1 of Appendix C. Other electric materials or equipment may be purchased by OUC at their discretion or by their need. The Parties hereto agree that OUC makes no guarantee as to a minimum purchase of any Goods. WESCO shall deliver to OUC the requested electric material in the manner herein agreed to.

OUC shall notify WESCO in writing, verbally, or electronically of its requirements for the electric materials. Each notification issued hereunder shall be governed by the terms and conditions of this Agreement. Notification(s) shall include the specific electric materials requested and the time and location site for the delivery. Upon receipt of request(s), WESCO shall advise OUC if it cannot fulfill any of the requirements. WESCO's inability to fulfill OUC's requirements hereunder shall be subject to the provisions herein.

WESCO shall deliver the electric materials to OUC in the manner required by OUC. All deliveries shall be made by WESCO FREE ON BOARD (FOB) with Freight allowed at OUC's requested delivery location, and in accordance with the provisions of this Agreement. The parties hereto agree that the legal and equitable title and risk of loss or damage to the electric materials required by OUC shall pass to OUC upon delivery at the requested delivery location.

As a benefit of the business relationship between OUC, and WESCO, OUC will be treated as a "most favored customer" whereby WESCO will maintain consistent collaboration with OUC Supply Chain Management to monitor and ensure that the daily operational needs of OUC for electric materials are met. In the furtherance of this objective, OUC shall have priority access to WESCO's emergency short lead time capabilities for deliveries of the electric materials. This will enable OUC to gain immediate access to electric materials in an emergency situation. WESCO shall also offer electric materials from its nationwide stock for any immediate requirements that OUC may require.

Section 3. Payment:

Payment of each WESCO invoice by OUC shall be made within thirty (30) Days after the date of receipt of WESCO's invoice and verification of compliance of the equipment delivered with the terms of the Purchase Order. OUC reserves the right to withhold payment for any non-conforming equipment provided by WESCO.

Section 4. Termination:

Either party may terminate this Agreement at any time upon a six (6) month written notice to the other parties at the addresses noted below. Any products ordered or stocked at WESCO for OUC exclusively will be purchased and delivered as part of the termination process.

(A) Orlando Utilities Commission Supply Chain Management 500 S. Orange Ave. P.O. Box 3193 Orlando, Florida 32802-3193 Attn: Director Supply Chain Management bids@ouc.com	(B) WESCO Distribution, INC. 14381 Gamma Drive SE Ft. Myers, Florida 33912 Attn: Florida Branch Manager rreynolds@wescodist.com dhsmith@wescodist.com
--	--

Section 5. Written Notices:

Any notice or other communication required or which may be given hereunder shall be in writing and either be delivered personally, by certified mail or by electronic means (E-Mail), to the addresses specified in Section 4 above.

Section 6. Manufacturer's Warranty:

WESCO shall assign to OUC all manufacturers' warranties of the electric materials delivered to OUC. WESCO agrees that it will make a good faith effort and cooperate with OUC in curing any defect(s) under warranty. If any of the manufacturer's warranties of the electric materials delivered to OUC are not assignable to OUC, then WESCO shall cure the defects and look solely to the manufacturer of such electric materials to cure any defect(s) or to pursue any claim it may have concerning any loss, damage, liability, expense (including attorneys' fees and internal costs associated with internal attorney work), cost or damage which WESCO, its officers, directors, employees, servants, affiliates, agents, successors, or assigns may have and in any way related to the goods supplied to OUC hereunder.

The Parties acknowledge that WESCO is not a manufacturer of Products and WESCO hereby agrees to pass through to Buyer each warranty that has been extended to WESCO by that manufacturer. Except for the express warranties set forth in this section, WESCO hereby expressly disclaims and excludes any and all warranties and representations, whether written or oral, whether express, implied, statutory or otherwise, with respect to any goods, including, but not limited to, any warranty to merchantability, any warranty of fitness for a particular purpose, any warranty of title, and any warranty against the infringement of any

third-party patent, copyright, trademark, trade name, trade secret or any other type of intellectual property right infringement under the laws of any nation.

The manufacturers' warranty on electric materials generally is twelve (12) months from shipment of delivery.

Section 7. Insurance:

WESCO shall, at its own expense, maintain adequate Workers Compensation (Statutory) and Employers' Liability insurance, Comprehensive Automobile Liability insurance, and Comprehensive General Liability Insurance in the amount of no less than two million dollars (\$2,000,000) combined single limit for each occurrence. All of the above referenced insurance shall be maintained throughout the duration of this Agreement. At the time of execution of this Agreement, but in any event as a condition antecedent to WESCO's initiation of performance, WESCO shall furnish OUC with copies of certificates of insurance as evidence that policies providing the required coverage and limits of insurance are in full force and effect. The certificates shall provide that any company issuing an insurance policy pursuant to the insurance requirements herein, shall provide not less than thirty (30) days advance cancellation, termination, material change or any policy of insurance. In addition, WESCO shall immediately provide written notice to OUC prior to cancellation, termination, or material change of any policy of insurance. All insurance coverage's furnished under this Agreement except Workers' Compensation and Employers' liability shall include OUC as an additional insured. Title to all the electric materials purchased under this Agreement shall remain with WESCO and its insurance until OUC receives said electric materials at the requested OUC delivery location.

Section 8. Indemnification:

Each Party agrees to indemnify, defend and save harmless the other party and their affiliated companies and their respective properties and officers, employees, agents, contractors, licensees and insurance companies from any and all costs, expenses, damages, charges, claims, demands or liabilities whatsoever for property damage and personal injury, including death (in this paragraph referred to as a "Claim") arising out of or in any manner connected with or resulting from the Parties' obligations or duties set forth in this Agreement whether the Claim arose out of the negligent acts or omissions of the Party or its servants, employees, independent contractors or assigns, as the case may be, which may be asserted by any third party whatsoever, including, but not limited to, the Parties' employees and contractors.

Section 9. Inspection and Acceptance of Equipment.

Should WESCO perform inventory services as part of this Agreement they shall inspect all equipment Delivered to OUC under this Agreement covered by the inventory services. Any equipment which is damaged or otherwise defective, or which has been shipped by mistake shall be returned to WESCO's facilities and shall not be stored at the Facility. OUC shall not be invoiced by WESCO for any such rejected equipment. All equipment shall be subject to OUC's inspection at any time. The making or failure to make any inspection of, or payment

for or acceptance of equipment by OUC shall in no way impair OUC's right to reject or revoke its acceptance of nonconforming equipment or inventory services, or to avail itself of any other remedies to which OUC may be entitled, notwithstanding OUC's knowledge of the nonconformity, its substantiality or ease of discovery. OUC may reject any or all such equipment at any time during the term of this Agreement.

Section 10. Independent Contractor.

The relationship of WESCO to OUC shall be that of an independent contractor.

Section 11. Hazardous Materials of WESCO and its Subcontractors

Any hazardous materials used by WESCO and its subcontractors in the performance of the inventory services shall be packaged, shipped, handled, labeled and disposed of by WESCO and its subcontractors in a manner that complies with all federal, state and local laws or regulations applicable to hazardous materials. No hazardous materials shall be stored by WESCO and its subcontractors at the Facility before, during or after the performance of inventory services hereunder. WESCO and its subcontractors shall, at its expense, remove, transport and dispose of all hazardous materials (i) brought by WESCO to the Facility or (ii) disturbed by WESCO and its subcontractors' performance of services or created by WESCO and its subcontractors use, handling or combination of non-hazardous materials brought by WESCO and its subcontractors to the Facility during the performance of inventory services. For purposes of the Purchase Order, the term "Hazardous Materials" shall mean any substance which by law requires special handling, containment or disposal, including without limitation "hazardous substances" as defined in the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended (42 USC Sections 9601, et seq.), the Hazardous Materials Transportation Act, as amended (49 USC Sections 5101, et seq.), "hazardous wastes" as defined in the Resource Conservation and Recovery Act, as amended (42 USC Sections 9601, et seq.), "toxic substances" as defined in the Toxic Substance Control Act as amended (15 USC Section 2601 et seq.), as amended and in the regulations adopted, published, and promulgated pursuant thereto.

Section 12. Waivers.

The failure of either party to enforce at any time any of the provisions of this Agreement or to require at any time performance by the other party of any of such provisions, shall in no way be construed to be a waiver of such provision, nor in any way to affect the validity of this Agreement, or any parts thereof, or the right of either party thereafter to enforce each and every provision.

Section 13. Severability.

Should any of the provisions of this Agreement, or parts thereof, be held invalid, such provisions, or parts thereof, shall not affect the remainder of the Agreement.

Section 14. Default:

The Parties Agree to carry out all duties and obligations pursuant to the terms and conditions contained in this Agreement. Failure of either Party to perform the obligations and covenants

herein shall be an act of default by the Party. In the event of an act of default by either Party, the non-defaulting Party shall promptly notify the defaulting Party, in writing, of the existence and nature of the default. Within twenty (20) days of receiving notice of the default, the defaulting shall have the opportunity to cure such default to the reasonable satisfaction of the non-defaulting party. Failure to cure the defect within said twenty (20) days maybe grounds for termination at the option of the non-defaulting party.

Section 15. Emergencies:

In the event of an emergency where, in the reasonable judgment of OUC, delay in the delivery of electric materials to OUC hereunder would cause serious loss or damage, repairs or adjustments may be made by OUC or a third party chosen by OUC without advance notice to WESCO. In addition in said emergency situation, OUC may at its option purchase electric materials from any given Supplier without recourse from WESCO.

Section 16. Force Majeure:

Delays in, or prevention of performance or carrying out obligation under this Agreement, by reason of or through strike, stoppage in labor, riot, fire, flood, invasion, civil war, insurrection, military of usurped power, order or any civil or military authority (either de facto or dejure), explosion, or act of God; then and in such case or cases, the Parties shall be relieved of performance under this Agreement for the duration of the period for which performance is delayed.

Section 17. Assignment:

WESCO shall not assign or subcontract the work or any part thereof, without the previous written consent of OUC, nor shall they assign, by power of attorney or otherwise, any of the money payable under this Agreement unless written consent of OUC has been obtained. No right under this contract, or claim for any money due or to become due hereunder, shall be asserted against OUC, or persons acting for OUC, by reason of any so called assignment of this Agreement or any part thereof, unless such assignment has been authorized by OUC in writing.

Provided that an assignment is approved by OUC, this Agreement and every clause and the provisions contained herein shall be binding upon and inure to the benefit of the successors, heirs, and assigns of the Parties hereto and cannot be changed or terminated except by written instrument subsequently executed by both Parties.

Section 18. Audit Rights:

Each Party shall have access to the other Parties records that support payments or required to be made under this Agreement. In the event that the review of these records reveals incorrect payments, correct payments shall be made plus interest at the current daily rate provided to OUC by its financial institution of record at the time of discovery. OUC shall have

access to WESCO records that support or document the activities for the transactions performed under this Agreement.

During the term of this Agreement and for a period of three years following its termination, OUC shall have the right, at reasonable times and upon reasonable notice, to audit and inspect any of the records having bearing upon matters dealing with the Agreement. WESCO shall grant representatives of OUC access to these records to the extent necessary to adequately permit evaluation and verification of compliance with the terms and conditions of this Agreement specifically including costs and allocations.

Section 19. Entire Agreement Severability:

This Agreement constitutes the entire Agreement between the Parties with respect to the subject matter contained herein and may not be amended, modified or rescinded, unless otherwise provided in this Agreement except in writing and signed by all Parties. Should any provision of this Agreement be declared to be invalid, the remaining provisions of this Agreement shall remain in full force and effect.

Section 20. Governing Law:

Any suit, action or proceeding brought by either Party in consequence of or to enforce any term or condition of this Agreement shall commence in Orlando, Florida. This Agreement is made subject to and shall be governed and construed in accordance with the laws of the state of Florida and the authority granted to the individual Parties thereunder.

Section 21. Electronic Data Interface (EDI):

WESCO shall accept directly into their computer system from OUC all inventory purchase orders that can be electronically transmitted through EDI. In return they shall acknowledge each of the purchase orders using EDI and at the same time verifying pricing and delivery.

Once an order has been placed, WESCO using EDI shall maintain the accuracy of the delivery dates in the OUC system. They shall also notify the OUC's Supply Chain Management Analyst if a delivery date moves out over 30 days from the original promise date. Once the material has been received by OUC, WESCO shall invoice the material using EDI. If the material is found to not be in good condition WESCO will take corrective action to replace the defective material. WESCO and OUC shall continue to enhance the invoicing and payment through Electronic Data Interface to allow for sending of non inventory purchase order and other such services to improve the efficiency.

Section 22. Annual Review

Semi-Annual the Management Committee shall meet and do a thorough review of the alliance. The review shall include at a minimum; pricing meeting of goals, cost savings, value added services and market intelligence and conditions to determine if the alliance agreement is performing as expected or if changes are needed as well as accomplishments. As a condition of the directive as stated in Section 4 on page 2 of this Alliance Agreement,

WESCO shall submit a written report of the cost savings associated with the building expansion as well as a total annual cost savings report.

The Management Committee will make recommendations to the Executive Steering Committee of process changes, investigate cost saving opportunities, supply chain enhancements, and other changes to enhance the performance of the Alliance. The Management Committee will be allowed to make changes such as adding or deleting or modifying Electric Materials, process improvements which have less than a \$50,000 net effect on pricing to OUC, and normal price adjustments within the Alliance without going to the Executive Steering Committee.

Section 23. Ordering of Electrical Materials from Companies other than WESCO

OUC at its option shall be capable of ordering electrical materials from other suppliers for reasons such as WESCO's inability to meet schedule, pilot a new type of material not sold by WESCO, and testing of new types of products or components without violating any portion of this Agreement.

Section 24. Limitation of Liability

Except for the losses covered by General Liability and Automobile Liability Insurance, for which the limits set forth in the Certificate of Liability Insurance provided by WESCO shall prevail, WESCO's maximum liability pursuant to or in connection with any and all claims arising out of the performance of this Agreement shall be limited to the value of the electrical material giving rise to the claim. In no event shall either party be liable to the other party for indirect, special, punitive, exemplary, speculative, consequential, contingent, liquidated, incidental or other similar damages, including, without limitation, damages for lost revenues, lost profits, lost business or business interruptions arising in any manner pursuant to or in connection with this Contract including, without limitation, from any defects or non-conformance of the electrical material.

Section 25. Alliance Management:

The Parties agree to manage this Alliance through committees overseen by an Executive Steering Committee. The Executive Committee shall set up committees as necessary to meet business needs. The Executive Steering Committee will receive Semi- annually performance reports from the Management Committee. The Executive Steering Committee will evaluate the success of the Alliance and make determinations of expansion, major changes, or termination of the Agreement. The Executive Steering Committee will be initially comprised of WESCO's Director of Eastern Utility Operations, Elster's Vice President of Sales, ABB's Vice President of Southeastern Region, OUC's Vice President of Corporate Services, OUC's Vice President of Customer Connection, and OUC's Vice President of the Energy Delivery Business Unit.

Modification of goals or process improvements having a net effect to pricing of greater than \$50,000 shall be approved by the Executive Steering Committee. The make up of the above referenced committees are:

Committee Membership

ENERGY DELIVERY MATERIAL

Executive Steering Committee

- A. Vice President Energy Delivery Business Unit – Orlando Utilities Commission
- B. Vice President Corporate Services – Orlando Utilities Commission
- C. Director, Eastern Utility Operations – WESCO
- D. Vice President of Southeastern Region –ABB

Management Committee

- A. Director, Finance & Lighting – Orlando Utilities Commission
- B. Director, System Planning & Reliability – Orlando Utilities Commission
- C. Director, Supply Chain Management – Orlando Utilities Commission
- D. Electric Utility, Branch Manager for Florida – WESCO

Standards Resource Contacts for Alliance

- A. Electric Distribution Standards Engineer – Orlando Utilities Commission
- B. Area Sales Representative – WESCO

Logistics - Purchasing Committee

- A. Manager Distribution Construction – Orlando Utilities Commission
- B. Inventory Control Analyst, Supply Chain Management – Orlando Utilities Commission
- C. Buyer/Planner , Supply Chain Management – Orlando Utilities Commission
- D. Alliance Manager – WESCO

Finance Committee

- A. Director of Finance and Lighting, Energy Delivery Business Unit-Orlando Utilities Commission
- B. Manager Operation, Supply Chain Management- Orlando Utilities Commission
- C. Electric Utility, Branch Manager for Florida – WESCO

APPENDIX B

OUC, WESCO and ABB Alliance Agreement

This Appendix to the Alliance Agreement between Orlando Utilities Commission and WESCO Distribution, Inc. (the "Alliance Agreement") dated January and entered into the 1st day 2009 is:

Now therefore, inclusive of the following Alliance Agreement between the Orlando Utilities Commission (herein referred to as OUC) and WESCO Distribution, Inc. (herein referred to as WESCO) and ABB, Inc. and Power Partners Inc. (herein referred to as ABB). The following specifications, requirements, and mutual covenants listed below and contained herein, are incorporated into this Alliance Agreement:

1. LEAD TIME

ABB has agreed to furnish OUC with Transformers through OUC's Distributor WESCO with a lead time of twelve (12) weeks from receipt of order without regard to the current industry standard lead time. As of July, 2008, the industry lead times are as follows:

- | | |
|---|------------------|
| ➤ Single Phase Pole Mounted Transformer | = 8 to 12 weeks |
| ➤ Single Phase Padmounted Transformers | = 12 to 16 weeks |
| ➤ Three Phase Padmounted Transformers
500KVA or below | = 16 to 20 weeks |
| ➤ Three Phase Padmounted Transformers
750 KVA or greater | = 16 to 24 weeks |

ABB will also allow changes within a category to existing orders up to six weeks prior to delivery. This will be accomplished by WESCO coordinating production planning with OUC Operations.

As of July, 2008, ABB is delivering the majority of the transformer units within 6 to 8 weeks after receipt of order.

ABB will report semi-annually to WESCO and OUC industry delivery lead times of transformers. ABB shall also immediately notify WESCO and OUC of changes in the market place or within ABB that alters the lead times and compromises the ability of ABB to furnish OUC transformers per the agreed upon schedule. ABB and WESCO shall take whatever action necessary to ensure that OUC receives transformers in as timely a manner as permits based upon the circumstances. Any action taken by ABB shall be reviewed and approved by WESCO and OUC prior to the performance of the action. In the event that ABB can not provide OUC's requirements based on the required date, WESCO will utilize other transformer manufacturers to satisfy OUC's requirements.

2. PRICING

Pricing for the transformers will normally be updated twice a year and shall otherwise remain firm. WESCO on behalf of ABB shall submit to OUC any request for a change in pricing as follows:

- A. Received at OUC 45 days prior to the effective date of April 1st
- B. Received at OUC 45 days prior to the effective date of October 1st.

In concurrence with the above stated schedule, WESCO and ABB shall provide to OUC a semi-annual summation of market conditions as they pertain to pricing and a copy of the indexes referenced in Tables A and B shown below. Pricing will be adjusted if the change in material costs results in a calculated price change of 2% or more and are confirmed by published commodity indexes. Changes will only be approved in advance and in writing by OUC. ABB's method is to forecast future price changes based on changes to labor, benefits and fixed price contracts as well as estimates about the market for products such as insulating oil, electrical steel, copper, steel and fuel.

In order for WESCO and OUC to verify pricing changes ABB will provided two tables showing the approximate make up of the pole and pad mounted transformers and which indexes apply. These tables should provide an estimate of the price variation to allow comparison to the actual ABB price change request.

The basic breakdown is as follows:

A. Pole-type Transformers

Commodity	Index Used	Avg. Weighting Factor	EEMAC weighting factor for 2006 and up
Transformer Oil	WPU 057	8.0%	5.3
Conductor	WPU 102201	17.0%	
Electric Steel(1)	ABB COST INDEX	30.0%	29.2
Carbon Steel	WPU 1017	5.0%	11.2
Labor	SIC 36	40.0%	
Alum. Wire			5.5
Copper Wire			13.5
Insulation			2.0
Acc./Misc.			9.2
Labor & OH			24.10

B. Pad-mounted Transformers

Commodity	Index Used	Avg. Weighting	EEMAC weighting
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OUC – WESCO ALLIANCE 2008

		Factor	factor for 2006 and up
Transformer Oil	WPU 057	8.0%	7.6
Conductor	WPU 102201	12.0%	
Electric Steel(1)	ABB COST INDEX	24.0%	19.5
Carbon Steel	WPU 1017	15.0%	11.2
Labor	SIC 36	41.0%	
Alum. Wire			3.7
Copper Wire			11.6
Insulation			2
Acc./Misc.			13.7
Labor & OH			30.7

Note:

1. Since there is no published index for Electric Steel ABB has agreed to furnish WESCO and OUC semi-annually a copy of Electrical Equipment Manufacturers Association of Canada (EEMAC) Distribution Transformer Price Index report which does have an "index" for Electric Steel and other transformer components. This is only to be used to help put together the comparison and not as a published index. All other indexes source is the Bureau of Labor Statistics (BLS).

During periods of volatility (material and market) by mutual agreement of the Alliance Executive Committee, changes to purchasing methods (example: direct vs. consignment) as well as pricing review periods (quarterly vs. semi-annually) and calculation methodology (look at immediate changes vs. past changes) can be put into effect. Once "new" purchasing or pricing methods are put into affect, they will remain in effect until the Alliance Executive Committee agrees that material and/or market conditions have stabilized or changed.

Request for changes to the pricing methodology shall be presented by WESCO and ABB to the Management Committee along with proof of the reason for the request and options of how to handle the change.

Examples of conditions which could cause a change in pricing or purchasing methods

- Large increase in raw material pricing.
- Raw prices and material delivers are unpredictable.
- Shortage of manufacturing space which cause dramatic changes in lead times.
- Shortage of critical material.

Non-scheduled requests for pricing changes shall be submitted to the other Alliance partner (i.e. WESCO/ ABB to OUC; or OUC to WESCO/ ABB) by the

fifteenth (15) day of the month following the proposed change. Purchase Orders issued prior to the notice of change will remain at the old price.

Transformers added to the Alliance shall be priced using the same pricing methodology as that of the original transformers.

3. INVENTORY

WESCO and ABB shall work with both Electric Delivery Construction and the Logistics Inventory Analyst to establish emergency stock requirements, review reorder point and reorder quantities on moving inventory based on ABB manufacturing lead time, and work with Electric Delivery Construction to develop a production plan based on forecast and work order demand.

The inventory goals of the alliance are to increase the general transformer inventory turn ratio and achieve and maintain a fill rate of 98%.

4. WARRANTY

The standard transformer warranty is eighteen (18) months from shipment or 12 months from installation whichever is greater. However, ABB has agreed to review cases where the transformer falls outside the standard warranty period to determine if repairs or service can be performed under warranty.

A failure rate exceeding 0.5% for anyone type of transformer during a period of one calendar year either in the field or receipt inspection shall result in an immediate investigation by ABB to ascertain the cause of the failures and report back to WESCO and OUC cause of the failure, and the corrective action.

1. ABB depending on the cause of the failure shall immediately repair or replace the transformer(s) made during that same period which could be defective. ABB shall work with WESCO and OUC to identify potential defective units.

5. TRANSFORMER COMMITTEES

Executive Steering Committee

- A. Vice President Energy Delivery Business Unit – Orlando Utilities Commission
- B. Vice President Corporate Services – Orlando Utilities Commission
- C. Vice President of Southeastern Region - ABB
- D. Director, Eastern Utility Operations – WESCO

Management Committee

- A. Director, Finance & Lighting – Orlando Utilities Commission
- B. Director, System Planning & Reliability – Orlando Utilities Commission
- C. Director, Supply Chain Management – Orlando Utilities Commission
- D. ABB Director of Southeast
- E. Electric Utility, Branch Manager for Florida – WESCO

Standards Resource Contacts for Alliance

- A. Electric Distribution Standards Engineer – Orlando Utilities Commission
- B. Area Sales Representative – WESCO
- C. Area Sales Representative- ABB

Logistics – Purchasing Committee

- A. Manager Distribution Construction – Orlando Utilities Commission
- B. Inventory Control Analyst, Supply Chain Management – Orlando Utilities Commission
- C. Buyer/Planner, Supply Chain Management – Orlando Utilities Commission
- D. Alliance Manager – WESCO
- E. Alliance Manager – ABB

Finance Committee

- A. Director, Finance & Lighting – Orlando Utilities Commission
- B. Manager Operation, Supply Chain Management – Orlando Utilities Commission
- C. Electric Utility, Branch Manager for Florida – WESCO
- D. ABB Director of Southeast

6. REPORTING

- A. ABB will provide quarterly the Electrical Equipment Manufacturers Association of Canada (EEMAC) data report to the Logistics Committee,
- B. The OUC transformer shop will provide a quarterly a report of all the transformer failures. The report shall include at a minimum the following:
 - 1. Separate ABB transformers from other manufacturers
 - 2. With ABB transformers, the report shall delineate

a) In Warranty Transformers

1) Found during inspection

- 2) In-field
 - b) Out of Warranty Transformers
 - 1) Found during inspection
 - 2) In-field
- C. OUC Logistics Department will provide a quarterly report on the fill rate.
- D. OUC Logistics Department will provide a semi-annual report on the turn ratio.
- E. OUC, WESCO and ABB will at least Semi-annually check the market place to perform a comparison of what OUC pricing structures for transformers versus other utilities of a similar size.
- F. Report cost savings quarterly where savings include such things as cost avoidance, actual purchase price savings, difference between what OUC is paying and market costs.
- G. Report On-Time delivery quarterly based on OUC One World system information.
- H. Report quarterly the accuracy of WESCO's transformer monthly Invoice to ensure a smooth payment process exists between OUC Accounts Payable and WESCO.

7. AREAS OF CONTINUING AND POTENTIAL ALLIANCE EXPANSION

- A. Establish a Vendor Managed Inventory program (VMI) for fast moving units.
- B. Consigning all or part of the transformer inventory to WESCO or ABB.
- C. Work with other utilities to see if we can standardize on certain types of transformers.
- D. Approve the use of transformers built by ABB outside of the USA.
- E. Re-building of used transformers.
- F. Standardization by the elimination of KVA sizes which are used very seldom.
- G. Extending the warranty period.
- H. Changing transformer designs as necessary to meet the new DOE standards.
- I. Approving 1 or 2 transformer repair facilities located within the southeast but more preferable within Florida.
- J. Review options to repair vs. replace.
- K. Any other value added opportunities.

ATTEST:

By: Sharon Knudsen
Print Name: Sharon Knudsen
Title: Assistant Secretary

WITNESS(ES):

By: _____
Print Name: _____

WITNESS(ES):

By: Bruce Purcell
Print Name: Bruce Purcell

WITNESS(ES):

By: Don Schmidt
Print Name: Don Schmidt

ORLANDO UTILITIES COMMISSION

By: Kenneth Ksionek
General Manager, CEO

WESCO DISTRIBUTION INC.

By: Donald W. Heitmeier
Print Name: Donald W. Heitmeier

ABB, INC. and Power Partners Inc.

By: Jeffrey M. Weingarten
Print Name: Jeffrey M. Weingarten

Power Partners Inc.

By: Scott Childs
Print Name: Scott Childs
Commercial operations mgr.

Approved as to form and legality,
OUC Legal Department

DATE: 12-15-08 BY: W.O.

APPENDIX C

Electric Distribution Materials

1. ELECTRIC DISTRIBUTION MATERIALS

OUC shall purchase from WESCO its standard electrical material requirements for the daily operation of electrical distribution with the exception of the items listed below which are presently being furnished by other suppliers. In general the full purchasing description and list of approved manufacturers with their respective catalog numbers can be found in OUC's electronic catalog on AURSI at www.aurisi.com

Items Not Included are as follows:

- A. Guy Wire
- B. All Above ground and underground Wire and Cable
- C. All Pad mounted Switchgear
- D. All Material Related to Lighting
- E. Manhole Covers & Rings
- F. All Wood and Concrete Poles
- G. Items Manufactured for Distribution by the OUC shops

2. LEAD TIME

WESCO has agreed to stock items in their Orlando warehouse which are either critical to OUC or have long lead times or requested by OUC Engineering to obtain timely delivery of materials allowing OUC to reduce its inventory level.

3. PRICING

Pricing for the distribution material will be updated once a year and remain firm until the next annual review and update. The pricing will be based on a "bid" by WESCO to all OUC approved manufacturers. The approved manufacturers can be found in OUC's electronic catalog on AURSI (www.aurisi.com).

During periods of material volatility, price changes will be considered based on changes in the manufacturer's price. It will be the responsibility of WESCO and OUC to determine if the price change requested by the manufacturer is justifiable or whether the judgment warrants further investigation of the market place to obtain better pricing.

WESCO even during periods of material volatility shall verify pricing utilizing a bidding process other means approved by OUC to verify it is receiving the best price and delivery. During their evaluation of the "bids" WESCO shall take into

consideration not only pricing but also such things as delivery (i.e. lead time), minimum order quantities, freight, warranty, return policy and OUC preferences. Should a decision be made to not order the lowest priced good(s), the WESCO OUC Alliance Manager shall write a memo to their file explaining the reason that specific good(s) was chosen. The "bidding" files shall be open to OUC's inspection upon request.

Purchase Orders issued prior to a price change and after WESCO's acceptance shall stay at the old price.

It is agreed to by all parties that WESCO shall calculate its price to OUC on distribution material by taking their purchase price and dividing it by (1-markup percentage agreed upon).

The markup percentage agreed upon between OUC and WESCO for purchases of distribution material with a net 30 day pay period is 13.5%. The markup percentage will be reviewed at least semi-annually between OUC and WESCO and will depend strictly on the types of service OUC is requesting and WESCO is providing. Services such as consignment or full inventory control may require WESCO to receive a larger markup percentage.

4. INVENTORY

WESCO shall work with OUC Energy Delivery Construction, OUC standards engineers and the OUC Logistics Inventory Analyst to review reorder point and reorder quantities on distribution material. Additional focus should be placed on the review of reorder point and reorder quantities on the critical moving inventory based on past experience and OUC Engineering recommendation(s). The review of the reorder point and reorder quantities shall look at such things as criticality of the item to the distribution system, manufacturers lead time, past usage, potential future usage, manufacturers requirements for ordering, and WESCO's present stock for other utilities. As part of the review the Logistic/ Purchasing Committee shall develop an estimated correction factor to adjust the One World commit requirements to a realistic usage.

The inventory goals of the alliance are to increase the general inventory turn ratio, reduce inventory, and to obtain a fill rate of greater than 95%.

OUC from time to time may add to, subtract from and/or modify the electric materials as listed in OUC's electronic catalog in AURSI (www.aurisi.com) or other engineering standards. Changes to the catalog or engineering standards are hereby incorporated by reference.

5. WARRANTY

In general the standard warranty for distribution material is twelve (12) months from shipment. WESCO agrees to make every effort in curing any defect(s)

under warranty. Also should failures of sufficient quantity on a certain item occur even after the warranty period WESCO agrees to again make every effort to resolve the issue with the manufacturer.

WESCO shall upon hearing of the multiple failures shall immediately put on hold any of their existing inventory of the same manufacture in their inventory and seek other sources to replace the existing material until such time as the issue is resolved to the satisfaction of all parties but more especially the OUC Standards Engineer.

The Parties acknowledge that WESCO is not a manufacturer of Products and WESCO hereby agrees to pass through to Buyer each warranty that has been extended to WESCO by that manufacturer. Except for the express warranties set forth in this section, WESCO hereby expressly disclaims and excludes any and all warranties and representations, whether written or oral, whether express, implied, statutory or otherwise, with respect to any goods, including, but not limited to, any warranty to merchantability, any warranty of fitness for a particular purpose, any warranty of title, and any warranty against the infringement of any third-party patent, copyright, trademark, trade name, trade secret or any other type of intellectual property right infringement under the laws of any nation.

6. GENERAL

- A. WESCO shall keep OUC Supply Chain Management informed at least quarterly (or earlier if necessary) on market place conditions such as lead time changes and other items which could affect OUC.
- B. WESCO shall immediately inform OUC Supply Chain Management and OUC Standards Engineers of dramatic changes in lead time.
- C. WESCO shall continuously work with their existing manufacturers as well as new manufacturers to bring new material for review and approval to OUC's Standards Engineers.
- D. If OUC is approached by a new manufacture, OUC will recommend that they contact WESCO for the product approval process.
- E. If OUC is approached by another Distributor for a new product, they will be sent directly to OUC's Standard Engineer for review and potential approval of that new product. Should that product be approved by the OUC Standards Engineer(s) and it is deemed to be better than the existing product, OUC agrees to purchase at least the first order from the distributor. OUC will then determine if they will continue purchasing the new product from that distributor or see if WESCO can purchase that product.

7. COMMITTEE MEMBERSHIP

Executive Steering Committee

- A. Vice President Energy Delivery Business Unit – Orlando Utilities Commission
- B. Vice President Corporate Services – Orlando Utilities Commission
- C. Director, Eastern Utility Operations –WESCO

Management Committee

- A. Director, Finance & Lighting – Orlando Utilities Commission
- B. Director, System Planning & Reliability – Orlando Utilities Commission
- C. Director, Supply Chain Management – Orlando Utilities Commission
- D. Electric Utility, Branch Manager for Florida – WESCO

Standards Resource Contacts for Alliance

- A. Electric Distribution Standards Engineer – Orlando Utilities Commission
- B. Area Sales Representative – WESCO
- C. Manager Logistics

Logistics - Purchasing Committee

- A. Manager Distribution Construction – Orlando Utilities Commission
- B. Inventory Control Analyst, Supply Chain Management – Orlando Utilities Commission
- C. Buyer/Planner , Supply Chain Management – Orlando Utilities Commission
- D. Alliance Manager – WESCO

Finance Committee

- A. Director of Finance and Lighting, Energy Delivery Business Unit-OUC
- B. Manager Operation, Supply Chain Management- OUC
- C. Electric Utility, Branch Manager for Florida – WESCO

8. REPORTING

- A. WESCO in conjunction with Logistics' shall provide semi-annually a report of all multiple material failures of a specific item which is not caused by age or lightning. The report shall be by stock number and manufacture and whether the item was within or outside of warranty.
- B. The OUC Logistics area will provide a semi-annual report on the turn ratio.
- C. OUC and WESCO will at least annually check the market place to determine a comparison of what OUC is paying versus other utilities of a similar size.
- D. WESCO shall report cost savings quarterly where savings include such things as cost avoidance, actual purchase price savings, difference between what OUC is paying and market costs.
- E. OUC shall report On-Time delivery quarterly based on OUC's One World system information.
- F. Report quarterly the accuracy of WESCO's invoicing versus One World system. This basically is a report from Accounts Payable to see how easy it is to pay WESCO's invoice without having a lot of adjustments.

9. AREAS OF CONTINUED AND POTENTIAL ALLIANCE EXPANSION

- A. Implement a Vendor Managed Inventory program (VMI) for fast moving inventory. Focus should be on truck stock items.
- B. Consigning all or part of the distribution inventory to WESCO
- C. WESCO shall work with OUC's Standard Engineers to review standardization opportunities between what OUC purchases and what is stocked by WESCO for other utilities. The goal of this action would be to reduce our costs or inventory because of reduced lead time.
- D. Extending the warranty period
- E. Work with OUC's Standard Engineers to improve products and industry changing requirements.
- F. WESCO preassembling and/or kitting material for specific projects.
- G. Jobsite delivery of preassembled and/or kitted projects.
- H. Any other value added opportunities.

APPENDIX D

Electric Meters and Components

1. ELECTRIC METERS AND COMPONENTS MATERIALS

OUC shall purchase from WESCO all the electrical meters and major component materials used in OUC's metering system listed below. In general the full purchasing description and the approved manufacturers with their respective catalog numbers can be found in OUC's electronic catalog on AURSI at "www.aursi.com"

Items Included:

- A. Current Transformers
- B. Potential Transformers
- C. Poly-phase Meters
- D. Energy Axis REX Meters (2-way electronic Communication meters)
- E. Electrical Mechanical Meters with ERT
- F. BTU Meters
- G. PV Meters (reactive, bidirectional)
- H. Miscellaneous Items Such as:
 - Brackets
 - Covers
 - Guards
 - Locks
 - Meter Spare Parts
 - Rings

Items included in this list are purchased from other suppliers.

- A. Meter Bases
- B. Miscellaneous Meter Parts purchased from Austin International

2. LEAD TIME

WESCO has agreed to stock in their Orlando warehouse items all electrical meter items which are part of the normal everyday operation of the Electric Meter shop or requested to by OUC Meter Shop to ensure one working day delivery of those items. Items which are not part of the normal operation will be ordered on an as need basis with WESCO obtaining the best delivery possible.

WESCO will work with the Meter Shop personnel on a weekly basis to forecast OUC's meter needs.

3. PRICING

Pricing for the electric meter material will be updated once a year and remain firm until the next annual review and update. The pricing will be based on WESCO's negotiated pricing with the OUC approved manufacturers supplying the electric meter material. Presently the Meters are being purchased from Elster and Current/Potential Transformers from ABB. The approved manufacturers can be found in OUC's electronic catalog on AURSI (www.aursi.com); however only the Manager of Electric Metering can change manufacturers currently being ordered by WESCO even if other manufacturers are approved in the electronic catalog.

During periods of material volatility, prices will be considered based on changes in the manufacturer's price. It will be the responsibility of WESCO and OUC to determine if the price change requested by the manufacturer is justifiable or whether the judgment warrants further investigation of the market place to obtain better pricing.

WESCO even during periods of material volatility, shall verify pricing by utilizing a bidding process or other means approved by OUC to verify that it is receiving the best price and delivery. During their evaluation of the market WESCO shall take into consideration not only pricing but also such things as delivery (i.e. lead time), minimum order quantities, freight, warranty, return policy and OUC preferences.

The market verification analysis shall be forwarded to the Manager of Electric Metering as well as the Buyer who is handling meter material. It shall also be shown to the management committee at the semi-annual update meeting and executive committee for annual review as per the terms stated on page A-7 in Appendix A.

OUC will issue one Purchase Order yearly to cover the estimated purchases by OUC through the VMI program. This Purchase Order does not have to go to the OUC Commission because the meter material is covered by the rules governing inventory material.

It is agreed to by all parties that WESCO shall calculate its price to OUC on electric meter material except for the electrical mechanical meters which are covered by a firm price through December 31, 2008 per OUC Blanket Order 348-OB by taking their purchase price and dividing it by (1+markup percentage agreed upon).

The markup percentage agreed upon between OUC and WESCO for purchases of electrical meter material with a net 15 day period varies between 8.5% and

13.5%. The markup percentage will be reviewed at least annually between OUC and WESCO and will depend strictly on the types of service OUC is requesting and WESCO is providing.

Presently meter pricing has not increased for the last couple of years; in fact WESCO is working with Elster for a reduction in pricing on the Rex Meters.

4. VENDOR MANAGED INVENTORY (VMI)

WESCO, OUC Supply Chain Management and the OUC Electric Meter Shop have negotiated an Agreement where all of the WESCO supplied meter materials would no longer be carried by OUC's warehouses but supplied directly from the WESCO warehouse to the Electric Meter Shop on an as need basis.

This arrangement has been working for the last couple of years and is performing to everyone's satisfaction.

In general the VMI process works as follows:

- A. WESCO meets weekly with the Electric Meter Shop to discuss future needs.
- B. Based on those discussions WESCO orders materials for their warehouse to ensure that they can meet the Electric Meter Shop requirements.
- C. Generally WESCO maintains approximately four (4) weeks supply over and above OUC's Electric Meter Shop estimated needs for non forecasted events.
- D. When electric meters which need to be tested by the Electric Meter Shop are received by WESCO from the manufacturer they use the sampling procedures provided by the OUC Electric Meter Shop to take the required samples and given them to the Meter Shop for testing. If the sample meters test out satisfactorily (i.e. pass OUC tests) the samples are returned to WESCO and WESCO marks the shipment okay for their inventory. If the electric meters do not pass, the samples are returned to WESCO with the results and the meters are returned to the manufacturer.
- E. When the Electric Meter Shop needs material they call or email the WESCO office with their requirements.
- F. WESCO delivers the item(s) to the Electric Meter Shop the next working day providing it is the normal everyday material which has forecasted.
- G. WESCO bills OUC on a monthly basis for all of the items sent to the Electric Meter Shop.

The goals of this part of the alliance are to increase the general turn ratio as measured by the WESCO inventory system, and to achieve a fill rate of greater than 98%.

5. WARRANTY

The standard warranty for electric meter material is twelve (12) months from shipment. WESCO agrees to make every effort in curing any defect(s) under

warranty. Also should failures of sufficient quantity on a certain item occur even after the warranty period WESCO agrees to again make every effort to resolve the issue with the manufacturer.

WESCO shall upon hearing of the multiple failures, put on hold any of their existing inventories and seek other sources if possible to replace the existing material until such time as the issue is resolved to the satisfaction of all parties but more especially the OUC Manager of the Electric Metering.

The Parties acknowledge that WESCO is not a manufacturer of Products and WESCO hereby agrees to pass through to Buyer each warranty that has been extended to WESCO by that manufacturer. Except for the express warranties set forth in this section, WESCO hereby expressly disclaims and excludes any and all warranties and representations, whether written or oral, whether express, implied, statutory or otherwise, with respect to any goods, including, but not limited to, any warranty to merchantability, any warranty of fitness for a particular purpose, any warranty of title, and any warranty against the infringement of any third-party patent, copyright, trademark, trade name, trade secret or any other type of intellectual property right infringement under the laws of any nation.

6. GENERAL

- A. WESCO shall keep OUC Meter Shop Management informed at least quarterly on what is happening within market place such lead time changes and other items which could affect OUC.
- B. WESCO shall immediately inform OUC Meter Shop Management and the Buyer of dramatic changes in lead time or other things which could affect delivery or performance of OUC electric meter material.
- C. WESCO shall continuously work with their existing manufacturers as well as new manufacturers to bring new material for review and approval to OUC's Meter Shop Management.
- D. If OUC is approached by a new manufacturer or another Distributor of a new product, OUC will send them directly to OUC's Meter Shop Management for review and potential approval of that new product. Should that product be approved by the OUC Meter Shop, OUC agrees to purchase at least the first order from the distributor or manufacturer. OUC will then determine if they will continue purchasing the new product from that distributor or see if WESCO can purchase that product.

7. COMMITTEE MEMBERSHIP

Executive Steering Committee

- A. Vice President Customer Connection – Orlando Utilities Commission
- B. Vice President Corporate Services – Orlando Utilities Commission
- C. Director, Eastern Utility Operations –WESCO
- D. Regional Director - Elster

Management Committee

- A. Director, Meter Services – OUC
- B. Director, Supply Chain Management – OUC
- C. Electric Utility, Branch Manager for Florida – WESCO
- D. Regional Sales Manager- Elster

Standards Resource Contacts for Alliance

- A. Meter Services Manager– OUC
- B. Area Sales Representative – WESCO
- C. Manager Logistic
- D. Elster Alliance Manager

Logistics - Purchasing Committee

- A. Manager Meter Services - OUC
- B. Inventory Control Analyst, Supply Chain Management – Orlando Utilities Commission
- C. Buyer/Planner , Supply Chain Management – OUC
- D. Alliance Manager – WESCO
- E. Elster Alliance Manager

Finance Committee

- A. Director of Meter Service, Energy Delivery Business Unit-OUC
- B. Manager Operation, Supply Chain Management- OUC
- C. Electric Utility, Branch Manager for Florida – WESCO

- D. Elster Director of Southeast

8 **REPORTING**

- A. The Electric Meter Shop shall provide semi-annually a report of all multiple material failures of a specific item which is not caused by age or lightning. The report shall be by stock number and manufacturer and whether the item was within or outside of warranty.
- B. WESCO will provide a semi-annual report on the turn ratio.
- C. WESCO shall report cost savings semi-annually where savings include such things as cost avoidance, actual purchase price savings, difference between what OUC is paying and market costs.
- D. The Electric Meter Shop shall report On-Time delivery semi-annually based on their records of when the items were ordered versus when they were received. In general normal material shall be received within 1 work day from time of the order.
- E. Report semi-annually the accuracy of WESCO's invoicing versus OneWorld system. This basically is a report from Accounts Payable to see how easy it is to pay WESCO's invoice without having a lot of adjustments.

9. **AREAS OF CONTINUING AND POTENTIAL ALLIANCE EXPANSION**

- A. Consigning all or part of the Vendor Management Material in the Meter Shop inventory to WESCO
- B. Extend the VMI program to those items not already covered.
- C. Extending the warranty period
- D. Working with OUC's Meter Shop personnel to improve products and industry changing requirements.
- E. Eliminate the additional testing OUC does over and above the manufacturer on the residential meters.
- F. Disposal of the returned meters which are still in working condition.
- G. Any other value added opportunities.

APPENDIX E

Transmission Insulators

1. TRANSMISSION INSULATORS

OUC shall purchase from WESCO all the transmission insulators and appropriate accessories used in OUC's transmission system. In general transmission insulators are purchased per project and therefore are designed specifically for that project by the OUC Engineers or by an engineering company such as Black & Veatch. The transmission engineers have set up some of the "standard" transmission insulators as stock items.

2. LEAD TIME

Presently WESCO does not stock transmission insulators because of their special nature. Manufacturers lead time can vary from 8 to 16 weeks depending on the type of insulator.

3. PRICING

Pricing for the transmission insulators is provided by WESCO at the time of ordering. The pricing will be based on a "bid" by WESCO to all OUC approved manufacturers. During their evaluation of the "bids" WESCO shall take into consideration not only pricing but also such things as delivery (i.e. lead time), minimum order quantities, freight, warranty, return policy and OUC preferences. After the evaluation WESCO shall inform the OUC Buyer of their recommendation for the Buyers concurrence. Should a decision be made to not order the lowest price manufacturer the WESCO OUC Alliance Manager shall write a memo to their file explaining the reason that a specific manufacturer was chosen.

The "bid" files shall be open to OUC's inspection upon request.

It is agreed to by all parties that WESCO shall calculate its price to OUC on transmission insulators by taking their purchase price and dividing it by (1-markup percentage agreed upon).

The markup percentage agreed upon between OUC and WESCO for purchases of transmission insulators with a net 30 day pay period varies between 8 and 13.5%. The markup percentage will be reviewed at least annually between OUC and WESCO and will depend strictly on the types of service OUC is requesting and WESCO is providing.

4. INVENTORY

WESCO shall work with Electric Transmission Construction, OUC Transmission Standards Engineer and the Logistics Inventory Analyst to review reorder point and reorder quantities on all transmission insulator inventories. Additional focus should be placed on the critical and fast moving inventory based on past experience and OUC Transmission Engineers recommendation. The review of the reorder point and reorder quantities shall look at such things as criticality of the item to the transmission system, manufacturers lead time, past usage, potential future usage, manufacturers requirements for ordering, and WESCO's present stock for other utilities. As part of the review the Logistic/Purchasing Committee shall develop an estimated correction factor to adjust the One World commit requirements to a realistic usage.

The inventory goals of the alliance are to maintain the appropriate quantity in inventory, and achieve an inventory fill rate of greater than 95%.

5. WARRANTY

In general the standard warranty for transmission insulators is twelve (12) months from shipment. WESCO agrees to make every effort in curing any defect(s) under warranty. Also should failures of sufficient quantity on a certain item occur even after the warranty period WESCO agrees to again make every effort to resolve the issue with the manufacturer.

Upon hearing of the multiple failures, WESCO shall immediately put on hold any of their existing inventories of the same manufacture in their inventory and seek other sources to replace the existing material until such time as the issue is resolved to the satisfaction of all parties but more especially the OUC Standards Engineer.

The Parties acknowledge that WESCO is not a manufacturer of Products and WESCO hereby agrees to pass through to Buyer each warranty that has been extended to WESCO by that manufacturer. Except for the express warranties set forth in this section, WESCO hereby expressly disclaims and excludes any and all warranties and representations, whether written or oral, whether express, implied, statutory or otherwise, with respect to any goods, including, but not limited to, any warranty to merchantability, any warranty of fitness for a particular purpose, any warranty of title, and any warranty against the infringement of any third-party patent, copyright, trademark, trade name, trade secret or any other type of intellectual property right infringement under the laws of any nation.

6. GENERAL

- A. WESCO shall keep OUC Supply Chain Management informed at least quarterly of what is happening within the market place such as lead time changes and other items which could affect OUC.
- B. WESCO shall inform OUC Supply Chain Management and Transmission Standard Engineer of dramatic changes in lead time immediately.
- C. WESCO shall continuously work with their existing manufacturers as well as new manufacturers to bring new insulators and manufacturers for review and approval to OUC's Transmission Standards Engineers.
- D. If approached by a new manufacturer, OUC will recommend that they contact WESCO and go through them for approval.
- E. If OUC is approached by another Distributor for a new product, OUC will send them directly to OUC's Transmission Standard Engineer for review and potential approval of that new product. Should that product be approved by the OUC Transmission Standards Engineer and it is deemed to be better than the existing product, OUC agrees to purchase at least the first order from the distributor. OUC will then determine if they will continue purchasing the new product from that distributor or see if WESCO can purchase that product.

7. COMMITTEE MEMBERSHIP

Executive Steering Committee

- A. Vice President. Energy Delivery – Orlando Utilities Commission
- B. Vice President Corporate Services – Orlando Utilities Commission
- C. Director, Eastern Utility Operations –WESCO

Management Committee

- A. Director Transmission Construction/Maintenance Division – Orlando Utilities Commission
- B. Director, Supply Chain Management – Orlando Utilities Commission
- C. Electric Utility, Branch Manager for Florida – WESCO

Standards Resource Contacts for Alliance

- A. Energy Delivery Business Unit Standards – OUC
- B. Area Sales Representative – WESCO
- C. Manager Logistic -OUC

Logistics - Purchasing Committee

- A. Manager Transmission Construction/Maintenance - OUC
- B. Inventory Control Analyst, Supply Chain Management – Orlando Utilities Commission
- C. Buyer/Planner , Supply Chain Management – OUC
- D. Alliance Manager – WESCO

Finance Committee

- A. Director of Transmission Construction/Maintenance, Energy Delivery Business Unit-OUC
- B. Manager Operation, Supply Chain Management- OUC
- C. Electric Utility, Branch Manager for Florida – WESCO

8. REPORTING

- A. WESCO in conjunction with the Transmission Standards Engineer shall provide semi-annually a report of all multiple material failures of a specific item which is not caused by age or lightning. The report shall be by stock number and manufacturer and whether the item was within or outside of warranty. .
- B. WESCO shall report cost savings quarterly where savings include such things as cost avoidance, actual purchase price savings, difference between what OUC is paying and market costs.
- C. OUC shall report On-Time delivery quarterly based on OUC's One World system information.
- D. Report quarterly the accuracy of WESCO's invoicing versus One World system. This basically is a report from Accounts Payable to see how easy it is to pay WESCO's invoice without having a lot of adjustments.

9. AREAS OF CONTINUING AND POTENTIAL ALLIANCE EXPANSION

- A. Implement a Vendor Managed Inventory program (VMI) for the fast moving inventory.
- B. Consigning all or part of the transmission insulator inventory to WESCO
- C. WESCO shall work with OUC's Transmission Standard Engineer to review standardization opportunities between what OUC purchases and what is stocked by other WESCO customers. The goal of this action would be to reduce our total costs and overall inventory because of reduced lead time.
- D. Extending the warranty period
- E. Working with OUC's Transmission Standard Engineers to improve products and industry changing requirements.
- F. Preassembling and/or kitting material for specific projects.
- G. Jobsite delivery of preassembled and/or kitted projects.
- H. Any other Value added opportunities.

APPENDIX F

Miscellaneous Materials

1. MISCELLANEOUS MATERIALS

OUC shall purchase from WESCO the miscellaneous materials listed in Attachment A of this Appendix. Items may be added or eliminated from this list by either the Electric Distribution Standards Engineer or Electric Distribution Construction. In general the full purchasing description and the approved manufacturers with their respective catalog numbers can be found in OUC's One World stock system.

2. LEAD TIME

WESCO has agreed to stock in their Orlando warehouse, items which Electric Construction deems are either critical to OUC or which have long lead times to obtain timely delivery of materials.

3. PRICING

Pricing for the distribution material will be updated once a year and remain firm until the next annual review and update. The pricing will be based on a "bid" by WESCO to all OUC approved manufacturers. The approved manufacturers can be found either in OUC's One World stock system or from the Distribution Standards Engineer.

During periods of material volatility, price changes will be considered based on changes in the manufacturer's price. It will be the responsibility of WESCO and OUC to determine if the price change requested by the manufacturer is justifiable or whether the judgment warrants further investigation of the market place to obtain better pricing.

WESCO even during periods of material volatility shall verify pricing utilizing a bidding process or other means approved by OUC to verify it is receiving the best price and delivery. During their evaluation of the "bids" WESCO shall take into consideration not only pricing but also such things as delivery (i.e. lead time), minimum order quantities, freight, warranty, return policy and OUC preferences. Should a decision be made to not order the lowest priced good(s), the WESCO/OUC Alliance Manager shall write a memo to their file explaining the reason that specific good was chosen. The "bidding" files shall be open to OUC's inspection upon request.

Purchase Orders issued prior to a price change and after WESCO's acceptance shall stay at the old price.

It is agreed to by all parties that WESCO shall calculate its price to OUC on miscellaneous material by taking their purchase price and dividing it by (1+markup percentage agreed upon).

The markup percentage agreed upon between OUC and WESCO for purchases of miscellaneous material with a net 30 day pay period is 10% per direct shipment or 13.5% for material they stock. The markup percentage will be reviewed at least annually between OUC and WESCO and will depend strictly on the types of service OUC is requesting and WESCO is providing. Services such as consignment or full inventory control may require WESCO to receive a larger markup percentage.

4. INVENTORY

WESCO shall work with Electric Distribution Construction, OUC standards engineers, transformer shop and the Logistics Inventory Analyst to review reorder point and reorder quantities on miscellaneous material. Additional focus should be placed on fast moving inventory based on past experience and OUC recommendation. The review of the reorder point and reorder quantities shall look at such things as criticality of the item to the Miscellaneous system, manufacturers lead time, past usage, potential future usage, manufacturers requirements for ordering, and WESCO's present stock for other utilities.

5. WARRANTY

Whatever is agreed to on the overall terms of Warranty should be consistent throughout the document. In general the standard warranty for miscellaneous material is twelve (12) months from shipment. WESCO agrees to make every effort in curing any defect(s) under warranty. Also should failures of sufficient quantity on a certain item occur even after the warranty period WESCO agrees to again make every effort to resolve the issue with the manufacturer.

WESCO shall upon hearing of the multiple failures shall immediately put on hold any of their existing inventories of the same manufacturer in their inventory and seek other sources to replace the existing material until such time as the issue is resolved to the satisfaction of all parties but more especially the OUC Distribution Standards Engineer.

The Parties acknowledge that WESCO is not a manufacturer of Products and WESCO hereby agrees to pass through to Buyer each warranty that has been extended to WESCO by that manufacturer. Except for the express warranties set forth in this section, WESCO hereby expressly disclaims and excludes any and all warranties and representations, whether written or oral, whether express, implied, statutory or otherwise, with respect to any goods, including, but not limited to, any warranty to merchantability, any warranty of fitness for a particular purpose, any warranty of title, and any warranty against the infringement of any

third-party patent, copyright, trademark, trade name, trade secret or any other type of intellectual property right infringement under the laws of any nation.

6. GENERAL

- A. WESCO shall keep OUC Supply Chain Management and Electric Distribution Construction informed at least quarterly on what is happening within market place such as lead time changes and other items which could affect OUC.
- B. WESCO shall immediately inform OUC Supply Chain Management, Distribution Construction and the Standard Engineer of dramatic changes in lead time.
- C. WESCO shall continuously work with their existing manufacturers as well as new manufacturers to bring new material for review and approval to OUC's Standards Engineers.
- D. If OUC is approached by a new manufacturer, OUC will recommend that they contact WESCO for product approval.
- E. If OUC is approached by another Distributor for a new product, they will be sent directly to OUC's Standard Engineer for review and potential approval of that new product. Should that product be approved by the OUC Standards Engineer and it is deemed to be better than the existing product OUC agrees to purchase at least the first order from the distributor. OUC will then determine if they will continue purchasing the new product from that distributor or see if WESCO can purchase that product.

ENERGY DELIVERY MISCELLANEOUS MATERIAL

7. COMMITTEE MEMBERSHIP

Executive Steering Committee

- A. Vice President. Energy Delivery Business Unit – Orlando Utilities Commission
- B. Vice President. Corporate Services – Orlando Utilities Commission
- C. Director, Eastern Utility Operations –WESCO

Management Committee

- A. Director, Finance & Lighting – Orlando Utilities Commission
- B. Director, System Planning & Reliability – Orlando Utilities Commission
- C. Director, Supply Chain Management – Orlando Utilities Commission
- D. Electric Utility, Branch Manager for Florida – WESCO

Standards Resource Contacts for Alliance

- A. Electric Distribution Standards Engineer – Orlando Utilities Commission
- B. Area Sales Representative – WESCO
- C. Manager Logistics - OUC

Logistics - Purchasing Committee

- A. Manager Distribution Construction – Orlando Utilities Commission
- B. Inventory Control Analyst, Supply Chain Management – Orlando Utilities Commission
- C. Buyer/Planner , Supply Chain Management – Orlando Utilities Commission
- D. Alliance Manager – WESCO

Finance Committee

- A. Director of Finance and Lighting, Energy Delivery Business Unit-OUC
- B. Manager Operation, Supply Chain Management- OUC
- C. Electric Utility, Branch Manager for Florida – WESCO

8. REPORTING

- A. WESCO in conjunction with Logistics' shall provide semi-annually a report of all multiple material failures of a specific item which is not caused by age or lightning. The report shall be by stock number and manufacture and whether the item was within or outside of warranty. .
- B. OUC and WESCO will at least semi-annually check the market place to determine a comparison of what OUC is paying versus other utilities of a similar size.
- C. WESCO shall report cost savings quarterly where savings include such things as cost avoidance, actual purchase price savings, difference between what OUC is paying and market costs.
- D. OUC shall report On-Time delivery semi-annually based on OUC's One World system information.

- E. Report quarterly the accuracy of WESCO's invoicing versus OneWorld system. This basically is a report from Accounts Payable to see how easy it is to pay WESCO's invoice without having a lot of adjustments.

9. AREAS OF CONTINUING AND POTENTIAL ALLIANCE EXPANSION

- A. Implement a Vendor Managed Inventory program (VMI) for fast moving miscellaneous material.
- B. Consigning all or part of the Miscellaneous inventory to WESCO
- C. WESCO shall work with OUC's Standard Engineers and Electric Distribution Construction to review standardization opportunities between what OUC purchases and what is stocked by WESCO for other utilities. The goal of this action would be to reduce our costs or inventory because of reduced lead time.
- D. Extending the warranty period
- E. Working with OUC's Standard Engineers and Electric Distribution Construction to improve products and industry changing requirements.
- F. Expand miscellaneous material to the WESCO alliance.
- G. The repair of lineman protection equipment.
- H. Any other value added opportunities.

FIRST AMENDMENT
To
The Contract for the WESCO Alliance
Between
ORLANDO UTILITIES COMMISSION and WESCO Distribution, Inc.
Dated January 1, 2009

This First Amendment to the Contract for the WESCO Alliance dated **January 1, 2009** (the "Agreement") is entered into, by and between **ORLANDO UTILITIES COMMISSION** ("Owner") and **WESCO Distribution, Inc.** ("Contractor") shall be effective as of the date last signed below. The Owner and Contractor shall be collectively referred to as the "Parties."

WITNESSETH:

WHEREAS, Contractor was the successful bidder to Owner's Alliance Proposal and was awarded a contract to provide an economic savings and timely delivery of Electric Distribution Material by WESCO to OUC's designated location in accordance with the terms herein.

WHEREAS, Owner entered into that certain Alliance with Contractor on **January 1, 2009** for the performance of said Services; and

WHEREAS, the Parties desire to amend Alliance to remove certain sections and to consolidate redundant sections making changes within the Appendices A through F of the WESCO Alliance, and add a new Appendix G, herein incorporated as Exhibit "A".

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

1. **Recitations.** The above recitals are true and correct and are hereby incorporated herein.
2. **Definitions.** Each initially capitalized term used without definition shall have the meaning as ascribed to such term in the Agreement, unless changed herein.
3. **Section 4.** Termination: is deleted in its entirety and replaced with the following:

Either party may terminate this Agreement at any time upon a six (6) month written notice to the other parties at the addresses noted below. Any products ordered or stocked at WESCO for OUC exclusively will be purchased and delivered as part of the termination process.

- | | |
|--|--|
| (A) Orlando Utilities Commission
Supply Chain Management
100 W. Anderson St.
P.O. Box 3193
Orlando, Florida 32802-3193
Attn: Director Supply Chain Management
bids@ouc.com | (B) WESCO Distribution, INC
5971 Pershing Ave.
Orlando, Florida 32822-3193
Attn: Florida Branch Manager
rreynolds@wescodist.com
dhsmith@wescodist.com |
|--|--|

4. **Changes.** Globally change "One World" to EnterpriseOne.
5. **Removal/Consolidation/Changes of Redundant Sections.** In Appendices A through F, excluding Appendix B the following paragraphs were removed and/or consolidated to Appendix G:

Appendix A –

1. Section 22, Annual Review add comma after pricing on second line.
2. Section 25. Alliance Management: Change OUC's Vice President of Corporate Services, to OUC's Vice President Sustainable Services, Change OUC's Vice President of Customer Connection to OUC's Vice President of Customer Experience.
3. Committee Membership, Executive Steering Committee add E. Vice President – Elster
4. Management Committee – add E. Alliance Manager –Wesco
5. Standards Resource Contracts for Alliance – change B from Area Sales Representative – Wesco to Alliance Manager – WESCO and add C. Area Sales Representative – ABB (Transformers only)
6. Finance Committee – Add D – Alliance Manager – WESCO

Appendices C – F

1. Delete Section 7, Committee Membership change to: Committee Membership, see Appendix A, page A-9

Appendix C –

1. Delete Sections 4 (Inventory) 5 (Warranty), 6 (General), 8 (Reporting) and 9 (Areas of Continued and Potential Alliance Expansion) and consolidate onto Appendix G

Appendix D –

1. Delete Sections 5 (Warranty), 6 (General), 8 (Reporting) and 9 (Areas of Continued and Potential Alliance Expansion) and consolidate onto Appendix G

Appendix E –

1. Delete Sections 5 (Warranty), 6 (General), 8 (Reporting) and 9 (Areas of Continued and Potential Alliance Expansion) and consolidate onto Appendix G

Appendix F –

1. Delete Sections 3 (Pricing), 4 (Inventory), 5 (Warranty) 6 (General), 8 (Reporting) and 9 (Areas of Continued and Potential Alliance Expansion) and consolidate onto Appendix G.

Appendix G –

1. Appendix G is added to consolidate and reiterate deletions made to Appendices A-F, excluding Appendix B to avoid redundancy and to consolidate the information contained in the Appendices and is attached as Exhibit A below.

Except as specifically amended herein, all other terms and conditions of the Agreement shall remain in full force and effect, and in the event of any inconsistencies between this Amendment and the terms of the Agreement (including any prior amendments), the terms set forth in this Amendment shall control and govern. The modifications shall remain in full force and effect during the extended term.

IN WITNESS WHEREOF, **OWNER** and **Contractor** have caused this Amendment to be executed in duplicate in their names by their respective duly authorized officials.

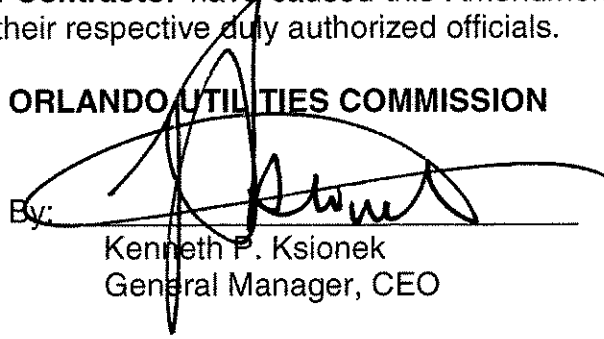
ATTEST:

ORLANDO UTILITIES COMMISSION

By: _____

Print Name: _____

Date: _____

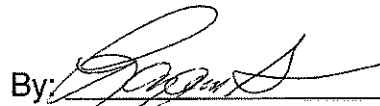
By:  _____

Kenneth P. Ksionek
General Manager, CEO

Date: _____

WITNESS:

WESCO DISTRIBUTION INC.

By:  _____

Print Name: Ramona Green

Date: 10-31-11

By:  _____

Print Name: Donald Heitmeier

Date: 10-31-11

Approved as to form and legality
OUC Legal Department

DATE: 11-14-11 BY: w.m.

EXHIBIT “A”

APPENDIX G

APPENDIX G

1. **PRICING**

Moved and consolidated from Appendix D, Electric Meter Material, and Appendix F, Miscellaneous Material

Pricing for the Electric Meter and Miscellaneous Material will be updated once a year and remain firm until the next annual review and update. The pricing will be based on WESCO's negotiated pricing with the OUC approved manufacturers supplying the electric meter material. Presently the Meters are being purchased from Elster and Current/Potential Transformers from ABB. The approved manufacturers can be found in OUC's electronic catalog on AURSI (www.aurisi.com); however only the Manager of Electric Metering can change manufacturers currently being ordered by WESCO even if other manufacturers are approved in the electronic catalog.

The distribution pricing will be based on a "bid" by WESCO to all OUC approved manufacturers. The approved manufacturers can be found either in OUC's EnterpriseOne stock system or from the Distribution Standards Engineer.

During periods of material volatility, prices will be considered based on changes in the manufacturer's price. It will be the responsibility of WESCO and OUC to determine if the price change requested by the manufacturer is justifiable or whether the judgment warrants further investigation of the market place to obtain better pricing.

WESCO even during periods of material volatility shall verify pricing by utilizing a bidding process or other means approved by OUC to verify that it is receiving the best price and delivery. During their evaluation of the bids or the market WESCO shall take into consideration not only pricing but also such things as delivery (i.e. lead time), minimum order quantities, freight, warranty, return policy and OUC preferences. Should a decision be made to not order the lowest priced good(s), the WESCO/OUC Alliance Manager shall write a memo to their file explaining the reason that specific good was chosen. The "bidding" files shall be open to OUC's inspection upon request.

The market verification analysis shall be forwarded to the Manager of Electric Metering as well as the Buyer who is handling meter material. It shall also be shown to the management committee at the semi-annual update meeting and executive committee for annual review as per the terms stated on page A-7 in Appendix A.

OUC will issue one Purchase Order yearly to cover the estimated purchases by OUC through the VMI program. This Purchase Order does not have to go to the OUC Commission because the meter material is covered by the rules governing inventory material. Purchase Orders issued prior to a price change and after WESCO's acceptance shall stay at the old price.

It is agreed to by all parties that WESCO shall calculate its price to OUC on electric meter and distribution material (except for the electrical mechanical meters which are covered by a firm price through December 31, 2008 per OUC Blanket Order 348-OB) by taking their purchase price and dividing it by (1+markup percentage agreed upon).

The markup percentage agreed upon between OUC and WESCO for purchases of electrical meter material with a net 15 day period varies between 8.5% and 13.5%. The markup percentage will be reviewed at least annually between OUC and WESCO and will depend strictly on the types of service OUC is requesting and WESCO is providing.

Presently meter pricing has not increased for the last couple of years; in fact WESCO is working with Elster for a reduction in pricing on the Rex Meters.

The markup percentage agreed upon between OUC and WESCO for purchases of miscellaneous material with a net 30 day period is 10% per direct shipment or 13.5% for material they stock.

2. INVENTORY -

Moved and consolidated from Appendix C, Electric Distribution Materials, Appendix E, Transmission Insulators, and Appendix F, Miscellaneous Materials

WESCO shall work with OUC Energy Delivery Construction, Electric Transmission Construction, Electric Distribution Construction, OUC standards engineers and the OUC Logistics Inventory Analyst to review reorder point and reorder quantities on distribution material, transmission insulator inventories and miscellaneous material. Additional focus should be placed on the review of reorder point and reorder quantities on the critical or fast moving inventory based on past experience and OUC Engineering recommendation(s). The review of the reorder point and reorder quantities shall look at such things as criticality of the item to the distribution system, transmission system, miscellaneous system, manufacturers lead time, past usage, potential future usage, manufacturers requirements for ordering, and WESCO's present stock for other utilities. As part of the review the Logistics/Purchasing Committee shall develop an estimated correction factor to adjust the EnterpriseOne commit requirements to a realistic usage.

The inventory goals of the alliance are to increase the general inventory turn ratio, reduce inventory, and to obtain a fill rate of greater than 95% for Energy Delivery Construction, and to maintain the appropriate quantity in inventory for Electric Distribution Construction.

OUC from time to time may add to, subtract from and/or modify the electric materials as

listed in OUC's electronic catalog in AURSI (www.aurisi.com) or other engineering standards. Changes to the catalog or engineering standards are hereby incorporated by reference.

3. **WARRANTY**

Moved and consolidated from Appendix C, Electric Distribution Materials, Appendix D, Electric Meters and Components, Appendix E, Transmission Insulators, and Appendix F, Miscellaneous Materials

In general the standard warranty for distribution material, transmission insulators, and miscellaneous material is twelve (12) months from shipment. WESCO agrees to make every effort in curing any defect(s) under warranty. Also should failures of sufficient quantity on a certain item occur even after the warranty period WESCO agrees to again make every effort to resolve the issue with the manufacturer.

WESCO shall upon hearing of the multiple failures shall immediately put on hold any of their existing inventory of the same manufacture in their inventory and seek other sources to replace the existing material until such time as the issue is resolved to the satisfaction of all parties but more especially the OUC Standards Engineer or OUC Manager of the Electric Metering, or OUC Distribution Standards Engineer.

The Parties acknowledge that WESCO is not a manufacturer of Products and WESCO hereby agrees to pass through to Buyer each warranty that has been extended to WESCO by that manufacturer. Except for the express warranties set forth in this section, WESCO hereby expressly disclaims and excludes any and all warranties and representations, whether written or oral, whether express, implied, statutory or otherwise, with respect to any goods, including, but not limited to, any warranty to merchantability, any warranty of fitness for a particular purpose, any warranty of title, and any warranty against the infringement of any third-party patent, copyright, trademark, trade name, trade secret or any other type of intellectual property right infringement under the laws of any nation.

4. **GENERAL**

Moved and consolidated from Appendix C, Electric Distribution Materials, Appendix D, Electric Meters and Components, Appendix E, Transmission Insulators, and Appendix F, Miscellaneous Materials

- A. WESCO shall keep OUC Supply Chain Management, Meter Shop Management or Electric Distribution informed at least quarterly (or earlier if necessary) on market place conditions such as lead time changes and other items which could affect OUC.
- B. WESCO shall immediately inform OUC Supply Chain Management and OUC Standards Engineers, or OUC Meter Shop Management, or Transmission Standards Engineers, Distribution Construction of dramatic changes in lead time.
- C. WESCO shall continuously work with their existing manufacturers as well as new manufacturers to bring new material for review and approval to OUC's Standards Engineers, or OUC Meter Shop Management, or Transmission Standards Engineers.
- D. If OUC is approached by a new manufacture, OUC will recommend that they contact WESCO for the product approval process.
- E. If OUC is approached by another Distributor for a new product, they will be sent directly to OUC's Standard Engineer or OUC's Meter Shop Management, or OUC Transmission Standards Engineer, for review and potential approval of that new product. Should that product be approved and it is deemed to be better than the existing product, OUC agrees to purchase at least the first order from the distributor. OUC will then determine if they will continue purchasing the new product from that distributor or see if WESCO can purchase that product.

5. **REPORTING**

Moved and consolidated from Appendix C, Electric Distribution Materials, Appendix D, Electric Meters and Components, Appendix E, Transmission Insulators, and Appendix F, Miscellaneous Materials and changed quarterly and annually to semi-annually.

- A. WESCO in conjunction with Logistics or the Transmission Standards Engineer, shall provide semi-annually a report of all multiple material failures of a specific item which is not caused by age or lightning. The report shall be by stock number and manufacture and whether the item was within or outside of warranty. The Electric Meter Shop shall provide this report semi-annually.

- B. The OUC Logistics area will provide a semi-annual report on the turn ratio. For Electric Meter Shop WESCO will provide a semi-annual report on the turn ratio.
- C. OUC and WESCO will at least semi-annually check the market place to determine a comparison of what OUC is paying versus other utilities of a similar size. In regards to the Meter Shop, WESCO shall report cost savings semi-annually.
- D. WESCO shall report cost savings semi-annually for Electric Distribution Material, Electric Transmission Insulators and Miscellaneous Materials and WESCO shall report cost savings semi-annually for Electric Meters where savings include such things as cost avoidance, actual purchase price savings, difference between what OUC is paying and market costs.
- E. OUC shall report On-Time delivery semi-annually for Electric Distribution Material and Electric Transmission Insulators, based on OUC's EnterpriseOne system information. For Electric Meters and Miscellaneous Material OUC shall report On-Time delivery semi-annually.
- F. Report quarterly the accuracy of WESCO's invoicing versus EnterpriseOne system. This basically is a report from Accounts Payable to see how easy it is to pay WESCO's invoice without having a lot of adjustments. Report semi-annually for Electric Meters.

6. AREAS OF CONTINUED AND POTENTIAL ALLIANCE EXPANSION

Moved and consolidated from Appendix C, Electric Distribution Materials, Appendix D, Electric Meters and Components, Appendix E, Transmission Insulators, and Appendix F, Miscellaneous Materials

- A. Implement a Vendor Managed Inventory program (VMI) for fast moving inventory. Focus for Electric Distribution items should be on truck stock items.
- B. Consigning all or part of the Distribution, Meter Shop, Transmission Insulator, or Miscellaneous Material inventory to WESCO,
- C. WESCO shall work with OUC's Standard Engineers or Transmission Standard Engineers or Electric Distribution Construction to review standardization opportunities between what OUC purchases and what is stocked by WESCO for other utilities. The goal of this action would be to reduce our costs or inventory because of reduced lead time.
- D. Extending the warranty period
- E. Work with OUC's Standard Engineers or Meter Shop or Transmission Standard Engineers or Electric Distribution Construction to improve products and industry changing requirements.
- F. WESCO preassembling and/or kitting material for specific projects regarding Electric Distribution and Transmission Insulators
- G. Jobsite delivery of preassembled and/or kitted projects for Electric Distribution and Transmission Insulators.
- H. Any other value added opportunities.
- I. Extend the VMI program to those items not already covered in Meter Shop.

- J. Eliminate the additional testing OUC does over and above the manufacturer on the residential meters.
- K. Disposal of the returned meters which are still in working condition.
- L. Expand Miscellaneous Material – to the WESCO alliance.
- M. Miscellaneous Material – Repair of lineman protection equipment.

SECOND AMENDMENT
To
The Contract for the WESCO Alliance
Between
ORLANDO UTILITIES COMMISSION and WESCO Distribution, Inc.
Dated January 1, 2009
APPENDIX B

This Second Amendment to the Contract for the WESCO Alliance dated **January 1, 2009** (the "Agreement") is entered into, by and between **ORLANDO UTILITIES COMMISSION** ("Owner") and **WESCO Distribution, Inc.** ("Contractor") shall be effective as of the date last signed below. The Owner and Contractor shall be collectively referred to as the "Parties."

Now therefore, inclusive of the following Alliance Agreement between the Orlando Utilities Commission (herein referred to as OUC) and WESCO Distribution, Inc. (herein referred to as WESCO and ABB, Inc and Power Partners Inc. (herein referred to as ABB).

WITNESSETH:

WHEREAS, Contractor was the successful bidder to Owner's Alliance Proposal and was awarded a contract to provide an economic savings and timely delivery of Electric Distribution Material by WESCO to OUC's designated location in accordance with the terms herein.

WHEREAS, Owner entered into that certain Alliance with Contractor on **January 1, 2009** for the performance of said Services; and

WHEREAS, the Parties desire to amend Alliance to remove certain sections and to consolidate redundant sections making changes within Appendix B of the WESCO Alliance.

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

1. **Recitations**. The above recitals are true and correct and are hereby incorporated herein.
2. **Definitions**. Each initially capitalized term used without definition shall have the meaning as ascribed to such term in the Agreement, unless changed herein.

3. **Changes.** Globally change "One World" to EnterpriseOne.
4. **Removal/Consolidation/Changes of Redundant Sections.** In Appendix B the following paragraphs were removed and/or consolidated.

Appendix B –

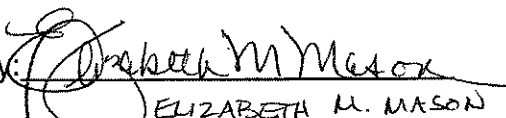
1. Section 2, B. Pad-mounted Transformers 1. Add semicolon after the word methods in the fourth paragraph.
2. Delete Section 5, Transformer Committee and change to:
Committee Membership, see Appendix A, page A-9
3. Section 6 – Reporting - delete comma and add a period after Committee. Change all references to quarterly or annually reporting to semi-annually reporting. Change references to Logistics Department to Logistics Division.

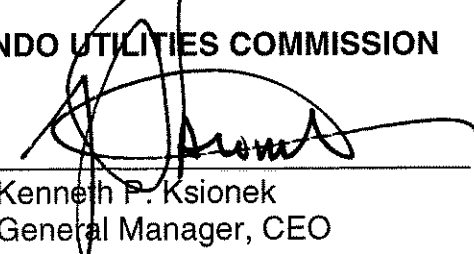
Except as specifically amended herein, all other terms and conditions of the Agreement shall remain in full force and effect, and in the event of any inconsistencies between this Amendment and the terms of the Agreement (including any prior amendments), the terms set forth in this Amendment shall control and govern. The modifications shall remain in full force and effect during the extended term.

IN WITNESS WHEREOF, **OWNER** and **Contractor** have caused this Amendment to be executed in duplicate in their names by their respective duly authorized officials.

ATTEST:

ORLANDO UTILITIES COMMISSION

By: 
Print Name: ELIZABETH M. MASON
~~KENNETH P.~~

By: 
Kenneth P. Ksionek
General Manager, CEO

Date: 12-15-11

Date: 12-15-11

Approved as to form and legality,
OUC Legal Department
DATE: 12-8-11 BY: W.M.

WITNESS:

By: [Signature]
Print Name: Pamela Green
Date: 10-31-11

WESCO DISTRIBUTION INC.

By: [Signature]
Print Name: Donald Heitmeier
Date: 10-31-11

WITNESS:

By: [Signature]
Print Name: Jayne Sapp
Date: 11-15-11

ABB, INC

By: [Signature]
Print Name: JEFFREY M. WEINGARTEN
Date: 11-15-11

WITNESS:

By: [Signature]
Print Name: Alan Traxt
Date: 11-22-11

POWER PARTNERS, INC.

By: [Signature]
Print Name: Scott Childs
Date: 11-22-11

[

**THIRD AMENDMENT
To
The Contract for the WESCO Alliance
Between
Orlando Utilities Commission and WESCO Distribution, Inc.
Dated January 1, 2009**

This Third Amendment to the Contract for the WESCO Alliance dated January 1, 2009 (the "Amendment") is entered into, by and between Orlando Utilities Commission ("Owner") and WESCO Distribution, Inc. ("Contractor") and shall be effective as of September 4, 2012. The Owner and Contractor shall be collectively referred to as the "Parties."

WITNESSETH:

WHEREAS, Owner and Contractor entered into that certain Alliance dated January 1, 2009 for the performance of services in accordance with the scope set forth in Owner's Alliance Proposal the ("Agreement") and Amendments 1 and 2; and,

WHEREAS, the Parties desire to amend the Agreement to add Appendix H, herein incorporated as Exhibit "A".

NOW THEREFORE, for and in consideration of the foregoing premises, the mutual agreements contained herein, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows:

1. **Recitations.** The above recitals are true and correct and are hereby incorporated herein.
2. **Definitions.** Each initially capitalized term used without definition shall have the meaning as ascribed to such term in the Agreement, unless changed herein.
3. **Appendix H.** Appendix H is added to establish the Inventory Buy-Back and Repurchase Agreement.

Except as specifically amended herein, all other terms and conditions of the Agreement shall remain in full force and effect, and in the event of any inconsistencies between this Amendment and the terms of the Agreement (including any prior amendments), the terms set forth in this Amendment shall control and govern. The modifications shall remain in full force and effect during the extended term.

IN WITNESS WHEREOF, Owner and Contractor have caused this Amendment to be executed in duplicate in their names by their respective duly authorized officials.

WITNESS:

By: *Evelyn Gonzalez*

Print Name: *Evelyn Gonzalez*

Title: *Administrative Assistant*

Date: *9-11-12*

WITNESS:

By: *Ramona Green*

Print Name: *Ramona Green*

Title: *fl/bm/A*

Date: *9-10-12*

ORLANDO UTILITIES COMMISSION

By: *Kenneth P. Ksionek*

Kenneth P. Ksionek

General Manager, CEO

Date: *9-27-12*

Approved as to form and legality
OUC Legal Department

DATE: *9-28-12* BY: *[Signature]*

WESCO Distribution, Inc.

By: *Donald Hestmeier*

Print Name: *Donald Hestmeier*

Title: *Vice President Eastern Region*

Date: *9-12-12*

EXHIBIT "A"

APPENDIX H

APPENDIX H

INVENTORY BUY-BACK AND REPURCHASE AGREEMENT BETWEEN WESCO DISTRIBUTION, INC. AND ORLANDO UTILITIES COMMISSON

This INVENTORY BUY-BACK AND REPURCHASE ("Agreement") is made and entered into as of this 4th day of September 2012 ("Effective Date"), by and between WESCO Distribution, Inc., a Delaware corporation with its headquarters at 225 West Station Square Drive, Suite 700, Pittsburgh, Pennsylvania 15219-1122 ("WESCO"), and Orlando Utilities Commission with its principal office located at 100 W. Anderson Street, Orlando, Florida ("OUC") (WESCO and OUC sometimes being referred to hereinafter collectively as the "Parties" and each, individually, as a "Party").

RECITALS:

WHEREAS, WESCO and OUC entered into that certain Master Supply Agreement for Goods and Services dated January 1, 2009 (the "Contract"); and

WHEREAS, OUC owns certain goods that WESCO agrees to buy back and that OUC agrees to repurchase those certain goods identified as inactive inventory at a later date in accordance with the provisions of this Agreement (the "Goods") as part of the purchase of goods and services under the Contract.

NOW, THEREFORE, in consideration of the mutual warranties, representations, promises and covenants contained in this Agreement and intending to be legally bound hereby, the parties hereto agree as follows:

A) WESCO's Buy-back Terms and Conditions

1. The Parties agree that WESCO will buy-back the Goods identified in Exhibit A from OUC for a total sum not to exceed \$200,000.00.
2. The Goods shall be sold and conveyed to WESCO in undamaged and resalable condition free and clear of all security interests, charges, taxes, encumbrances, liens, assessments, covenants, claims, title defects, pledges, and burdens of every kind or nature whatsoever. WESCO's acceptance and approval of the Goods for buy-back shall be subject to its review following a physical inventory conducted on September 4, 2012.
3. OUC will invoice WESCO according to the terms of this Agreement and WESCO shall pay such invoice within thirty (30) days of receipt of the invoice.

B) OUC's Obligations

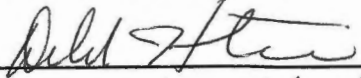
1. The Parties acknowledge and agree that, unless otherwise stated herein, the terms set forth in the Contract shall govern and control OUC's repurchase of the Goods identified as inactive inventory, including pricing.
2. OUC agrees to pay WESCO a handling fee of 6% to be applied to the current cost of Goods when repurchased under this Agreement. Each month WESCO will review the remaining inventory balance and eliminate the 6% handling fee when the specified Good has been completely repurchased by OUC.
3. OUC further understands and agrees to purchase all remaining Inactive Inventory on the 1st day of the 13th month following the date of the buy-back and WESCO will subsequently discontinue stocking such Inactive Inventory. For purposes of this Agreement, "Inactive Inventory" shall mean an individual Good that was purchased by WESCO as part of this Agreement with a remaining inventory value in excess of 60% of the original Good value at the time of the buy-back.
4. OUC understands and expressly agrees that if OUC terminates the Contract for any reason after WESCO has completed its buy-back, OUC will be liable to WESCO for the total cost of the Goods remaining from the buy-back in WESCO's possession at the time of termination, plus handling, restocking fees and/or any other costs and expenses associated with WESCO's sale of the Goods to a third party or return of the Goods to vendors and suppliers. If OUC terminates in violation of this paragraph, WESCO will provide OUC with a termination/cancellation invoice for the aforementioned Goods and itemized associated expenses, which OUC shall pay within thirty (30) days of the date of invoice. OUC's failure to pay such invoice timely shall entitle WESCO to charge OUC a 1% monthly inventory carrying charge.

C) Miscellaneous

1. Amendment. This Agreement may not be amended, supplemented, changed or modified in any manner, orally or otherwise (including, without limitation, by prior course of dealing or course of performance between the Parties, industry custom or usage of trade), except by an instrument in writing of subsequent date, signed by a duly authorized representative of each Party.
2. Order of Precedence. This Agreement shall have precedence over any inconsistent or contrary provisions contained in the Contract.

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be signed and delivered by their duly authorized officers, as of the Effective Date.

WESCO Distribution, Inc.

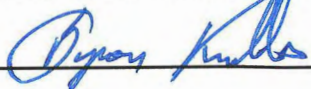
By: 

Print Name: Arnold H. Heitner

Title: VP & GM Eastern Region

Date: 8/10/12

Orlando Utilities Commission

By: 

Print Name: BYRON KNIBBS

Title: WESCO President

Date: 8-27-12

EXHIBIT A

GOODS LIST

(to be added)

EXHIBIT A WESCO BUY BACK GOODS LIST.xls

WESCO BUY BACK GOODS LIST						
	Item	Description1	UOM	Count 9.19.12	System Standard Cost	Extended Cost
00418005 Total	00418005	PIN STAND OFF FIBERGLASS 12"	EA	0	23.21	0.00
01411008 Total	01411008	INSULATOR HORIZONTAL TIE TOP	EA	0	15.03	0.00
01411018 Total	01411018	INSULATOR SPOOL SECONDARY 600V	EA	0	0.68	0.00
02317115 Total	02317115	FUSE TUBE 100 AMP 35KV CHANCE	EA	19	24.25	460.75
01611010 Total	01611010	SLEEVE SERVICE INSULATED	EA	300	0.40	121.38
01611066 Total	01611066	SLEEVE SERVICE INSULATED	EA	200	0.40	80.92
01611140 Total	01611140	SLEEVE SER INSUL 4/0-4/0 AL/CU	EA	131	2.78	364.18
01212477 Total	01212477	CONNECTOR AMPACT4/0 477	EA	0	14.16	0.00
01212391 Total	01212391	CARTRIDGE AMPACT YELLOW	EA	75	0.90	67.50
01212394 Total	01212394	CARTRIDGE BURNDY YELLOW FOR	EA	0	1.30	0.00
01211002 Total	01211002	CONNECTOR #2 COPPER VISE BOLT	EA	300	2.53	759.00
01211004 Total	01211004	CONNECTOR #4 COPPER VISE BOLT	EA	300	1.28	384.00
01211006 Total	01211006	CONNECTOR 6 CU VISE BOLT	EA	200	1.67	334.00
01211020 Total	01211020	CONNECTOR 1/0 2/0 CU VISE BOLT	EA	175	3.40	595.00
01211040 Total	01211040	CONNECTOR 4/0 COPPER VISE BOLT	EA	100	5.41	541.00
00412020 Total	00412020	EYE NUT STANDARD	EA	100	1.62	162.00
01413477 Total	04240431	SIDE TIE 477 AAC F-NECK	EA	360	10.71	1,285.20
00413030 Total	00413030	BRACE CROSSARM STEEL FLAT	EA	87	3.94	342.78
00418020 Total	00418020	PIN CROSSARM STEEL 5/8" THRD	EA	104	3.85	400.40
00414075 Total	00414075	BRACKET GAIN POST INSULATOR	EA	104	4.34	451.36
02111051 Total	02111051	ARRESTER OVERHEAD 9 KV	EA	100	26.61	2,661.00
00815516 Total	00815516	GUY DEADEND AUTO 5/16" ALUMWLD	EA	337	12.06	4,064.22
00815416 Total	00815416	GUY DEADEND AUTO 1/4" ALUM WLD	EA	169	8.89	1,502.41
00817416 Total	00817416	GUY SLEEVE 1/4" ALUMOWELD	EA	62	11.19	693.78
02111051 Total	02111051	ARRESTER OVERHEAD 9 KV	EA	0	26.61	0.00
04913010 Total	04913010	BOLT MACHINE 5/8" X 10" GALV	CS	6	52.50	315.00
00816516 Total	00816516	GUY GRIP 5/16" ALUMOWELD	EA	351	2.81	986.31
00817516 Total	00817516	GUY SLEEVE 5/16" ALUMOWELD	EA	40	13.88	555.20
04913012 Total	04913012	BOLT MACHINE 5/8" X 12" GALV	CS	0	49.00	0.00
02317102 Total	02317102	FUSETUBE 100A27KV S&C	EA	30	24.25	727.50

EXHIBIT A WESCO BUY BACK GOODS LIST.xls

	Item	Description 1	UOM	Count 9.19.12	System Standard Cost	Extended Cost
04913014 Total	04913014	BOLT MACHINE 5/8" X 14" GALV	CS	9	33.25	299.25
04915010 Total	04915010	WASHER SQUARE 2 1/4 X 2 1/4	CS	0	70.00	0.00
04913016 Total	04913016	BOLT MACHINE 5/8" X 16" GALV	CS	2	40.00	80.00
04915020 Total	04915020	WASHER SQUARE CURVED	CS	0	44.00	0.00
00454006 Total	00454006	BRACKET APPARATUS MTG	EA	7	4.26	29.82
00414046 Total	00414046	BRACKET ARR & CO 1PH FIBERGLAS	EA	45	36.72	1,652.40
01419040 Total	01419040	STIRRUP AL HOT LINE 2-336	EA	122	10.12	1,234.64
01419070 Total	01419070	STIRRUP HOT LINE CU	EA	36	34.40	1,238.40
01419075 Total	01419075	STIRRUP HOT LINE STUD BRONZE	EA	9	23.87	214.83
00414046 Total	00414046	BRACKET ARR & CO 1PH FIBERGLAS	EA	0	36.72	0.00
02313100 Total	04626200	CUTOUT 100 AMP 15KV OPEN	EA	8	117.08	468.32
01117005 Total	01117005	CLAMP HOT LINE COPPER	EA	53	6.72	356.16
01119050 Total	01119050	CLAMP TRANSFORMER GROUND	EA	90	3.82	343.80
01411018 Total	01411018	INSULATOR SPOOL SECONDARY 600V	EA	0	0.68	0.00
02313100 Total	02313100	CUTOUT 100 AMP 15KV OPEN	EA	0	58.54	0.00
01411018 Total	01411018	INSULATOR SPOOL SECONDARY 600V	EA	346	0.68	235.97
01419036 Total	01419036	STIRRUP AL HOT LINE 477-795	EA	162	10.81	1,751.22
02313100 Total	02313100	CUTOUT 100 AMP 15KV OPEN	EA	54	58.54	3,161.16
01317050 Total	01317050	CLEVIS SECONDARY	EA	136	3.24	440.64
01214402 Total	01214402	CONNECTOR 4/0-6 H TYPE COMP	EA	225	0.52	117.05
01411055 Total	01411055	INSULATOR 25KV POLYMER	EA	210	12.95	2,719.50
01315021 Total	01315021	DEADEND AUTO #2 AL STEEL BAIL	EA	83	8.20	680.60
01214401 Total	01214401	CONNECTOR 4/0-1/0 H TYPE COMP	EA	350	0.62	217.00
01411008 Total	02822016	INSULATOR HORIZONTAL TIE TOP	EA	49	30.06	736.47
01315101 Total	01315101	DEADEND AUTO 1/0 AL STEEL BAIL	EA	177	10.64	1,883.28
01411030 Total	01411030	INSULATOR PIN 7200V F NECK	EA	176	3.53	621.28
01214501 Total	01214501	CONNECTOR COVER D DIE	EA	75	0.46	34.50
01411055 Total	01411055	INSULATOR 25KV POLYMER	EA	0	12.95	0.00
00418005 Total	00418005	PIN STAND OFF FIBERGLASS 12"	EA	0	23.21	0.00
01912010 Total	01912010	GRIP WEDGE #6 AND #2 ALUMINUM	EA	400	1.10	439.32
01411030 Total	01411030	INSULATOR PIN 7200V F NECK	EA	0	3.53	0.00
02111051 Total	02111051	ARRESTER OVERHEAD 9 KV	EA	17	26.61	452.37

EXHIBIT A WESCO BUY BACK GOODS LIST.xls

	Item	Description1	UOM	Count 9,19,12	System Standard Cost	Extended Cost
01912020 Total	01912020	GRIP WEDGE 2 1/4 ALUMINUM	EA	0	1.69	0.00
01912140 Total	01912140	GRIP WEDGE 4/0 ALUMINUM	EA	200	2.44	488.00
00814010 Total	00814010	EYE BOLT 5/8 X 10"	EA	25	3.01	75.25
00814012 Total	00814012	EYE BOLT 5/8 X 12"	EA	80	3.09	247.20
04608999 Total	04608999	FAULT INDICATOR 800A OVERHEAD	EA	0	161.85	0.00
04923008 Total	04923008	BOLT MACHINE 5/8" X 8" GALV	CS	6	49.00	294.00
04609120 Total	04609120	CONNECTOR ELBOW LOADBREAK 2/0	EA	4	24.91	99.64
04609452 Total	04609452	SPLICE PREMOLDED 2/0 AL/CU 15KV	EA	18	21.61	388.98
02303102 Total	02303102	CUTOUT 100 AMP 15KV LINKBREAK	EA	36	71.83	2,585.88
04609002 Total	04609002	FAULT INDICATOR CABLE MOUNT	EA	24	130.00	3,120.00
02303102 Total	02303102	CUTOUT 100 AMP 15KV LINKBREAK	EA	31	71.83	2,226.73
04609100 Total	04609100	BUSHING WELL INSERT	EA	10	23.17	231.70
04609003 Total	04609003	FAULT INDICATOR CABLE MOUNT	EA	26	130.00	3,380.00
04609100 Total	04609100	BUSHING WELL INSERT	EA	0	23.17	0.00
04609101 Total	04609101	STANDOFF PLUG LOADBREAK 15KV	EA	24	31.21	749.04
04609003 Total	09218006	FAULT INDICATOR CABLE MOUNT	EA	0	260.00	0.00
04609112 Total	04609112	CONNECTOR ELBOW LOADBREAK #2	EA	13	25.90	336.70
04609451 Total	04609451	SPLICE PREMOLDED #2 AL 15KV	EA	8	17.71	141.68
04609102 Total	04609102	RECEPTACLE INSULATING	EA	0	20.25	0.00
02102020 Total	02102020	ARRESTER RISER POLE 9KV	EA	46	35.88	1,650.48
04608096 Total	04608096	TERMINAL STRAIGHT BAR SLIP ON	EA	94	20.67	1,942.98
02307104 Total	02307104	FUSETUBE 100AMP 27KV CHANCE	EA	2	34.53	69.06
02102020 Total	02102020	ARRESTER RISER POLE 9KV	EA	80	35.88	2,870.40
01506021 Total	01506021	TERMINATOR KIT 2/0 AL/CU	EA	26	23.95	622.70
04608705 Total	04608705	SPADE SECONDARY 5/8" DIA STUD	EA	32	15.32	490.24
04608710 Total	04608710	SPADE SECONDARY FOR 1" DIA	EA	5	36.26	181.30
04608995 Total	04608995	FAULT INDICATOR -LOAD TRACKING	EA	29	145.67	4,224.43
04609700 Total	13829100	CONNECTOR TEE HOUSING/ELBOW	EA	113	133.71	579.41
04609703 Total	04609703	CONNECTOR PLUG CP 600A	EA	117	45.67	776.39
04609704 Total	04609704	PLUG BASIC INSULATING BIP 600A	EA	40	30.06	1,202.40
04609700 Total	04609700	CONNECTOR TEE HOUSING/ELBOW	EA	0	44.57	0.00
04609003 Total	04609003	FAULT INDICATOR CABLE MOUNT	EA	0	130.00	0.00

EXHIBIT A WESCO BUY BACK GOODS LIST.xls

	Item	Description1	UOM	Count 9.19.12	System Standard Cost	Extended Cost
04609400 Total	04609400	ARRESTER ELBOW METAL OXIDE	EA	1	57.49	57.49
04608440 Total	04608440	SLEEVE HEATSHRINK 2/0-4/0 AWG	EA	60	1.25	75.00
04609122 Total	04609122	FEED THRU L/B 200A 15KV	EA	9	83.43	750.87
04608210 Total	04608210	TAP ASSEMBLY 1/0 AL OR CU HEAT	EA	125	3.67	458.75
04608240 Total	04608240	TAP ASSEMBLY 4/0 AL OR CU HEAT	EA	73	3.68	268.64
04608220 Total	04608220	TAP ASSEMBLY - 2/0 AL/CU	EA	50	3.87	183.50
04608304 Total	04608304	MOLE 4 HOLE LUG 2-4/0 AL OR CU	EA	106	14.57	1,544.42
04608306 Total	04608306	MOLE 6 HOLE LUG 2-4/0 AL OR CU	EA	84	15.93	1,338.12
04804306 Total	04804306	BANDING BUCKLE-STAINLESS STEEL	EA	0	0.34	0.00
04701000 Total	04701000	LUBRICANT SILICONE 5 OZ TUBE	EA	0	6.94	0.00
04804200 Total	04804200	INSULATOR-CABLE PORCELAIN	EA	351	2.38	835.38
04803819 Total	04803819	TAPE OUC URD WARNING - RED	EA	15	30.16	452.40
04803837 Total	04803837	TAPE BLACK VINYL #37	EA	0	2.47	0.00
04803819 Total	04803819	TAPE OUC URD WARNING - RED	EA	0	30.16	0.00
04803817 Total	04803817	COMPOUND - DUCT SEALING 5LB	EA	39	7.74	301.86
04803823 Total	04803823	JET LINE PULLING STRING	EA	7	25.25	176.75
04804300 Total	04804300	LOCK UTILITY ROTARY SHACKLE	EA	360	3.30	1,188.00
04803823 Total	04803823	JET LINE PULLING STRING	EA	0	25.25	0.00
04803805 Total	04803805	TAPE BLACK VINYL 8.5 MIL	EA	0	1.71	0.00
04804305 Total	04804305	BANDING - STAINLESS STEEL 3/4"	EA	0	48.79	0.00
04804306 Total	04804306	BANDING BUCKLE-STAINLESS STEEL	EA	100	0.34	34.30
04803823 Total	04803823	JET LINE PULLING STRING	EA	0	25.25	0.00
04803825 Total	04803825	SPLICING TAPE 130C, 1- 1/2"	EA	24	4.56	109.44
04803826 Total	04803826	TAPE - ELECTRICAL FILLER	EA	24	6.26	150.24
04626220 Total	04626220	ELL 90 DEG 2" PVC CONDUIT	EA	5	1.77	8.85
04626120 Total	04626120	COUPLING - PVC 2" CONDUIT	EA	53	0.43	22.79
04606130 Total	04606130	COUPLING - PVC CONDUIT 3"	EA	24	1.15	27.60
04602460 Total	04602460	COUPLING-SPLIT 6" PVC	EA	3	16.87	50.61
04709100 Total	04709100	BUSHING INSERT LOADBREAK	EA	68	231.21	15,722.28
04609700 Total	04609700	CONNECTOR TEE HOUSING/ELBOW	EA	0	44.57	0.00
01205010 Total	01205010	STEM CONNECTOR 1/0 AL TO 2 CU	EA	38	3.31	125.64
04609445 Total	04609445	CABLE REPAIR SPLICE #2 AL 15KV	EA	0	59.37	0.00

EXHIBIT A WESCO BUY BACK GOODS LIST.xls

	Item	Description1	UOM	Count 9.19.12	System Standard Cost	Extended Cost
04608705 Total	04608705	SPADE SECONDARY 5/8" DIA STUD	EA	0	15.32	0.00
04609003 Total	04609003	FAULT INDICATOR CABLE MOUNT	EA	0	130.00	0.00
04608306 Total	04608306	MOLE 6 HOLE LUG 2-4/0 AL OR CU	EA	0	15.93	0.00
01506021 Total	01506021	TERMINATOR KIT2/0ALCU	EA	0	23.95	0.00
00813055 Total	02439165	GUY SHIELD PLASTIC 8 FT 25/BOX	EA	68	13.68	310.08
01411120 Total	01411120	INSULATOR STRAIN FIBGL 120 IN	EA	71	23.01	1,633.71
Grand Total						92,064.18

Items to Remain in OUC Inventory until Depleted

	Item	Description 1	UOM
01611020 Total	01611020	SLEEVE SERVICE INSULATED	EA
01611044 Total	01611044	SLEEVE SERVICE INSULATED	EA
01611046 Total	01611046	SLEEVE SERVICE INSULATED	EA
01611022 Total	01611022	SLEEVE SERVICE INSULATED	EA
01611024 Total	01611024	SLEEVE SERVICE INSULATED	EA
01611026 Total	01611026	SLEEVE SER INSUL #2-#6 AL/CU	EA
01611102 Total	01611102	SLEEVE SERVICE INSULATED	EA
01611104 Total	01611104	SLEEVE SERVICE INSULATED	EA
01611106 Total	01611106	SLEEVE SERVICE INSULATED	EA
01615012 Total	01615012	SLEEVE 1/0 AAC AAAC ACSIR AL	EA
01611020 Total	01611020	SLEEVE SERVICE INSULATED	EA
01611210 Total	01611210	SLEEVE SERVICE INSULATED	EA
01611410 Total	01611410	SLEEVE SERVICE INSULATED	EA
01712600 Total	05137800	SWITCH OH DISCONNECT 15KV	EA
01211350 Total	01211350	CONNECTOR 350 MCM CU VISE BOLT	EA
01712600 Total	01712600	SWITCH OH DISCONNECT 15KV	EA
01413140 Total	01413140	SIDE TIE 4/0 AAAC F-NECK	EA
01712600 Total	01712600	SWITCH OH DISCONNECT 15KV	EA
01413140 Total	01413140	SIDE TIE 4/0 AAAC F-NECK	EA
00414048 Total	00828096	BRACKET ARR & CO 3PH FIBERGLAS	EA
01413140 Total	01413140	SIDE TIE 4/0 AAAC F-NECK	EA
00414048 Total	01242144	BRACKET ARR & CO 3PH FIBERGLAS	EA
04913018 Total	04913018	BOLT MACHINE 5/8" X 18" GALV	CS
00414048 Total	00414048	BRACKET ARR & CO 3PH FIBERGLAS	EA
02319900 Total	02319900	CAP FUSE TUBE EXPULSION S/S	EA
00414048 Total	01242144	BRACKET ARR & CO 3PH FIBERGLAS	EA
01214404 Total	01214404	CONNECTOR 4/0-4/0 H TYPE COMP	EA
01214500 Total	01214500	CONNECTOR COVER O DIE	EA
01615010 Total	01615010	SLEEVE 1/0 AAAC AUTOMATIC	EA
00414048 Total	00414048	BRACKET ARR & CO 3PH FIBERGLAS	EA
01615040 Total	01615040	SLEEVE 4/0 AAC AAAC AUTOMATIC	EA
01655336 Total	01655336	SLEEVE AUTO F/T 336.5 AAC	EA
00814008 Total	00814008	EYE BOLT 5/8 X 8"	EA
00814014 Total	00814014	EYE BOLT 5/8 X 14"	EA
00417050 Total	00417050	HOOK CABLE BRACKET	EA
04608098 Total	04608098	TERMINAL Z-BAR SLIP ON 8	EA
01506501 Total	01506501	TERMINATOR KIT 500MCM CU	EA
01506100 Total	01506100	TERMINATOR REPAIR KIT 15KV	EA
04609445 Total	04609445	CABLE REPAIR SPLICE #2 AL 15KV	EA
01506501 Total	01506501	TERMINATOR KIT 500MCM CU	EA
04609420 Total	04609420	PLUG, STRAIGHT, 2/0 CU, 15KV	EA
04609701 Total	04609701	CABLE CONTACT 750 AL SPLICE	EA
04804107 Total	04804107	STEP - CABLE 7.5 INCH	EA
04804110 Total	04804110	STEP - CABLE 10 INCH	EA
04609701 Total	04609701	CABLE CONTACT 750 AL SPLICE	EA
01407500 Total	01407500	LUG COMPRESSION 500 MCM COPPER	EA
04609420 Total	04609420	PLUG, STRAIGHT, 2/0 CU, 15KV	EA
01506501 Total	01506501	TERMINATOR KIT 500MCM CU	EA
01506100 Total	01506100	TERMINATOR REPAIR KIT 15KV	EA

FOURTH AMENDMENT

**To
The Contract for the WESCO Alliance
Between
Orlando Utilities Commission and WESCO Distribution, Inc.
Dated January 1, 2009**

This FOURTH Amendment to the Alliance Agreement between Orlando Utilities Commission and WESCO Distribution, Inc. dated January 1, 2009 is entered into, by and between, Orlando Utilities Commission ("OUC") and WESCO Distribution, Inc. ("Contractor") and shall be effective as of the date last signed below. The OUC and Contractor shall be collectively referred to as "the Parties".

WITNESSETH:

WHEREAS, the Parties have agreed to certain terms under the auspices of the Alliance Agreement and all previous Amendments between the Parties; and

WHEREAS, the Parties recognize that certain terms of the Alliance Agreement need to be amended to reflect changes as contemplated herein; and

WHEREAS, the Parties have agreed to terminate the Inventory Buy-Back and Repurchase Agreement stated in Appendix H; and

WHEREAS, OUC desires to exercise the option provided in 'Section 1 – Length of Agreement' to extend the Agreement for an additional five (5) year term resulting in a new expiration date of December 31, 2018;

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

1. **RECITATIONS.** The above recitals are true and correct and are hereby incorporated herein.
2. **REBATES.** A 1% volume rebate will be paid to OUC on all WESCO invoices. This rebate will be paid semi-annually, around July 15th and January 15th, and replaces the current 'meter only' rebate of 3%. Effective date of June 1, 2013.
3. **PRICE REDUCTION.** A 1.5% price reduction for all material currently under contract with WESCO. Effective date of October 1, 2013.
4. **EARLY PAYMENT DISCOUNT.** A 0.5% discount applied to all invoices paid in 10 days. Effective date of October 1, 2013.

5. **CERTAIN DEFINITIONS.** Each initially capitalized term used without definition shall have the meaning as ascribed to such term in the Agreement, unless changed herein.
6. **MISCELLANEOUS.** This Amendment shall be construed in connection with and as part of the Alliance Agreement, and all terms, conditions and covenants contained in the Alliance Agreement, except as herein modified, shall be and shall remain in full force and effect. The Parties hereto agree that they are bound by the terms, conditions and covenants of the Agreement as amended hereby.
7. **Change.** Globally change "Supply Chain Management" to "Purchasing".
8. **Change.** 'Section 4 – Termination' is deleted in its entirety and replaced with the following:

Either party may terminate this Agreement at any time upon a six (6) month written notice to the other parties at the addresses noted below. Any products ordered or stocked at WESCO for OUC exclusively will be purchased and delivered as part of the termination process.

(A) Orlando Utilities Commission
Purchasing
100 W. Anderson Avenue
P.O. Box 3193
Orlando, Florida 32802-3193
Attn: Director Purchasing
bids@ouc.com

(B) WESCO Distribution, INC.
5971 Pershing Avenue
Orlando, Florida 32822
Attn: Florida Branch Manager
mreynolds@wescodist.com
dhicks@wescodist.com

9. **Change.** 'Section 25 - Alliance Management' is deleted in its entirety and replaced with the following:

The Parties agree to manage this Alliance through committees overseen by an Executive Steering Committee. The Executive Committee shall set up committees as necessary to meet business needs. The Executive Steering Committee will receive Semi-annually performance reports from the Management Committee. The Executive Steering Committee will evaluate the success of the Alliance and make determinations of expansion, major changes, or termination of the Agreement. The

Executive Steering Committee will be initially comprised of WESCO's Director of Eastern Utility Operations, Elster's Vice President of Sales, ABB's Vice President of Southeastern Region, OUC's Vice President of Financial and Support Services, OUC's Vice President of Customer & Sustainable Services, and OUC's Vice President of the Electric & Water Delivery Business Unit.

Modification of goals or process improvements having a net effect to pricing of greater than \$50,000 shall be approved by the Executive Steering Committee. The make-up of the above referenced committees are:

Committee Membership

ENERGY DELIVERY MATERIAL

Executive Steering Committee

- A. Vice President Electric & Water Delivery Business Unit – Orlando Utilities Commission
- B. Vice President Financial & Support Services – Orlando Utilities Commission
- C. Vice President Customer & Sustainable Services – Orlando Utilities Commission
- D. Director, Eastern Utility Operations – WESCO
- E. Vice President of Southeastern Region – ABB
- F. Vice President - Elster

Management Committee

- A. Director, Energy Delivery Services – Orlando Utilities Commission
- B. Director, System Planning & Reliability – Orlando Utilities Commission
- C. Director, Purchasing – Orlando Utilities Commission
- D. Director, Fleet, Facilities & Logistics – Orlando Utilities Commission
- E. Branch Manager for Florida – WESCO
- F. Alliance Manager - WESCO

Standards Resource Contacts for Alliance

- A. Electric Distribution Standards Engineer – Orlando Utilities Commission
- B. Alliance Manager - WESCO
- C. Area Sales Representative – ABB (Transformers Only)

Logistics - Purchasing Committee

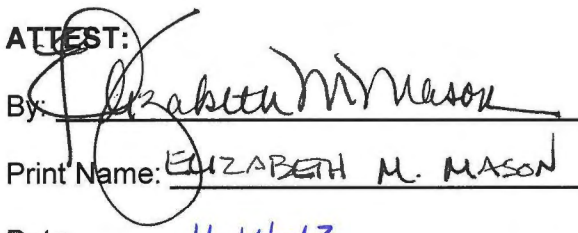
- A. Manager Distribution Construction – Orlando Utilities Commission

- B. Warehouse Operations Supervisor, Logistics – Orlando Utilities Commission
- C. Buyer/Planner, Supply Chain Management – Orlando Utilities Commission
- D. Alliance Manager – WESCO

Finance Committee

- A. Director of Energy Delivery Services, Energy Delivery Business Unit- Orlando Utilities Commission
- B. Manager Finance & Contracts- Orlando Utilities Commission
- C. Electric Utility, Branch Manager for Florida – WESCO
- D. Alliance Manager - WESCO

ATTEST:

By: 

Print Name: ELIZABETH M. MASON

Date: 11-14-13

ORLANDO UTILITIES COMMISSION

By: 

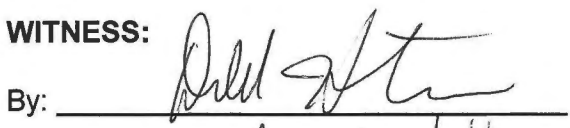
Print Name: KENNETH P. KSIONEK

Date: 11-14-13

Approved as to form and legality
OUC Legal Department

DATE: 11-22-13 BY: 

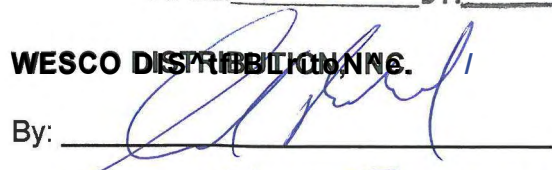
WITNESS:

By: 

Print Name: Donald Heitmeier

Date: 10/16/13

WESCO DISTRIBUTION INC.

By: 

Print Name: Andy Bercevic

Date: 11/15/13

**FIFTH AMENDMENT
To
The Contract for the WESCO Alliance
Between
Orlando Utilities Commission and WESCO Distribution, Inc.
Dated January 1, 2009**

This Fifth Amendment to the Alliance Agreement between Orlando Utilities Commission and WESCO Distribution, Inc. dated January 1, 2009 is entered into, by and between, Orlando Utilities Commission ("OUC") and WESCO Distribution, Inc. ("Contractor") and shall be effective as of the date last signed below. The OUC and Contractor shall be collectively referred to as "the Parties".

WITNESSETH:

WHEREAS, the Parties have agreed to certain terms under the auspices of the Alliance Agreement and all previous Amendments between the Parties; and

WHEREAS, the Parties recognize that certain terms of the Alliance Agreement need to be amended to reflect changes as contemplated herein; and

WHEREAS, the Parties desire to extend the term of the Alliance Agreement contingent on the completion of the leasehold improvements (see Amendment to the Lease Agreement between the Parties dated August 30, 2016).

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

1. Upon completion of the leasehold improvements and based on the timing thereof, the duration of the Alliance Agreement will extend for five (5) years, as described below. At the end of said five year term extension, OUC and WESCO reserve the option, upon mutual agreement, to extend the Alliance Agreement for up to three additional one-year extension periods.

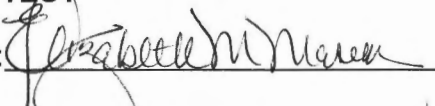
Timing of the five year extension is calculated as follows:

- (i) If the leasehold improvements are completed in calendar year 2016, the five (5) year extension will commence January 1, 2017 resulting in an Alliance Agreement expiration date of December 31, 2021; or
- (ii) If the leasehold improvements are completed in calendar year 2017, the five (5) year extension will commence January 1, 2018 resulting in an Alliance Agreement expiration date of December 31, 2022.

2. CERTAIN DEFINITIONS. Each initially capitalized term used without definition shall have the meaning as ascribed to such term in the Alliance Agreement, unless changed herein.
3. MISCELLANEOUS. This Amendment shall be construed in connection with and as part of the Alliance Agreement, and all terms, conditions and covenants contained in the Alliance Agreement, except as herein modified,

shall be and shall remain in full force and effect. The Parties hereto agree that they are bound by the terms, conditions and covenants of the Alliance Agreement as amended hereby.

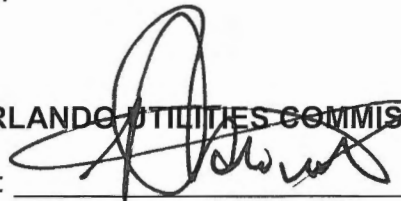
ATTEST

By: 

Print Name: ELIZABETH M. MASON

Date: 11-18-2016

ORLANDO UTILITIES COMMISSION

By: 

Kenneth P. Ksionek

Date: 11-18-2016

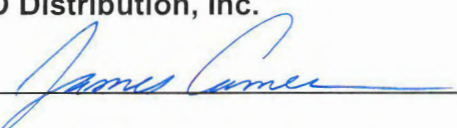
WITNESS:

By: 

Print Name: Michael Pardue
Dir. Of Operations (SE Region)

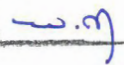
Date: November 15th, 2016

WESCO Distribution, Inc.

By: 

Print Name: James Cameron
VP & GM Utility Group

Date: November 15th, 2016

Approved as to form and legality
OUC Legal Department
DATE: 11-18-16 BY: 

**SIXTH AMENDMENT To
The Contract for the WESCO Alliance
between Orlando Utilities Commission and
WESCO Distribution, Inc.**

Sixth Amendment
WESCO Alliance

Re: APPENDIX B

This SIXTH Amendment to the Alliance Agreement between Orlando Utilities Commission and WESCO Distribution, Inc. dated January 1, 2009 entered into, by and between, Orlando Utilities Commission ("OUC") and WESCO Distribution, Inc. ("Contractor") shall be effective as of the date last signed below.

Now therefore, inclusive of Appendix B of the Alliance Agreement between Orlando Utilities Commission (herein referred to as "OUC") and WESCO Distribution, Inc. (herein referred to as WESCO or "Contractor") and ABB, Inc. (herein referred to as "ABB") and Power Partners Inc. (herein referred to as "Power Partners"), all collectively referred to as "the Parties", the following specifications, requirements, and mutual covenants listed below and contained herein, are incorporated into this Alliance Agreement:

WITNESSETH:

WHEREAS, the Parties have agreed to certain terms under the auspices of the Alliance Agreement and all previous Amendments between the Parties; and

WHEREAS, the Parties recognize that certain terms of the Alliance Agreement need to be amended to reflect changes as contemplated herein; and

WHEREAS, the Parties desire to extend the term of the Alliance Agreement contingent on the completion of the leasehold improvements contemplated between WESCO and OUC. Upon completion of the leasehold improvements and based on the timing thereof, the duration of the Alliance Agreement will extend for five (5) years, as described below. At the end of said five year term extension, OUC and WESCO reserve the option, upon mutual agreement, to extend the Alliance Agreement for up to three additional one-year extension periods.

Timing of the five year extension is calculated as follows:

(i) If the leasehold improvements are completed in calendar year 2016, the five (5) year extension will commence January 1, 2017 resulting in an Alliance Agreement expiration date of December 31, 2021; or

(ii) If the leasehold improvements are completed in calendar year 2017, the five (5) year extension will commence January 1, 2018 resulting in an Alliance Agreement expiration date of December 31, 2022.

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

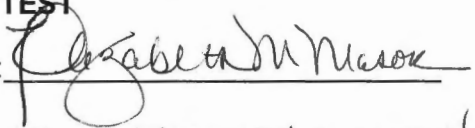
1. **RECITATIONS**. The above recitals are true and correct and are hereby incorporated herein.
2. **CERTAIN DEFINITIONS**. Each initially capitalized term used without definition shall have the meaning as ascribed to such term in the Alliance Agreement, unless changed herein.

3. **MISCELLANEOUS.** This Amendment shall be construed in connection with and as part of the Alliance Agreement, and all terms, conditions and covenants contained in the Alliance Agreement, except as herein modified, shall be and shall remain in full force and effect.

The Parties hereto agree that they are bound by the terms, conditions and covenants of the Alliance Agreement as amended hereby.

4. **DISCOUNTS.** A 2% price reduction will be provided by ABB and Power Partners for all purchases from ABB and Power Partners beginning on January 1, 2017. Beginning on January 1, 2018 the price reduction will be an additional 1% for a total reduction of 3%.

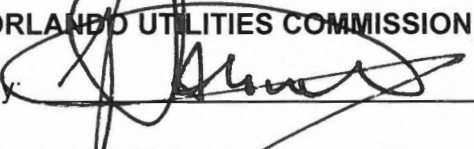
ATTEST

By: 

Print Name: ELIZABETH M. MASON

Date: 11-18-2016

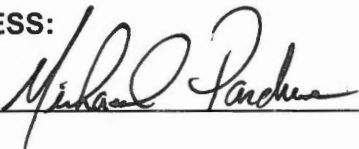
ORLANDO UTILITIES COMMISSION

By: 

Kenneth P. Ksionek

Date: 11-18-2016

WITNESS:

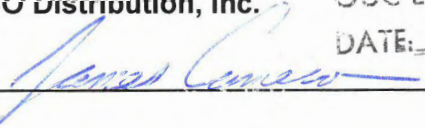
By: 

Print Name: Michael Pardue

Date: August 29, 2016

WESCO Distribution, Inc.

Approved as to form and legality
OUC Legal Department

By: 

Print Name: James Cameron

Date: August 29, 2016

DATE: 11-16-18 BY: W.M.

WITNESS:

By: 

Print Name: Rick Bax

Date: 9-8-16

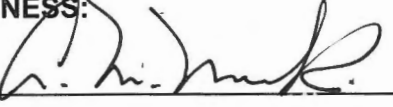
ABB, INC.

By: 

Print Name: MICHAEL HUMERNIK

Date: 08/09/2016

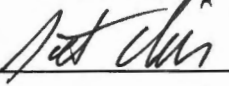
WITNESS:

By: 

Print Name: A. M. Moak

Date: 9-26-2016

POWER PARTNERS, INC.

By: 

Print Name: SCOTT Childs

Date: 9/26/2016

**SEVENTH AMENDMENT
To
The Contract for OUC-WESCO Alliance 2008
Between
Orlando Utilities Commission and WESCO DISTRIBUTION, INC
Dated January 1, 2009**

This Seventh Amendment to the Alliance Agreement between Orlando Utilities Commission and WESCO Distribution Inc. dated January 1, 2009 entered into, by and between Orlando Utilities Commission ("OUC") and WESCO Distribution, Inc. ("Supplier") shall be effective as of the date last signed below.

Now therefore, inclusive of Appendix B of the Alliance Agreement between Orlando Utilities Commission (herein referred to as "OUC") and WESCO Distribution, Inc. (herein referred to as WESCO) and ABB, Inc. (herein referred to as "ABB") and Power Partners Inc. (herein referred to as "PPI"), all collectively referred to as "the Parties", the following specifications, requirements, and mutual covenants listed below and contained herein, are incorporated into this Alliance Agreement:

WITNESSETH:

WHEREAS, OUC and Supplier entered into that certain Contract dated *January 1, 2009* for the performance of services in accordance with the scope set forth in the Alliance Agreement ("Contract"); and,

WHEREAS, the Parties desire to amend the Contract to update the index tables referencing the Bureau of Labor and Statistics (BLS) for "A. Pole-type Transformers" and "B. Pad-mounted Transformers"; and,

WHEREAS, the Parties desire to amend the Contract to establish the BLS index evaluation period for Transformer pricing in October will be from the previous change in price from December of the prior year to June of the current year and pricing in April will be from June of the previous year to December of the previous year.

NOW THEREFORE, for and in consideration of the foregoing premises, the mutual agreements contained herein, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows:

1. **Recitations.** The above recitals are true and correct and are hereby incorporated herein.

2. **Definitions.** Each initially capitalized term used without definition shall have the meaning as ascribed to such term in the Contract, unless changed herein.
3. Provisions to be amended: (Committee Membership and Appendix B Section 2. Pricing)

Executive Steering Committee

- A Chief Financial Officer - Orlando Utilities Commission
- B. Chief Operating Officer - Orlando Utilities Commission
- C. Electric and Water Distribution Vice President – Orlando Utilities Commission
- D. Transmission Vice President – Orlando Utilities Commission
- E. Regional Manager - WESCO
- F. Regional Manager – ABB
- G. Director of Sales and Marketing - PPI

Management Committee

- A System Planning & Energy Control Center Director - Orlando Utilities Commission
- B. Customer Service Field Operations Director - Orlando Utilities Commission
- C. Supply Chain Management Director – Orlando Utilities Commission
- D. Distribution Construction & Maintenance Director - Orlando Utilities Commission
- E. Distribution Engineering Director – Orlando Utilities Commission
- F. Transmission Engineering Director – Orlando Utilities Commission
- G. Contracts& Finance Manager– Orlando Utilities Commission
- H. Materials Demand Manager – Orlando Utilities Commission
- I. Distribution Planning Manager – Orlando Utilities Commission
- J. Electric Meter & Field Operations Manager – Orlando Utilities Commission
- K. Water Meter & Field Operations Manager – Orlando Utilities Commission
- L. Alliance Manager - WESCO

Standards Resource Contacts for Alliance

- A. Sr. Electric Distribution Standards Engineer - Orlando Utilities Commission
- B. Electric Distribution Standards Engineer – Orlando Utilities Commission
- C. Alliance Manager - WESCO

Logistics - Purchasing Committee

- A. Supply Chain Management Director - Orlando Utilities Commission
- B. Materials Demand Manager - Orlando Utilities Commission
- C. Material Fulfillment Manager - Orlando Utilities Commission
- D. Material Buyer – Orlando Utilities Commission
- E. Senior Inventory Control Analyst – Orlando Utilities Commission
- F. Inventory Supervisor – Orlando Utilities Commission
- G. Alliance Manager - WESCO

Finance Committee

- A. Contracts, Finance & Project Management Director -Orlando Utilities Commission
- B. Materials Demand Manager- Orlando Utilities Commission
- C. Alliance Manager - WESCO

SECTION 2. PRICING

Pricing for the transformers will normally be updated twice a year and shall otherwise remain firm. WESCO on behalf of ABB and PPI shall submit to OUC any request for a change in pricing as follows:

- A. Received at OUC 30 days prior to the effective date of April 1st
- B. Received at OUC 30 days prior to the effective date of October 1st

In concurrence with the above stated schedule, WESCO, ABB and PPI shall provide to OUC a semi-annual summation of market conditions as they pertain to pricing and a copy of the indexes referenced in Tables A and B shown below. Pricing will be adjusted if the change in material and labor costs results in a calculated price change of $\pm 2\%$ or more from the last price adjustment and are confirmed by published commodity indexes. Changes will only be approved in advance and in writing by OUC. ABB's and PPI's method

is to forecast future price changes based on changes to labor, benefits and fixed price contracts as well as estimates about the market for products such as insulating oil, electrical steel, copper, steel and fuel.

In order for WESCO and OUC to verify pricing changes ABB and PPI will provide two tables showing the approximate make-up of the pole and pad mounted transformers and which indexes apply. These tables should provide an estimate of the price variation to allow comparison to the actual ABB and PPI price change request.

The basic breakdown is as follows:

A. Pole-type Transformers

Commodity	Index Used	Avg. Weighting Factor	EEMAC weighting factor for 2006 and up
Transformer Oil	WPU 057	7.0%	5.3
Copper	WPU 102502	4.7%	
Aluminum	WPU 102501	6.0%	
Electric Steel(1)	ABB COST INDEX	39.0%	29.2
Carbon Steel	WPU 1017	2.0%	11.2
Labor	CEU3133500008	41.3%	
Alum. Wire			5.5
Copper Wire			13.5
Insulation			2.0
Acc./Misc.			9.2
Labor & OH			24.10

B. Pad-mounted Transformers

Commodity	Index Used	Avg. Weighting Factor	EEMAC weighting factor for 2006 and up
Transformer Oil	WPU 057	8.0%	7.6
Copper	WPU 102502	5.0%	
Aluminum	WPU 102501	7.0%	
Electric Steel(1)	ABB COST INDEX	24.0%	19.5
Carbon Steel	WPU 1017	15.0%	11.2
Labor	CEU3133500008	41.0%	
Alum. Wire			3.7
Copper Wire			11.6
Insulation			2
Acc./Misc.			13.7
Labor& OH			30.7

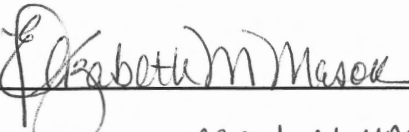
Note:

1. Since there is no published index for Electric Steel ABB has agreed to furnish WESCO and OUC semi-annually a copy of Electrical Equipment Manufacturers Association of Canada (EEMAC) Distribution Transformer Price Index report which does have an "index" for Electric Steel and other transformer components. This is only to be used to help put together the comparison and not as a published index. All other indexes source is the Bureau of Labor Statistics (BLS).

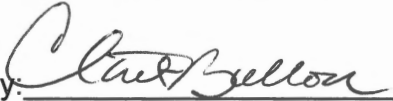
Except as specifically amended herein, all other terms and conditions of the Contract shall remain in full force and effect, and in the event of any inconsistencies between this Amendment and the terms of the Contract (including any prior amendments), the terms set forth in this Amendment shall control and govern. The modifications shall remain in full force and effect during any extended term.

IN WITNESS WHEREOF, OUC and Supplier have caused this Amendment to be executed in duplicate in their names by their respective duly authorized officials.

WITNESS:

By: 
Print Name: ELIZABETH M MASON
Title: ASSISTANT SECRETARY
Date: 01/06/2020

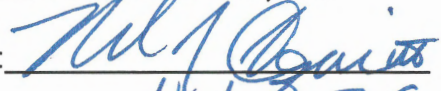
Orlando Utilities Commission

By: 
Clint Bullock
Title: General Manager & CEO
Date: 01/06/2020

WITNESS:

By: _____
Print Name: _____
Title: _____
Date: _____

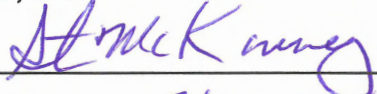
WESCO Distribution, Inc.

By: 
Print Name: Nelson J. Squillante
Title: SVP/COO WESCO
Date: 13 Nov 19

WITNESS:

By: _____
Print Name: _____
Title: _____
Date: _____

ABB, Inc.

By: 
Print Name: Steve McKinney
Title: SVP Transformers
Date: 12/13/19

WITNESS:

By: _____
Print Name: _____
Title: _____
Date: _____

Power Partners, Inc.

By: 
Print Name: Scott Childs
Title: Dir. of M&T & Sales
Date: 19 Nov 19

**TENTH AMENDMENT
To
The Contract for OUC-WESCO Alliance 2008
Between
Orlando Utilities Commission and WESCO DISTRIBUTION, INC
Dated January 1, 2009**

This Tenth Amendment to the Alliance Agreement between Orlando Utilities Commission and WESCO Distribution Inc. dated January 1, 2009 entered into, by and between Orlando Utilities Commission ("OUC") and WESCO Distribution, Inc. ("WESCO") shall be effective as of April 1, 2023. OUC and Supplier shall be collectively referred to as the "Parties".

WITNESSETH:

WHEREAS, OUC and Supplier entered into that certain Alliance Agreement dated January 1, 2009 for the performance of services in accordance with the scope set forth in the Alliance Agreement; and,

WHEREAS, the Parties have mutually agreed on changes to the Alliance Agreement and desire to amend the Alliance Agreement to reflect the agreed changes as set forth herein; and,

WHEREAS, the Parties have agreed to extend the Alliance Agreement term for an additional five (5) years; and,

NOW THEREFORE, for and in consideration of the foregoing premises, the mutual agreements contained herein, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows:

1. **Recitations**. The above recitals are true and correct and are hereby incorporated herein.
2. **Definitions**. Each initially capitalized term used without definition shall have the meaning as ascribed to such term in the Alliance Agreement, unless changed herein.
3. **Term**. The term of the Agreement shall be extended for an additional five (5) years period to commence on April 1, 2023 and terminate on March 31, 2028.
4. **Early Payment Discount**. A 0.5% discount apply to all invoices paid in 15 days. Effective date of April 1, 2023.

5. **Transformers Inventory.** WESCO and OUC shall work with both Electric Delivery Construction and the Logistics Inventory Analyst to establish emergency stock requirements, review reorder point and reorder quantities on moving inventory based on PPI's manufacturing lead time, and work with Electric Delivery Construction to develop a production plan based on forecast and work order demand.

The inventory goals of the alliance are to increase the general transformer inventory turn ratio and achieve and maintain a fill rate of 98%.

6. **Transformer Committees**

Executive Steering Committee

- A. Vice President Energy Delivery Business Unit - Orlando Utilities Commission
- B. Chief Financial Officer - Orlando Utilities Commission
- C. Vice President of Sales – WESCO
- D. Local Branch Manager - WESCO

Management Committee

- A. Director, Energy Services and Contract Management - Orlando Utilities Commission
- B. Director, System Planning & Reliability - Orlando Utilities Commission
- C. Director, Strategic Sourcing - Orlando Utilities Commission
- D. Alliance Manager - WESCO

Standards Resource Contacts for Alliance

- A. Electric Distribution Standards Engineer - Orlando Utilities Commission
- B. Alliance Manager - WESCO

Logistics - Purchasing Committee

- A. Director, Logistics - Orlando Utilities Commission
- B. Manager Distribution Construction - Orlando Utilities Commission
- C. Inventory Control Analyst, Materials Demand - Orlando Utilities Commission
- D. Buyer/Planner, Supply Chain Management - Orlando Utilities Commission
- E. Alliance Manager - WESCO

Finance Committee

- A. Director, Energy Services and Contract Management - Orlando

- Utilities Commission
- B. Manager Materials Demand - Orlando Utilities Commission
- C. Alliance Manager - WESCO

7. **Transformers Reporting**

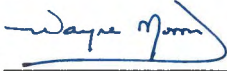
- A. OUC Logistics Department will provide a semi-annual report on the turn ratio.
- B. OUC and WESCO will at least Semi-annually check the market place to perform a comparison of what OUC pricing structures for transformers versus other utilities of a similar size.
- C. WESCO will report cost savings annually where savings include such things as cost avoidance, actual purchase price savings, difference between what OUC is paying and market costs.
- D. OUC will report On-Time delivery on a quarterly basis on OUC Qlik system information.
- E. Report quarterly the accuracy of WESCO's transformer monthly Invoice to ensure a smooth payment process exists between OUC Accounts Payable and WESCO.

Except as specifically amended herein, all other terms and conditions of the Alliance Agreement shall remain in full force and effect, and in the event of any inconsistencies between this Amendment and the terms of the Alliance Agreement (including any prior amendments), the terms set forth in this Amendment shall control and govern. The modifications shall remain in full force and effect during any extended term.

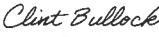
IN WITNESS WHEREOF, OUC and Supplier have caused this Amendment to be executed in duplicate in their names by their respective duly authorized officials.

The Parties executing this Agreement each agree and consent to the use of Electronic Signatures. Each such signatory warrants and represents that he or she has proper authority to sign electronically under his or her corporate or business policies and the laws of the state in which such Party is established. Such electronic signature shall be deemed to have the same full and binding effect as a handwritten signature.

Approved as to form and legality
OUC Legal Department

Date: Mar 29, 2023 By: 

Orlando Utilities Commission

By: 

Print Name: Clint Bullock

Title: General Manager & CEO

Date: Apr 3, 2023

OUC Supply Chain

By: 
Maria Cabreja (Mar 29, 2023 16:29 EDT)

Print Name: Maria Cabreja

Title: Senior Buyer

Date: Mar 29, 2023

WESCO Distribution, Inc.

By: 
Steven M. Dean (Mar 29, 2023 16:16 EDT)

Print Name: Steve Dean

Title: SVP & General Manager, Utility

Date: Mar 29, 2023



Date: January 12, 2023
To: Sales personnel
Sales management (including Managers, Directors, and Vice Presidents)
From: Wesco Corporate Headquarters
Subject: **Signatory Authority Delegation**

1. **Purpose:** The purpose of this memorandum is to delegate to you the authority to sign bid documents, customer contracts and related documents, provided that said documents and contracts have been first approved internally in accordance with the Corporate Levels of Authority (LOA).
2. **Authority:** The WESCO Distribution, Inc. Board of Directors adopted a resolution on February 28, 1994 authorizing me to delegate authority to you to perform certain duties in the ordinary conduct of Wesco's business. I hereby delegate to you the signatory authority described in paragraph 1 hereof. You shall not re-delegate this authority to any other person.
3. **Acquisitions and Divisions:** The signatory authority described in paragraph 1 shall include the management of Wesco's acquired subsidiaries, divisions and all business locations.
4. **Performance of Duties:** In addition to exercising this authority in accordance with the review and approval requirements set forth by the LOA, at the end of each calendar month, you should submit a list of all documents that you have signed pursuant to this delegation of authority to Michele Nelson at the e-mail address provided below.
5. **Expiration:** This delegation of authority shall continue in full force and effect until December 31, 2023, unless terminated earlier by me.
6. **Questions:** Questions regarding this delegation of authority should be referred to Arun Krishnan, Senior Counsel and Assistant Corporate Secretary, at akrishnan@wescodist.com or Michele Nelson, Senior Paralegal, at michele.nelson@anixter.wescodist.com.

A handwritten signature in blue ink that reads 'John Engel'.

John J. Engel
Chairman, President and CEO

Attachment: Extract of Written Consent of the Board of Directors



WESCO DISTRIBUTION, INC.

**EXTRACT OF WRITTEN CONSENT
OF THE BOARD OF DIRECTORS**

FEBRUARY 28, 1994

RESOLVED, that, effective March 1, 1994, the Chairman and the President of the Corporation be, and each of them hereby is, authorized, in the ordinary course of the Corporation's business and to the extent permitted by the General Corporation Law of the State of Delaware, and the Certificate of Incorporation and By-Laws of the Corporation, (i) to sign all bonds and obligations, (ii) to sign, execute and bind the Corporation with respect to all contracts, deeds, leases, powers of attorney, releases, waivers, claims documents and other documents of a contractual nature and (iii) to sign applications for regulatory permits and licenses and other governmental forms, other than tax returns, on behalf of the Corporation, attested by the Secretary or an Assistant Secretary if requested or required and under the Corporation's seal, if requested or required; provided, however, that each of the above-specified officers is also authorized to delegate his respective signature authority by a writing (x) specifying the scope of the authority being delegated by the writing, (y) identifying the delegate either by name or as the incumbent of a position and (z) advising the delegate that he or she shall have no authority to redelegate the signatory authority being delegated.

I, Arun G. Krishnan, Senior Counsel and Assistant Corporate Secretary, do hereby certify solely on behalf of WESCO Distribution, Inc. and not in any individual capacity that the foregoing is a true and correct copy of a resolution adopted by Board of Directors of said Corporation as of February 28, 1994.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of said Corporation on behalf of said Corporation.

Dated: January 12, 2023

A handwritten signature in black ink, appearing to read 'Arun G. Krishnan', written over a horizontal line.

Arun G. Krishnan
Senior Counsel and Assistant Corporate Secretary





510 N. Baker St.
Mount Dora, FL 32757
352-735-7126

DATE: January 2, 2024

TO: Honorable Mayor and City Council Members

FROM: Patrick C. Comiskey, City Manager

SUBJECT: Request Approval of **Resolution No. 2024-02**, Amending Employee Annual Leave Time Eligibility and Rate of Earning Policy

Introduction:

This is a request for City Council to approve Resolution No. 2024-02, Amending Employee Annual Leave Time Eligibility and Rate of Earning policy.

Discussion:

The City of Mount Dora's current policy for granting vacation time to full-time, exempt employees reads as follows:

8.03 Eligibility and Rate of Earning

A. **Regular full-time non-exempt employees** shall accrue vacation on a biweekly basis in accordance with the following schedule, or as indicated in an existing collective bargaining agreement.

0-5	12 days (96 hours)
6-10	15 days (120 hours)
11-19	18 days (144 hours)
20+	20 days (160 hours)

B. **Regular full-time exempt employees** will upon completion of the applicable probationary period and within the first year of employment, be credited with twelve (12) days of accrued annual leave. After twelve (12) months of employment and annually thereafter, regular full-time exempt employees shall accrue additional leave commensurate with years of service and experience in same or similar capacity as the position for which they were hired, based on the above schedule. Prior experience and "City experience" will not accrue cumulatively.

In an effort to attract qualified, experienced candidates; to reflect what is understood to be the established practice; and to clarify conflicting policy language, staff recommends amending the policy to allow the city manager the authority to grant a greater leave allocation commensurate with years of service and experience in the same or similar capacity as the position for which an employee was hired.

Budget Impact:

N/A

Strategic Impact:

GOAL 3: Fiscal Resources / Human Resources

Objective 3.2. Attract and maintain city human resources through competitive compensation and benefits.

Recommendation:

City Council approve Resolution No. 2024-02, amending the Employee Annual Leave Time Eligibility and Rate of Earning policy.

Attachment(s):

1. Resolution 2024-02 (PAB revised)

Prepared by: Merry Lovern, Executive Assistant

Reviewed by: City Attorney, City Attorney
Jeanann Hand, City Clerk
Patrick Comiskey, City Manager

Approved - 12/28/2023

Approved - 12/28/2023

Final Approval - 12/28/2023

RESOLUTION NO. 2024-02

A RESOLUTION OF THE CITY OF MOUNT DORA, FLORIDA, AMENDING SECTION 8.3(B) OF THE EMPLOYMENT POLICY & PROCEDURE REFERENCE GUIDE RELATING TO ANNUAL LEAVE TIME – VACATION – ELIGIBILITY AND RATE OF EARNING FOR REGULAR FULL-TIME EXEMPT EMPLOYEES; PROVIDING FOR LEGISLATIVE FINDINGS AND INTENT; PROVIDING FOR THE IMPLEMENTATION OF ADMINISTRATIVE ACTIONS; PROVIDING A SAVINGS CLAUSE; PROVIDING FOR SCRIVENER’S ERRORS; PROVIDING FOR CONFLICTS; PROVIDING FOR SEVERABILITY; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the City Council of the City of Mount Dora, as part of its Employment Policy & Procedure Reference Guide (“Employment Policy”), adopted the revised Annual Sick Leave, Personal Days, Life Insurance and Annual Leave Time (Vacation), Section 8.3 thereof, on August 7, 2007; and

WHEREAS, Section 8.3(B) Eligibility and Rate of Earning currently provides as follows: “Regular full-time exempt employees will upon completion of the applicable probationary period and within the first year of employment, be credited with twelve (12) days of accrued annual leave. After twelve (12) months of employment and annually thereafter, regular full-time exempt employees shall accrue additional leave commensurate with years of service and experience in the same or similar capacity as the position for which they were hired, based on the above schedule. Prior experience and ‘City experience’ will not accrue cumulatively”; and

WHEREAS, the City has an existing practice of providing leave time for regular full-time exempt employees commensurate with years of service and experience in same or similar capacity as the position for which they were hired; and

WHEREAS, the City wishes to amend Section 8.3(B) Annual Leave Time—Vacation - Eligibility and Rate of Earning of the Employment Policy to ensure the current language of the policy reflects the current practice and intent.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY OF MOUNT DORA, FLORIDA, AS FOLLOWS:

SECTION 1. Legislative Findings and Intent. The City Council of the City of Mount Dora has complied with all requirements and procedures of Florida law in processing this Resolution and the above recitals are hereby adopted.

SECTION 2. Adoption of Amendment to Section 8.3(B). The City Council of the City of Mount Dora hereby amends Section 8.3(B) Annual Leave Time – Vacation - Eligibility and Rate

of Earning as set forth in **Exhibit “A”** attached hereto, with underlines representing additions and ~~striketroughs~~ representing the removal of text.

SECTION 3. Implementing Administrative Actions. The City Manager is hereby authorized and directed to take such action as may be deemed necessary and appropriate in order to implement the provisions of this Resolution. The City Manager may, as deemed appropriate, necessary, and convenient, delegate the powers of implementation as herein set forth to such City employees as deemed effectual and prudent.

SECTION 4. Savings Clause. All prior actions of the City of Mount Dora pertaining to the Employment Policy, as well as any and all matters relating thereto, are hereby ratified and affirmed consistent with the provisions of this Resolution.

SECTION 5. Scrivener’s Errors. Typographical errors and other matters of a similar nature that do not affect the intent of this Resolution, as determined by the City Clerk and City Attorney, may be corrected.

SECTION 5. Scrivener’s Errors. Typographical errors and other matters of a similar nature that do not affect the intent of this Resolution, as determined by the City Clerk and City Attorney, may be corrected.

SECTION 6. Conflicts. All Resolutions or parts of Resolutions in conflict with any of the provisions of this Resolution are hereby repealed.

SECTION 7. Severability. If any Section or portion of a Section of this Resolution proves to be invalid, unlawful, or unconstitutional, it shall not be held to invalidate or impair the validity, force, or effect of any other Section or part of this Resolution.

SECTION 8. Effective Date. This Resolution shall become effective immediately upon its passage and adoption.

PASSED AND ADOPTED this 2nd day of January, 2024.

CRISSY STILE
MAYOR of the City of Mount Dora, Florida

ATTEST:

Jeanann Hand, City Clerk

For the use and reliance of City of Mount Dora only.
Approved as to form.

Patrick Brackins, City Attorney

Resolution No. 2024-02

Exhibit A

Amendment to Section 8.3(B) Annual Leave Time—Vacation – Eligibility and Rate of Earning

Section 8

Annual Leave Time—Vacation

8.3 Eligibility and Rate of Earning

- A. **Regular full-time non-exempt** employees shall accrue vacation on a biweekly basis in accordance with the following schedule, or as indicated in an existing collective bargaining agreement.

0-5	12 days (96 hours)
6-10	15 days (120 hours)
11-19	18 days (144 hours)
20+	20 days (160 hours)

- B. **Regular full-time exempt** employees ~~will upon completion of the applicable probationary period and within the first year of employment, be credited with twelve (12) days of accrued annual leave. After twelve (12) months of employment and annually thereafter, regular full-time exempt employees~~ shall accrue vacation on a biweekly basis in accordance with the above schedule. The city manager shall have the authority to grant a greater additional leave allocation commensurate with years of service and experience in same or similar capacity as the position for which they were an employee was hired, based on the above schedule. ~~Prior experience and “City experience” will not accrue cumulatively.~~