

AGENDA
CITY COMMISSION MEETING
VENETIAN CENTER, 1 DOZIER COURT
MONDAY, NOVEMBER 23, 2020 5:30 PM

1. CALL TO ORDER

INVOCATION

PLEDGE OF ALLEGIANCE TO THE FLAG OF THE UNITED STATES OF AMERICA

2. PROCLAMATIONS

3. PRESENTATIONS

A. Service Award Recognition of Clell Coleman

B. Certification Results of the November 3, 2020 Election

4. PUBLIC COMMENTS:

This section is reserved for members of the public to bring up matters of concern or opportunities for praise. Issues brought up will not be discussed in detail at this meeting. Issues will either be referred to the proper staff or will be scheduled for consideration at a future City Commission Meeting. Comments are limited to three minutes.

5. CONSENT AGENDA:

Routine items are placed on the Consent Agenda to expedite the meeting. If the Commission/Staff wish to discuss any item, the procedure is as follows: (1) pull the item(s) from the Consent Agenda; (2) vote on remaining items with one roll call vote, (3) discuss each pulled item and vote by roll call

A. CITY COMMISSION MEETING MINUTES:

1. Regular meeting held November 9, 2020

B. PURCHASING ITEMS:

1. Purchase request by Fleet Services for the purchase of two (2) replacement

mini-excavators from Synergy Equipment, Inc. for a total cost of \$87,066.88.

- 2. Resolution of the City Commission of the City of Leesburg, Florida authorizing the Mayor and City Clerk to execute a corrected Amendment 3 to fix scrivener's error with NFP for financial advisory services; and providing an effective date.**
- 3. Resolution executing agreements for the purchase of new Community Development (Building Services / Planning & Zoning / Code Enforcement) software platform.**
 - a. Resolution of the City Commission of the City of Leesburg, Florida authorizing the Mayor and City Clerk to execute a Non-Exclusive End-User License Agreement with Perconti Data Systems for a cost of \$246,400.00; and providing an effective date.**
 - b. Resolution of the City Commission of the City of Leesburg, Florida authorizing the Mayor and City Clerk to execute a Maintenance and Support Agreement with Perconti Data Systems, Inc.; and providing an effective date.**
- 4. Ratification of City Manager emergency purchase approval for four (4) Ford F-150 Responder police vehicles for \$138,380.00.**
- 5. Resolution of the City Commission of the City of Leesburg, Florida authorizing the Mayor and City Clerk to execute an Agreement for improvements to the Sleepy Hollow Sports Complex in preparation for NCAA Softball competition with PCDG Construction, LLC for an amount of \$269,037.04; and providing an effective date.**
- 6. Purchase request by the Electric Department of a hydraulic underground conductor puller to replace an 18 year old piece of equipment for \$192,075.00.**
- 7. Purchase request for notebook and mini-desktop computers from Staples Technology Solutions for an amount of \$62,645.71.**

C. RESOLUTIONS:

- 1. Resolution of the City Commission of the City of Leesburg, Florida, setting new rates for providing meter treater surge protection devices to electric utility customers requesting such services; imposing an installation fee for**

future installations of this service; setting a date for the charges imposed by this Resolution to commence; and providing an effective date.

- 2. Resolution of the City Commission of the City of Leesburg, Florida, authorizing the Mayor and City Clerk to execute an Amendment 2 to Professional Services Agreement with Hoyle, Tanner and Associates, Inc., to provide Gopher Tortoise Relocation services related to the Runway 13/31 Rehabilitation Construction project at the Leesburg International Airport for an amount of \$6,817.00; and providing an effective date.**
- 3. Resolution of the City Commission of the City of Leesburg, Florida accepting and approving the City of Leesburg Electric Department's North American Electric Reliability Corporation (NERC) documentation, including the 2020 Annual NERC Compliance Annual Review Report, the 2019 NERC Internal Compliance Monitoring and Enforcement Program Document, the 2019 Internal Controls for Compliance Monitoring Policy, and the 2020 NERC Compliance Program City Commission Presentation; and providing an effective date.**
- 4. Resolution of the City Commission of the City of Leesburg, Florida authorizing the Mayor and City Clerk to execute Amendment 1 to Municipal Solid Waste Disposal and Services Agreement with Covanta Lake II, Inc. for continued disposal of municipal solid waste; and providing an effective date.**

**6. PUBLIC HEARINGS AND NON-ROUTINE ITEMS:
NONE**

**7. INFORMATIONAL REPORTS:
The following reports are provided to the Commission in accordance with the Charter/Ordinances. No action required. NONE**

8. CITY ATTORNEY ITEMS:

9. CITY MANAGER ITEMS:

10. ROLL CALL:

**11. ADJOURN:
PERSONS WITH DISABILITIES NEEDING ASSISTANCE TO PARTICIPATE IN ANY OF THESE PROCEEDINGS SHOULD CONTACT THE HUMAN RESOURCES DEPARTMENT, ADA COORDINATOR, AT 728-9740, 48 HOURS IN ADVANCE OF THE MEETING.**

F.S.S. 286.0105 "If a person decides to appeal any decision made by the Commission with respect to any matter considered at this meeting, they will need a record of the proceedings, and that for such purpose they may need to ensure that a verbatim record of the proceedings is made, which record includes the testimony and evidence upon which the appeal is to be based." The City of Leesburg does not provide this verbatim record.

***** 1st Set of Official Results *****
CERTIFICATE OF COUNTY CANVASSING BOARD
LAKE COUNTY

We, the undersigned, JASON NIMETH, County Judge, D. ALAN HAYS, Supervisor of Elections, JENNIFER HILL, BOCC Chair, constituting the Board of County Canvassers in and for said County, do hereby certify that we met on the Thirteenth day of November, 2020 A.D., and proceeded publicly to canvass the votes given for the several offices and persons herein specified at the **Nonpartisan** held on the Third day of November, 2020 A.D., as shown by the returns on file in the office of the Supervisor of Elections. We do hereby certify from said returns as follows:

For Leesburg Commissioner Seat 1, District 1, the whole number of votes cast was 3,106 of which

Jimmy Burry	received	1,763 votes
Alan Reisman	received	1,343 votes

For Leesburg Commissioner Seat 3, District 3, the whole number of votes cast was 4,763 of which

Jay Connell	received	2,502 votes
Jazmin Felix	received	1,133 votes
Fred Griffin Jr	received	1,128 votes

LEESBURG ORDINANCE 20-25

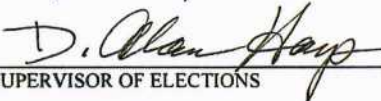
Referendum to Change City Commission Districts to Five Single Member Districts Rather Than Three Single Member and Two At-Large Districts

Yes for Approval	6,975	votes
No for Rejection	3,335	votes

*** Official Results ***
CERTIFICATE OF COUNTY CANVASSING BOARD
LAKE COUNTY

We Certify that pursuant to Section 102.112, Florida Statutes, the canvassing board has compared the number of persons who voted with the number of ballots counted and that the certification includes all valid votes cast in the election.


COUNTY JUDGE


SUPERVISOR OF ELECTIONS


BOCC CHAIR

**AGENDA MINUTES
CITY COMMISSION MEETING
VENETIAN CENTER, 1 DOZIER COURT
MONDAY, NOVEMBER 9, 2020 5:30 PM**

1. CALL TO ORDER

The City of Leesburg Commission held a regular meeting Monday, November 9, 2020, at the Venetian Center. Mayor Dennison called the meeting to order at 5:30 p.m. with the following members present:

Commissioner John Christian
Commissioner Mike Pederson
Commissioner Dan Robuck
Mayor Elise Dennison

Commissioner Jay Hurley appeared by telephone; had some technical issues. Also present were City Manager (CM) Al Minner, City Clerk (CC) J. Andi Purvis, City Attorney (CA) Fred Morrison, the news media, and others.

INVOCATION

Commissioner Robuck gave the invocation followed by the Pledge of Allegiance to the Flag of the United States of America.

PLEDGE OF ALLEGIANCE TO THE FLAG OF THE UNITED STATES OF AMERICA

2. PROCLAMATIONS

There were none.

3. PRESENTATIONS

A. Service Award Recognition of Clell Coleman

Mr. Coleman was unable to attend. This item will be moved to the November 23, 2020 Commission meeting.

4. PUBLIC COMMENTS:

This section is reserved for members of the public to bring up matters of concern or opportunities for praise. Issues brought up will not be discussed in detail at this meeting. Issues will either be referred to the proper staff or will be scheduled for consideration at a future City Commission Meeting. Comments are limited to three minutes.

There were none.

5. CONSENT AGENDA:

Routine items are placed on the Consent Agenda to expedite the meeting. If the Commission/Staff wish to discuss any item, the procedure is as follows: (1) pull the item(s) from the Consent Agenda; (2) vote on remaining items with one roll call vote, (3) discuss each pulled item and vote by roll call

Items pulled for discussion:

5.B.1 - Construction Services Agreement with Wharton-Smith, Inc.

5.C.4 - Representative appointment to the Lake Community Action Agency Board of Directors

Commissioner Christian moved to adopt the Consent Agenda except for 5.B.1 and 5.C.4, and Commissioner Robuck seconded the motion.

The roll call vote was:

Commissioner Christian	Yes
Commissioner Robuck	Yes
Commissioner Hurley	Technical issues
Commissioner Pederson	Yes
Mayor Dennison	Yes

Four yeas, no nays, the Commission adopted the Consent Agenda, as follows:

A. CITY COMMISSION MEETING MINUTES:

- 1. Regular meeting held October 26, 2020**
- 2. Regular meeting held October 12, 2020**

B. PURCHASING ITEMS:

- 2. Purchase request approval for the purchase of one (1) new regenerative air street sweeper from Environmental Products, Inc. for an amount of \$212,299.00.**

Approved

C. RESOLUTIONS:

- 1. Resolution of the City Commission of the City of Leesburg, Florida, accepting and approving a Warranty Deed from Taylor and Taylor, Inc., to**

the Community Redevelopment Agency (CRA) for the Carver Heights/Montclair Area for property lying in the City of Leesburg, Lake County, Florida; and providing an effective date.

ADOPTED RESOLUTION 10,749

- 2. Resolution of the City Commission of the City of Leesburg, Florida authorizing and directing the Mayor and City Clerk to execute a Natural Gas Service Agreement between the City of Leesburg and Leesburg Landing II Community, LLC, for the purpose of setting forth the terms and conditions under which the City of Leesburg will supply Natural Gas service to the Development referred to as Leesburg Landing Phase II; and providing an effective date.**

ADOPTED RESOLUTION 10,750

- 3. Resolution of the City Commission of the City of Leesburg, Florida authorizing the Mayor and City Clerk to execute a Natural Gas Service Agreement between the City of Leesburg and Leesburg Land Holdings, LLC, for the purpose of providing Natural Gas service to the proposed development referred to as Lake Griffin Preserve; and providing an effective date.**

ADOPTED RESOLUTION 10,751

- 1. Resolution of the City Commission of the City of Leesburg, Florida authorizing the Mayor and City Clerk to execute a Construction Services Agreement with a Guaranteed Maximum Price (GMP) with Wharton-Smith, Inc. for \$21,571,562.97; and providing an effective date.**

ADOPTED RESOLUTION 10,752

Commissioner Robuck introduced the resolution to be read of title only. CC Purvis read the resolution by title only.

Commissioner Robuck moved to adopt the resolution and Commissioner Christian seconded the motion.

Mayor Dennison requested comments from the Commission and the audience.

Commissioner Robuck stated the Commission is familiar with this project, but since voting on a \$21 million dollar project, he asked the city manager to give a brief description of the project for the public.

CM Minner stated this is the Turnpike Wastewater Treatment expansion project, which required a few things for the city in preparation of growth in the south western and south Leesburg areas, as well as growth pending from the Villages. On a financial side, the city made some long range financial plans; issued debt for the sewer fund back in July, that was \$15 million, and planned on cash floating that debt with income coming in from the Villages, so there is an offset and a little bit of gain for the fund, which

is good. The plant had some issues where it really was never able to reach its nameplate capacity of 4 MGD (million gallons per day), so the plan was to get to that 4 MGD. Basically, doing some expansions of all the contact chambers in the plant, like the aeration chamber, the digesters, changing some pipe mechanisms, and changing the way the SBR works through aeration. With all that it is a \$21.5 million dollar project. The target deadline for completion is about 16 months, March 2022, which is ahead of schedule.

The roll call vote was:

Commissioner Robuck	Yes
Commissioner Hurley	Technical issues
Commissioner Pederson	Yes
Commissioner Christian	Yes
Mayor Dennison	Yes

Four yeas, no nays, the Commission adopted the resolution.

4. **Resolution of the City Commission of the City of Leesburg, Florida authorizing the City Commission to appoint a representative and alternate to the Board of Directors of Lake Community Action Agency; and providing an effective date.**

ADOPTED RESOLUTION 10,753

Commissioner Christian introduced the resolution and CC Purvis read the resolution by title only.

Commissioner Robuck made motion to appoint Commissioner John Christian as Representative and Commissioner Jay Hurley as Alternate and Commissioner Christian seconded the motion.

The roll call vote was:

Commissioner Hurley	Technical issues
Commissioner Pederson	Yes
Commissioner Christian	Yes
Commissioner Robuck	Yes
Mayor Dennison	Yes

Four yeas, no nays, the Commission adopted the resolution.

6. PUBLIC HEARINGS AND NON-ROUTINE ITEMS: COMPREHENSIVE PLAN INFORMATION SIGN-UP SHEET (YELLOW) AVAILABLE

- A. **Resolution of the City Commission of the City of Leesburg, Florida appointing one member to the Carver Heights / Montclair Area Community Redevelopment Agency (CRA) to serve the remaining four-year term set to expire December 31, 2023; and providing an effective date.**

ADOPTED RESOLUTION 10,754

Mayor Dennison read the resolution by title only.

Mayor Dennison read a statement from Constance Poitier-Christian withdrawing her application.

Mayor Dennison asked if the second applicant, Kevin Conner, was present. Mr. Conner was present and gave a brief statement on his background and why he would like to be appointed to the CRA board.

Commissioner Christian made motion to appoint Kevin Conner to fulfil the vacant seat set to expire December 31, 2023, and Commissioner Robuck seconded the motion.

The roll call was:

Commissioner Christian	Yes
Commissioner Pederson	Yes
Commissioner Robuck	Yes
Commissioner Hurley	Technical issue
Mayor Dennison	Yes

Four yeas, no nays, the Commission appointed Kevin Conner to the Carver Heights CRA board.

- B. An Ordinance of the City of Leesburg, Florida, annexing certain real property consisting of approximately 158 acres; and being generally located west of U.S. Highway 27, north of Bridges Road, and east of Florida's Turnpike, lying in Sections 01 and 02, Township 21 South, Range 24 East, and Sections 35 and 36, Township 20 South, Range 24 East, Lake County, Florida; providing that said property so annexed shall be liable for its proportionate share of the existing and future indebtedness of said City; providing that such annexed property shall be subject to all laws and ordinances of said City as if such territory had been a part of the City of Leesburg at the time of passage and approval of said laws; providing that such annexed territory shall be placed in City Commission District 3; and providing an effective date. (Whitemarsh II & III AX)**

FIRST READING OF ORDINANCE.

Commissioner Pederson introduced the ordinance and CC Purvis read the ordinance by title only.

Mayor Dennison requested comments from the Commission and the audience.

Greg Beliveau, representative for the applicant, stated, if it pleases the Commission, that he would like to defer his comments until after the public has spoken on all three items (6.B, C, and D) rather than after each item. The Commission agreed.

- C. An Ordinance amending the Future Land Use Map of the Comprehensive Plan of the City of Leesburg, changing the Future Land Use Map Designation of certain property containing 158 +/- acres from Lake County Urban Low Density to city of Leesburg Estate, for a property generally located west of U.S. Highway 27 and north of Bridges Road, and east of Florida's Turnpike as legally described in Sections 01 and 02, Township 21 South, Range 24 East, and Sections 35 and 36 Township 20 South, Range 24 East, Lake County, Florida; and providing an**

effective date.

FIRST READING OF ORDINANCE.

Commissioner Pederson introduced the ordinance and CC Purvis read the ordinance by title only.

Commissioner Robuck made motion to transmit this item to the State of Florida and Commissioner Christian seconded the motion.

The roll call was:

Commissioner Robuck	Yes
Commissioner Hurley	Technical issues
Commissioner Christian	Yes
Commissioner Pederson	Yes
Mayor Dennison	Yes

Four yeas, no nays, the Commission approved the transmittal to the State.

- D. An Ordinance of the City of Leesburg, Florida, changing the zoning on approximately 158 acres from Lake County A (Agriculture) to City of Leesburg PUD (Planned Unit Development), to allow for single family residential development for a property generally located west of U.S. highway 27, north of Bridges road and east of Florida's Turnpike, as legally described in Sections 01 and 02, Township 21 South, Range 24 East, and Sections 35 and 36, Township 20 South, Range 24 East, Lake County, Florida; and providing and effective date. (Whitemarsh PH II & III) PUD**

FIRST READING OF ORDINANCE.

Commissioner Robuck introduced the ordinance and CC Purvis read the ordinance by title only.

Greg Beliveau deferred his comments until after the public comments.

Marlena Sokol stated the first time she heard of the proposed Whitemarsh 2 and 3 developments was at their September HOA meeting in September when one neighbor, out of four who had received letter from City of Leesburg dated July 23, 2020, brought this up. The rest of the neighborhood would not have known about the proposed development. Primary concerns brought up were the road use, protected wetlands, protected species, and their quality of life. The wetlands are visible upon entering the neighborhood, as is the playground immediately to the left of the entrance; children play in this playground as well as in the streets all through this neighborhood. Sandhill cranes are frequently seen and the presence of gopher tortoises has also been registered with the Florida Wildlife commission.

Great Egret Drive is initially 42 feet wide, landscaped from its U.S. Highway 27 access point then narrows to a 20 feet wide road. Orchard Drive, leading to the proposed development is a dirt path overgrown with vegetation and bordered on both sides by protected wetlands. Using these roads, especially Great Egret Drive as part of the proposed development would negatively impact the quality of life for the existing residents in favor of sprawl. Leapfrog development patterns further fragment natural landscapes by leaving patches of open land intermingled with built up areas. Roadways, fences and other abrupt human defined edges can act as barriers to wide-ranging species and with all these points, she asked the Leesburg Commission to not change the zoning. The neighborhood as it exists cannot handle

increased traffic; residential or heavy construction equipment. She invited the commission to visit their neighborhood and take a closer look at the impacts that this proposed development would have.

Dennis Bean thank Ms. Sokol for her comments; eloquent stated. Mr. Bean thanked the City Clerk's office for quickly and graciously providing him with requested information; so a thank you, great customer service. He also suggested that the commission take ten minutes, drive through the neighborhood, see how close everything is, and you will see what their real concerns are. When they purchased their home at Whitemarsh it was under the pretense of what the neighborhood currently is. In addition, they were told that the wetlands could not be touched; it is in their paperwork. He finds it disheartening that this could happen.

Lisa Christy thanked the commission for all its hard work and also Mr. Beliveau for being patient with them because this is all new, just sprung on them. She reviewed her documents, purchased home in 2013, and she saw nothing agreeing to new home building, only to an HOA, which they agreed. She asked that when work is done, if work is done, please do not drain the marsh. She promises the neighborhood is all in one spirit. She asked to use the remainder of her three minutes for silence. She also passed out pictures for the commission to review of the sandhill cranes seen just that morning. We are not a retirement community, we do not have a boulevard, we have a small narrow road that is the only way in and out of our neighborhood.

Mayor Dennison stated she has driven by Whitemarsh and will visit the community to see what is going on.

Bill Gamble stated he feels that the city is not going to turn down money that this development will bring so they obviously have an uphill battle. His suggestion, if that is the case, is to look at potential other avenues to reach this property. Driving into the community, if you drive faster than 15-20 mph, there is a sharp S curve and you can see multiple near misses; this narrow road is definitely not designed for the amount of traffic we are going to see there. Could an entrance come from the turnpike side? The builder or owner should take that on to allow them to keep their quality of life and raise their families in a safe place. Think about your own communities, take the 100 homes and then quadruple the size of residents and see how that would impact your streets, because that is what we are looking at.

Walter Beliveau stated development is good, but there has to be consideration given to the homes and people living in the area. Over 300 homes, no additional access egress planned, at least two working adults in each family, with at least two cars per home; 600 cars leaving in the morning and returning in the evening on a road 20 feet wide less than a mile from the top of Dilly Marsh, which is the entrance into this new development. Would you want to live on Egret Drive knowing that you are going to have a minimum of 1,200 cars per day potential; I doubt it. In good conscience can you allow this to happen. Development is good for the economy, good for you and the city, but let's do it in good conscience, put in proper access egress, and protect all those who already live here.

Greg Beliveau addressed the traffic and environmental issues. The traffic component, the road system and road design of that subdivision, Whitemarsh, is actually very consistent with several projects on South 27 that were designed by Keith Riddle. Pringle projects designed exactly the same, with the same number of lots and number of homes. For instance, Royal Harbor and Highland Lakes are subdivisions with 500 lots. A smaller subdivision is Legacy, which has a scrub jay habitat such as this project will have. They received a sign off from Fish and Game, which they have to abide by. The other component is that Whitemarsh 2 and 3 was always anticipated to be a growth of Whitemarsh 1; the original plat is designed with a stub out at the end of the road. The utilities are there and the expansion is to go to the west where our project is looked at as going as the entrance from all the roads, the water and sewer lines.

This was anticipated from the beginning with Whitemarsh 1. The environmentalist on this project are the original ones that did phase 1. As far as concerns about the wetlands and endangered species, they have studies accomplished on this property. St. John's just issued their wetland line determination, it has been verified and certified, so they are not going to encroach on those; they actually have to have an upland buffer. They did a sand skink evaluation, done cover boards and again, those have been signed off. We will be setting aside a scrub jay habitat, we know about the gopher tortoises, there is a study on that. They have done an exhaustive analysis. Traffic analysis clearance letters have been received from all agencies, not only local but also FDOT. This project has met all requirements, all reviews have been signed off. In anticipation of hopefully going through the PUD process, the second reading will outline the plan itself, giving all the details on the plan and design and show the concessions made on some of those with their neighbors to the north.

Commission Hurley asked how many homes are currently in Whitemarsh. **Mr. Beliveau** answered he believes 105.

Commissioner Robuck thinks this is a little unique in the access, not ideal, but does not see any other way to access the property. He requested, possibly, that Mr. Beliveau could come back with some restrictions during construction in terms of some time frames where you would not have heavy trucks going in and out everyday at 4:35 a.m. **Mr. Beliveau** stated yes, they can look into that.

Commissioner Christian stated on that note, he was in a Clermont subdivision and they actually had signs posted construction from 7:00 a.m. to 7:00 p.m. So in some cities they are actually doing is. Maybe something to look into and bring back. **Mr. Beliveau** replied certainly.

Commissioner Pederson stated that on the comments about the 20-foot wide road, he would trust that this road will be widened during development construction; wider into the subdivision. **Mr. Beliveau** replied it will probably be 24 with a two foot curb. Their road is actually 20 foot lanes with Miami curb on each side, so with that Miami curb it is 20 plus two feet on each side. It is not a normal curve with bumps, it is a Miami curb. **Commissioner Pederson** stated his guess is that this project is not large enough for a secondary road. **Mr. Beliveau** replied there is no way. They looked at it and the only access through Plantation is through their golf course, does not see that and the turnpike blocks them to the west.

Christa Wzynski stated all the housing developments mentioned are retirement communities for the most part, so when talking about the amount of traffic in and out through the day, Whitemarsh has a lot more. She feels the flow of traffic is different.

Greg Beliveau stated he also mentioned the fact that numerically those communities have a lot more number of lots on those same type of roads, so the traffic numbers would probably pan out numerically. Also, the other component is the not having an option, but having the fact that Phases 2 and 3, this road access was the road access historically outlined and planned that way on the plat of record.

Bill Gamble stated he was one of the first 10 or so homes built there, so he knows about the stub out was there, but he can guarantee it was not to build 300 homes. The lot sizes in the community have about an 80 foot front lot, which is larger than these other communities where you can reach out and touch your neighbor's house from your window. Not sure if that is what is being planned, but when they talked with the original sellers, they did mention that it was going to be a mirror of this, which maybe talking another 100 homes, not 300. The communities mentioned have main boulevards with streets branching off, but that is different than our small road. We are not looking at increasing the traffic on a 20 foot road, even if taking away that Miami curb, so please take that into consideration because this is going to be a big

impact on our community.

Walter Beliveau finds it quite interesting that this gentleman calls it a boulevard; his concept of a boulevard is much more different than a 20 foot road. He appreciates their want, but just because it was that way back in history does not mean it has to be that way today. The way it is is quality of life, safety for children, for families and smart development.

Paul Wzynski thanked his neighbors for eloquently stating their concerns. It was mentioned that the roads in the new part of the development would be 24 feet wide and ours is 20, so I am assuming that your 24 foot is for safety reasons and traffic. Our road is not and they have concerns about the safety of all the residents because their roads are not set for an extra 300 homes.

Greg Beliveau stated instead of a continued debate, he would delay this until the commission has seen the actual plans, see what they are doing, what is proposed, and what they are accomplishing. That way we can go through a discussion that actually outlines what they are trying to accomplish and how they are getting there. He will also have Keith Riddle present to address the road situation and the transportation items.

Commissioner Pederson asked Mr. Beliveau if he could compare the lot sizes in phase 1 to what is being proposed.

Mr. Beliveau stated they have three different lot sizes and in the proposed design they are proposing to put the larger lots abutting the existing subdivisions. With the layout they have extensive wetlands as proposed buffers, so they have a lot of open space.

Mayor Dennison thanked everyone for coming and stated the second reading will be announced. She also encouraged the other Commissioners to take a ride down there to help visualize what is going on.

7. INFORMATIONAL REPORTS:

The following reports are provided to the Commission in accordance with the Charter/Ordinances. No action required.

A. Financial Reports as of September 2020

No comments.

8. CITY ATTORNEY ITEMS:

None.

9. CITY MANAGER ITEMS:

None.

10. ROLL CALL:

Commissioner Pederson had nothing.

Commissioner Robuck congratulated our new incoming Commissioners, Jimmy Burry and Jay Connell. Also, congratulation to the other candidates, he thinks everyone ran a really good race; it was very cordial and that was good for the City. He gave a shout out to Alan Hays, Supervisor of Elections; in Lake County we knew in two houses what our totals were and that says a lot for him and the professionalism of this staff and how well prepared they were with this historic turnout. Lots of mail votes, early voting, and in Lake County, at least, it wall went well, flawlessly, so that was good to see.

Commissioner Christian echoed Commissioner Robuck and welcomed new incoming Commissioners elect Jimmy Burry and Jay Connell. Also to the other candidates who ran an outstanding race, we had some new faces involved and he thinks it does Leesburg well to have spirited competition and it makes our city look progressive. Also, to Mr. Conner for coming on the Carver Heights CRA. We look forward to seeing some very progressive things from Carver Heights/Montclair area as see the last few meetings we have had a lot of new growth opportunities for our city. He thinks our city is poised to grow and he commends our staff working with all those that come in and even those who oppose. He also thinks the Mayor has done a very fine job with some very contentious, in the middle of a pandemic, so we do commend you. Also, Al and Andi maybe on our agendas we could add back the first and second reading of ordinances; without it, it is kind of confusing.

Commissioner Hurley echoed the other commissioners in welcoming Jimmy Burry and Jay Connell, good job. He hopes the success of Leesburg just keeps on rolling as we have had the last several years. Excited to see what kind of ideas you all bring and to the other contestants as well. Thank you to everyone still in the room from the Whitemarsh project; we have a great need in Leesburg with the Villages coming in that, that whole corridor is going to explode. We are going to have lots of jobs in the service industry and when these things get brought up it is not that we are not doing our job, our due diligence, we are not being methodical about it. You can go to any neighborhood in Leesburg, over to Sunnyside, Sleepy Hollow, wherever, there are neighborhoods with 500 houses in them without boulevards. It comes down to responsibility, the people who are going to be driving in there are not the visitors flying through your neighborhoods and wrecking things, they are going to be your neighbors if this thing passes. Hopefully when this comes back there will be a lot of answers. When Whitemarsh when in the Plantation was mad about it and when Plantation when in people who owned cows were made about that. It does not matter when we are trying to do some type of development, we continually have opposition. Have not, in my eight years, had one residential community being developed where the surrounding houses wanted it there. At the end of the day, Leesburg is growing, Florida is growing at a rapid rate and as part of that we have got to be able to have housing for our residents. If we are ever going to raise our medium income and get all the things done that everybody wants to have in Leesburg, if you do not have a place for work force to live you are never going to bring industry in. It is not just oh wow we can get a little more money on the taxes so put this development here, there are a lot of things that go into it. So when I vote, please understand I am not going to be voting one way or the other just on some tax dollars or just from the history of the old days, it is looking at the totality of it all.

Mayor Dennison asked the situation with the restaurant in Venetian Gardens. **CM Minner** stated the last he checked the Boyd group was in the process of getting their loan. They were on the brink of getting their financing all wrapped up back in March and COVID happened, which has been a big delay. They were down to two weeks on getting their loan closed and the bank challenged our title, so Fred did some work on that, we got it back to the title company. He has a message into Mr. Boyd but has not heard back. We have not heard back from the title company, so we are assuming that is good news. He

will provide a more formal update as soon as he hears back from Mr. Boyd. **Mayor Dennison** inquired to the status of Mote Morris, what are we looking at as far as reopening. **CM Minner** thinks we are about four months out and asked Public Works Director Cliff Kelsey. **PWD Kelsey** stated that is correct, we are looking at finishing construction the end of January, first of February, and then move in some furniture and some other small work. Goal for ribbon cutting is first of March. **Mayor Dennison** thanked everyone who voted in the election to change our city charter so that going forward no district can take control over the board in Leesburg. There will be a fair distribution over the districts, do away with at-large, and it will depend on how the census turned out as far as what changes are going to start happening in the different districts. Looking forward, she thinks the citizens have protected Leesburg and she thinks it is a great amendment, so thank you. Finally, she reminded everyone that COVID is not over; every country in the world is experiencing massive increases in this disease. We had a great announcement this morning that Pfizer looks like they have a 90% efficacy rate, in other words, they expect this to work 90% of the time for our people; so that is coming, but please continue to take your precautions with the masks, with the six foot distance and no massive parties or anything. We have the holidays coming up and we all want to get back to normal, please just be careful.

Commissioner Christian stated the new pool had its groundbreaking and work has already started.

Mayor Dennison stated yes, the pool had its groundbreaking the other day and has Commissioner Christian must said building is already going on, so that is going to add a lot to the Pine Street area of Leesburg. We are also continuing with our teen center over on the other side of town, so while things have slowed down a little because of what has happened this year, and it has been a crazy year, we are still moving ahead with the things we promised.

11. ADJOURN:

PERSONS WITH DISABILITIES NEEDING ASSISTANCE TO PARTICIPATE IN ANY OF THESE PROCEEDINGS SHOULD CONTACT THE HUMAN RESOURCES DEPARTMENT, ADA COORDINATOR, AT 728-9740, 48 HOURS IN ADVANCE OF THE MEETING.

F.S.S. 286.0105 "If a person decides to appeal any decision made by the Commission with respect to any matter considered at this meeting, they will need a record of the proceedings, and that for such purpose they may need to ensure that a verbatim record of the proceedings is made, which record includes the testimony and evidence upon which the appeal is to be based." The City of Leesburg does not provide this verbatim record.

Meeting adjourned at 6:31 p.m.

City of Leesburg Lake Front City

Agenda Memorandum

Item No: 5.B.1.

Meeting Date: November 23, 2020

From:

Subject: Purchase request by Fleet Services for the purchase of two (2) replacement mini-excavators from Synergy Equipment, Inc. for a total cost of \$87,066.88.

Staff Recommendation:

Staff recommends award of Invitation for Bid to and approve the purchase of two (2) mini-excavators from Synergy Equipment for a cost of \$87,066.88.

Analysis:

The purpose of this purchase is to replace two (2) existing mini-excavators that are used by the Water Division (Unit #3026) and Wastewater Division (Unit #320). The mini-excavator being replaced for the Water Division is a 2005 model year Ditch Witch Mx352. The piece of equipment being replaced for the Wastewater Division is a 2002 model year International Harvester KHB3GB. Both excavators have been evaluated and scored a 32.4 and a 38.5 in the condition assessment. Fleet Services has deemed both pieces of equipment need to be replaced in order for these utility divisions to have reliable equipment to use in the operations.

The low bidder submitted a bid response for Bobcat Equipment. If approved the Supplier will provide a Bobcat Model E35 to replace unit #320 for the Wastewater Division. A Bobcat model E50 will be purchased to replace unit #3026 for the Water Division.

Procurement Analysis:

The Procurement Division issued Invitation for Bid (IFB) 210051 on October 20, 2020. ON November 5, 2020 the City received eleven (11) electronic bid responses. The Procurement Division has evaluated all bids received and deemed all bids responsive and all bidders responsible. Fleet Services has reviewed the equipment proposed by the low bidder Synergy Equipment and deemed the equipment as meeting the City's minimum specifications. A summary of the bidders and their bid amounts are provided in the attached Final Detailed Bid Tabulation. Staff applied the City's Local Vendor preference but it did not result any a change to the low bidder.

Staff recommends award of the IFB and approval of the purchase to Synergy Equipment, Inc.

Options:

1. Approve award of the IFB and purchase request to Synergy Equipment; or
2. Such alternative action as the Commission may deem appropriate.

Fiscal Impact:

Funds are specifically budgeted and available for this purchase. An amount of \$100,000 was budgeted for the purchase of the two mini-excavators. This purchase is less than the budget amount providing a budget versus actual savings of \$12,933.12.

Account No.	510-5199-519.64-13
Project No.	FLEET
WF No.	WF1310892 / 001
	WF1310881 / 001
Requisition	52677
Budget	\$100,000.00
Available	\$100,000.00

Submission Date and Time: 11/18/2020 12:56:35 PM

BID TABULATION
210051 - MINI-EXCAVATORS

	BIDDER NAME:	SYNERGY EQUIPMENT	EARTHMOVERS CONST EQUIPMENT	RIDGE EQUIPMENT CO. INC	DOBBS EQUIPMENT,LLC	BEARD EQUIPMENT CO	CRYSTAL TRACTOR
	BIDDER LOCATION:	Valrico, FL	Apopka, FL	Sebring, FL	Riverview, FL	Ocala, FL	Leesburg,FL
1.0	EXCAVATOR #1	\$35,425.92	\$39,437.00	\$40,343.00	\$42,000.00	\$43,490.00	\$41,546.34
	Model Year:	2021	2021	2021	2021	2020	2021
	Make:	Bobcat	Hyundai	Kubota	John Deere	John Deere	Kubota
	Model:	E35 25HP R	R35Z-9A	U35-4R1A	35G	35G	U35
	Delivery Cal. Days ARO:	60	120	120	30	60	30
2.0	EXCAVATOR #2	\$51,640.96	No Bid	\$56,272.00	\$54,750.00	\$54,490.00	\$57,075.08
	Model Year:	2021	NO BID	2021	2021	2020	2021
	Make:	Bobcat	NO BID	Kubota	John Deere	John Deere	Kubota
	Model:	E50 R2-Series	NO BID	U35-4R1A	35G	35G	U35
	Delivery Cal. Days ARO:	60	NO BID	120	30	60	30
	TOTAL BASE BID AMOUNT:	\$87,066.88	\$39,437.00	\$96,615.00	\$96,750.00	\$97,980.00	\$98,621.42
Local Vendor Preference:							
	Tier I - 5%	\$91,420.22	\$37,197.22	\$91,420.22	\$91,420.22	\$91,420.22	\$91,420.22
	Tier II - 2%	\$88,808.22	\$36,134.44	\$88,808.22	\$88,808.22	\$88,808.22	\$88,808.22

BID TABULATION
210051 - MINI-EXCAVATORS

	BIDDER NAME:	EVERGLADES EQUIPMENT GROUP	RING POWER CORPORATION	RING POWER CORPORATION 1	LOWERY'S TRUE VALUE	CRITICAL POWER SOLUTIONS GROUP, INC
	BIDDER LOCATION:	Leesburg, FL	Riverview, FL	Riverview, FL	Bushnell, FL	Miami, FL
1.0	EXCAVATOR #1	\$39,730.00	\$42,743.00	\$42,743.00	\$45,615.00	\$49,900.00
	Model Year:	2020	2021	2021	2020	2020
	Make:	John Deere	Caterpillar	Caterpillar	Wacker Neuson	SANY
	Model:	30G	303E	303E	EZ36	SY35CAB
	Delivery Cal. Days ARO:	30	60	60	21	5
2.0	EXCAVATOR #2	\$60,400.00	\$61,717.00	\$61,717.00	\$59,180.00	\$67,990.00
	Model Year:	2020	2021	2021	2020	2020
	Make:	John Deere	Caterpillar	Caterpillar	Wacker Neuson	SANY
	Model:	30G	305E2	305E2	EZ53	SY50CAB
	Delivery Cal. Days ARO:	30	60	60	21	5
	TOTAL BASE BID AMOUNT:	\$100,130.00	\$104,460.00	\$104,460.00	\$104,795.00	\$117,890.00
Local Vendor Preference:						
	Tier I - 5%	\$91,420.22	\$91,420.22	\$91,420.22	\$91,420.22	\$91,420.22
	Tier II - 2%	\$88,808.22	\$88,808.22	\$88,808.22	\$88,808.22	\$88,808.22

City of Leesburg Lake Front City

Agenda Memorandum

Item No: 5.B.2.

Meeting Date: November 23, 2020

From: Mike Thornton, (Purchasing Manager)

Subject: Resolution of the City Commission of the City of Leesburg, Florida authorizing the Mayor and City Clerk to execute a corrected Amendment 3 to fix scrivener's error with NFP for financial advisory services; and providing an effective date.

Staff Recommendation:

Staff recommends approval of the Resolution authorizing execution of an Amendment 1 with NFP Retirement, Inc. and repealing Resolution 10,731.

Analysis:

On October 12, 2020 the City Commission approved Resolution 10,731 authorizing execution of an Amendment with NFP Retirement, Inc. The Amendment prepared by staff and executed by both parties contained errors. The attached Amendment 1 and Resolution have been corrected. Approval this item will correct the scrivener's errors and repeal Resolution 10,731.

The original Amendment was numbered incorrectly and not all the recitals were accurate.

Procurement Analysis:

This Amendment is permitted in accordance with the terms of the original Agreement between the parties.

Options:

1. Approve the resolution correcting the scrivener's error.
2. Such alternative action as the Commission may deem appropriate.

Fiscal Impact:

There is no fiscal impact with the approval of this resolution. Fees related to the services are paid from the retirement account funds as an administrative fee.

Submission Date and Time: 11/18/2020 1:01:01 PM

RESOLUTION NO. _____

**RESOLUTION OF THE CITY COMMISSION OF THE CITY OF LEESBURG,
FLORIDA AUTHORIZING THE MAYOR AND CITY CLERK TO EXECUTE A
CORRECTED AMENDMENT 3 TO FIX SCRIVENERS ERROR WITH NFP
FOR FINANCIAL ADVISORY SERVICES; AND PROVIDING AN EFFECTIVE
DATE.**

WHEREAS the City Commission approved Resolution 10,731 on October 12, 2020.

WHEREAS the Amendment executed by approval of Resolution 10,731 contained several scrivener's errors that must be corrected.

BE IT RESOLVED BY THE CITY COMMISSION OF THE CITY OF LEESBURG, FLORIDA:

THAT the Mayor and City Clerk are hereby authorized to execute an agreement with NFP RETIREMENT, INC. whose address is 1060 Maitland Center Common, Suite 360, Maitland, Florida 32751 for Investment Advisor Services to the city related to the employee 401(a) and 457(b) retirement plans.

THAT Resolution 10,731 is repealed and replaced by this Resolution.

THAT this resolution shall become effective immediately.

PASSED AND ADOPTED by the City Commission of the City of Leesburg, Florida, at a regular meeting held the 23rd day of November 2020.

Mayor

ATTEST:

City Clerk

AMENDMENT ONE
to an
AGREEMENT FOR PROFESSIONAL SERVICES

THIS AMENDMENT is made as of the 1st day of October 2020 between **THE CITY OF LEESBURG, FLORIDA** a Florida Municipal Corporation, whose address is 501 West Meadow Street, Post Office Box 490630, Leesburg, Florida 34749-0630 ('CITY'), and **NFP RETIREMENT, INC** whose address 1060 Maitland Center Common, Suite 360, Maitland, Florida 32751 ('NFP Retirement').

The CITY and Fiduciary First, LLC entered into an Agreement for the City to obtain financial advisory services for an initial term ending September 30, 2020; and

On about October 1, 2018 Fiduciary First, LLC was acquired by NFP Retirement, Inc. (NFP Corporation) and the Agreement between the CITY and Fiduciary First, LLC was assigned to NFP Retirement, Inc.; and

The CITY and NFP Retirement desire to enter into an Amendment One extending the term of the Agreement for an additional two (2) years through September 30, 2022 as approved by Resolution of the Leesburg City Commission on the date stated in the preamble to this Amendment.

WITNESSETH:

NOW, THEREFORE, in consideration of the mutual premises made herein and of the mutual benefits to be derived therefrom, the parties hereby agree as follows:

1. **Recitals.** The above recitals are true and correct and are incorporated by reference herein and made a part hereof.
2. **Term.** The Term is amended extending the Term of the Agreement through September 30, 2022.
3. **Modification.** Except as specifically modified by this Amendment, all terms and conditions of the prior Agreement shall continue in full force and effect as originally executed. Nothing herein shall be deemed or construed to amend or modify any other Agreement or undertaking between the City and NFP Retirement other than as defined above.
4. **Counterparts.** This Agreement may be executed in multiple counterparts, each of which may be considered an original, but all of which together shall constitute but one and the same instrument. This Agreement when signed by a party may be delivered by electronic mail or facsimile transmission with the same force and effect as if the same were an executed and delivered original, manually-signed counterpart.

[Signature page follows.]

IN WITNESS WHEREOF, the parties have hereunto executed this Amendment, which shall become effective as of the date stated in the preamble of this Amendment.

NFP RETIREMENT, INC.

By: _____

Printed: _____

Its: _____
(Title)

CITY OF LEESBURG, FLORIDA

Elise Dennison, Mayor

ATTEST:

J. Andi Purvis, City Clerk

Approved as to form:

Fred A. Morrison, City Attorney

City of Leesburg Lake Front City

Agenda Memorandum

Item No: 5.B.3.

Meeting Date: November 23, 2020

From: Mike Thornton, (Purchasing Manager), Ann Kinsey, (Building Official)

Subject: Resolution executing agreements for the purchase of new Community Development (Building Services / Planning & Zoning / Code Enforcement) software platform.

Staff Recommendation:

Staff recommends approval of the resolutions authorizing execution of the Non-Exclusive End-User License Agreement and Maintenance and Support Agreement with Perconti Data Systems for the CD-Plus software platform.

Analysis:

The purpose of this Solicitation is to select a new software provider for the City's Building Services, Planning and Zoning, and Code Enforcement areas. All these areas are referred to as Community Development and are 'land based' activities. It is common practice for all three areas to use the same software solution as the activities of each area is intertwined and can overlap in the other areas. All activities typically tie back to an address or parcel of land.

The City has been using software products from Central Square Technologies (fka Sungard Public Sector and fka HTE). The affected areas currently use the OneSolution produce from Central Square Technologies. This product is no longer being developed by the provider, Central Square Technologies. The software solution needs to be replaced with something new that can provide more efficiencies to the community development areas and provide better services, both in person and on line, to builders, developers, and citizens as a whole.

Procurement Analysis:

The City issued a Request for Proposal (RFP) soliciting proposals from qualified and interested companies to provide the City with a new Community Development Software platform. The City received seven (7) responses to the RFP. Following an evaluation of all proposals and produce demonstrations the Committee narrowed the list to three (3) companies. The Committee then participated in a hands on demo or 'test' drive of each software platform. The Committee also met (virtually) with a current client from each company. Following this exhaustive process, the Committee selected the CD-Plus software product from Perconti Data Systems as being the best solution for the City's current and future needs.

The Final Ranking of all responding companies are provided here in the final order of ranking. The Top 3 companies were the finalists.

1. Perconti Data Systems (CD-Plus)
2. Central Square Technologies (Community Development)
3. Online Services (CitizenServe)
4. The Davenport Group
5. BS&A Software
6. Tyler Technologies, Inc.
7. General Code, LLC

The Total cost for the initial software purchase is \$246,400.00. This is a one time cost and includes a \$61,600 discount with the City using the same code set and initial setup as Lake County Building Services. This is one time cost. Recurring costs for annual maintenance and support which also includes custom changes to the software. Annual maintenance and support averages \$56,000.00 per year over the next 4 years (2022 - 2025).

Options:

1. Approve the resolutions authorizing execution of the End-User License Agreement and Maintenance and Support Agreement with Perconti Data Solutions for the CD-Plus software product, or
2. Such alternative action as the Commission may deem appropriate.

Fiscal Impact:

The first year cost in calendar year 2021 for this purchase is \$246,400.00. This is one time cost. Recurring costs for annual maintenance and support will average \$56,000.00 per year starting January 1, 2022.

Account No.	151-6131-524.64-10
Project No.	GFASST
WF No.	WF1254074 / 001
Requisition	51509
Budget	\$246,400.00
Available	\$246,400.00

Submission Date and Time: 11/18/2020 1:06:10 PM

RESOLUTION NO. _____

**RESOLUTION OF THE CITY COMMISSION OF THE CITY OF LEESBURG,
FLORIDA AUTHORIZING THE MAYOR AND CITY CLERK TO EXECUTE A
NON-EXCLUSIVE END-USER LICENSE AGREEMENT WITH PERCONTI
DATA SYSTEMS FOR A COST OF \$246,400.00; AND PROVIDING AN
EFFECTIVE DATE.**

BE IT RESOLVED BY THE CITY COMMISSION OF THE CITY OF LEESBURG, FLORIDA:

THAT the Mayor and City Clerk are hereby authorized to execute an agreement with PERCONTI DATA SYSTEMS, INC. whose address is 400 Beach Drive Northeast, #2101, Saint Petersburg, Florida 33701, for a Non-Exclusive End-User License Agreement in accordance with Request for Proposal 200012.

THAT this resolution shall become effective immediately.

PASSED AND ADOPTED by the City Commission of the City of Leesburg, Florida, at a regular meeting held the 23rd day of November 2020.

Mayor

ATTEST:

City Clerk

PERCONTI DATA SYSTEMS, INC.
Non-Exclusive End-User License Agreement

THIS AGREEMENT, made and entered into this **23rd** day of **November, 2020**, by and between Perconti Data Systems, Inc. (hereinafter "Licensor"), a corporation duly authorized and existing under the laws of the State of Florida, and The City of Leesburg, a Florida Municipal Corporation (hereinafter "Licensee").

WITNESSETH:

WHEREAS, Licensor desires to grant to Licensee and Licensee desires to acquire from Licensor a non-exclusive right and license to use and modify certain computer software as hereinafter defined, on the terms and conditions set forth in this Agreement; and

WHEREAS, both parties represent that they are able to comply with and otherwise satisfy the terms and conditions set forth in this Agreement;

NOW, THEREFORE, in consideration of the premises, as well as the obligations herein made and undertaken, the parties hereto, intending to be legally bound, do hereby covenant and agree as follows:

Section 1

Definitions

The definition of terms set forth in this Section 1 shall apply when such terms are used in this Agreement, its exhibits, and any amendments hereto.

1.1 "Licensed Program." The computer program designated by Licensor as **CD-Plus**, including both source code and object code as well as related procedural code. All programs and modules that are owned by Perconti Data Systems, Inc. and a part of the CD-Plus system.

1.2 "Enhancements." Changes or additions, other than Maintenance Modifications, to the Licensed Program or Licensed Documentation that add significant new functions or substantially improved performance thereto by changes in system design or coding.

1.3 "Errors." Problems caused by incorrect operation of the computer code of the Licensed Program that produces incorrect results or causes incorrect actions to occur.

1.4 "Maintenance Modifications." Modifications or revisions to the Licensed Program or Licensed Documentation that correct Errors therein.

Section 2

Grant of License

2.1 Scope of License. Subject to compliance by Licensee with the terms hereof, Licensor hereby grants to Licensee, in perpetuity unless terminated as provided herein, a personal, non-exclusive, nontransferable license (without the right of sublicense), to:

- a. Install, use, and execute the Licensed Program on one computer or system (LAN) owned or leased and used by Licensee at its facilities in the United States in support of the internal business activities of Licensee;
- b. Use the Licensed Documentation only in conjunction with installation and use of the Licensed Program; and
- c. Prepare Maintenance Modifications to the Licensed Program and use such works only as authorized in Sections 2.1(a) and 2.1(b) hereof.

2.2 Delivery of Materials. Licensor has delivered one copy of the Licensed Program to Licensee as per contract delivery schedule in Exhibit B.

2.3 Availability of Licensor Enhancements. Licensor agrees to offer to Licensee a license to Enhancements that Licensor develops and offers generally to licensees of the Licensee Program at its announced license fees for such Enhancements. Licensor shall advise Licensee of the availability of any such Enhancements and of the license terms available for such Enhancements.

Section 3

Title to Materials

3.1 Title to Licensed Program. All right, title, and interest in and to the Licensed Program and Licensed Documentation, including the media on which the same are furnished to Licensee, are and shall remain with Licensor. Licensee acknowledges that no such right, title, or interest in or to the Licensed Program and the Licensed Documentation is granted under this Agreement, and no such assertion shall be made by Licensee. Licensee is granted only a limited right of use of the Licensed Program and as set forth herein, which right of use is not coupled with an interest and is revocable in accordance with the terms of this Agreement.

3.2 Title to Enhancements and Maintenance Modifications; Restrictions on Use, Disclosure, Access, and Distribution. All right, title, and interest in and to any Enhancements and Maintenance Modifications developed by Licensor or Licensee and furnished to Licensee hereunder shall be and remain with Licensor. Licensee shall treat all such Enhancements and Maintenance Modifications, whether developed by Licensor or Licensee, in accordance with the restrictions and limitations set forth herein respecting Licensed Programs.

Section 4

Royalties and Payments

4.1 License Fee. In consideration of the licenses granted hereunder, Licensee shall pay Licensor a one-time royalty of **\$246,400.00** and is detailed in Attachment 'A'.

4.2 Payment. The License fee set forth in Section 4.1 hereof shall be paid within 15 days of Licensor providing to the Licensee the Licensed Program and an invoice for the Licensed Program.

4.3 Taxes. The license fee specified in Section 4.1 hereof is exclusive of any federal, state, or local excise, sales, use, and similar taxes assessed or imposed with respect to the computer software licensed hereunder. Licensee shall pay any such amounts upon request of Licensor accompanied by evidence of imposition of such taxes, except as licensee is exempt from such taxes.

Section 5

Proprietary Protection of Materials and Trade Secrets

5.1 Acknowledgment of Proprietary Materials; Limitations on Use. Licensee acknowledges that the Licensed Program are unpublished works for purposes of federal copyright law and embody valuable confidential and secret information of Licensor, the development of which required the expenditure of considerable time and money by Licensor. Licensee shall treat the Licensed Programs in confidence and shall not use, copy, or disclose, nor permit any of its personnel to use, copy, or disclose the same for any purpose that is not specifically authorized under this Agreement.

5.2 Secure Handling. Except for copies of the Licensed Program installed and operated upon its computers as permitted hereunder, Licensee shall require that the Licensed Program be kept on Licensee's premises in separate, secured safes or cabinets, which shall be maintained in a manner so as to reasonably preclude unauthorized persons from having access thereto, and Licensee shall permit such safes or cabinets to be open to access only as necessary for Licensee's use thereof in accordance with the terms of this Agreement.

5.3 Proprietary Legends. Licensee shall not permit any personnel of Licensee to remove any proprietary or other legend or restrictive notice contained or included in any material provided by Licensor, and Licensee shall not permit Licensee personnel to reproduce or copy any such material except as specifically authorized hereunder.

5.4 Licensee's Obligations Respecting Access. Licensee shall limit use of and access to the Licensed Program to such personnel of Licensee as are directly involved in the use thereof by Licensee, and Licensee shall (1) disclose such information only to personnel of Licensee who Licensee has no reason to believe are untrustworthy or may violate the provisions of this Section 5 and (2) prevent all Licensee personnel from having access to any such information that is not required in the performance of their duties for Licensee.

5.5 Injunctive Relief. Licensee recognizes and acknowledges that any use or disclosure of the Licensed Program by Licensee in a manner inconsistent with the provisions of this Agreement may cause Licensor irreparable damage for which remedies other than injunctive relief may be inadequate, and Licensee agrees that in any request to a court of competent jurisdiction by Licensor for injunctive or other equitable relief seeking to restrain such use or disclosure, Licensee will not urge that such remedy is not appropriate under the circumstances.

5.6 Technical Protections. Licensor may from time to time prescribe password protection as an additional security measure for the Licensed Program, and Licensee shall cooperate with Licensor in connection therewith.

5.7 Security Audit. Licensor shall have the right to make visits to the Licensee's computer facilities to review security measures respecting the Licensed Program, and, if deficiencies are identified by Licensor, Licensee shall implement such additional security practices as are reasonably necessary to adequately ensure the security of the Licensed Program.

5.8 Survival of Terms. The provisions of this Section 5 shall survive termination of this Agreement for any reason.

Section 6

Limited Warranty, Limitation of Liability, and Indemnity

6.1 Limited Warranty Against Infringement. Licensor warrants that the Licensed Program and Licensed Documentation as delivered to Licensee do not infringe any third-party rights in patent, copyright, or trade secret in the United States.

6.2 Limited Warranty of Conformity. Licensor warrants, for the benefit only of Licensee, that for a period of one year after delivery to Licensee of the Licensed Program, the Licensed Program shall conform in all material respects to the Specifications (except for modifications made by Licensee or by Licensor at the request of Licensee). Licensor assumes no responsibility for obsolescence of the Licensed Program.

6.3 Exclusive Remedy. As the exclusive remedy of Licensee for any nonconformity or defect constituting an Error in the Licensed Program for which Licensor is responsible, Licensor shall use commercially reasonable efforts to provide Maintenance Modifications with respect to such Error. However, Licensor shall not be obligated to correct, cure, or otherwise remedy any Error in the Licensed Program resulting from any (1) modification of the Licensed Program by Licensee, (2) misuse or damage of the Licensed Program other than by personnel of Licensor, or (3) failure of Licensee to notify Licensor of the existence and nature of such nonconformity or defect promptly upon its discovery.

6.4 Disclaimer. EXCEPT AS SPECIFICALLY SET FORTH HEREIN, LICENSOR MAKES NO WARRANTIES, WHETHER EXPRESS OR IMPLIED, REGARDING OR RELATING TO THE LICENSED PROGRAM OR TO ANY OTHER MATERIALS FURNISHED OR PROVIDED TO LICENSEE HEREUNDER, LICENSOR SPECIFICALLY DISCLAIMS ALL IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE WITH RESPECT TO SAID MATERIALS OR THE USE THEREOF.

6.5 Limitation on Liability. Except with respect to liability arising from claims of infringement of third-party rights in the United States in copyright, trade secret, or patent, in no event shall Licensor be liable under any claim, demand, or action arising out of relating to its performance or lack thereof under this Agreement for any special, indirect, incidental, exemplary, or consequential damages, whether or not Licensor has been advised of the possibility of such claim, demand, or action.

6.6 Licensee Indemnification. Up to but not in excess of the amount of the statutory waiver of sovereign immunity provided by §768.28, Fla. Stat. (2020), Licensee shall and does hereby agree to indemnify, hold harmless, and save Licensor from liability against any claim, demand, loss, or action (1) resulting from Licensee's use or modification of the Licensed Program and (2) alleging that any Maintenance Modifications made by Licensee infringe any third-party rights in the United States respecting copyright, trade secret, or patent. The foregoing indemnification is predicated upon Licensor (1) fully cooperating with Licensee in the defense or settlement of such actions and (2) giving Licensee prompt written notice of any claim, demand, or action for which indemnification is sought.

6.7 Licensor Indemnification. Licensor shall and does hereby agree to indemnify, hold harmless, and save Licensee from liability against any claim, demand, loss, or action alleging that the Licensed Program or any Maintenance Modifications or Enhancements made by Licensor infringe any third-party rights in the United States respecting copyright, trade secret, or patent. The foregoing indemnification is predicated upon Licensee (1) fully cooperating with Licensor in the defense or settlement of such actions and (2) giving Licensor prompt written notice of any claim, demand, or action for which indemnification is sought.

Section 7

Term and Termination

7.1 Term. This Agreement shall commence on the date and year first above written and shall continue until terminated in accordance with the terms thereof.

7.2 Termination by Licensee. Licensee may terminate this Agreement at any time upon written notice to Licensor.

7.3 Termination by Either Party. Either party may terminate this Agreement upon 30 days written notice to the other party if the other party commits a breach of any term hereof and fails to cure said breach within the 30-day period. Such notice shall set forth the basis of the termination.

7.4 Actions Upon Termination. Upon termination of this Agreement for any reason, Licensee shall immediately cease use of, and return forthwith to Licensor, the Licensed Program, and any copies or portions thereof, including Maintenance Modifications or Enhancements.

Section 8

Miscellaneous

8.1 Entire Agreement. The provisions herein constitute the entire agreement between the parties with respect to the subject matter hereof and supersede all prior agreements, oral or written, and all other communications relating to the subject matter hereof. No amendment or modification of any provision of this Agreement will be effective unless set forth in a document that purports to amend this Agreement and that is executed by both parties hereto.

8.2 No Assignment. Licensee shall not sell, transfer, assign, or subcontract any right or obligation hereunder without the prior written consent of Licensor. Any act in derogation of the foregoing shall be null and void; provided, however, that any such assignment shall not relieve Licensee of its obligations under this Agreement.

8.3 Force Majeure. Excepting provisions of this Agreement relating to payment of royalties and protection of Licensor's Proprietary information, neither party shall be in default of the terms hereof if such action is due to a natural calamity, act of government, or similar causes beyond the control of such party.

8.4 Governing Law. The validity, construction, and performance of this Agreement shall be governed by the substantive laws of the State of Florida.

8.5 Severability. If any provision of this Agreement is held by a court of competent jurisdiction to be contrary to law, the remaining provisions of this Agreement will remain in full force and effect.

8.6 Notice. Any notice required or permitted to be made or given by either party under this Agreement shall be made in writing and delivered by hand or by certified mail, postage prepaid, addressed as first set forth above or to such other address as a party shall designate by written notice given to the other party.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed by their duly authorized representatives, on the date and year first above written.

CITY OF LEESBURG, FLORIDA

PERCONTI DATA SYSTEMS, INC.

By: _____

By: _____

Title: _____

Title: Salvatore Perconti, President

Attest: _____

J. Andi Purvis, City Clerk

Address for Correspondence:

City of Leesburg
501 W. Meadow St.
Leesburg, Florida 34748

Address for Correspondence:

Perconti Data Systems, Inc.
400 Beach Drive NE #2101
ST PETERSBURG, FL 33701

RESOLUTION NO. _____

**RESOLUTION OF THE CITY COMMISSION OF THE CITY OF LEESBURG,
FLORIDA AUTHORIZING THE MAYOR AND CITY CLERK TO EXECUTE A
MAINTENANCE AND SUPPORT AGREEMENT WITH PERCONTI DATA
SYSTEMS, INC.; AND PROVIDING AN EFFECTIVE DATE.**

BE IT RESOLVED BY THE CITY COMMISSION OF THE CITY OF LEESBURG, FLORIDA:

THAT the Mayor and City Clerk are hereby authorized to execute an agreement with PERCONTI DATA SYSTEMS, INC. whose address is 400 Beach Drive Northeast, #2101, Saint Petersburg, Florida 33701, for software Maintenance and Support Services in accordance with Request for Proposal 200012.

THAT all future expenditures for commodities (goods & services) ordered under this Agreement are approved provided Commission has appropriated funds in the applicable fiscal year. Should the department fail to budget funds for orders under this Agreement or purchases exceed the appropriated funds, commission approval for any orders will be required.

THAT this resolution shall become effective immediately.

PASSED AND ADOPTED by the City Commission of the City of Leesburg, Florida, at a regular meeting held the 23rd day of November 2020.

Mayor

ATTEST:

City Clerk

PERCONTI DATA SYSTEMS, INC.

Maintenance and Support Agreement

This Maintenance and Support Agreement is made and entered into by and between Perconti Data Systems, Inc., hereinafter referred to as "Support Vendor", and the City of Leesburg, a Florida Municipal Corporation, hereinafter referred to as "Customer". This Agreement is considered binding upon full payment by Customer of the proper Perconti Data Systems, Inc. maintenance invoice during each subsequent Calendar Year.

WITNESSETH:

WHEREAS, the Customer has purchased a license to one or more modules of the computer system henceforth referred to as "Licensed Program". The Customer has obtained a non-exclusive, non-transferable license to use certain computer software (the "Licensed Program") on certain terms and conditions; and

WHEREAS, Support Vendor has, as the owner of the Licensed Program, the source code and other support documentation for the Licensed Program and has the requisite authorization to have access to the Licensed Program in Customer's possession and to make and offer to Customer the maintenance modifications, enhancements, and new releases provided for herein; and

WHEREAS, Support Vendor desires to offer Customer certain services with respect to the Licensed Program on the terms and conditions set forth herein;

NOW THEREFORE, in consideration of the promises hereof, and the mutual obligations herein, the parties hereto, intending to be legally bound, hereby agree as follows:

Definitions

For the purposes of this Agreement, the following definitions shall apply to the respective capitalized terms:

"Licensed Program." The computer software henceforth referred to as **CD-Plus**. Including any extracts from such software, derivative works of such software, or collective works constituting such software (such as subsequent Releases) to the extent offered to Customer under this Agreement or the License Agreement.

"Agreement Term." The Agreement Term shall begin on January 1st of each year upon full payment of the maintenance invoice and end on the maintenance end date specified on the maintenance invoice.

"Normal Working Hours." The hours between 8:30A.M. and 5:00P.M. Eastern Time on the days Monday through Friday, excluding regularly scheduled holidays of Support Vendor.

"Releases." New versions of the Licensed Program, which new versions may include both Program Corrections and Enhancements.

"Approved Interface." The online support programs and mechanism by which the Support Vendor accesses the Licensed Programs installed at the Customer's location. All Approved Interfaces will be listed on the Support Vendor's web site (www.perdasys.com). Customers may submit programs to the Support Vendor for approval and addition to the list. Addition to the Approved Interface list is at the sole discretion of the Support Vendor. The Support Vendor will make available at least one Approved Interface solution which will cost the Customer less than \$199.

Scope of Services

During the Agreement Term Support Vendor shall render the following services in support of the Licensed Program, during Normal Working Hours.

- Support Vendor shall maintain a telephone hot line and email address that allows Customer to report system problems and seek assistance in use of the Licensed Program.

- Support Vendor shall provide responsive support and maintenance by providing availability during Normal Working Hours with a goal of no longer than four (4)-hour response time. Support Vendor shall provide modem or Internet support.
- Support Vendor shall be responsible for using all reasonable diligence in correcting verifiable and reproducible program errors when reported to Support Vendor in accordance with Support Vendor's standard reporting procedures. Support Vendor shall, upon verifying that such an error is present, initiate work in a diligent manner toward development of a correction or "fix".
- Support Vendor may, from time to time, offer Program Enhancements to its customers, generally for an additional charge.
- Subject to space availability, Customer may enroll its employees in Support Vendor's training classes, held at Support Vendor's facility, for regular or advanced training.
- Support Vendor shall consider and evaluate the development of Program Enhancements for the specific use of Customer and shall respond to Customer's requests for additional services pertaining to the Licensed Program (including, without limitation, data conversion and report-formatting assistance), provided that such assistance, if agreed to be provided, shall be subject to supplemental charges mutually agreed to by Support Vendor and Customer.
- Customer shall be responsible for procuring, installing, and maintaining all equipment, telephone lines, communications interfaces, and other hardware (other than the hardware constituting the program control center maintained at Support Vendor's facilities) necessary to operate the Licensed Software and to obtain from Support Vendor the services called for by this Agreement.
- Customer shall provide an online interface according to the specifications of the Support Vendor. Customer will permit access to system via online interface as required by Support Vendor. Failure to provide online access via an Approved Interface will result in suspension of the customers maintenance for the current month and forfeiture of that month's maintenance hours. No refunds of maintenance fees will be provided and no rollover of maintenance hours will occur. Support Vendor will inform Customer of any such situation and allow the Customer 2 business days to correct the situation, prior to suspension.

Support Vendor will provide support for a set number of hours per month according to the published maintenance schedule, (available upon request) selected and paid for by the customer. These hours will be based on a rolling average of the set monthly maintenance hours. These hourly allotments are used primarily to establish staffing levels. Customer may not accumulate or carry over monthly maintenance hours. No refunds will be given for any reason. Customer may keep a list of outstanding problems / issues / requests and Customer and Vendor will work together to establish support priorities. Special projects or conditions may be granted an exception to standard maintenance hours use, but any special exceptions must be approved by Perconti Data Systems, Inc. prior to the start of the project or condition. All customers that utilize the CD-Plus OPRS/Web Services will be required to maintain a minimum Silver support level.

Fees and Charges

Customer shall pay the Support Vendor for the services of this Agreement an amount set forth in the Maintenance Invoice. Fees are due at the start date of the agreement. All Fees paid for this agreement are nonrefundable. All Fees must be paid in full, no partial payments will be considered valid.

Customer shall pay Support Vendor for **additional services** its fees and charges based on the Perconti rate schedule (available upon request). Support Vendor reserves the right to change its rate schedule from time to time, provided that no such change will be effective until at least sixty (60) days after Support Vendor has given Customer notice of such change.

Support Vendor shall invoice Customer at the beginning of each calendar month for all fees and charges accrued, and all reimbursable expenses incurred, during the previous month, and Customer shall pay the invoiced amount immediately upon receipt of such invoice. Any amount not paid within 45 days after the invoice date shall bear interest at the lesser of one percent per month or the highest rate allowed by applicable law.

Schedule of Support Fees

2021 Gold Maintenance	\$0.00
2022 Gold Maintenance	\$57,000.00
2023 Gold Maintenance	\$60,000.00
2024 Gold Maintenance	\$60,000.00
2025 Gold Maintenance	\$63,000.00

Support Fees beyond 2025 will be negotiated between parties. Customer may change to a different level/plan of Maintenance and Support. Customer will notify the Support Vendor prior to the start of the next Maintenance and Support term of their selection.

Proprietary Rights

To the extent that Support Vendor may provide Customer with any Error Corrections or Enhancements or any other software, including any new software programs or components, or any compilations or derivative works prepared by Support Vendor (collectively, "Vendor Programs"), Customer may

- install one set of the Vendor Programs, in the most current form provided by Support Vendor, in Customer's own facility;
- use such Vendor Programs in connection with the Licensed Programs, and in a manner consistent with the requirements of the Agreement, for purposes of serving Customer's internal business needs; and
- make copies of the Vendor Programs in machine readable form for nonproductive backup purposes only. Customer may not use, copy or modify the Vendor Programs, or any copy, adaptation, transcription, or merged portion thereof, except as expressly authorized by Support Vendor. Customer's rights shall remain in effect for so long as Customer is authorized to use the Licensed Programs under the License Agreement. Upon termination of such License Agreement, Customer shall return or destroy the Vendor Programs, and returning the Vendor Programs in the manner required by the License Agreement shall be sufficient for such purpose.
- The Vendor programs are and shall remain the sole property of Support Vendor, regardless of whether Customer, its employees, or contractors may have contributed to the conception of such work, joined in the effort of its development, or paid Support Vendor for the use of the work product. Customer shall not assert any right, title or interest in such works, except for the non-exclusive right of use granted to Customer at the time of its delivery or on-site development.

Disclaimer of Warranty and Limitation of Liability

EXCEPT AS EXPRESSLY SET FORTH IN THIS AGREEMENT, SUPPORT VENDOR EXPRESSLY DISCLAIMS ANY AND ALL WARRANTIES CONCERNING THE LICENSED PROGRAM OR THE SERVICES TO BE RENDERED HEREUNDER, WHETHER EXPRESS OR IMPLIED, INCLUDING (WITHOUT LIMITATION) ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

Customer is entitled to recover its provable, actual damages resulting from a default by Support Vendor or improper performance by Support Vendor of its duties and obligations. In no event shall Support Vendor be liable for any indirect, consequential, special, exemplary, or incidental damages of whatever kind and however caused, even if Support Vendor knew or should have known of the possibility of such damages.

Termination

This Agreement may be terminated as follows:

- This Agreement may be terminated by either party without cause with NINETY (90) days written notice. Should the Customer terminate the Agreement any fees paid will be non-refundable. Should the Support Vendor terminate the Agreement paid fees will be refunded on a pro-rated basis using the termination effective date and the end of the current maintenance period.
- This Agreement shall immediately terminate upon the termination of the License Agreement.

- Failure to pay any proper invoice within 30 days or notify the Vendor within 15 days of a valid reason to withhold payment shall be cause for termination of this Agreement by the Support Vendor, at the Support Vendor's option. Partial payments will not cure a breach for non-payment.
- This Agreement may be terminated by either party upon 30 days prior written notice if the other party has materially breached the provisions of this Agreement and has not cured such breach within such notice period.

Following termination of this Agreement, Support Vendor shall immediately invoice Customer for all accrued fees and charges and all reimbursable expenses, and Customer shall pay the invoiced amount immediately upon receipt of such invoice. Customer may continue to use any work supplied to Customer by Support Vendor for the remaining term of the License Agreement. All fees paid for maintenance are nonrefundable. Any amount not paid within 45 days after the due date shall bear interest at the lesser of one percent per month or the highest rate allowable by applicable law. Termination of this Agreement by either party does not relieve Customer of its obligation to pay all proper invoice.

Miscellaneous

Each party acknowledges that it has read this Agreement, understands it, and agrees to be bound by its terms. The parties further agree that this is the complete and exclusive statement of the agreement of the parties with respect to the subject matter hereof and that it supersedes and merges all prior proposals, understandings, and agreements, whether oral or written, between the parties with respect to the subject matter hereof. Specifically, this Agreement supersedes all previous Maintenance Agreements. This Agreement may not be modified except by a written instrument duly executed by the parties hereto. This Agreement will be considered binding and in full effect upon full payment of the maintenance invoice. Partial payment of the maintenance invoice will not place this Agreement into effect.

This Agreement and the parties' obligations hereunder shall be governed, construed, and enforced in accordance with the laws of the State of Florida.

In the event that any provision of this Agreement is held invalid, illegal, or unenforceable, the remaining provisions shall be enforced to the maximum extent permitted by applicable law.

Neither party may assign its rights or duties under this Agreement without the prior written consent of the other party, except to a successor of the licensed program.

The waiver by either party of any term or condition of this Agreement shall not be deemed to constitute a continuing waiver thereof not of any further or additional right that such party may hold under this Agreement.

This Agreement shall not be construed more favorably to one party than the other.

Notices

Any notice required or permitted to be made or given by either party under this Agreement shall be made in writing and delivered postage prepaid, addressed as set forth below or to such other address as a party shall designate by written notice given to the other party.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed by their duly authorized representatives, on the date and year first above written.

CITY OF LEESBURG, FLORIDA

PERCONTI DATA SYSTEMS, INC.

By: _____

By: _____

Title: _____

Title: Salvatore Perconti, President

Attest: _____
J. Andi Purvis, City Clerk

Address for Correspondence:

City of Leesburg
501 W. Meadow St.
Leesburg, Florida 34748

Address for Correspondence:

Perconti Data Systems, Inc.
400 Beach Drive NE #2101
Saint Petersburg, FL 33701

City of Leesburg Lake Front City

Agenda Memorandum

Item No: 5.B.4.

Meeting Date: November 23, 2020

From: Mike Thornton, (Purchasing Manager)

Subject: Ratification of City Manager emergency purchase approval for four (4) Ford F-150 Responder police vehicles for \$138,380.00.

Staff Recommendation:

Staff recommends ratification of the City Manager's emergency purchase approval for four (4) F-150 Responder police vehicles for a total of \$138,380.00.

Analysis:

The Fleet Services Division on behalf of the Police Department budgeted in the 2021 Fiscal Year the replacement of four (4) 2012 Dodge Charger pursuit vehicles with Ford F-150 Responder pickup trucks.

The trucks will be assigned to each of the four (4) patrol shift supervisors. The trucks will benefit the operation by being able to carry additional equipment that may not be needed in each patrol vehicle but can be brought by the supervisor if needed. The trucks will also allow access to areas that cannot be passed by cars or even the Explorer SUV. Access to difficult areas is required on a regular basis as well as during storm events.

Procurement Analysis:

Staff located 2020 model year Ford F-150 Police Responder trucks at a dealership in Hardeeville, SC. If the City had following our standard process of manufactured to order the cost of each truck would have been \$2,000 more and the trucks would not have been available until September of 2021 based on Ford's current production schedule as provided by Ford Fleet Division. City Manager approval was requested in order to obtain the in stock vehicles that were subject to prior sale. Staff made arrangements for transport to Leesburg at a cost of \$400 per truck.

Procurement received one quote from the NJPA cooperative contract on the 2021 Ford F-150 Police Responder for a cost of \$36,495.00. The cost of the 2020 model year trucks from OC Welch Ford Lincoln was \$34,595.00 plus \$400 for transportation. This resulted in a savings of \$1,500.00 and provided immediate delivery.

Options:

1. Ratify the emergency purchase approval by the City Manager.

Fiscal Impact:

Fleet Services has budgeted \$51,600 for the replacement of each of the Dodge Chargers. This amount includes the cost of the vehicle and all equipment to up-fit the vehicle to be put into service. The cost of the equipment is expected to be \$14,000.00 each. The total outfitted cost is estimated to be \$48,995.00 each, providing a budget versus actual savings of \$2,605.00 per vehicle.

Account No.	<u>510-5199-519-6413</u>
Project No.	<u>FLEET</u>
WF No.	<u>1310955, 1310956, 1310957, 1310958</u>
Budget	<u>\$206,400.00</u>
Available	<u>\$206,400.00</u>

Submission Date and Time: 11/18/2020 1:09:16 PM

City of Leesburg Lake Front City

Agenda Memorandum

Item No: 5.B.5.

Meeting Date: November 23, 2020

From: Mike Thornton, (Purchasing Manager), Travis Rima, (Recreation Director)

Subject: Resolution of the City Commission of the City of Leesburg, Florida authorizing the Mayor and City Clerk to execute an Agreement for improvements to the Sleepy Hollow Sports Complex in preparation for NCAA Softball competition with PCDG Construction, LLC for an amount of \$269,037.04; and providing an effective date.

Staff Recommendation:

Staff recommends approval of the Resolution authorizing execution of the Agreement with Prospect Construction and Development Group d/b/a PCDG Construction, LLC for an amount of \$269,037.04.

Analysis:

NOTE: ISSUANCE OF A NOTICE TO PROCEED TO BEGIN WORK OR INCUR ANY EXPENSES IS CONTINGENT UPON THE CITY RECEIVING A SIGNED AGREEMENT WITH THE BIG TEN NCAA CONFERENCE ORGANIZATION FOR THE EVENT.

The purpose of this project is to make specific improvements to the Sleepy Hollow Sports Complex to meet the requirements of NCAA Softball for team competition. The improvements include modifications and enhancements to:

irrigation, infield surface (clay), installation of turf, backstops, bases, bullpens, batting tunnels, improvements to practice and warm-up fields.

Procurement Analysis:

The Procurement Division issued an invitation only solicitation to three (3) known companies that do this level of athletic field improvements and maintenance. The City had to act quickly in order to be positioned to meet the timeline of the Big 10 Conference when a signed contract is received. That warranted an short turn around on bids and an invitation only process. On November 17, 2020 the City received two (2) bid responses.

The lowest bidder PCDG Construction, LLC has submitted a responsive bid and is deemed to be responsible. Procurement staff recommend awarding the Invitation for Bid and Contract to PCDG Construction, LLC.

NOTE: ISSUANCE OF A NOTICE TO PROCEED TO BEGIN WORK OR INCUR ANY EXPENSES IS CONTINGENT UPON THE CITY RECEIVING A SIGNED AGREEMENT WITH THE BIG TEN NCAA CONFERENCE ORGANIZATION FOR THE EVENT.

Options:

1. Approve the Resolution authorizing execution of the Agreement with PCDG Construction, LLC for \$269,037.04; or
2. Such alternative action as the Commission may deem appropriate.

Fiscal Impact:

If the City receives a signed NCAA agreement with the Big Ten NCAA conference organization, the City will process a budget adjustment to recognize the City being awarded a Lake County TDC Grant for \$290,000.00 and will be able to get reimbursed for the cost of the improvements after the event is held.

Account No.	031-8125-572-6310
Project No.	310051
WF No.	WF1319147

Submission Date and Time: 11/18/2020 1:13:00 PM

RESOLUTION NO. _____

**RESOLUTION OF THE CITY COMMISSION OF THE CITY OF LEESBURG,
FLORIDA AUTHORIZING THE MAYOR AND CITY CLERK TO EXECUTE
AN AGREEMENT FOR IMPROVEMENTS TO THE SLEEPY HOLLOW
SPORTS COMPLEX IN PREPARATION FOR NCAA SOFTBALL
COMPETITION WITH PCDG CONSTRUCTION, LLC FOR AN AMOUNT OF
\$269,037.04; AND PROVIDING AN EFFECTIVE DATE.**

WHEREAS the City has the opportunity to host NCAA Softball competitive games for the Big 10 Conference.

WHEREAS the City will be required to make improvements and modifications to the complex in order to meet the competition requirements of the NCAA.

WHEREAS the City Commission recognizes the economic benefits to Leesburg and Lake County by hosting this collegiate softball competition.

BE IT RESOLVED BY THE CITY COMMISSION OF THE CITY OF LEESBURG, FLORIDA:

THAT the Mayor and City Clerk are hereby authorized to execute an agreement with **Prospect Construction and Development Group d/b/a PCDG Construction, LLC** whose address is 4130 United Avenue, Mt. Dora, Florida 32757 for improvements to the Sleepy Hollow Sports Complex pursuant to Invitation for Bid 210111.

THAT the City Procurement Division will not issue a Notice to Proceed to PCDG Construction, LLC before the City has a signed Contract or irrevocable confirmation from the Big 10 Conference their conference members will play at the Sleepy Hollow Sports Complex.

THAT should the Big 10 Conference not approve the competition at Sleepy Hollow the contract with PCDG Construction, LLC may be terminated by the City with written notice from the Purchasing Manager without penalty to the City.

THAT this resolution shall become effective immediately.

PASSED AND ADOPTED by the City Commission of the City of Leesburg, Florida, at a regular meeting held the 23rd day of November 2020.

Mayor

ATTEST:

City Clerk

AGREEMENT FOR CONTRUCTION SERVICES

THIS AGREEMENT is made as of the 23rd day of November in the year 2020, between The City of Leesburg, a Florida Municipal Corporation, whose address is 501 West Meadow Street, Post Office Box 490630, Leesburg, Florida 34749-0630 (hereinafter referred to as the “CITY”), and **Prospect Construction and Development Group d/b/a PCDG Construction, LLC** whose address is 4130 United Avenue, Mt. Dora, Florida 32757 (hereinafter referred to as the “CONTRACTOR”).

NOW, THEREFORE, in consideration of the mutual benefits accruing to the parties to this Agreement, and for other good and valuable considerations, the parties agree as follows:

1. **Contract Documents.** The following documents and information are incorporated by reference and made part hereof; and shall comprise the Contract Documents.

- a. This Agreement; and
- b. Invitation for Bid (IFB) 210111 – Sleepy Hollow Sports Complex Improvements in its entirety; and
- c. Supplemental Conditions attached as Attachment ‘A’; and
- d. The CONTRACTOR’S response to IFB 210111 opened on November 17, 2020.

2. **Scope of Services.** The CONTRACTOR shall furnish the following services generally described as the “SLEEPY HOLLOW SPORTS COMPLEX IMPROVEMENTS” to the CITY as listed in Invitation for Bid 210111. Nothing herein shall limit the CITY’S right to obtain bids or proposals for services from other contractors for same or similar work.

- a. **Optional Bid Items.** Optional bid items are NOT included in the scope of services.

3. **Total Construction Cost.** The CONTRACTOR shall perform the Services for a total price not to exceed **\$269,037.04**. The cost of these services shall not exceed this amount unless the CITY has executed a written change order approving any increase in price.

4. **Labor and Materials.** The CONTRACTOR shall furnish all labor, material and equipment necessary for satisfactory contract performance. When not specifically identified in the technical specifications, such materials and equipment shall be of a suitable type and grade for the purpose. All material, workmanship, and equipment shall be subject to the inspection and approval of the CITY's representative.

5. **Professional License.** The CONTRACTOR holds a Certified General Contractors license number CGC1528426 issued by the State of Florida. The name of the Qualifying Agent is James M. Walmer. CONTRACTOR must maintain this license during the full duration of this Agreement.

6. **Term of Agreement.** This Agreement shall commence upon the date of execution and shall remain in effect until such time as the contracted services have been completed, and

accepted by the CITY's authorized representative, unless earlier terminated in accordance with its provisions. Those portions imposing warranty requirements on CONTRACTOR, together with any implied warranties under law, will continue to remain in effect until completion of the expressed and/or implied warranty periods.

7. **Notice to Proceed.** The CONTRACTOR will not begin work or incur any expenses related to this project without the CITY first issuing a limited or full Notice to Proceed to the CONTRACTOR.

8. **Commencement and Completion.** The CITY and the CONTRACTOR mutually agree time is of the essence with respect to the dates and times set forth in the Agreement Documents. To that end, the CONTRACTOR will commence work not later than **SEVEN (7)** continuous calendar days after CITY issues a Notice to Proceed, and will diligently and continuously prosecute the work at such a rate, and with sufficient forces as will allow the CONTRACTOR to achieve Final Completion no later **FORTY-FIVE (45)** continuous calendar days after CITY issues a Notice to Proceed, subject only to any adjustments in the contract time that may be authorized by change orders properly issued in accordance with the Agreement Documents. In executing this Agreement, CONTRACTOR affirms the time set for completion is reasonable.

9. **Termination for Convenience or Cause.**

a. **For Convenience.** The CITY may terminate this Agreement at any time without cause by providing the CONTRACTOR with SEVEN (7) calendar days advance notice in writing, delivery by email is acceptable. In the event of termination for convenience, all finished or unfinished deliverable items prepared by the CONTRACTOR under this Agreement shall, at the option of the CITY, become the CITY's property. If the Agreement is terminated for convenience by the CITY as provided herein, the CONTRACTOR shall be paid for services satisfactorily completed, less payment or compensation previously made. The CONTRACTOR shall not incur any additional expenses after receiving the written notice of termination.

b. **For Cause or Default.** If, through any cause, the CONTRACTOR should fail to fulfill in a timely and proper manner its obligations under this Agreement, other than for the instances listed below due to "Force Majeure," the CITY will have the right to terminate this Agreement by providing a written notice (Show Cause Notice) to the CONTRACTOR requiring a written response due within FIVE (5) calendar days from receipt of the written notice as to why the Agreement should not be terminated for default. The CITY's Show Cause Notice shall include an Agreement termination date at least SEVEN (7) calendar days subsequent to the due date for the CONTRACTOR's response. Should the CONTRACTOR fail to respond to such show cause notice, or if the CITY determines that the reasons provided by the CONTRACTOR for failure of the CONTRACTOR to fulfill its contractual obligations do not justify continuation of the contractual relationship, the Agreement shall be considered to have been terminated for default on the date indicated in the Show Cause Notice. Should the CITY determine that the CONTRACTOR provided adequate justification that a termination for default is not appropriate under the circumstances; the CITY shall have a unilateral option to either

continue the Agreement according to the original contract provisions or to terminate the contract for convenience. In the event that the CITY terminates the contract for default, all finished or unfinished deliverable items under this contract prepared by the CONTRACTOR shall, at the option of the CITY, become CITY property, and the CONTRACTOR shall be entitled to receive just and equitable compensation for any satisfactory work completed on such materials. Notwithstanding this compensation, the CONTRACTOR shall not be relieved of liability to the CITY for damages sustained by the CITY by virtue of any breach of this Agreement, and the CITY may withhold any payment due the CONTRACTOR for the purpose of set-off until such time as the exact amount of damages due the CITY from such breach can be determined.

In case of default by the CONTRACTOR, the CITY may procure the services from other sources and hold the CONTRACTOR responsible for any excess cost occasioned thereby. The CITY reserves the right to require a performance bond or other acceptable alternative performance guarantees from the successor CONTRACTOR without expense to the CITY.

In addition, in the event of default by the CONTRACTOR under this Agreement, the CITY may immediately cease doing business with the CONTRACTOR, immediately terminate for cause all existing Agreements the CITY has with the CONTRACTOR, and debar the CONTRACTOR from doing future business with the CITY.

Upon the CONTRACTOR filing a petition for bankruptcy or the entering of a judgment of bankruptcy by or against the CONTRACTOR, the CITY may immediately terminate, for cause, this Agreement and all other existing agreements the CONTRACTOR has with the CITY, and debar the CONTRACTOR from doing future business with the CITY.

The CITY may terminate this Agreement for cause without penalty or further obligation at any time following Agreement execution, if any person significantly involved in initiating, negotiating, securing, drafting, or creating the Agreement on behalf of the CITY is at any time while the Agreement or any extension thereof is in effect, an employee or agent of any other party to the Agreement in any capacity or consultant to any other party of the Agreement with respect to the subject matter of the Agreement. Additionally, the CITY may recoup any fee or commission paid or due to any person significantly involved in initiating, negotiating, securing, drafting or creating the Agreement on behalf of the CITY from any other party to the Agreement.

Upon receipt of a termination action, for convenience or cause, the CONTRACTOR shall promptly discontinue all affected work (unless the notice directs otherwise) and deliver or otherwise make available to the City all data, drawings, reports specifications, summaries and other such information, as may have been accumulated by the CONTRACTOR in performing this contract, whether completed or in process.

10. **Force Majeure.** Neither party shall be deemed to be in default of its obligations hereunder if and so long as it is prevented from performing such obligations by any act of war, hostile foreign action, nuclear explosion, riot, strikes, civil insurrection, earthquake, hurricane,

tornado, or other catastrophic natural event or act of God. Should there be such an occurrence that impacts the ability of either party to perform their responsibilities under this contract, the nonperforming party shall give immediate written notice to the other party to explain the cause and probable duration of any such nonperformance.

11. **Guaranty of Faithful Performance and Payment.** A Public Construction Bond (Performance and Payment Bond), written by a Surety firm satisfactory to the City of Leesburg on the forms attached hereto which comply with Section 255.05(1), Florida Statutes, will be required of the successful Bidder to guarantee that he will deliver a complete project under his Contract in strict accordance with the Contract Documents and that he will, after receiving payment from the CITY, pay promptly all persons supplying him with labor or materials for the work.

The Public Construction Bond shall be for an amount not less than the GMP as agreed to and amended by both parties.

This bond shall be substantially in the form provided herein and written by a qualified Surety firm and through a reputable and responsible surety bond agency licensed to do business in the State of Florida and Lake County and meet the following requirements:

The Surety must be rated as "A" or better as to strength by Best's Insurance Guide, published by Alfred M. Best Company, Inc., 75 Fulton Street, New York, New York.

Bonding Limit - Any One Risk: The Bonding Limit of the Surety shall not exceed ten (10) percent of the policy-holders surplus (capital and surplus) as listed by the aforementioned Best's Insurance Guide. The completed Bond shall be executed in four (4) counterparts and delivered to the City of Leesburg with the required Power-of-Attorney and executed contract.

12. **Insurance Requirements.**

a. Scope of Insurance - The CONTRACTOR shall procure and maintain at its own expense, the following minimum insurance coverage, unless otherwise specified in the Contract Documents.

- i All required insurance shall be provided by insurers acceptable to the CITY with an A.M. Best rating of at least A: VII.
- ii The CONTRACTOR shall require, and shall be responsible for assuring that any and all of its subcontractors secure and maintain such insurance that are required by law to be provided on behalf of their employees and others until the completion of that subcontractors work.
- iii The required insurance shall be secured and maintained for not less than the limits required by the CITY, or as required by law, whichever is greater. iv. The required insurance shall not limit the liability of the CONTRACTOR. The CITY does not represent these coverages or amounts to be adequate or sufficient to protect the CONTRACTOR's interests or liabilities, but are merely required minimums.

- iv The provisions of the required insurance are subject to the approval of the City's Risk Manager, and upon request, the CONTRACTOR shall make available certified copies of the various policies for inspection.
- v All liability insurance, except professional liability, shall be written on an occurrence basis.
- vi The CONTRACTOR waives its right of recovery against the CITY to the extent permitted by its insurance policies.
- vii Insurance required of the CONTRACTOR, or any other insurance of the CONTRACTOR shall be considered primary, and insurance of the CITY, if any, shall be considered excess as applicable to any claims which arise out of the agreement, Contract or lease.

b. Certificate of Insurance - The CONTRACTOR shall provide evidence of required minimum insurance by providing the CITY an ACORD or other Certificate of Insurance in forms acceptable to the Risk Manager for the CITY, before any work under the agreement, Contract or lease begins.

- i Except for workers' compensation and professional liability, the CONTRACTOR's insurance policies shall be endorsed to name the City of Leesburg as additional insured to the extent of the agreement, Contract or lease.
- ii The Certificate(s) of Insurance shall designate the CITY as certificate holder as follows: City of Leesburg, Attn: Purchasing Manager, P.O. Box 490630, Leesburg, Florida 34749-0630.
- iii The Certificate(s) of Insurance shall include a reference to the project and/or purchase order number.
- iv The Certificate(s) of Insurance shall indicate that the CITY shall be notified at least thirty (30) days in advance of cancellation.
- v The Certificate(s) of Insurance shall include all deductibles and/or self-insurance retentions for each line of insurance coverage.
- vi The CONTRACTOR, at the discretion of the Risk Manager for the CITY, shall provide information regarding the amount of claims payments or reserves chargeable to the aggregate amount of the CONTRACTOR's liability coverage(s).

c. Comprehensive General Liability - The CONTRACTOR shall purchase and maintain Commercial General Liability coverage on forms no more restrictive than the latest editions of the Commercial General Liability policies of the Insurance Services Office (ISO). The Commercial General Liability policy shall provide minimum limits of \$1,000,000 per occurrence combined single limit that includes coverage for bodily and personal injury and property damage liability for premises, operations, products and completed operations*, independent Contractors, Contractual liability covering the agreement, Contract or lease, broad form property damage coverage, and property damage resulting from explosion, collapse or underground exposures (x, c, u).

- i. For remodeling and construction projects, the CONTRACTOR shall purchase and maintain products and completed operations coverage for

a minimum of three (3) years beyond the CITY's acceptance of the project.

d. Business Automobile Liability - The CONTRACTOR shall purchase and maintain Business Automobile Liability coverage on forms no more restrictive than the latest editions of the Business Automobile Liability policies of the Insurance Services Office (ISO). The Business Automobile Liability policy shall provide minimum limits of \$1,000,000 per occurrence combined single limit that includes coverage for claims for bodily injury and property damage arising from the use of motor vehicles, including on-site and off-site operations, and owned, non-owned and hired vehicles, and employee non-ownership use.

e. Workers' Compensation - The CONTRACTOR shall purchase and maintain Workers' Compensation insurance for all workers' compensation obligations imposed by state law and with employers liability limits of at least \$100,000 each accident and \$100,000 each employee with \$500,000 policy limit for disease.

12. **Waiver of Lien.** The CONTRACTOR agrees to make payment of all proper charges for labor and materials supplied and CONTRACTOR shall hold harmless the CITY against any claim arising out of any unpaid bills for labor, services, or materials furnished for the project covered by this Agreement.

13. **Indemnification.** The CONTRACTOR agrees to make payment of all proper charges for labor required in the aforementioned work and CONTRACTOR shall indemnify CITY and hold it harmless from and against any loss or damage, claim or cause of action, and any attorneys' fees and court costs, arising out of: any unpaid bills for labor, services or materials furnished to this project; any failure of performance of CONTRACTOR under this Agreement; or the negligence of the CONTRACTOR in the performance of its duties under this Agreement, or any act or omission on the part of the CONTRACTOR, his agents, employees, or servants. CONTRACTOR shall defend, indemnify, and save harmless the CITY or any of their officers, agents, or servants and each and every one of them against and from all claims, suits, and costs of every kind and description, including attorney's fees, and from all damages to which the CITY or any of their officers, agents, or servants may be put by reason of injury to the persons or property of others resulting from the performance of CONTRACTOR'S duties under this Agreement, or through the negligence of the CONTRACTOR in the performance of its duties under this Agreement, or through any act or omission on the part of the CONTRACTOR, his agents, employees, or servants.

If however, this Agreement is a "construction contract" as defined in and encompassed by the provision of Florida Statutes § 725.06, then the following shall apply in place of the aforementioned indemnification provision:

The CONTRACTOR shall indemnify the CITY and hold it, its officers, and its employees harmless from liabilities, losses, and costs, including, but not limited to, reasonable attorney's fees to the extent caused by the negligence, recklessness, or intentional wrongful conduct of the

CONTRACTOR and persons employed or utilized by the CONTRACTOR in the performance of this Agreement. The liability of the CONTRACTOR shall, however, be limited to one million and 00/100 dollars (\$1,000,000.00) per occurrence, and the obligation of the CONTRACTOR to indemnify the CITY shall be limited to acts, omissions, or defaults of the CONTRACTOR; any contractors, subcontractors, sub-subcontractors, material men, or agents or employees of any of them, providing labor, services or materials in connection with the project; and the CITY, its officers, agents and employees, provided however that the CONTRACTOR shall not be obligated to indemnify the CITY against losses arising from the gross negligence, or willful, wanton, or intentional misconduct of the CITY, its officers, agents and employees, or against statutory violations or punitive damages except to the extent caused by or resulting from the acts or omissions of the CONTRACTOR, or any contractors, subcontractors, sub-subcontractors, material men, or agents or employees of any of them, providing labor, services, or materials in connection with this Agreement.

14. **Codes, Laws, and Regulations.** CONTRACTOR will comply with all applicable codes, laws, regulations, standards, and ordinances in force during the term of this Agreement.

15. **Permits, Licenses, and Fees.** CONTRACTOR will obtain and pay for all permits and licenses required by law that are associated with the CONTRACTOR'S performance of the Scope of Services. All permits and licenses required by law or requirements of the Request for Proposal will remain in force for the full duration of this Agreement and any extensions.

16. **Public Records Retention.** CONTRACTOR shall keep and maintain public records that ordinarily and necessarily would be required by the CITY in order to perform the services being provided by CONTRACTOR herein. CONTRACTOR shall provide the public with access to public records on the same terms and conditions that the CITY would provide the records and at a cost that does not exceed the cost provided in Chapter 119, Florida Statutes. CONTRACTOR shall ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law. CONTRACTOR shall meet all requirements for retaining public records and transfer, at no cost, to the CITY all public records in possession of the CONTRACTOR upon termination of this Agreement and destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. All records stored electronically must be provided to the CITY by CONTRACTOR in a format that is compatible with the information technology systems of the CITY.

IF THE CONTRACTOR HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORDIA STATUTES TO THE CONTRACTOR'S DUTY TO PROVIDE PUBLIC RECORED'S RELATING TO THIS CONTRACT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT 352-728-9731, 501 W. MEADOW STREET, LEESBURG, FLORIDA 34748.

17. **Access to Records.** The services provided under this Agreement may be funded in part by a grant from a government agency other than the CITY. As a requirement of grant funding CONTRACTOR shall make records related to this project available for examination to any local, state or federal government agency, or department, during CONTRACTOR'S normal business hours. Said records will be maintained for a period of five (5) years after the date of the invoice.

18. **Contingent Fees Prohibited.** The CONTRACTOR warrants that he or she 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 he or she has not paid or agreed to pay any person, company, corporation, individual, or firm, other than a bona fide employee working solely for the CONTRACTOR any fee, commission, percentage, gift, or other consideration contingent upon or resulting from the award or making of this Agreement. In the event of a breach of this provision, the CITY shall have the right to terminate this Agreement without further liability and at its discretion, deduct from the contract price, or otherwise recover, the full amount of any such fee, commission, percentage, gift or consideration paid in breach of this Agreement.

19. **Acceptance of Goods or Services.** The goods delivered as a result of an award from this solicitation shall remain the property of the CONTRACTOR, and services rendered under the Agreement will not be deemed complete, until a physical inspection and actual usage of the product(s) and/or service(s) is (are) accepted by the CITY and shall be in compliance with the terms herein, fully in accord with the specifications and of the highest quality.

Any goods and/or services purchased as a result of this solicitation and/or Agreement may be tested and/or inspected for compliance with specifications. In the event that any aspect of the goods or services provided is found to be defective or does not conform to the specifications, the CITY reserves the right to terminate the solicitation or initiate corrective action on the part of the CONTRACTOR, to include return of any non-compliant goods to the CONTRACTOR at the CONTRACTOR's expense, requiring the CONTRACTOR to either provide a direct replacement for the item, or a full credit for the returned item. The CONTRACTOR shall not assess any additional charge(s) for any conforming action taken by the CITY under this clause. The CITY will not be responsible to pay for any product or service that does not conform to the contract specifications.

In addition, any defective product or service or any product or service not delivered or performed by the date specified in the purchase order or contract, may be procured by the CITY on the open market, and any increase in cost may be charged against the awarded contractor. Any cost incurred by the CITY in any re-procurement plus any increased product or service cost shall be withheld from any monies owed to the CONTRACTOR by the CITY for any contract or financial obligation.

This project will be inspected by an authorized representative of the CITY. This inspection shall be performed to determine acceptance of work, appropriate invoicing, and warranty conditions.

20. **Ownership of Documents.** All data, specifications, calculations, estimates, plans, drawings, construction documents, photographs, summaries, reports, memoranda, and other documents, instruments, information and material prepared or accumulated by the CONTRACTOR (or by such sub-consultants and specialty consultants) in rendering services hereunder shall be the sole property of the CITY who may have access to the reproducible copies at no additional cost other than printing. Provided, that the CONTRACTOR shall in no way be liable or legally responsible to anyone for the CITY'S use of any such materials for another PROJECT, or following termination. All original documents shall be permanently kept on file at the office of the CONTRACTOR.

21. **Independent Contractor.** The CONTRACTOR agrees that he or she is an independent contractor and not an agent, joint venture, or employee of the CITY, and nothing in this Agreement shall be construed to be inconsistent with this relationship or status. None of the benefits provided by the CITY to its employees, including but not limited to, workers' compensation insurance, unemployment insurance, or retirement benefits, are available from the CITY to the CONTRACTOR. CONTRACTOR will be responsible for paying his own Federal income tax and self-employment tax, or any other taxes applicable to the compensation paid under this Agreement. The CONTRACTOR shall be solely and primarily responsible for his and her acts during the performance of this Agreement.

22. **Assignment.** Neither party shall have the power to assign any of the duties or rights or any claim arising out of or related to the Agreement, whether arising in tort, contract, or otherwise, without the written consent of the other party. These conditions and the entire Agreement are binding on the heirs, successors, and assigns of the parties hereto.

23. **No Third Party Beneficiaries.** This Agreement gives no rights or benefits to anyone other than the CONTRACTOR and the CITY.

24. **Jurisdiction.** The laws of the State of Florida shall govern the validity of this Agreement, its interpretation and performance, and any other claims related to it. In the event of any litigation arising under or construing this Agreement, venue shall lie only in Lake County, Florida.

25. **Contact Person.** The primary contact person under this Agreement for each party is listed here. Contact person and information may be updated as needed by written, electronic mail is acceptable, communication to the other party. Notifying party shall receive confirmation the other party has received the change to the Contact Person.

CONTRACTOR Contact Information

Name/Title: Dan Stewart, Director of Business Development

Address: 4130 United Avenue

City, State & Zip: Mt. Dora, FL 32757

Telephone: 407-502-2939

Email Address: dstewart@gopcdg.com

CITY Contact Information

Name/Title: Travis Rima, Recreation Director

Telephone: 352-728-9786 x3214

Email Address: travis.rima@leesburgflorida.gov

26. **Approval of Personnel.** The CITY reserves the right to approve the contact person and the persons actually performing the services on behalf of CONTRACTOR pursuant to this Agreement. If CITY, in its sole discretion, is dissatisfied with the contact person or the person or persons actually performing the services on behalf of CONTRACTOR pursuant to this Agreement, CITY may require CONTRACTOR assign a different person or persons be designated to be the contact person or to perform the CONTRACTOR services hereunder.

27. **Disclosure of Conflict.** The CONTRACTOR has an obligation to disclose to the CITY any situation that, while acting pursuant to this Agreement, would create a potential conflict of interest between the CONTRACTOR and his duties under this Agreement.

28. **Warranty.** The CONTRACTOR agrees that, unless expressly stated otherwise in the bid or proposal, the product and/or service furnished as a result of an award from this solicitation shall be covered by the most favorable commercial warranty the CONTRACTOR gives to any customer for comparable quantities of products and/or services and the rights and remedies provided herein are in addition to said warranty and do not limit any right afforded to the CITY by any other provision of this solicitation.

The CONTRACTOR hereby acknowledges and agrees that all materials, except where recycled content is specifically requested, supplied by the CONTRACTOR in conjunction with this Agreement shall be new, warranted for their merchantability, and fit for a particular purpose.

29. **Risk of Loss.** The CONTRACTOR assumes the risk of loss of damage to the CITY's property during possession of such property by the CONTRACTOR, and until delivery to, and acceptance of, that property to the CITY. The CONTRACTOR shall immediately repair, replace or make good on the loss or damage without cost to the CITY, whether the loss or damage results from acts or omissions (negligent or not) of the CONTRACTOR or a third party.

The CONTRACTOR shall indemnify and hold the CITY harmless from any and all claims, liability, losses and causes of action which may arise out of the fulfillment of this Agreement. The CONTRACTOR shall pay all claims and losses of any nature whatsoever in connection therewith, and shall defend all suits, in the name of the CITY when applicable, and shall pay all costs and judgments which may issue thereon.

30. **Employment Eligibility.** Effective 12:01 AM EST January 1, 2021, the CONTRACTOR becomes obligated to comply with the provisions of Section 448.095, Fla. Stat., "Employment Eligibility." This includes but is not limited to utilization of the E-Verify System to verify the work authorization status of all newly hired employees, and requiring all subcontractors to provide an affidavit attesting that the subcontractor does not employ, contract with, or

subcontract with, an unauthorized alien. Failure to comply will lead to termination of this Agreement, or if a subcontractor knowingly violates the statute, the subcontract must be terminated immediately. Any challenge to termination under this provision must be filed in the Circuit Court no later than TWENTY (20) calendar days after the date of termination. If this contract is terminated for a violation of the statute by the CONTRACTOR, the CONTRACTOR may not be awarded a public contract for a period of ONE (1) year after the date of termination.

31. **Illegal Alien Labor** - CONTRACTOR shall comply with all provisions of the Federal Immigration and Control Act of 1986 (8 U.S. Code § 1324 a) and any successor federal laws, as well as all provisions of Section 448.09, Florida Statutes, prohibiting the hiring and continued employment of aliens not authorized to work in the United States. CONTRACTOR shall not knowingly employ or contract with an illegal alien to perform work under this Agreement or enter into an Agreement with a subcontractor that fails to certify to the CONTRACTOR that the subcontractor is following the terms stated within. The CONTRACTOR nor any subcontractor employed by him shall not knowingly employ or contract with an illegal alien to perform work under this Agreement. CONTRACTOR agrees that it shall confirm the employment eligibility of all employees through participation in E-Verify or an employment eligibility program approved by the Social Security Administration and will require same requirement to confirm employment eligibility of all subcontractors.

All cost incurred to initiate and sustain the aforementioned programs shall be the responsibility of the CONTRACTOR. Failure to meet this requirement may result in termination of the Agreement by the CITY.

32. **Counterparts.** Original signatures transmitted and received via facsimile or other electronic transmission of a scanned document, (e.g., PDF or similar format) are true and valid signatures for all purposes hereunder and shall bind the parties to the same extent as that of an original signature. Any such facsimile or electronic mail transmission shall constitute the final agreement of the parties and conclusive proof of such agreement. Any such electronic counterpart shall be of sufficient quality to be legible either electronically or when printed as hardcopy. The CITY shall determine legibility and acceptability for public record purposes. This Agreement may be executed in one or more counterparts, each of which shall for all purposes be deemed to be an original and all of which shall constitute the same instrument.

33. **Authority to Obligate.** Each person signing this agreement on behalf of either party individually warrants that he or she has full legal power to execute this Agreement on behalf of the party for whom he or she is signing, and bind and obligate such party with respect to all provisions contained in this agreement.

[Signature page follows.]

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the date indicated in the preamble to the Agreement.

PROSPECT CONSTRUCTION AND DEVELOPMENT GROUP

d/b/a PCDG CONSTRUCTION, LLC

By: _____

Printed: _____

Its: _____
(Title)

CITY OF LEESBURG, FLORIDA

Elise Dennis, Mayor

ATTEST:

J. Andi Purvis, City Clerk

Approved as to form:

Fred A. Morrison, City Attorney

Attachment 'A'
SUPPLEMENTAL CONDITIONS – CONSTRUCTION

1. DEFINITIONS

The following definitions shall apply. Whenever the following terms (or pronouns in place of them) are used in the Contract Documents, the intent and meaning of such terms shall be interpreted as follows:

- a. **City Project Representative:** There shall be authorized representative(s) of the CITY assigned to make all necessary inspections of the work performed by the CONTRACTOR and for such other purposes as outlined in the Contract Documents.
- b. **City Technical Representative:** There may be a designated Project Representative assigned by the CITY to inspect the technical aspects of the project. To insure the project is being constructed as designed.
- c. **Engineer of Record:** The Engineer of Record designated by the CITY following Contract Execution.
- d. **Engineer:** The design professional (engineer, architect, landscape architect or surveyor) designated by the CITY to serve as the design professional representing the CITY.
- e. **Notice to Proceed (NTP):** The official Notice from the CITY to the CONTRACTOR providing the date work may begin and the date the performance period begins. The NTP date will be mutually agreed to at or following the pre-construction meeting. CONTRACTOR shall sign the acknowledgement section of the NTP and return to the Purchasing Division. The NTP shall become a part of the Contract Documents.
- f. **Subcontractor:** Includes only those having a direct contract with the CONTRACTOR and it includes one who furnished material worked to a special design according to the plans or specifications of this work, but does not include one who merely furnishes material not so worked.
- g. **Work:** The entire completed construction or the various separately identifiable parts thereof required to be furnished under the Contract Documents. Work is the result of performing services, furnishing labor and furnishing and incorporating materials and equipment into the construction, all as required by the Contract Documents.
- h. **Manual(s):** Equipment documentation meant for the end user/consumer of the equipment. CONTRACTOR shall provide all Manuals to the CITY upon substantial completion. Retainage may not be released until the CITY has received all Manuals relevant to the equipment incorporated into the project.
- i. **Surety:** The corporate body which is bound with and for the CONTRACTOR which is primarily liable and which guarantees the faithful performance of the bid and/or agreement.
- j. **Plans, Drawings and/or Sketches:** Graphic representations of the work to be performed or reproductions thereof.
- k. **Specifications:** Broadly defined, the specifications include all data bound together herein or referenced on the plans, including, but not limited to, General Conditions, Technical Specifications, Special Conditions, Geotechnical Investigation, Supplemental Conditions (if any), other detailed technical specifications, exhibits and all addenda.

- l. **Defective:** An adjective which when modifying the word Work refers to Work that is unsatisfactory, faulty or deficient, or does not conform to the Contract Documents, or does not meet the requirements of any inspection, reference standard, test or approval referred to in the Contract Documents, or has been damaged prior to Engineer's recommendation of final payment (unless responsibility for the protection thereof has been assumed by CITY at Substantial Completion or CITY has taken beneficial use of completed portions.
- m. **Shop Drawings:** All drawings, diagrams, illustrations, schedules and other data which are specifically prepared by or for CONTRACTOR to illustrate some portion of the Work and all illustrations, brochures, standard schedules, performance charts, instructions, diagrams and other information prepared by a Supplier and submitted by CONTRACTOR to illustrate material or equipment for some portion of the Work.
- n. **Substantial Completion:** The Work (or a specified part thereof) has progressed to the point where, in the opinion of Engineer as evidenced by Engineer's definitive certificate of Substantial Completion, it is sufficiently complete, in accordance with the Contract Documents, so that the Work (or specified part) can be utilized for the purposes for which it is intended; or if there be no such certificate issued, when final payment is due. The terms "substantially complete" and "substantially completed" as applied to any Work refer to Substantial Completion thereof.
- o. **Underground Facilities:** All pipelines, conduits, ducts, cables, wires, manholes, vaults, tanks, tunnels or other such facilities or attachments, and any encasements containing such facilities which have been installed underground to furnish any of the following services or materials: electricity, gases, steam, liquid petroleum products, telephone or other communications, cable television, sewage and drainage removal, traffic or other control systems or water.

2. INSPECTION OF WORK

The Project Representative and his representatives shall, at all times, have access to the work whenever it is in preparation or progress and the CONTRACTOR shall provide proper facilities for such access and for inspection. The work will be conducted under the general direction of the Project Representative of the CITY and is subject to inspection by his appointed inspectors to insure compliance with the terms of the contract. No inspector is authorized to change any provisions of the specifications without written authorization of the CITY, nor shall the presence or absence of an inspector relieve the CONTRACTOR from any requirements of the contract.

If the specifications, the Project Representative's instructions, laws, ordinances or any public authority require any work to be specifically tested or approved, the CONTRACTOR shall give the CITY timely notice of its readiness for inspection, and if the inspection is by another authority than the Project Representative, of the date fixed for such inspection. Inspections by the Project Representative will be promptly made, and where practicable at the source of supply. If any work should be covered up without approval or consent of the CITY, it shall, if required by the Project Representative, be uncovered for examination at the CONTRACTOR's expense.

Re-examination of questioned work may be ordered by the Project Representative and, if so ordered, the work shall be uncovered by the CONTRACTOR. If such work is found in accordance with the contract documents, the CITY will pay the cost of re-examination and replacement. If

such work is found not in accordance with the contract documents, the CONTRACTOR shall pay such cost.

3. TESTS

The Project Representative will have the right to require all materials to be submitted to test prior to incorporation in the work. In some instances, it may be expedient to make these tests at the source of supply and for this reason it is requested that the CONTRACTOR furnish the source

before incorporating material in the work. This does not in any way obligate the Project Representative to perform tests for acceptance of material and does not relieve the CONTRACTOR of his responsibility to furnish satisfactory material. The CONTRACTOR shall furnish two copies of manufacturer's certificate of compliance with these specifications covering manufactured items incorporated in the work.

All field tests for compaction of earthwork and of material incorporated in the sub grade and base will be performed by technicians of a materials testing laboratory approved by the CITY. All tests performed by the laboratory to ascertain that the material, as placed, meets the required specification will be at the expense of the CONTRACTOR and should be included in the bid items as such.

4. TOOLS, PLANT AND EQUIPMENT

If any time before the commencement or during the progress of the work, tools, plant or equipment appears to the Project Representative to be insufficient, inefficient or inappropriate to secure the quality of work required, or the proper rate of progress, the Project Representative will notify the CITY of such conditions. The Engineer will provide written notification to the CONTRACTOR of CITY's quality and/or schedule concerns. The CONTRACTOR will respond in writing within 5 business days of receiving the CITY's notice and will propose remedial actions to address the quality and/or schedule concerns.

5. COLLECTION AND DISPOSAL OF WASTE

The CONTRACTOR shall collect waste from construction areas and elsewhere; handle hazardous, dangerous, or unsanitary waste materials separately from other waste by containerizing properly; dispose of material in a lawful manner. The CONTRACTOR shall be responsible for the transportation and disposal costs of all waste construction materials.

6. BURNING OF DEBRIS

For any areas where the burning of debris is permitted, the CONTRACTOR will be required to request a permit therefore, from the fire authority having jurisdiction in the area in due advance time, and if such permission is granted he shall rigidly abide by all provisions and requirements of such permit. In no case will burning be permitted until the fire authorities have adequately checked the size of the pile to be burned, the weather conditions and any other factors which might affect the proper control of the burning operation.

7. MAINTENANCE OF TRAFFIC

Where construction is located in public right of ways, traveled streets and roads, the CONTRACTOR shall exercise extreme care in seeing that sufficient area is provided and kept open for police, fire, ambulance, mail and private vehicular traffic.

The CONTRACTOR shall ensure that each person supervising the selection, placement and maintenance of Traffic Control Devices in the FDOT Work Zone shall be certified by attending an FDOT approved MOT training course. A copy of these certifications shall be submitted to the CITY of Leesburg upon request.

8. PROTECTION AGAINST POLLUTION

The CONTRACTOR shall comply with all legal regulations pertaining to pollution as are applicable to the site and he shall take all measures necessary to assure that no pollution, temporary or permanent, occurs to any lakes or other water areas as a result of runoff from the areas within which he is working.

This shall include the installation of temporary construction turbidity screens or hay bales along the edge of existing wetlands prior to the start of construction. These areas shall be as shown on the plans.

CONTRACTOR shall maintain the fuel storage area in accordance with local, state and federal regulations. Refueling vehicles and refueling techniques shall also comply with all applicable regulations. Clean-up of the fuel storage area shall be as required by the regulations and in accordance with these regulations.

9. TEMPORARY FENCING AND BARRICADES

The CONTRACTOR shall at his cost erect barricades sufficient to prevent injury to persons or damage to property, including the CONTRACTOR's personal property and materials. The CITY shall not be held responsible for the loss, theft, or vandalism of the CONTRACTOR's equipment or other personal property, including construction materials and supplies. Fences shall be constructed to prevent entry of unauthorized persons; cover trenches and holes when not in use; erect barriers at sharp changes in plane more than four (4) feet high. Should construction operations temporarily obstruct road passage, the CONTRACTOR shall at his cost provide suitable flagmen to control vehicular traffic on the road. Permits to use construction equipment on Florida Department of Transportation Right-of-Way shall be secured by the CONTRACTOR prior to actual beginning of work. The CONTRACTOR shall, at his cost, remove all temporary protection from the work site upon completion of the work.

10. WORKMANSHIP, MATERIALS, APPLIANCES, AND EMPLOYEES

All work will be done in a competent and workmanlike manner. All materials, equipment and supplies furnished by the CONTRACTOR for permanent incorporation in the work shall be new and of quality standards specified. Workmanship shall be first class and the finished product equal to the best-accepted standards of the trade for the category of work performed. It is the CITY's intent to obtain a high-quality job that will operate and function with least maintenance costs. The CONTRACTOR shall, if requested by CITY, furnish satisfactory evidence as to the kind and quality of materials.

Unless otherwise stipulated, the CONTRACTOR shall provide and pay for all materials, labor, water, tools, equipment, light, power, transportation and other facilities necessary for the execution and completion of the work.

The CONTRACTOR shall, at all times, enforce strict discipline and good order among his employees and shall not employ on the work any unfit person or anyone not skilled in the work assigned to him.

Neither party shall employ or hire any employees of the other party without his consent.

11. GENERAL QUALITY AND STANDARDS

To facilitate rapid examination, detailed specifications concerning basic requirements for labor, materials, equipment and/or incidentals to be used on the project are included under the various divisions in as brief a form as is consistent with clarity. The primary concern of the detailed specifications is for standards of performance expected for the finished work.

When in the detailed specifications reference is made to a particular code or specification, the latest edition of said code or specification shall apply.

The interests of the CITY, the CONTRACTOR and others concerned with the work require the inclusion of certain general governing requirements and standards, as a precaution against contingency and to provide for the conditions under which the construction and the administration of the work will be carried out.

General requirements for the quality of the work, when not otherwise covered in more specific detail in the specifications, will be governed by acceptable standards of the trade.

These specifications consider the project as a whole and assume it's completion under a general contract. Further, the scope of subcontracts and the quantities of materials and labor supplied to the CONTRACTOR by others are assumed to be matters governed by agreement between the CONTRACTOR and his Subcontractors and suppliers and not by agreement between the CITY and any Subcontractor or suppliers.

Various sections of the construction specifications are intended to govern only the quality of work and/or materials incidental to the particular branch of work mentioned in the section title. Sections are not intended as itemizations of the work materials to be furnished or to limit or define the scope of any subcontract or agreement to furnish material and labor.

The furnishing of all items of material, labor, equipment and/or incidentals necessary to the completion of the work as a whole will be expected when such items are called for on the drawings by diagram, note or schedule, are listed in the specifications, or are reasonably inferred by either or a combination of both.

During the construction operations under this contract, the CITY may elect to contract other work for the project. The CONTRACTOR shall coordinate his operations with those of any other such CONTRACTORS as well as any work of constructing or adjusting utilities by any other

authorities, to the end that the least practical handicap to the work of all such CONTRACTORS or authorities will result.

12. PROJECT COORDINATION

The CONTRACTOR shall coordinate construction operations that are dependent upon each other for proper installation, connection and operation. The CONTRACTOR shall make adequate provisions to accommodate items scheduled for later installation.

The CONTRACTOR shall inspect both the substrate and conditions under which the work is to be performed. The CONTRACTOR shall not proceed until unsatisfactory conditions have been corrected in an acceptable manner.

The CONTRACTOR shall inspect materials or equipment immediately upon delivery and again prior to installation. The CONTRACTOR shall reject damaged and defective items.

The CONTRACTOR shall supervise construction activities to ensure that no part of the construction is subject to deleterious exposure during the construction period. Where applicable, such exposures include, but are not limited to, the following: Unprotected storage, Improper shipping and handling, Theft, Vandalism.

13. COORDINATION WITH UTILITY COMPANIES

CONTRACTOR shall coordinate with all utility installations. CONTRACTOR shall notify the appropriate utility companies, in writing, adequately in advance of the time frame set aside for such utility installation. The utility companies referred to herein shall include, but not be limited to, Power, Gas, Telephone, and Cable Television. CONTRACTOR shall coordinate the installation of "sleeves" for the utility companies as may be required.

CONTRACTOR shall supply the CITY with copies of all correspondence notifying the utility companies of his intended schedule of construction and the expected date for their respective utility installations. Written notices shall be sent to the utility companies at sixty (60) days, thirty (30) days and two (2) weeks prior to the time at which the utility installation should begin.

14. SUPERVISION

CONTRACTOR shall supervise and direct the Work competently and efficiently, devoting such attention thereto and applying such skills and expertise as may be necessary to perform the Work in accordance with the Contract Documents. CONTRACTOR shall be solely responsible for the means, methods, techniques, sequences and procedures of construction. CONTRACTOR shall be responsible to see that the finished Work complies accurately with the Contract Documents.

If the CONTRACTOR, in the course of the work, finds any discrepancy between the drawings and the physical conditions of the locality, or any errors or omissions in the drawing or in layout as given by points and instructions, it shall be his duty to immediately inform the Project Representative, in writing, and the Project Representative will promptly verify the same. Any work done after such discovery, until authorized, will be done at the CONTRACTORS' risk.

15. CONSTRUCTION SUPERINTENDENT

CONTRACTOR shall employ a Construction Superintendent who shall be present on-site or available throughout the duration of the project and shall remain associated with the project until completion unless otherwise requested to be replaced by the CITY. The superintendent shall be experienced in the work required and perform all coordination activities generally conducted by project superintendents including, but not limited to, subcontractor coordination, utility installations, inspections, testing, material deliveries, etc. The superintendent shall be present at the pre-construction meeting and shall remain on the project until completion. The owner reserves the right to request a resume of experience for the superintendent including, but not limited to, requesting references from recent projects. Substitution of superintendents after the start of the work shall be approved by the owner in advance. All communications given to the superintendent shall be as binding as if given to CONTRACTOR.

16. WAGE RATES/EQUAL EMPLOYMENT OPPORTUNITY

Wage rates for laborers, mechanics and apprentices shall not be less than those established by the Florida Department of Labor and Employment Security and/or the United States Department of Labor for this work, as may be attached hereto. The CONTRACTOR must insure Equal Employment Opportunity as part of the awarded contract and also subcontracts awarded by the CONTRACTOR.

17. SUBCONTRACTS

The CONTRACTOR shall, as soon as practicable after signing the contract, notify the Project Representative in writing of any changes in the names of subcontractors proposed for the work as listed on the bid form. The CONTRACTOR shall not employ subcontractors, unless they are approved by the Project Representative.

The CONTRACTOR agrees that he is as fully responsible to the CITY for the acts and omissions of his subcontractors and of persons, either directly or indirectly, employed by them, as he is for the acts and omissions of persons directly employed by him.

Nothing contained in the contract documents shall create any contractual relation between any subcontractors and the CITY.

18. PRE-CONSTRUCTION MEETING

The CITY shall schedule a meeting after the Notice of Award. The Project Representative, Engineer, and CONTRACTOR shall attend this mandatory meeting. The following items shall be completed:

- a. Submission of list of Subcontractors, Schedule of Values and Progress Schedule.
- b. Designation of Personnel representing the parties in Contract, and the Engineer.
- c. Use of premises by CITY and the CONTRACTOR.
- d. Survey layout and scheduling.
- e. Security and housekeeping procedures.
- f. Requirements for start-up of equipment.
- g. Inspection and acceptance of equipment put into service during construction period.

At least ten (10) days before submission of the first Application for Payment a conference attended by CONTRACTOR, Engineer and others as appropriate will be held to finalize the schedules submitted by CONTRACTOR. The finalized progress schedule will be acceptable to Engineer as providing an orderly progression of the Work to completion within the Contract Time, but such acceptance will neither impose on Engineer responsibility for the progress or scheduling of the Work nor relieve CONTRACTOR from full responsibility thereto. The finalized schedule of Shop Drawing submissions will be acceptable to Engineer as providing a workable arrangement for processing the submissions. The finalized schedule of values will be acceptable to Engineer as to form and substance.

19. ORDER OF COMPLETION

The CONTRACTOR shall submit at such times as may be requested by the Project Representative, schedules which shall show the order in which the CONTRACTOR proposes to carry on the work with dates on which the CONTRACTOR will start the several parts of the work and estimated dates of completion of the several parts. The CITY retains the right to dictate to the CONTRACTOR the order of completion of the work.

20. MATERIALS AND EQUIPMENT SCHEDULES

As soon as practicable and within ten (10) days after the date of award of contract and before any material or equipment is purchased, the CONTRACTOR will submit to the CITY for approval a complete list, in triplicate, of materials to be incorporated in the work and samples of each listed material. The list shall include catalog numbers, cuts, diagrams; drawings and such other descriptive data as may be required. No consideration will be given to partial lists submitted from time to time. Approval of materials will be based on manufacturers' published ratings. Any materials listed that are not in accordance with the specification requirements may be rejected.

When one or more manufacturer's items are specified, it shall be understood that the item(s) so specified are hereby approved as to suitability and no substitutions will be permitted unless followed by such qualifying phrases as equal "approval equal" or "as approved" in which case the approval of the CITY for items not specified shall be obtained before they may be used.

21. CONTRACTOR'S REQUESTS FOR INTERPRETATION (RFIs)

Should CONTRACTOR be unable to determine from the Contract Documents the exact material, process, or system to be installed; or when the elements of construction are required to occupy the same space (interference); or when an item of Work is described differently at more than one place in the Contract Documents; the CONTRACTOR shall request that the Architect/Engineer (AE), or CITY Representative, make an interpretation of the requirements of the Contract Documents to resolve such matters. CONTRACTOR shall comply with procedures specified herein to make Requests for Interpretation (RFIs).

- a. Submission of RFIs: RFIs shall be prepared and submitted on a form provided by the CITY.
 - i. Forms shall be completely filled in, and if prepared by hand, shall be fully legible after copying by xerographic process.
 - ii. Each RFI shall be given a discrete, consecutive number.

- iii. Each page of the RFI and each attachments to the RFI shall bear the CITY's project name, project number, date, RFI number and a descriptive title.
 - iv. CONTRACTOR shall sign all RFIs attesting to good faith effort to determine from the Contract Documents the information requested for interpretation. Frivolous RFIs shall be subject to reimbursement from CONTRACTOR to CITY for fees charged by A/E, A/E consultants and other design professionals engaged by the CITY.
- b. Subcontractor-Initiated and Supplier-Initiated RFIs: RFIs from subcontractors and material suppliers shall be submitted through, be reviewed by and be attached to an RFI prepared, signed and submitted by CONTRACTOR. RFIs submitted directly by subcontractors or material suppliers will be returned unanswered to the CONTRACTOR.
 - i. CONTRACTOR shall review all subcontractor- and supplier-initiated RFIs and take actions to resolve issues of coordination, sequencing and layout of the Work.
 - ii. RFIs submitted to request clarification of issues related to means, methods, techniques and sequences of construction or for establishing trade jurisdictions and scopes of subcontracts will be returned without interpretation. Such issues are solely the CONTRACTOR'S responsibility.
 - iii. CONTRACTOR shall be responsible for delays resulting from the necessity to resubmit an RFI due to insufficient or incorrect information presented in the RFI.
- c. Requested Information: CONTRACTOR shall carefully study the Contract Documents to ensure that information sufficient for interpretation of requirements of the Contract Documents is not included. RFIs that request interpretation of requirements clearly indicated in the Contract Documents will be returned without interpretation.
 - i. In all cases in which RFIs are issued to request clarification of issues related to means, methods, techniques and sequences of construction, for example, pipe and duct routing, clearances, specific locations of Work shown diagrammatically, apparent interferences and similar items, the CONTRACTOR shall furnish all information required for the A/E or CITY's Representative to analyze and/or understand the circumstances causing the RFI and prepare a clarification or direction as to how the CONTRACTOR shall proceed.
 - ii. If information included with this type RFI by the CONTRACTOR is insufficient, the RFI will be returned unanswered.
- d. Unacceptable Uses for RFIs: RFIs shall not be used to request the following:
 - i. Approval of submittals
 - ii. Approval of substitutions
 - iii. Changes that entail change in Contract Time and Contract Sum
 - iv. Different methods of performing Work than those indicated in the Contract Drawings and Specifications
- e. Disputed Requirements: In the event the CONTRACTOR believes that a clarification by the CITY's A/E, or Representative, results in additional cost or time, CONTRACTOR shall comply with the method for requesting a Change Order.
- f. RFI Log: CONTRACTOR shall prepare and maintain a log of RFIs, and at any time requested by the CITY's Representative, the CONTRACTOR shall furnish copies of the log showing all outstanding RFIs.

- g. Review Time: Architect/Engineer or CITY Representative (CITY) shall return RFIs to CONTRACTOR and within five (5) calendar days of receipt. RFIs received after 12:00 noon shall be considered received on the next regular working day for the purpose of establishing the start of the five-calendar day response period.

22. SUBMITTAL REQUIREMENTS OF CONTRACTOR

After checking and verifying all field measurements and after complying with applicable procedures specified in the General Requirements, CONTRACTOR shall submit to Engineer for review in accordance with the accepted schedule of Shop Drawing submissions, or for other appropriate action if so indicated in the Special Conditions, five copies (unless otherwise specified in the General Requirements) of all Shop Drawings, which will bear a stamp or specific written indication that CONTRACTOR has satisfied CONTRACTOR'S responsibilities under the Contract Documents with respect to the review of the submission. All submissions will be identified as Engineer may require. The data shown on the Shop Drawings will be complete with respect to quantities, dimensions, specified performance and design criteria, materials and similar data to enable Engineer to review the information as required.

CONTRACTOR shall also submit to Engineer for review with such promptness as to cause no delay in Work, all samples required by the Contract Documents. All samples will have been checked by and accompanied by a specific written indication that CONTRACTOR has satisfied CONTRACTOR'S responsibilities under the Contract Documents with respect to the review of the submission and will be identified clearly as to material, Supplier, pertinent data such as catalog numbers and the use for which intended.

Before submission of each Shop Drawing or sample CONTRACTOR shall have determined and verified all quantities, dimensions, specified performance criteria, installation requirements, materials, catalog numbers and similar data with respect thereto and reviewed or coordinated each Shop Drawing or sample with other Shop Drawings and samples and with the requirements of the Work and the Contract Documents.

At the time of each submission, CONTRACTOR shall give Engineer specific written notice of each variation that the Shop Drawings or samples may have from the requirements of the Contract Documents, and in addition, shall cause a specific notation to be made on each Shop Drawing submitted to Engineer for review of each such variation.

Engineer will review with reasonable promptness Shop Drawings and samples, but Engineer's review will be only for conformance with the design concept of the Project and for compliance with the information given in the Contract Documents and shall not extend to means, methods, techniques, sequences or procedures of construction (except where a specific means, method, technique, sequence or procedure of construction is indicated in or required by the Contract Documents) or to safety precautions or programs incident thereto. The review of a separate item as such will not indicate review of the assembly in which the item functions. CONTRACTOR shall make corrections required by Engineer, and shall return the required number of corrected copies of Shop Drawings and submit as required new samples for review. CONTRACTOR shall direct specific attention in writing to revisions other than the corrections called for by Engineer on previous submittals.

Engineer's review of Shop Drawings or samples shall not relieve CONTRACTOR from responsibility for any variation from the requirements of the Contract Documents unless CONTRACTOR has in writing called Engineer's attention to each such variation at the time of submission as required by this Article and Engineer has given written review each such variation by a specific written notation thereof incorporated in or accompanying the Shop Drawing or sample review; nor will any review by Engineer relieve CONTRACTOR from responsibility for errors or omissions in the Shop Drawings or from responsibility for having complied with the provisions herein.

Where a Shop Drawing or sample is required by the Specifications, any related Work performed prior to Engineer's review of the pertinent submission will be the sole expense and responsibility of CONTRACTOR.

23. CHANGES IN THE WORK

Any Change in the Work will be documented in writing and approved by the CITY in writing. Changes that increase the cost of the work may need to be approved by CITY Commission depending on the dollar value of the increase change order. No work may be performed prior to the change being approved by CITY.

The Contract Price constitutes the total compensation payable to the CONTRACTOR for performing the work. All duties, responsibilities and obligations assigned to or undertaken by the CONTRACTOR shall be at his expense without change in the Contract Price.

The Contract Price may only be changed by a Change Order. Any claim for an increase in the Contract Price, shall be delivered in writing to the CITY and the Engineer within fifteen days of the occurrence of the event giving rise to the claim. Notice of the amount of the claim with supporting data shall be delivered within forty-five days of such occurrence unless the Engineer allows an additional period of time to ascertain accurate cost data. All claims for adjustments in the Contract Price shall be determined by the Engineer if the CITY and CONTRACTOR cannot otherwise agree on the amount involved. The Engineer(s) decision shall be final and binding. Any change in the Contract Price resulting from any such claim shall be incorporated in a Change Order.

The value of any work covered by a Change Order or of any claim for an increase or decrease in the Contract Price shall be determined in one of the following ways:

- a. where the work involved is covered by unit prices contained in the Contract Documents, by application of unit prices to the quantities of the items involved, or ii. by mutual acceptance of a lump sum, or
- b. on the basis of the cost of the work plus a CONTRACTOR's fee for overhead and profit.

24. DETAIL DRAWINGS AND INSTRUCTIONS

The CITY will furnish, with reasonable promptness, additional instructions by means of drawings or otherwise, necessary for the proper execution of the work. All such drawings and instructions will be consistent with the contract documents, true developments thereof and reasonably inferable therefrom.

25. OWNERSHIP OF DRAWINGS

All drawings, specifications and copies thereof furnished by the CITY are the property of the CITY. They are not to be used on other work and, with the exception of the signed contract set, are to be returned to the CITY, at the request of the CITY upon the completion of the work.

26. SURVEYS, PERMITS AND REGULATIONS

The CITY will furnish horizontal and vertical control necessary to layout the work in an orderly and workmanlike manner.

Horizontal Control furnished by the CITY shall consist of adequately marked property corners or offset corners, with dimensions as shown on the drawings. Vertical Control will consist of benchmarks established within the immediate area of the work.

It shall be the responsibility of the CONTRACTOR to furnish all construction layout of the work, including, but not limited to, layout and elevations for the construction and final grade of the site.

The CONTRACTOR shall maintain and preserve all stakes and marks established by the CITY and should such stakes or marks be carelessly or willfully destroyed or damaged by the CONTRACTOR, said stakes or marks shall be replaced by the CITY at the expense of the CONTRACTOR.

The CONTRACTOR will set the horizontal and vertical control only at the beginning of the job as specified above. Interim staking during the job and all staking and layout work not furnished by the CITY as specified above shall be the responsibility of the CONTRACTOR.

The CITY will furnish all personnel and equipment and materials to make such surveys as are necessary to determine the quantities of work performed.

The CITY will furnish environmental permits unless otherwise specified. The CONTRACTOR shall obtain any and all required permits from all appropriate government agencies.

Work permits and licenses necessary for the prosecution of the work shall be secured and paid for by the CONTRACTOR. Easements for permanent structures or permanent changes in existing facilities will be secured and paid for by the CITY unless otherwise specified. The CONTRACTOR shall give all notices and comply with all laws, ordinances, rules and regulations bearing on the conduct of the work as drawn and specified. If the CONTRACTOR observes that the drawings and specifications are at variance therewith, he shall promptly notify the CITY in writing and any necessary changes shall be adjusted as provided in the contract for changes in the work. If the CONTRACTOR performs work knowing it to be contrary to such laws, ordinances, rules and regulations and without such notice to the CITY, he shall bear all cost arising there from.

27. ROYALTIES AND PATENTS

There may be a design, device, material or process included in these plans and specifications which may be covered by letters, patent or copyright. Prior to use of any design, device, material or process, or its incorporation into the construction, the CONTRACTOR shall secure indemnity

from his subcontractors or material suppliers that will protect and save harmless the CITY from all loss on account thereof.

The CONTRACTOR shall pay all royalties and license fees. He shall defend all suits or claims for infringement of any patent rights and shall save the CITY harmless from loss on account thereof, except that the CITY shall be responsible for all such loss when a particular process or the product of a particular manufacturer or manufacturers is specified, but if the CONTRACTOR has information that the process or article specified is an infringement of a patent, he shall be responsible for such loss unless he promptly gives such information to the CITY.

28. PROTECTION OF WORK AND PROPERTY

The CONTRACTOR shall continuously maintain adequate protection of all his work from damage and shall protect the CITY's property from injury or loss arising in connection with this contract. The CONTRACTOR shall at all times protect all public and privately-owned property, structures, utilities, and work of any kind against damage or interruption of service which may result from the operations of the CONTRACTOR. Damage or interruption to service resulting from failure to do so shall be repaired or restored by or at the expense of the CONTRACTOR except such as may be directly due to errors in the contract documents or caused by the agents or employees of the CITY.

29. DEDUCTIONS FOR UNCORRECTED WORK

If the Project Representative deems it inexpedient to correct work injured or done, not in accordance with the contract, an equitable deduction from the contract price will be made therefore.

30. DELAYS AND EXTENSION OF TIME

If the CONTRACTOR be delayed at any time, in the progress of the work by an act of neglect of the CITY or of his employees, or by any other CONTRACTOR employed by the CITY or by Changes ordered in the work or by strikes, lockouts, fire, unusual delay in transportation, unavoidable casualties or any causes beyond the CONTRACTOR's control, or by delay authorized by the Project Representative, or by any cause which the Project Representative may decide to justify the delay, then the time of completion will be extended for any such reasonable time as the Project Representative may decide.

No such extension will be made for delay occurring more than seven (7) days before claim therefore is made in writing to the CITY. In the case of a continuing cause or delay, only one claim is necessary.

If no schedule or agreement stating the dates upon which drawings shall be furnished is made, then no claim for delay will be allowed on account of failure to furnish drawings until two weeks after demand for such drawings and not then unless such claims be reasonable.

31. CORRECTION OF WORK BEFORE FINAL PAYMENTS

The CONTRACTOR shall promptly remove from the premises all materials condemned by the Project Representative as failing to conform to the contract, whether incorporated in the work or not, and the CONTRACTOR shall promptly replace and re-execute his own work in accordance

with the contract and without expense to the CITY and shall bear the expense of making good all work of other CONTRACTORS destroyed or damaged by such removal or replacement.

If the CONTRACTOR does not correct such condemned work and material within a reasonable time fixed by written notice, the CITY may correct it at the expense of the CONTRACTOR. If the CONTRACTOR does not pay the expense of such correction within three (3) days thereafter, the CITY may, upon three (3) days written notice, deduct all the cost and expenses that should have been borne by the CONTRACTOR.

32. THE CITY'S RIGHT TO DO WORK

If the CONTRACTOR should neglect to prosecute the work properly or fail to perform any provision of this contract, the CITY after three (3) days written notice to the CONTRACTOR, may, without prejudice to any other remedy he may have, make good such deficiencies at the CONTRACTOR's expense.

33. SUSPENSION OF WORK

The CITY may at any time suspend the work or any part thereof by giving five (5) days notice to the CONTRACTOR in writing. The work shall be resumed by the CONTRACTOR within ten (10) days after the date fixed in a written notice to resume work from the

CITY to the CONTRACTOR. The CITY will reimburse the CONTRACTOR for expense incurred by the CONTRACTOR in connection with the work under this contract as a result of such suspension unless the suspension was recommended to the CITY by the Project Representative to enforce the contract or for any violation of the contract.

34. REMOVAL OF EQUIPMENT

In the case of annulment of this contract before completion, from any cause whatever, the CONTRACTOR, if notified to do so by the CITY, shall promptly remove any part or all of his equipment and supplies from the property of the CITY, failing which, the CITY will have the right to remove such equipment and supplies at the expense of the CONTRACTOR.

35. USE OF COMPLETED PORTIONS

Use by CITY of any finished part of the Work, which has specifically been identified in the Contract Documents, or which CITY, Engineer and CONTRACTOR agree constitutes a separately functioning and useable part of the Work that can be used by CITY without significant interference with CONTRACTOR's performance of the remainder of the Work, may be accomplished prior to Substantial Completion of all the Work subject to the following:

- a. CITY at any time may request CONTRACTOR in writing to permit CITY to use any such part of the Work which CITY believes to be ready for its intended use and substantially complete. If CONTRACTOR agrees, CONTRACTOR will certify to CITY and Engineer that said part of the Work is substantially complete and request Engineer to issue a certificate of Substantial Completion for that part of the Work. CONTRACTOR at any time may notify CITY and Engineer in writing that CONTRACTOR considers any such part of the Work ready for its intended use and substantially complete and request Engineer to issue a certificate of Substantial Completion for that part of the Work. Within a reasonable time after either such

- request, CITY, CONTRACTOR and Engineer shall make an inspection of that part of the Work to determine its status of completion. If Engineer does not consider that part of the Work to be substantially complete, Engineer will notify CITY and CONTRACTOR in writing giving the reasons therefore. If Engineer considers that part of the Work to be substantially complete, the provisions of Substantial Completion will apply with respect to certification of that part of the Work and the division of responsibility in respect thereof and access thereto.
- b. CITY may at any time request CONTRACTOR in writing to permit CITY to take over operation of any such part of the Work although it is not substantially complete. A copy of such request will be sent to Engineer and within a reasonable time thereafter CITY, CONTRACTOR and Engineer shall make an inspection of that part of the Work to determine its status of completion and will prepare a list of the items remaining to be completed or corrected thereon before final payment. If CONTRACTOR does not object in writing to CITY and Engineer that such part of the Work is not ready for separate operation by CITY, Engineer will finalize the list of items to be completed or corrected and will deliver such list to CITY and CONTRACTOR together, with a written recommendation as to the division of responsibilities pending final payment between CITY and CONTRACTOR with respect to security, operation, safety, maintenance, utilities, insurance, warranties and guarantees for that part of the Work, which will become binding upon CITY and CONTRACTOR at the time when CITY takes over such operation (unless they shall have otherwise agreed in writing and so informed Engineer). During such operation and prior to Substantial Completion of such part of the Work, CITY shall allow CONTRACTOR reasonable access to complete or correct items on said list and to complete other related Work.
 - c. If CITY finds it necessary to occupy or use a portion or portions of the Work prior to Substantial Completion of all the Work, such use or occupancy may be accomplished in accordance with this Article; provided that no such use or occupancy shall commence before the insurers providing the property insurance have acknowledged notice thereof and in writing effected the changes in coverage necessitated thereby. The insurers providing the property insurance shall consent by endorsement on the policy or policies, but the property insurance shall not be cancelled or lapse on account of any such partial use or occupancy.

36. PROMPT PAYMENT

It is the policy of the CITY that payment for all purchases by the CITY shall be made in a timely manner and that interest payments will be made on late payments in accordance with Part VII, Chapter 218, Florida Statutes, known as the Florida Prompt Payment Act.

37. APPLICATION FOR PAYMENT

The CONTRACTOR shall submit to the CITY, at least 20 days before the date established for each progress payment (but not more often than once a month), an Application for Payment filled out and signed by CONTRACTOR covering the work completed as of the date of the Application. Upon review and approval by the CITY and Engineer (if applicable).

The retained percentage (retainage) amount with respect to the progress payments shall initially be 10% unless stated otherwise in the Construction Services Agreement. Retainage amounts and retainage process shall be governed by Florida Statute 255.078 – Public Construction Retainage.

CONTRACTOR shall, before any draw is issued, provide a sworn statement to CITY attesting that all services, materials and labor, furnished to the project to the date of the draw request have been paid for in full, or listing the amounts due for such services, materials and labor, and if any amounts are listed as being due, the CITY shall have the right to pay those amounts directly to the persons to whom they are due, with the balance of the draw amount to be paid to CONTRACTOR, and if the draw is insufficient to pay the amounts then due for services, materials and labor, the CITY shall pay those to whom such amounts are due on a pro rata basis until the draw is exhausted, and any remaining amounts due others shall be paid first out the next draw due.

The CITY shall not be required to issue progress payments pursuant to the draw schedule until the CITY has verified, by on-site inspection, that construction has in fact progressed to the stage at which a draw is required and that the work done and materials furnished are in compliance with the Contract Documents, and all applicable technical codes. The final draw due upon “completion” shall not be payable until the CITY, its Project Representative or Engineer of Record has determined the work has been completed in accordance with the Contract Documents and a Certificate of Completion has been issued by the CITY.

38. PAYMENTS WITHHELD

The CITY may withhold or, on account of subsequently discovered evidence, recover the whole or part of any payment to such an extent as may be necessary to protect the CITY from loss on account of—

- a. Defective work not remedied.
- b. Claims filed or reasonable evidence indicating probable filing of claims.
- c. Failure of the CONTRACTOR to make payments properly to subcontractors or for materials or labor.
- d. The Project Representative's opinion that the contract cannot be completed for the balance then unpaid.
- e. Damage to another CONTRACTOR.
- f. Failure to maintain adequate progress. vii. Damage to the building resulting from the negligence of the CONTRACTOR.

When the above grounds are removed, payment will be made for amounts withheld because of them.

39. FINAL PAYMENT APPLICATION

Administrative actions and submittals that must precede or coincide with submittal of the final payment Application for Payment include the following:

- a. Completion of Project closeout requirements.
- b. Completion of items specified for completion after Substantial Completion.
- c. Assurance that unsettled claims will be settled.
- d. Transmittal of required project construction records to CITY.
- e. Final Clean Up as outlined in these General Conditions

Upon written notice from CONTRACTOR that the entire Work or an agreed portion thereof is complete, Engineer will make a final inspection with CITY and CONTRACTOR and will notify CONTRACTOR in writing of all particulars in which this inspection reveals that the Work is incomplete or defective. CONTRACTOR shall immediately take such measures as are necessary to remedy such deficiencies.

After CONTRACTOR has completed all such corrections to the satisfaction of Engineer and delivered all maintenance and operating instructions, schedules, guarantees, bonds, certificates of inspection, marked-up record documents and other documents--all as required by the Contract Documents, and after Engineer has indicated that the Work is acceptable (subject to the provisions under Waiver of Claims), CONTRACTOR may make application for final payment following the procedure for progress payments. The final Application for Payment shall be accompanied by all documentation called for in the Contract Documents, together with complete and legally effective releases or waivers (satisfactory to CITY) of all Liens arising out of or filed in connection with the Work. In lieu thereof and as approved by CITY, CONTRACTOR may furnish receipts or releases in full; an affidavit of CONTRACTOR that the releases and receipts include all labor, services, material and equipment for which a Lien could be filed, and that all payrolls, material and equipment bills, and other indebtedness connected with the Work for which CITY or CITY's property might in any way be responsible, have been paid or otherwise satisfied; and consent of the surety, if any, to final payment. If any Subcontractor Supplier fails to furnish a release or receipt in full, CONTRACTOR may furnish a Bond or other collateral satisfactory to CITY to indemnify CITY against any Lien.

If, on the basis of Engineer's observation of the Work during construction and final inspection, and Engineer's review of the final Application for Payment and accompanying documentation--all as required by the Contract Documents, Engineer is satisfied that the Work has been completed and CONTRACTOR's other obligations under the Contract Documents have been fulfilled, Engineer will, within ten days after receipt of the final Application for Payment, indicate in writing Engineer's recommendation of payment and present the Application to CITY for payment. Thereupon Engineer will give written notice to CITY and CONTRACTOR that the Work is acceptable subject to the provisions found under "Waiver of Claims". Otherwise, Engineer will return the Application to CONTRACTOR, indicating in writing the reasons for refusing to recommend final payment, in which case CONTRACTOR shall make the necessary corrections and resubmit the Application. Thirty days after presentation to CITY of the Application and accompanying documentation, in appropriate form and substance, and with Engineer's recommendation and notice of acceptability, the amount recommended by Engineer will become due and will be paid by CITY to CONTRACTOR.

If, through no fault of CONTRACTOR, final completion of the Work is significantly delayed and if Engineer so confirms, CITY shall, upon receipt of CONTRACTOR's final Application for Payment and recommendation of Engineer, and without terminating the Agreement, make payment of the balance due for that portion of the Work fully completed and accepted. If the remaining balance to be held by CITY for Work not fully completed or corrected is less than the retainage stipulated in the Agreement, and if Bonds have been furnished as required, the written consent of the surety to the payment of the balance due for that portion of the Work fully completed and accepted shall be submitted by CONTRACTOR to Engineer with the Application for such

payment. Such payment shall be made under the terms and conditions governing final payment, except that it shall not constitute a waiver of claims.

40. CONTRACTOR'S CONTINUING OBLIGATION

CONTRACTOR's obligation to perform and complete the Work in accordance with the Contract Documents shall be absolute. Neither recommendation of any progress or final payment by Engineer, nor the issuance of a certificate of Substantial Completion, nor any payment by CITY to CONTRACTOR under the Contract Documents, nor any use or occupancy of the Work or any part thereof by CITY, nor any act of acceptance by CITY nor any failure to do so, nor any review and approval of a Shop Drawing or sample submission, nor the issuance of a notice of acceptability by Engineer, nor any correction of defective Work by CITY will constitute an acceptance of Work not in accordance with the Contract Documents or a release of CONTRACTOR's obligation to perform the Work in accordance with the Contract Documents (except as provided under Waiver of Claims)

41. DAMAGES

Any claim for damage arising under a resulting Agreement shall be made in writing to the party liable within ten (10) days after the first observance of such damage and not later than the time of final payment, except as expressly stipulated otherwise in the case of faulty work or materials.

42. EQUIPMENT STARTUP

Equipment startup shall be in accordance of the manufacturer's recommendations, and as required to demonstrate performance to the Engineer and CITY in accordance with the specifications. The CONTRACTOR shall provide 30-days notice to the Engineer and CITY of the date on which all equipment and systems will be ready for startup. The startup date shall be arranged as required by the CITY's operational schedule with consideration of the schedule needs of the Engineer and CONTRACTOR.

43. COMPLETION OF WORK

The CONTRACTOR shall be considered "substantially complete" when the equipment and systems have been used without failure for seven (7) continuous days, and in the opinion of the CITY, it's Project Representative or Engineer of Record, all work has been completed in general accordance with the plans and specifications and all test reports, inspections, etc. have been completed and delivered to the Engineer. Substantial completion shall also mean that degree of completion which allows the CITY to occupy and use the facilities. When the Engineer deems the work to be "substantially complete" he shall indicate this to the CITY in writing with copies to the CONTRACTOR. The date of contract completion shall be the same date at which the CONTRACTOR is considered substantially complete by the Engineer.

44. ACCEPTANCE OF FINISHED WORK

The CITY shall make final acceptance inspection of the Project covered by this Contract when the Project is completed and finished in all respects in accordance with the Contract Documents. CONTRACTOR shall furnish to the Engineer or CITY Representative a complete set of As-Built drawings. These drawings shall be prepared by a licensed Surveyor in the State of Florida and shall be submitted to the Engineer within five (5) days following the completion of the work.

45. FINAL CLEAN UP

The CONTRACTOR shall complete all cleaning operations before requesting final inspection.

The CONTRACTOR shall, as directed by the Project Representative, remove from the CITY's property and from all public and private property, at his own expense, all temporary structures, rubbish, and waste materials resulting from his operation.

The CONTRACTOR shall remove temporary protection and facilities installed for protection of the work during construction.

The CONTRACTOR shall comply with all regulations of authorities having jurisdiction and safety standards for cleaning. The CONTRACTOR shall not burn waste materials. The CONTRACTOR will not discharge volatile, harmful or dangerous materials into drainage systems. The CONTRACTOR will remove all waste materials from the site and dispose of in a lawful manner. Materials of value remaining after completion of associated work will become the owner's property. The CONTRACTOR will arrange for the disposition of these materials as directed by the CITY.

The CONTRACTOR shall rake the grounds that are neither paved nor planted to a smooth, even textured surface.

46. TREES

It shall be the responsibility of the CONTRACTOR to protect all trees within the limits of the work and as designated by the Project Representative.

47. GUARANTY

CONTRACTOR warrants and guarantees to CITY that all Work will be in accordance with the Contract Documents and will not be defective. Prompt notice of all defects shall be given to CONTRACTOR. All defective Work, whether or not in place, may be rejected, corrected or accepted as provided in the paragraph in this section labeled 'Inspections, Correction, Removal Of Defective Work'.

All equipment, materials and installation and workmanship furnished by the CONTRACTOR under the terms of the Contract, shall be guaranteed by the CONTRACTOR against defective workmanship, mechanical and physical defects, leakage, breakage and other damages and failure, under normal operation for a period of two (2) years or as otherwise specified in the Technical Specifications and after the date of acceptance thereof by the CITY, and each item of equipment or materials and installation proving to be defective within the specified period of guaranty shall be replaced, without cost to the CITY, by the CONTRACTOR or by the Surety. The period of guaranty of such replacement shall be from and after the date of final acceptance of the Project by the CITY, provided however, that where any item or equipment or material comes with a manufacturer's warranty of two (2) years or longer, that warranty shall take precedence over the warranty of CONTRACTOR hereunder.

48. INDEMNITY

The CONTRACTOR agrees to make payment of all proper charges for labor required in the aforementioned work and defend, indemnify, and save harmless the CITY and Engineer or any of their officers, agents, or servants and each and every one of them against and from all claims, suits, and costs of every kind and description, including attorney's fees, and from all damages to which the CITY and Engineer or any of their officers, agents, or servants may be put by reason of injury to the persons or property of others resulting from the performance of CONTRACTOR's duties under the Contract, or through the negligence of the CONTRACTOR in the performance of its duties under this Contract, or through any act or omission on the part of the CONTRACTOR, his agents, employees, or servants or subcontractors.

Provided, however, if this Contract is deemed, by a court of competent jurisdiction, to be a construction contract for the purposes of Section 725.06, Florida Statutes, any obligation of the CONTRACTOR to defend, indemnify or hold harmless an CITY and Engineer shall be limited to an obligation to indemnify and hold harmless the CITY and Engineer, and its officers and employees, from liabilities, damages, losses, and costs, including, but not limited to, reasonable attorneys' fees, to the extent caused by the negligence, recklessness, or intentionally wrongful conduct of the CONTRACTOR and persons employed or utilized by the CONTRACTOR in the performance of this Contract.

49. ASSIGNMENT

Neither party to the contract shall assign the contract or sublet it as a whole without the written consent of the other, nor shall the CONTRACTOR assign any moneys due, or to become due to him hereunder, without the previous written consent of the Project Representative.

50. RIGHTS OF VARIOUS INTERESTS

Wherever work being done by the CITY's forces, or by the other CONTRACTORS, is contiguous to work covered by this contract, the respective rights of the various interests involved will be established by the Project Representative, to secure the completion of the various portions of the work in general harmony.

51. SEPARATE CONTRACTS

The CITY reserves the right to let other contracts in connection with this work. The CONTRACTOR shall afford other CONTRACTORS reasonable opportunity for the introduction and storage of their materials and the execution of their work, and shall properly conduct and coordinate his work with theirs.

If any part of the CONTRACTOR's work depends, for proper execution or results upon the work of any other CONTRACTOR, the CONTRACTOR shall inspect and promptly report to the Project Representative any defects in such work that render it unsuitable for such proper execution and results. His failure to so inspect and report shall constitute an acceptance of the other CONTRACTOR's work as fit and proper for the reception of his work, except as to defects which may develop in the other CONTRACTOR's work after the execution of the work.

To insure the proper execution of his subsequent work, the CONTRACTOR shall measure work already in place and shall at once report to the Project Representative any discrepancy between the executed work and the drawings.

52. LANDS FOR WORK

The CITY will provide the lands upon which the work under this contract is to be done, except that the CONTRACTOR shall provide land required for the erection of temporary construction facilities and storage of his material, together with right of access to same.

53. ACCESS TO RECORDS

The CITY, the Florida Department of State, or any of their duly authorized representatives shall have access to any books, documents, papers or any other records prepared by the CONTRACTOR that are directly pertinent to the work produced under this Agreement for making audit, examination, excerpts and transcription. Such records will be maintained for five (5) years after the completion of the work and until claims or audit findings have been resolved which were initiated prior to the expiration of the five (5) year period.

54. EXECUTION, CORRELATION AND INTENT OF DOCUMENTS

The Agreement shall be signed in quadruplicate by the CITY and the CONTRACTOR. The Contract Documents comprise the entire agreement between CITY and CONTRACTOR concerning the Work. The Contract Documents are complementary; what is called for by one is as binding as if called for by all. The Contract Documents will be construed in accordance with the law of the place of the Project.

It is the intent of the Contract Documents to describe a functionally complete Project (or part thereof) to be constructed in accordance with the Contract Documents. Any Work, materials or equipment that may reasonably be inferred from the Contract Documents as being required to produce the intended result will be supplied whether or not specifically called for. When words which have a well-known technical or trade meaning are used to describe Work, materials or equipment, such words shall be interpreted in accordance with that meaning. Reference to standard specifications, manuals or codes of any technical society, organization or association, or to the Laws or Regulations of any governmental authority, whether such reference be specific or by implication, shall mean the latest standard specification, manual, code or Laws or Regulations in effect at the time of opening of Bids (or, on the Effective Date of the Agreement if there were no Bids), except as may be otherwise specifically stated. However, no provision of any referenced standard specification, manual or code (whether or not specifically incorporated by reference in the Contract Documents) shall be effective to change the duties and responsibilities of CITY, CONTRACTOR or Engineer, or any of their consultants, agents or employees from those set forth in the Contract Documents, nor shall it be effective to assign to Engineer, or any of Engineer's consultants, agents or employees, any duty or authority to supervise or direct the furnishing or performance of the Work or any duty or authority to undertake responsibility contrary to the provisions of these Supplemental Conditions. Clarifications and interpretations of the Contract Documents shall be issued by Engineer.

If, during the performance of the Work, CONTRACTOR finds a conflict, error or discrepancy in the Contract Documents, CONTRACTOR shall so report to Engineer in writing at once and before proceeding with the Work affected thereby shall obtain a written interpretation or clarification from Engineer; however, CONTRACTOR shall not be liable to CITY or Engineer for failure to

report any conflict, error or discrepancy in the Contract Documents unless CONTRACTOR had actual knowledge thereof or should reasonably have known thereof.

55. CONTRACTOR'S UNDERSTANDING

CONTRACTOR has visited the site, has called for utility locates and has familiarized itself with the local conditions under which the work is to be performed, both underground and above ground and both on and off premises and has correlated these observations with the requirements of the proposed contract documents; all as considered necessary or pertinent to the work, and any failure to thus make all such prior investigations and studies shall in no way act as a waiver of any of the terms of the contract. No verbal agreement or conversation with any officer, agent or employee of the CITY, either before or after the execution of this contract, shall affect or modify any of the terms or obligations herein contained

56. FAMILIARITY WITH LAWS

The CONTRACTOR is required to be familiar with all Federal, State and Local laws, ordinances, rules and regulations that in any manner affect the work. Ignorance on the part of the CONTRACTOR will in no way relieve him from responsibility.

57. SALES TAX

The CONTRACTOR is required to pay Florida sales and use taxes on all materials purchased for this project unless otherwise specified in the document. All Florida sales and use taxes will be included in the submitted bid price(s).

58. CLARIFICATIONS AND INTERPRETATIONS OF CONTRACT DOCUMENTS

It is the duty of the CONTRACTOR to notify the Engineer, in writing, in the event of any doubt or question as to the true meaning of any provision in the Contract Documents. The Engineer's decision thereon shall be final. Annotated dimensions on drawings shall govern and work not dimensioned shall be as clarified by the Engineer. Work not particularly shown or specified shall be the same as similar parts that are shown or specified. Materials or work described in words which have a well-known technical or trade meaning shall be deemed to refer to such recognized standard.

Engineer will issue with reasonable promptness such written clarifications or interpretations of the requirements of the Contract Documents (in the form of Drawings or otherwise) as Engineer may determine necessary, which shall be consistent with or reasonably inferable from the overall intent of the Contract Documents. If CONTRACTOR believes that a written clarification or interpretation justifies an increase in the Contract Price or an extension of the Contract Time then CONTRACTOR shall notify CITY in accordance with the Agreement.

Engineer will be the initial interpreter of the requirements of the Contract Documents and judge of the acceptability of the Work there under. Claims, disputes and other matters relating to the acceptability of the Work or the interpretation of the requirements of the Contract Documents pertaining to the performance and furnishing of the Work and claims in respect of changes in the Contract Price or Contract Time will be referred initially to Engineer in writing with a request for a formal decision in accordance with this paragraph, which Engineer will render writing within a reasonable time. Written notice of each such claim, dispute and other matters will be delivered by

the claimant to Engineer and the other party to the Agreement promptly (but in no event later than thirty days) after the occurrence of the event giving rise thereto, and written supporting data will be submitted to Engineer and the other party within sixty days after such occurrence unless Engineer allows an additional period of time to ascertain more accurate data in support of the claim.

When functioning as interpreter and judge under this Article, Engineer will not show partiality to CITY or CONTRACTOR and will not be liable in connection with any interpretation or decision rendered in good faith in such capacity. The rendering of a decision by Engineer pursuant this Article with respect to any such claim, dispute or other matter (except any which have been waived by the making or acceptance of final payment as permitted by the Agreement.) will be a condition precedent to any exercise by CITY or CONTRACTOR of such rights or remedies as either may otherwise have under the Contract Documents or by Laws or Regulations in respect of any such claim, dispute or other matter.

59. LIMITATIONS ON ENGINEER'S RESPONSIBILITIES

Neither Engineer's authority to act nor any decision made by Engineer in good faith either to exercise or not exercise such authority shall give rise to any duty or responsibility of Engineer to CONTRACTOR, any Subcontractor, any Supplier, or any other person or organization performing any of the Work, or to any surety for any of them.

Whenever in the Contract Documents the terms "as ordered", "as directed", "as required", "as allowed", "as approved" or terms of like effect or import are used, or the adjectives "reasonable", "suitable", "acceptable", "proper" or "satisfactory" or adjectives of like effect or import are used to describe a requirement, direction, review or judgment of Engineer as to the Work, it is intended that such requirement, direction, review or judgment will be solely to evaluate the Work for compliance with the Contract Documents (unless there is a specific statement indicating otherwise). The use of any such term or adjective shall not be effective to assign to Engineer any duty or authority to supervise or direct the furnishing or performance of the Work or any duty or authority to undertake responsibility contrary to the provisions of this Article.

Engineer will not be responsible for CONTRACTOR's means, methods, techniques, sequences or procedures of construction, or the safety precautions and programs incident thereto, and Engineer will not be responsible for CONTRACTOR's failure to perform or furnish the Work in accordance with the Contract Documents.

Engineer will not be responsible for the acts or omissions of CONTRACTOR or of any Subcontractor, any Supplier, or of any other person or organization performing or furnishing any of the Work.

60. SAFETY AND PRECAUTION

CONTRACTOR shall be responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the Work. CONTRACTOR shall take all necessary precautions for the safety of, and shall provide the necessary protection to prevent damage, injury or loss to:

- a. all employees on the Work and other persons and organizations who may be affected thereby;

- b. all the Work and materials and equipment to be incorporated therein, whether in storage on or off the site; and iii. other property at the site or adjacent thereto, including trees, shrubs, lawns, walks, pavements, roadways, structures, utilities and Underground Facilities not designated for removal, relocation or replacement in the course of construction.

CONTRACTOR shall comply with all applicable Laws and Regulations of any public body having jurisdiction for the safety of persons or property or to protect them from damage, injury or loss; and shall erect and maintain all necessary safeguards for such safety and protection. CONTRACTOR shall notify owners of adjacent property and of Underground Facilities and utility owners when prosecution of the Work may affect them, and shall cooperate with them in the protection, removal, relocation and replacement of their property. All damage, injury or loss to any property referred to in paragraph caused, directly or in this Article directly, in whole or in part, by CONTRACTOR, any Subcontractor, Supplier or any other person or organization directly or indirectly employed by any of them to perform or furnish any of the Work or anyone for whose acts any of them may be liable, shall be remedied by CONTRACTOR (except damage or loss attributable to the fault of Drawings or Specifications or to the acts or omissions of CITY or Engineer or anyone employed by either of them or anyone for whose acts either of them may be liable, and not attributable, directly or indirectly, in whole or in part, to the fault or negligence of CONTRACTOR). CONTRACTOR's duties and responsibilities for the safety and protection of the Work shall continue until such time as all the Work is completed and Engineer has issued a notice to CITY and CONTRACTOR that the Work is acceptable (except as otherwise expressly provided in connection with Substantial Completion).

CONTRACTOR shall designate a responsible representative at the site whose duty shall be the prevention of accidents. This person shall be CONTRACTOR's superintendent unless otherwise designated in writing by CONTRACTOR to CITY.

In emergencies affecting the safety or protection of persons or the Work or property at the site or adjacent thereto, CONTRACTOR, without special instruction or authorization from Engineer or CITY, is obligated to act to prevent threatened damage, injury or loss. CONTRACTOR shall give

Engineer prompt written notice that any significant changes in the Work or variations from the Contract Documents have been caused thereby. If Engineer determines that a change in the Contract Documents is required because of the action taken in response to an emergency, a Work Directive Change or Change Order will be issued to document the consequences of the changes or variations.

61. RECORD DOCUMENTS

CONTRACTOR shall maintain in a safe place at the site one record copy of all Drawings, Specifications, Addenda, Written Amendments, reviewed Shop Drawings, Change Orders, Work Directive Changes, Field Orders and written interpretations and clarifications in good order and annotated to show all changes made during construction. These record documents together with all reviewed samples and a counterpart of all reviewed Shop Drawings will be available to Engineer for reference. Upon completion of the Work, these record documents or as-builts, samples and Shop Drawings will be delivered to Engineer for CITY. Upon delivery of such

documents to Engineer, the CONTRACTOR shall provide a written certification, signed and dated, that all documents accurately and completely reflect all deviations from or changes in the original Contract Documents made during construction of the project.

Record documents shall be up-to-date and available for review by the resident project representative prior to each application for progress payment. Payment will not be made for construction of items not shown on the record documents.

These requirements also supplement those of Item 66. Not less than two percent (2%) of the contract price shall be retained until correct record drawings, specifications, addenda, modifications and shop drawings are delivered to and reviewed by the Engineer.

62. PHYSICAL CONDITIONS-UNDERGROUND FACILITIES

Shown or Indicated: The information and data shown or indicated in the Contract Documents with respect to existing Underground Facilities at or contiguous to the site are based on information and data furnished to CITY or Engineer by the owners of such Underground Facilities or by others. Unless it is otherwise expressly provided in the Supplementary Conditions:

- a. CITY and Engineer shall not be responsible for the accuracy or completeness of any such information or data; and
- b. CONTRACTOR shall have full responsibility for reviewing and checking all such information and data, for locating all Underground Facilities shown or indicated in the Contract Documents, for coordination of the Work with the owners of such Underground Facilities during construction, for the safety and protection thereof and repairing any damage thereto resulting from the Work, the cost of all of which will be considered as having been included in the Contract Price.

The word facility as used in this subsection titled "Utilities" includes any pipe conveying gases or liquids and appurtenances attached thereto; cables, conduits, wires, ducts and appurtenances; poles and appurtenances; any of which may be buried below grade or installed at or above grade level. A facility excludes irrigation pipes, service connections and traffic signal wiring. A service connection is a pipe (excluding irrigation pipes), cable, wire, duct or conduit that is intended to connect a facility with a user. The word Utility as used in this subsection titled "Utilities" refers to the entity having legal owner-ship of the facility, service connection, irrigation pipe, or traffic signal wiring.

The Engineer has endeavored to determine the existence of underground facilities at the site of the work from the records of the utilities with known facilities in the vicinity of the work. The position of these facilities as derived from such records is shown on the plans. Service connections, irrigation pipes, and traffic signal wiring may not be shown on the plans. The CONTRACTOR shall make his own investigations, including exploratory excavations and contact with Utilities, to determine the exact locations and type of existing facilities, service connections, irrigation pipes, and traffic signal wiring prior to commencing work in the area and shall be responsible for any damage thereto.

Damage, injury, or loss resulting in whole or in part from the CONTRACTOR's failure to locate and preserve a facility, service connection, irrigation pipe, or traffic signal wiring shall under no circumstances be deemed attributable to the fault of the Drawings or Specifications or to the acts

or omissions of the CITY or Engineer or anyone employed by either of them or anyone for whose acts either of them may be liable.

With respect to underground facilities, no claim for a change in the contract price may be allowed unless the CONTRACTOR discovers an underground facility which is not indicated or referred to in the Contract Documents or which is in a position differing materially and significantly from that indicated or referred to in the Contract Documents. If such discovery is made, the CONTRACTOR shall promptly notify in writing the CITY, Engineer and the Utility. The CITY may make changes in the alignment and grade of the work.

At no additional cost to the CITY, the CONTRACTOR shall replace, remove, relocate, protect, or temporarily maintain a facility which is not in a position differing materially and significantly from that indicated or referred to in the Contract Documents. At no additional cost to the CITY, the CONTRACTOR shall adjust the top elevation of all valve boxes and manholes to match the finish grade or pavement surface and shall replace, remove, relocate, protect, or temporarily maintain all service connections, irrigation pipes, and traffic signal wiring. The work on the facility, service connection, irrigation pipe or traffic signal wiring shall be done in a manner satisfactory to the Utility, it being understood that the Utility has the option of doing such work with his own forces, or permitting the work to be done by the CONTRACTOR.

63. PHYSICAL CONDITIONS

- a. Exploration and Reports: Reference is made in the Special Conditions to those reports of exploration and tests of subsurface conditions at the site that have been utilized by Engineer in preparation of the Contract Documents. Such reports are not guaranteed as to accuracy or completeness and are not part of the Contract Documents.
- b. Unforeseen Conditions: CONTRACTOR shall promptly notify CITY and Engineer in writing of any subsurface or latent physical conditions at the site or in an existing structure differing materially from those indicated or referred to in the Contract Documents. Engineer will promptly review those conditions and advise CITY in writing if further investigation or tests are necessary.

Promptly thereafter, CITY shall obtain the necessary additional investigations and tests and furnish copies to Engineer and CONTRACTOR. If Engineer finds that the results of such investigations or tests indicate that there are subsurface or latent physical conditions which differ materially from those intended in the Contract Documents, and which could not reasonably have been anticipated by CONTRACTOR, a Change Order shall be issued incorporating the necessary revisions.

64. REVIEW OF APPLICATION FOR PROGRESS PAYMENT

Engineer will, within ten days after receipt of each Application for Payment, to either indicate in writing a recommendation of payment and present the Application to CITY, or return the Application to CONTRACTOR indicating in writing Engineer's reasons for refusing to recommend payment. In the latter case, CONTRACTOR may make the necessary corrections and resubmit the Application.

Ten (10) days after presentation of the Application for Payment with Engineer's recommendation, the amount recommended will become due and when due will be paid by CITY to CONTRACTOR.

Engineer's recommendation of any payment requested in an Application for Payment will constitute a representation by Engineer to CITY, based on Engineer's on-site observations of the Work in progress as an experienced and qualified design professional and on Engineer's review of the Application for Payment and the accompanying data and schedules that the Work has progressed to the point indicated; that, to the best of Engineer's knowledge, information and belief, the quality of the Work is in accordance with the Contract Documents (subject to an evaluation of the Work as a functioning whole prior to or upon Substantial Completion, to the results of any subsequent tests called for in the Contract Documents, to a final determination of quantities and classifications for Unit Price Work, and to any other qualifications stated in the recommendation); and that CONTRACTOR is entitled to payment of the amount recommended. However, by recommending any such payment Engineer will not thereby be deemed to have represented that exhaustive or continuous on-site inspections have been made to check the quality or the quantity of the Work beyond the responsibilities specifically assigned to Engineer in the Contract Documents or that there may not be other matters or issues between the parties that might entitle CONTRACTOR to be paid additionally by CITY or CITY to withhold payment to CONTRACTOR.

Engineer's recommendation of final payment will constitute an additional representation by Engineer to CITY that the conditions precedent to CONTRACTOR's being entitled to final payment have been fulfilled.

Engineer may refuse to recommend the whole or any part of any payment if, in Engineer's opinion, it would be incorrect to make such representations to CITY. Engineer may also refuse to recommend any such payment, or, because of subsequently discovered evidence or the results of subsequent inspections or test, nullify any such payment previously recommended; to such extent as may be necessary in Engineer's opinion to protect CITY from loss.

CITY may refuse to make payment of the full amount recommended by Engineer because claims have been made against CITY on account of CONTRACTOR's performance or furnishing of the Work or Liens have been filed in connection with the Work or there are other items entitling CITY to a set-off against the amount recommended, but CITY must give CONTRACTOR immediate written notice (with a copy to Engineer) stating the reasons for such action.

65. SUBSTANTIAL COMPLETION

When CONTRACTOR considers the entire Work ready for its intended use, CONTRACTOR shall notify CITY and Engineer in writing that the entire Work is substantially complete (except for items specifically listed by CONTRACTOR as incomplete) and request that Engineer issue a certificate of Substantial Completion. Within a reasonable time thereafter, CITY, CONTRACTOR and Engineer shall make an inspection of the Work to determine the status of completion. If Engineer does not consider the Work substantially complete, Engineer will notify CONTRACTOR in writing giving the reasons therefore. If Engineer considers the Work substantially complete, Engineer will prepare and deliver to CITY a tentative certificate of

Substantial Completion which shall fix the date of Substantial Completion. There shall be attached to the certificate a tentative list of items to be completed or corrected before final payment. CITY shall have seven days after receipt of the tentative certificate during which to make written objection to Engineer as to any provisions of the certificate or attached list. If, after considering such objections, Engineer concludes that the Work is not substantially complete, Engineer will within fourteen days after submission of the tentative certificate to CITY notify CONTRACTOR in writing, stating the reasons therefore. If, after consideration of CITY's objections, Engineer considers the Work substantially complete, Engineer will within said fourteen days execute and deliver to CITY and CONTRACTOR a definitive certificate of Substantial Completion (with a revised tentative list of items to be completed or corrected) reflecting such changes from the tentative certificate as Engineer believes justified after consideration of any objections from CITY. At the time of delivery of the tentative certificate of Substantial Completion, Engineer will deliver to CITY and CONTRACTOR a written recommendation as to division of responsibilities pending final payment between CITY and CONTRACTOR with respect to security, operation, safety, maintenance, heat, utilities, insurance and warranties. Unless CITY and CONTRACTOR agree otherwise in writing and so inform Engineer prior to Engineer's issuing the definitive certificate of Substantial Completion, Engineer's aforesaid recommendations will be binding on CITY and CONTRACTOR until final payment.

CITY shall have the right to exclude CONTRACTOR from the Work after the date of Substantial Completion, but CITY shall allow CONTRACTOR reasonable access to complete or correct items on the tentative list.

66. INSPECTIONS, CORRECTION, REMOVAL OF DEFECTIVE WORK

Engineer and Engineer's representatives, other representatives of CITY, testing agencies and governmental agencies with jurisdictional interests will have access to the Work at reasonable times for their observation, inspecting and testing. CONTRACTOR shall provide proper and safe conditions for such access.

CONTRACTOR shall give Engineer timely notice of readiness of the Work for all required inspections or tests.

If Laws or Regulations of any public body having jurisdiction require any Work (or part thereof) to specifically be inspected, tested or approved, CONTRACTOR shall assume full responsibility therefore, pay all costs in connection therewith and furnish Engineer the required certificates of inspection, testing or approval. CONTRACTOR shall also be responsible for and shall pay all costs in connection with any inspection or testing required in connection with CITY's or Engineer's acceptance of a Supplier of materials or equipment proposed to be incorporated in the Work, or of materials or equipment submitted for approval prior to CONTRACTOR's purchase thereof for incorporation in the Work. The cost of all inspections, tests and approvals in addition to the above which are required by the Contract Documents shall be paid by CITY (unless otherwise specified). All inspections, tests or approvals other than those required by Laws or Regulations of any public body having jurisdiction shall be performed by organizations acceptable to CITY and CONTRACTOR (or by Engineer if so specified).

If any Work (including the work of others) that is to be inspected, tested or approved is covered without written concurrence of Engineer, it must, if requested by Engineer, be uncovered for observation. Such uncovering shall be at CONTRACTOR's expense unless CONTRACTOR has given Engineer timely notice of CONTRACTOR's intention to cover the same and Engineer has not acted with reasonable promptness in response to such notice.

Neither observations by Engineer nor inspections, tests or approvals by others shall relieve CONTRACTOR from CONTRACTOR's obligations to perform the Work in accordance with the Contract Documents.

If any Work is covered contrary to the written request of Engineer, it must, if requested by Engineer, be uncovered for Engineer's observation and replaced at CONTRACTOR's expense.

If Engineer considers it necessary or advisable that covered Work be observed by Engineer or inspected or tested by others, CONTRACTOR, at Engineer's request, shall uncover, expose or otherwise make available for observation, inspection or testing as Engineer may require, that portion of the Work in question, furnishing all necessary labor, material and equipment. If it is found that such Work is defective, CONTRACTOR shall bear all direct, indirect and consequential costs of such uncovering, exposure, observation, inspection and testing and of satisfactory reconstruction, (including but not limited to fees and charges of engineers, architects, attorneys and other professionals), and CITY shall be entitled to an appropriate decrease in the Contract Price, and, if the parties are unable to agree as to the amount thereof, may make a claim therefore as provided in Special Conditions. If, however, such Work is not found to be defective, CONTRACTOR shall be allowed an increase in the Contract Price or an extension of the Contract Time, or both, directly attributable to such uncovering, exposure, observation, inspection, testing and reconstruction; and, if the parties are unable to agree as to the amount or extent thereof, CONTRACTOR may make a claim therefore as provided in Special Conditions.

If the Work is defective, or CONTRACTOR fails to supply sufficient skilled workers or suitable materials or equipment, or fails to furnish or perform the Work in such a way that the completed Work will conform to the Contract Documents, CITY may order CONTRACTOR to stop the Work, or any portion thereof, until the cause for such order has been eliminated; however, this right of CITY to stop the Work shall not give rise to any duty on the part of CITY to exercise this right for the benefit of CONTRACTOR or any other party.

If required by Engineer, CONTRACTOR shall promptly either correct all defective Work, whether or not fabricated, installed or completed, or, if the Work has been rejected by Engineer, remove it from the site and replace it with non-defective Work. CONTRACTOR shall bear all direct, indirect and consequential costs of such correction or removal (including but not limited to fees and charges of engineers, architects, attorneys and other professionals) made necessary thereby.

67. ACCEPTANCE OF DEFECTIVE WORK; CORRECTION OF DEFECTIVE WORK BY THE CITY

If, instead of requiring correction or removal and replacement of defective Work, CITY (and, prior to Engineer's recommendation of final payment) prefers to accept it, CITY may do so. CONTRACTOR shall bear all direct, indirect and consequential costs attributable to CITY's

evaluation of and determination to accept such defective Work (such costs to be approved by Engineer as to reasonableness and to include but not be limited to fees and charges of engineers, architects, attorneys and other professionals). If any such acceptance occurs prior to Engineer's recommendation of final payment, a Change Order will be issued incorporating the necessary revisions in the Contract Documents with respect to the Work; and CITY shall be entitled to an appropriate decrease in the Contract Price, and, if the parties are unable to agree as to the amount thereof, CITY may make a claim. If the acceptance occurs after such recommendation, an appropriate amount will be paid by CONTRACTOR to CITY.

If CONTRACTOR fails within a reasonable time after written notice of Engineer to proceed to correct and to correct defective Work or to remove and replace rejected Work as required by Engineer, or if CONTRACTOR fails to perform the Work in accordance with the Contract Documents, or if CONTRACTOR fails to comply with any other provision of the Contract Documents, CITY may, after seven days' written notice to CONTRACTOR, correct and remedy any such deficiency. In exercising the rights and remedies under this paragraph CITY shall proceed expeditiously. To the extent necessary to complete corrective and remedial action, CITY may exclude CONTRACTOR from all or part of the site, take possession of all or part of the Work, and suspend CONTRACTOR's services related thereto, take possession of CONTRACTOR's tools, appliances, construction equipment and machinery at the site and incorporate in the Work all materials and equipment stored at the site or for which CITY has paid CONTRACTOR but which are stored elsewhere. CONTRACTOR shall allow CITY, CITY's representatives, agents and employees such access to the site as may be necessary to enable CITY to exercise the rights and remedies under this paragraph. All direct, indirect and consequential costs of CITY in exercising such rights and remedies will be charged against CONTRACTOR in an amount approved as to reasonableness by Engineer, and a Change Order will be issued incorporating the necessary revisions in the Contract Documents with respect to the Work; and CITY shall be entitled to an appropriate decrease in the Contract Price, and, if the parties are unable to agree as to the amount thereof, CITY may make a claim. Such direct, indirect and consequential costs will include but not be limited to fees and charges of engineers, architects, attorneys and other professionals, all court and arbitration costs and all costs of repair and replacement of work of others destroyed or damaged by correction, removal or replacement of CONTRACTOR's defective Work. CONTRACTOR shall not be allowed an extension of the Contract Time because of any delay in performance of the Work attributable to the exercise by CITY of CITY's rights and remedies hereunder.

68. ARBITRATION

Before bringing any action in any court of competent jurisdiction pertaining to any claim, dispute or other matter in question arising out of or relating to the Contract Documents or the breach thereof, in an amount less than \$25,000, except for claims which have been waived by the making and acceptance of final payment, the claimant/objector (Party A) shall first offer to arbitrate the question(s) with the other party to the contract (Party B) by notifying him in writing and setting forth in such notice the question(s) to be arbitrated.

Party B can select to arbitrate or not. If Party B agrees to arbitrate he shall so advise Party A in writing within ten days after receipt of Party A's notice. Notice by Party B that he does not wish

to arbitrate or failure of Party B to notify Party A within the ten-day period will give Party A the right to institute a court action.

If Party B agrees to arbitrate, the arbitration shall be in accordance with the Construction Industry Arbitration Rules of the American Arbitration Association except as modified herein. In such event, the agreement to arbitrate shall be specifically enforceable under the provisions of the Florida Arbitration Code, S682, Fla. Stat., as it may be from time to time amended. The award rendered by the arbitrators shall be final, and judgment may be entered upon it in any court having jurisdiction thereof.

If Party B agrees to arbitrate, then Party A shall file its notice of demand for arbitration in writing with Party B and with the American Arbitration Association, and a copy shall be filed with the Engineer. Notice of demand for arbitration shall be served on the parties referred to herein no later than thirty days from the date Party B agrees to arbitrate the issues in question.

Failure to serve the notice of demand for arbitration shall constitute a waiver and abandonment of the claims for which arbitration is sought. Notice of demand for arbitration shall in no event be made on any claim, dispute or other matter in questions which would be barred by the applicable statute of limitations.

If the dollar amount of the claim exceeds \$25,000, arbitration may only be utilized if both Party A and party B agree to arbitrate.

The CONTRACTOR shall carry on the Work and maintain the progress schedule during any arbitration proceedings, unless otherwise mutually agreed in writing.

The Florida Rules of Civil Procedure pertaining to discovery shall apply to both parties during arbitration, and, at the CITY's sole option, any and all arbitration arising out of or relating to any of the Contract Documents or any breach thereof shall include by consolidation, joinder, or joint filing any additional person or entity not a party to this Agreement to the extent necessary for the final resolution of the matter in controversy.

At least one of the members of the arbitration panel must be an attorney licensed to practice law in the State of Florida.

The surety shall be bound by the arbitration award to the same extent as the CONTRACTOR is bound.

The arbitration panel shall submit a written opinion with findings of fact and conclusions of law stating the basis for the decision made, and including an award of arbitration that may be confirmed by a court of competent jurisdiction.

Unless CITY agrees to the contrary, the location of any and all arbitration proceedings shall be in Lake County, Florida.

City of Leesburg Lake Front City

Agenda Memorandum

Item No: 5.B.6.

Meeting Date: November 23, 2020

From: Mike Thornton, (Purchasing Manager), Brad Chase, (Electric Director)

Subject: Purchase request by the Electric Department of a hydraulic underground conductor puller to replace an 18 year old piece of equipment for \$192,075.00.

Staff Recommendation:

Staff recommends waiving a competitive solicitation and approve this purchase as a single source to Sherman & Reilly, Inc. for \$192,075.00.

Analysis:

The Electric Department has budgeted for this purchase in the current Fiscal Year. This equipment is used to pull conductor into underground conduit for distribution lines. The current piece of equipment is 18 years old and at the end of its life. This new equipment will be needed for the installation of underground conductor in areas of new construction.

Procurement Analysis:

The Electric Department has complete the attached Single Source Justification form. Procurement has reviewed the request and concurs this purchase does qualify as a single source and is in the best interest of the City. A quote was solicited and received from another manufacturer of similar equipment. That quote was significantly higher at \$274,409.00. The price being paid for this purchase is reasonable. By purchasing this piece of equipment from Sherman & Reilly the Electric Department will be able to use accessory equipment already owned and used on the old equipment.

Options:

1. Waive a competitive solicitation and approve a single source purchase to Sherman & Reilly for \$192,075.00; or
2. Such alternative action as the Commission may deem appropriate.

Fiscal Impact:

The Electric Department budgeted \$180,000 for this purchase. The shortfall of \$12,075.00 has been identified in the current Electric capital budget and will be added to the current budget for this purchase.

Account No.	041-1099-531.64-10
Project No.	410008
WF No.	WF1309057 / 001
Requisition	52602
Budget	\$180,000.00
Available	\$192,075.00

Submission Date and Time: 11/18/2020 1:14:43 PM



Request for Single or Sole Source Purchase

City of Leesburg, Florida

INSTRUCTIONS

This form is to be completed and submitted with an electronic requisition to request and provide justification for a sole source, single source or where competitive quotes were not obtained for the purchase of equipment, supplies and/or services. Please complete all parts of this form and include all supporting documentation.

For purchases costing \$25,000 or more, this form should be submitted with your Advance Procurement Plan if a sole source, single source, or waiver of competitive bidding is being requested.

I. REQUEST INFORMATION

Date: November 10, 2020 Requisition No. 52602 Dept. Name: Electric Department

Requested By: Greg David

Name of Director: Brad Chase

Brief Description of Purchase:

The Electric Department is replacing its 18 year old underground hydraulic cable puller trailer, Sherman & Reilly Duct Dawg DDIXA-100-T.

II. AFFIDAVIT

Please check the following statements affirming both statements apply:

This purchase is clearly and legitimately limited to a Single Source because the product or service:

☒ (a) is available from only one source and there are no alternates;

AND,

☒ (b) has unique characteristics essential to the intended use which no other product would be acceptable to the City.

Explain why this is the only source for the required product or source.

The City of Leesburg's Electric Department has long ago standardized on Sherman & Reilly for all of its overhead and underground puller tensioner machines. The Electric Department currently has five (5) Sherman & Reilly puller and tensioners in our fleet including several hundred dollies and various accessories. Sherman & Reilly is recognized as the leader in the utility industry and is widely used within our peer group. By standardizing on the Sherman & Reilly equipment we provide consistency for our employees when utilizing the equipment and to fleet for servicing the equipment.

III. RATIONALE FOR A SINGLE SOURCE PURCHASE

Attach vendor documentation certifying that the vendor is the only source for the products or services in question and/or holds the production, copyrights, trademark, and/or patent to the item AND check the following applicable statements:

- ☐ The vendor holds the exclusive distribution rights for the item in question. You must attach a **current** letter from the manufacturer on their letterhead stating such territorial rights for this region.
- ☒ The item to be purchased is the only item compatible with existing equipment owned by the City.
- ☐ The vendor is the single provider of the goods or services having unique characteristics essential to the needs of the City to perform the intended function and no other product is suitable for use by the City.

Request for Single or Sole Source Purchase

City of Leesburg, Florida

Page 2 of 3

III. REASONABLENESS OF COST

If you did not obtain competitive price quotations or bids, regardless of reason, you must perform a Price Analysis to demonstrate that the cost is fair and reasonable. Reasonableness of cost must be validated for all purchases even if only one source exists.

PRICE ANALYSIS

Price analysis is the process of examining and evaluating a proposed price to determine if it is fair and reasonable, without evaluating its separate cost elements and proposed profit. Price analysis always involves some form of COMPARISON with other prices. Performing a price analysis even on sole/single source purchases is a prudent way to insure the City's money is being spent appropriately. The list below includes some of the common ways to justify the reasonableness of the cost using price analysis. Please check one of the boxes and attach supporting documentation.

☒ The vendor's price quotation is either equal to or less than the vendor's published price list. **(Please attach a copy of the price quotation and the published price list.)**

☐ The vendor does not have a published price list. **You must attach a letter from the vendor certifying that the quoted price is equal to or less than that given to the vendor's most favored customer or other government entities.**

☐ The price of this purchase has been compared to published prices for similar or comparable goods or services from other sources. **(Please attach supporting documentation for the comparably priced goods or services.)**

☐ You have recently purchased the same or a comparable product or service from a different source. The price for the previous purchase was comparable to the price of this purchase. **(Please attach a copy of that purchase order or vendor's invoice.)**

☐ Other

IV. SIGNATURES

Return completed and signed form to the Purchasing Division with attachments. As soon as the electronic requisition is received this document will be reviewed. Please note, inadequate justification or documentation for a request will result in delays.

 11/10/2020
Department Head Signature (Designee not acceptable.) Date

 11/12/2020
Purchasing Manager Signature Date

☒ Approved ☐ Disapproved

IV. SUPPORTING INFORMATION

What steps were taken to verify that these features are not available with other products or from other sources?

Check the items that are applicable and provide the requested information in the space provided.

- ☐ Other brands/manufacturers were examined.
List the names and phone numbers and explain why they are not suitable for use by the City.

Manufacturer / Brand Name	Contact Name	Contact Phone No.	Contact E-mail Address



400 West 33rd Street • Chattanooga, TN 37410
 p | 800.251.7780 • 423-756-5300 f | 423-756-2948
 w | sherman-reilly.com

Lindsey Smith

QUOTATION

Quotation To:
 City of Leesburg

Quotation Date: September 14, 2020

Quotation # 6992

Customer ID:

Quotation valid until: December 13, 2020

Phone:
 Fax:
 Email:

Prepared by:

Quoted Products/Services

(signature)

BASE UNIT	UOM	Qty.	Price/Unit	Ext. Price
DDHXA-100-T (609208) Hydraulic Duct Dawg underground puller trailer	EA	1	178,000.00	178,000.00
mounted with electric trailer brakes and T4F 71hp diesel engine and				-
Air Compressor				-
Unit is equipped with the following:				-
Remote Control				-
Canbus Operating System				
Data Logging Features				-
D.O.T. Lighting and Adjustable Pintle Eye				-
Hydraulic Boom for set up from vertical to horizontal/lateral/telescope				
Hydraulic Jacks (3) for easy set up				
Pulling Tensions - 0 to 10,000 lbs. @ 0 to 120 fpm				-
Pulling Cable - Steel 7/16" x 2,200 ft.				-
Heavy Duty Automatic Levelwind w/ horizontal arm				-
Dynometer and Footage Counter				-
UG Pulling Connectors - (1) E-35-D and (1) E-49-D				-
Storage for UG-71 Blocks and Air Adapter Kit				-
AVAILABLE OPTIONS:				-
UG71 Duct blocks w/ Nylatron Sheaves for 2-2 1/2-3-4-5-6 inch conduit	EA	1	3,125.00	3,125.00
Air Adapter Kit for 2-2 1/2-3-4-5-6 inch conduit, includes aluminum	EA	1	10,850.00	10,850.00
air adapter heads, birds, hoses, control valves, & safety relief valves				-
Trailer Plug - 7 pin, unless otherwise specified	EA	1	100.00	100.00
				-

Prices are FOB Destination, freight prepaid and added to the invoice.
 Payment Terms are Net 30 days with approved credit
 Standard Terms & Conditions apply unless otherwise noted:
 Expected ship date will be communicated with/by S&R's order confirmation.
 Standard Shipping Interval is 90 - 120 Days After Receipt of Order

Lindsey Smith
Training Included

QUOTE FORM 6-29-11 v.4

City of Leesburg Lake Front City

Agenda Memorandum

Item No: 5.B.7.

Meeting Date: November 23, 2020

From: Mike Thornton, (Purchasing Manager), Tino Anthony , (IT Director)

Subject: Purchase request for notebook and mini-desktop computers from Staples Technology Solutions for an amount of \$62,645.71.

Staff Recommendation:

Staff recommends approval of the purchase request to Staples Technology Solutions for \$62,645.71.

Analysis:

The purpose of this purchase request is to purchase 64 each Lenovo Thinkpad T14 notebook computers and 21 each Lenovo ThinkCentre M720 Tiny desktop computer. This purchase is part of the 5-year computer equipment replacement program. Each year the Information Technology Department budgets for the purchase of computer equipment to replace equipment that has been in service for at least 5 years.

The IT Department has standardized on the Lenovo brand of products for both desktop and notebook computer equipment. This brand has been found to be reliable and consistent from year to year. Previous manufacturers have changed their product lines too frequently, this causes operational challenges for the IT Department when deploying new equipment. Support and maintenance of many different models of the same manufacturer is not efficient.

The equipment to be purchased is:

- 64 each - Lenovo Thinkpad T14 Notebook - \$804.91 each
- 21 each - Lenovo ThinkCentre M720 Tiny Desktop - \$530.07 each

Procurement Analysis:

Procurement recommends using the Sourcewell Cooperative Contract for this purchase. Staples Technology Solutions is an authorized reseller under the Sourcewell Cooperative Agreement. The City's Purchasing Policy allows for the use of Cooperative Contracts in lieu of a competitive solicitation. Procurement has vetted the Sourcewell contract vehicle and finds it to be transparent and a competitively awarded contract. The City has made other purchases using the Sourcewell cooperative contract awards.

Options:

1. Approve the purchase request to Staples Technology Solutions for a cost of \$62,645.71; or
2. Such alternative action as the Commission may deem appropriate.

Fiscal Impact:

Funds are budgeted and available for this purchase.

Account No.	001-1633-513.51-81
Requisition	52836
Budget	\$94,500.00
Available	\$94,022.20

Submission Date and Time: 11/18/2020 1:16:18 PM

Pricing Confirmation



Expiration Date
12/31/2020

Thank you for the opportunity to partner with you for your technology needs. Please see information below regarding your quote.

Thank you,
Chuck Seybold

Quote #	Quote Date	Customer Name	Sales Rep	Total
202011-405276	11/17/2020	City Of Leesburg	Chuck Seybold	\$ 62,645.71

Qty.	Part No.	Product Description	UOM	Unit Price	Extended Price
64	20UD000HUS	Ryzen 5 Pro 4650U / 2.1 GHz - Win 10 Pro 64-bit - 8 GB RAM - 256 GB SSD TCG Opal Encryption 2, NVMe - 14" IPS 1920 x 1080 (Full HD) - Radeon Graphics - Wi-Fi, Bluetooth - black - kbd: US	EA	\$ 804.91	\$ 51,514.24
21	10T7002CUS	Tiny - Core i5 8400T / 1.7 GHz - RAM 8 GB - SSD 256 GB - TCG Opal Encryption, NVMe - UHD Graphics 630 - GigE - WLAN: 802.11a/b/g/n/ac, Bluetooth 4.2 - Win 10 Pro 64-bit - monitor: none - keyboard: US - TopSeller	EA	\$ 530.07	\$ 11,131.47
				Total*	\$ 62,645.71

*Tax, eWaste and freight charges are additional where applicable

Customer Information

City Of Leesburg

Please remit payments to:
Staples Technology Solutions
P.O. Box 95230
Chicago, IL 60694-5230

Staples Sales Rep Information

Staples Technology Solutions
Chuck Seybold
(412) 505-1643
Chuck.Seybold@Staples.Com

You can lease this monthly for only: \$ 1,733.41

Leasing Options: Staples can help you overcome budget constraints, avoid obsolescence, and reduce upfront cost by leasing your IT assets.
Leasing Offer: 36 Mo FMV lease, your actual payment may vary. Lease subject to customer credit approval and lessor terms & conditions. Other restrictions may apply.

Based upon the impact of COVID-19 driven product shortages we suggest prompt placement of a Purchase Order, which will help establish the highest likelihood of fulfillment for constrained products. Your account team is ready to assist you with this order and any subsequent updates.

Terms: This quote is valid thru Expiration Date above and is subject to change. Seller also reserves the right to reasonably adjust a Product's price if extraordinary market events require immediate adjustment (e.g., epidemics, shortages, trade disputes, natural disasters, etc.) and to adjust pricing with the impact of tariffs, customs, or duties imposed on products. This proposal is confidential and meant for the client recipient above, any unauthorized review; use, disclosure or distribution is prohibited. Credit cards may be used only at the time of purchase and not for the payment of invoices. Purchase subject to Staples Terms and Conditions here : https://sts.staples.com/tech_services_STS.html and Staples Return Policy found here: <https://sts.staples.com/returns.html>

City of Leesburg Lake Front City

Agenda Memorandum

Item No: 5.C.1.

Meeting Date: November 23, 2020

From: Brad Chase, (Electric Director)

Subject: Resolution of the City Commission of the City of Leesburg, Florida, setting new rates for providing meter treater surge protection devices to electric utility customers requesting such services; imposing an installation fee for future installations of this service; setting a date for the charges imposed by this Resolution to commence; and providing an effective date.

Staff Recommendation:

Electric Department staff recommends approval of the referenced amendment to the Meter Treater Rate Structure.

Analysis:

The City of Leesburg Electric Department has provided our customers the opportunity to obtain electric surge protection for their home or business since 1992. This service is provided by the installation of a Meter Treater Surge Protection Device at the electric meter.

The current Meter Treater Surge Protection Program (Meter Treater Program) requires no initial charge or installation fee and a \$3.50/monthly charge for residential single-phase customers or a \$4.50/monthly charge for commercial three-phase customers. These charges have been in place since 1992. The customer, in either case, is required to sign a 12-month agreement prior to the installation of the Meter Treater Surge Protection Device.

Procurement Analysis:

Due to price increases for the surge protection device, as well as increases to the City's O&M costs, it is important that we review this program. -This proposal will increase the monthly fees for the single-phase Meter Treater to \$5.75 and three phase Meter Treater to \$6.75 and incorporate an installation fee of \$40.00 for new Meter Treater installations. The proposal is to implement the new Meter Treater Rate Structure on January 1, 2021.

The changes to this program should reflect a more sustainable cost structure while remaining competitive with surrounding utilities.

Options:

1. Approve the new Meter Treater Rate Structure as presented, or;
2. Such alternative action as the Commission may deem appropriate.

Fiscal Impact:

The FY2021 budgeted revenue from the Meter Treater Program is projected to be \$79,711 dollars. The proposed changes to the Meter Treater Rate Structure will increase annual net revenue approximately 25% per year while providing operating funds for the purchase of new Meter Treaters and the continued maintenance/replacement of older Meter Treaters.

Account No. 041-0000-343-xx50

Submission Date and Time: 11/18/2020 1:18:36 PM

RESOLUTION NO. _____

**RESOLUTION OF THE CITY COMMISSION OF THE CITY OF LEESBURG,
FLORIDA, SETTING NEW RATES FOR PROVIDING METER TREATER
SURGE PROTECTION DEVICES TO ELECTRIC UTILITY CUSTOMERS
REQUESTING SUCH SERVICES; IMPOSING AN INSTALLATION FEE FOR
FUTURE INSTALLATIONS OF THIS SERVICE; SETTING A DATE FOR THE
CHARGES IMPOSED BY THIS RESOLUTION TO COMMENCE; AND
PROVIDING AN EFFECTIVE DATE.**

BE IT RESOLVED BY THE CITY COMMISSION OF THE CITY OF LEESBURG, FLORIDA:

THAT commencing January 1, 2021, the fee for single phase Meter Treater service shall increase to \$5.75 per month. On that same date, the fee for three phase Meter Treater service shall increase to \$6.75 per month. Also, commencing January 1, 2021, an installation fee of \$40.00 per installation shall be imposed for all new Meter Treater installations performed after that date.

THIS RESOLUTION shall be effective on the date it is adopted by the Leesburg City Commission in accordance with law.

PASSED AND ADOPTED at the regular meeting of the Leesburg City Commission held on November 23, 2020.

Mayor

ATTEST:

City Clerk

City of Leesburg Lake Front City

Agenda Memorandum

Item No: 5.C.2.

Meeting Date: November 23, 2020

From: Tracey Dean, (Airport Manager)

Subject: Resolution of the City Commission of the City of Leesburg, Florida, authorizing the Mayor and City Clerk to execute an Amendment 2 to Professional Services Agreement with Hoyle, Tanner and Associates, Inc., to provide Gopher Tortoise Relocation services related to the Runway 13/31 Rehabilitation Construction project at the Leesburg International Airport for an amount of \$6,817.00; and providing an effective date.

Staff Recommendation:

Staff recommends approval of the resolution authorizing execution of the Amendment 2 for Gopher Tortoise Relocation services with Hoyle, Tanner and Associates, Inc. for an amount of \$6,817.00.

Analysis:

Hoyle, Tanner and Associates, Inc., designed the Runway 13/31 Rehabilitation as a result of Request for Qualifications 180613. Amendment 1 to the agreement was approved by Commission on September 14, 2020 by Resolution 10,709 to add construction administration services. Construction has begun and Gopher Tortoise burrows have been uncovered. Approval of Amendment 2, will provide the necessary funds for a certified agent/biologist, working as a subconsultant to the engineers, to assist with the required relocation efforts. The Airport will have additional expenses related to the Gopher Tortoise Recipient Site. These fees will be approximately \$11,200.00 which will be dependent on the number and age of tortoises found.

Procurement Analysis:

Options:

1. Approve the resolution authorizing execution of Amendment 2 with Hoyle, Tanner and Associates, Inc.; or,
2. Such alternative action as the Commission may deem appropriate.

Fiscal Impact:

This project is funded by a 100% reimbursable FAA grant. The FAA amends any over/under quantities at project closeout.

Account No. 048-8099-542-6310
Project No. 480003
WF No. WF1218363/2

Submission Date and Time: 11/18/2020 1:21:34 PM

RESOLUTION NO. _____

RESOLUTION OF THE CITY COMMISSION OF THE CITY OF LEESBURG, FLORIDA, AUTHORIZING THE MAYOR AND CITY CLERK TO EXECUTE AN AMENDMENT 2 TO PROFESSIONAL SERVICES AGREEMENT WITH HOYLE, TANNER AND ASSOCIATES, INC., TO PROVIDE GOPHER TORTOISE RELOCATION SERVICES RELATED TO THE RUNWAY 13/31 REHABILITATION CONSTRUCTION PROJECT AT THE LEESBURG INTERNATIONAL AIRPORT FOR AN AMOUNT OF \$6,817.00; AND PROVIDING AN EFFECTIVE DATE.

BE IT RESOLVED BY THE CITY COMMISSION OF THE CITY OF LEESBURG, FLORIDA:

THAT the Mayor and City Clerk are hereby authorized to execute an Amendment 2 with Hoyle, Tanner and Associates, Inc., whose address is 95 E. Mitchell Hammock Road, Oviedo, Florida 32765, for Gopher Tortoise Relocation efforts, pursuant to RFQ 180613 and an existing Professional Services Agreement.

THAT this resolution shall become effective immediately.

PASSED AND ADOPTED by the City Commission of the City of Leesburg, Florida, at a regular meeting held the 23rd day of November 2020.

Mayor

ATTEST:

City Clerk

**AMENDMENT TWO TO AN
AGREEMENT FOR PROFESSIONAL SERVICES**

THIS AMENDMENT is made as of the 23rd day of November in the year 2020, between **THE CITY OF LEESBURG, FLORIDA**, a Florida Municipal Corporation, whose address is 501 West Meadow Street, Post Office Box 490630, Leesburg, Florida 34749-0630 (“CITY”), and **HOYLE TANNER & ASSOCIATES, INC.** whose address is 95 e. Mitchell Hammock Road, Suite 200, Oviedo, Florida 32765 (“PROFESSIONAL”).

WITNESSTH:

On June 10, 2019, pursuant to resolution 10413 the CITY and PROFESSIONAL entered into an Agreement for Professional Services for design services related to the rehabilitation of runway 13/31 at the Leesburg International Airport. The Agreement is referenced herein as though set forth in full text.

On September 14, 2020 the CITY and PROFESSIONAL executed an Amendment One to the Agreement.

The CITY and the PROFESSIONAL desire to execute this Amendment Number Two (“Amendment”) to the Original Agreement, modifying said Agreement as described herein.

NOW THEREFORE, for and in consideration of the mutual covenants and promises contained in this Amendment, the CITY and the PROFESSIONAL do hereby agree as set forth below:

1. **Recitals.** The above recitals are true and correct and are incorporated herein.
2. **Amendment.** Additional services for the relocation of gopher tortoise found within the limits of the Project.
 - a. **Additional Services.** The CITY and PROFESSIONAL amend the Agreement to add services to coordinate with the appropriate biological companies the capture and relocation of eight (8) gopher tortoise.
 - b. **Compensation.** Compensation for the Additional Services will not exceed \$6,817.00.
3. **Modification.** Except as specifically modified by this Amendment, all terms and conditions of the prior agreement shall continue in full force and effect as originally executed. Nothing herein shall be deemed or construed to amend or modify any other contract or undertaking between the City and Contractor other than as defined above.
4. **Counterparts.** This Agreement may be executed in multiple counterparts, each of which may be considered an original, but all of which together shall constitute but one and the same instrument. This Agreement when signed by a party may be delivered by electronic mail or facsimile transmission with the same force and effect as if the same were an executed and delivered original, manually-signed counterpart.

[Signature page follows.]

IN WITNESS WHEREOF, the parties hereto have executed this Amendment on the date stated in the preamble.

HOYLE, TANNER & ASSOCIATES, INC.

By: _____

Printed: _____

Its: _____
(Title)

THE CITY OF LEESBURG, FLORIDA

By: _____
Elise Dennison, Mayor

Attest:

J. Andi Purvis, City Clerk

Approved as to form:

Fred A. Morrison, City Attorney

City of Leesburg Lake Front City

Agenda Memorandum

Item No: 5.C.3.

Meeting Date: November 23, 2020

From: Brad Chase, (Electric Director)

Subject: Resolution of the City Commission of the City of Leesburg, Florida accepting and approving the City of Leesburg Electric Department's North American Electric Reliability Corporation (NERC) documentation, including the 2020 Annual NERC Compliance Annual Review Report, the 2019 NERC Internal Compliance Monitoring and Enforcement Program Document, the 2019 Internal Controls for Compliance Monitoring Policy, and the 2020 NERC Compliance Program City Commission Presentation; and providing an effective date.

Staff Recommendation:

Staff recommends accepting and approving the Resolution for the City of Leesburg Electric Department's North American Electric Reliability Corporation (NERC) documentation, including 2020 Annual NERC Compliance Annual Review Report, the 2019 NERC Internal Compliance Monitoring and Enforcement Program Document, the 2019 Internal Controls for Compliance Monitoring Policy, and the 2020 NERC Compliance Program City Commission Presentation. All NERC Compliance documents are required to be submitted annually to the City Commission.

Analysis:

The North American Electric Reliability Corporation (NERC) requires each Registered Entity to create and maintain an Internal Compliance Program (ICP). The City of Leesburg Electric Department's ICP requires that Leesburg Electric's Compliance Oversight Group (COG) provide a report of the findings of each Annual NERC Compliance Review. The documents contained in this submission to the City Commission as well as the documents submitted to the City Manager fulfill this requirement.

Procurement Analysis:

Options:

1. Adopt the Resolution accepting and approving the City of Leesburg Electric Department's NERC documentation as presented, or;
2. Such alternative action as the Commission may deem appropriate.

Fiscal Impact:

None

Submission Date and Time: 11/18/2020 1:31:29 PM

RESOLUTION NO. _____

RESOLUTION OF THE CITY COMMISSION OF THE CITY OF LEESBURG, FLORIDA ACCEPTING AND APPROVING THE CITY OF LEESBURG ELECTRIC DEPARTMENT'S NORTH AMERICAN ELECTRIC RELIABILITY CORPORATION (NERC) DOCUMENTATION, INCLUDING THE 2020 ANNUAL NERC COMPLIANCE ANNUAL REVIEW REPORT, THE 2019 NERC INTERNAL COMPLIANCE MONITORING AND ENFORCEMENT PROGRAM DOCUMENT, THE 2019 INTERNAL CONTROLS FOR COMPLIANCE MONITORING POLICY, AND THE 2020 NERC COMPLIANCE PROGRAM CITY COMMISSION PRESENTATION; AND PROVIDING AN EFFECTIVE DATE.

BE IT RESOLVED by the City Commission of the City of Leesburg, Florida, that:

The City of Leesburg, Florida, does hereby accept the City of Leesburg Electric Department's North American Electric Reliability Corporation (NERC) documentation, including 2019 Annual NERC Compliance Annual Review Report, the 2019 NERC Internal Compliance Monitoring and Enforcement Program Document, the 2019 Internal Controls for Compliance Monitoring Policy, and the 2019 NERC Compliance Program City Commission Presentation.

THIS RESOLUTION shall become effective upon its passage and adoption according to law.

PASSED AND ADOPTED by the City Commission of the City of Leesburg, Florida, at a regular meeting held the 23 day of November 2020.

Mayor

ATTEST:

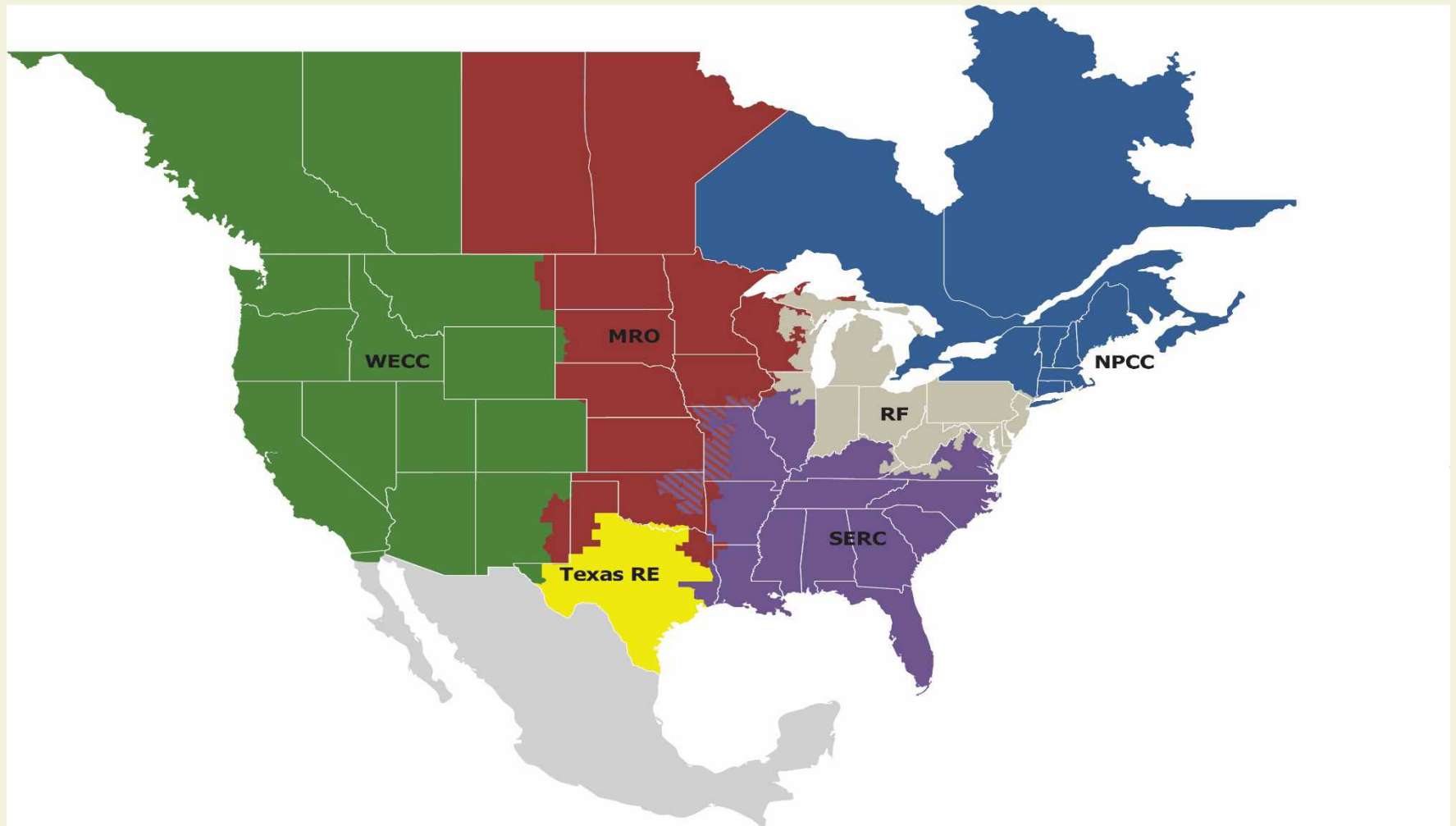
City Clerk



City of Leesburg Electric Department

**2020 NERC Compliance Program
City Commission Presentation
November 23, 2020**

Leesburg Electric Compliance Program





Leesburg Electric Compliance Program



- The North American Electric Reliability Corporation (NERC), created mandatory Reliability Standards that safeguard the Bulk Electric System (BES).
- The City of Leesburg Electric Department (City) is a jurisdictional electric power provider, and therefore, must comply with applicable NERC Reliability Standards.
- Compliance Review Results for 2020:
 - The City of Leesburg had a change in NERC Registration from a Distribution Provider (DP) to a Distribution Provider Under Frequency Load Shed only (DP UFLS only) in 2019.
 - The change in NERC Registration resulted in a NERC Compliance footprint reduction to 2 Standards and 7 individual Requirements.
 - The City is compliant with all applicable Standards and individual Requirement.

Leesburg Electric Compliance Program



- Key Reliability Standards:
 - Protection and Controls (PRC)
 - Compliance Requirements for maintenance and testing of Protection Systems in our substations.
 - PRC-005 and PRC-006
- A new Leesburg Electric's Internal Compliance Program (ICP) is posted on City's Intranet. The basis for the new ICP was to incorporate the change in NERC Registration.

Leesburg Electric Compliance Program



The Report from our 2020 Annual Review has been given to the City Manager, the Director of Electric, and the Electric Deputy Director of Operational and Technical Services/ NERC Compliance Manager.

This report has also been included in your information packets.

Leesburg Electric Compliance Program



The initial phase of Risk-Based Registration (RBR) was completed for the City by the Florida Reliability Coordination Council (FRCC) with the issuance of an Inherent Risk Assessment (IRA) and a Compliance Oversight Plan (COP)— the City’s NERC region, which is an initiative by NERC to reduce the compliance requirements for small entities.

Leesburg Electric Compliance Program



- On July 1, 2019, the FRCC's Compliance Oversight responsibility transferred to the Southeast Electric Reliability Council (SERC) based in North Carolina.
- The City of Leesburg has been fully integrated into the SERC region.
- An evaluation of the City's substation (PRC) maintenance and testing programs have been conducted to ensure compliance with any applicable SERC approved Reliability standards.

City of Leesburg

Electric Department

2020 Annual NERC Compliance Review

May 28, 2020

Purpose: The purpose of the 2020 Annual NERC Compliance Review is to thoroughly examine each NERC Reliability Standard and its associated Requirements to assure that the City of Leesburg Electric Department is in compliance.

Scope: The scope of the 2020 Annual NERC Compliance Review is to analyze every Standard to determine if the City is required to be compliant with the Standard, verify that the City was in compliance during the previous calendar year, and to make sure that the City is in compliance moving forward.

Duration: April 2019 through May 2020

Findings: This Review covered 2 NERC Standards with 19 individual Requirements plus the City of Leesburg Internal Compliance Program. This is the first full review after a significant change in the City of Leesburg's NERC Registration. The City's NERC Registration changed from Distribution Provider (DP) to Distribution Provider Under Frequency Load Shed Only (DP UFLS Only). This is also the first significant review of the City of Leesburg Internal Compliance Program after the NERC Registration change.

Under this new NERC Registration, it was determined that the City of Leesburg Electric Department must be in compliance with 2 NERC Standards with 7 individual Requirements plus the City of Leesburg Internal Compliance Program.

The City of Leesburg has fulfilled all data requests covered under various aspects of the FMPA ARP contract, individual data request from FMPA and direct requests from FRCC. No incidents have been reported to the City of Leesburg in which FMPA has not fulfilling their contractual obligations with FRCC to provide data on behalf of FMPA ARP members.

Training: Training documents for the City of Leesburg's Internal Compliance Program and Reliability Standard PRC-005 were updated and distributed to all employees with direct compliance responsibilities.

Reports: There are two actions that are required to be completed after our Annual NERC Compliance Review. This document fulfills one of the actions. The second action is to provide the information on the completed review to the City Commissioners.

The City Commission information documents have been compiled. The Annual NERC Review Information will be provided to the City Commissioners as part of a City Commission meeting agenda item, after review by the Director of Electric and the City Manager.

Future: In July of 2019, NERC will have implemented a change in Regional Entity compliance responsibilities. This change will result in the City of Leesburg transferring to SERC Regional Entity in Charlotte, NC from the FRCC Regional Entity in Tampa, FL.

In 2020, there are no new NERC Reliability Compliance Standards that will affect the City of Leesburg's compliance footprint.

There will be some changes encountered with the transition to the SERC Regional Entity, such as modifying all documents that presently contain references to FRCC. Some process and procedure documents will also require modification to support SERC Regional Entity business practices.

With the change in registration and coupled with the existing Inherent Risk Assessment (IRA) the City's future NERC Audit focus has been significantly narrowed. Because of the this narrowed focus, the Compliance Oversight Group (COG) must continue to increase our internal controls efforts and strengthen our Internal Compliance Program.

Summary: The City of Leesburg Electric Department was in compliance during the previous calendar year and is currently in compliance with all applicable Standards and associated Requirements. Ongoing improvement efforts continue for the NERC Compliance Program and its associated processes and procedures.

Data for this report was compiled by Rich Olson and submitted to Chris Adkins.



Submitted
Rich Olson
Senior Systems Operator/
NERC Compliance Officer



Date



Chris Adkins
Electric Operations Manager/
NERC Compliance Manager



Date



**City of Leesburg
Electric Department
Internal Compliance Monitoring
And
Enforcement Program**



City of Leesburg

PO Box 490630 • Leesburg, Florida 34749-0630

Ph 352-728-9786 • Fx 352-728-9734

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Purpose:

The City of Leesburg Electric Department (Leesburg Electric) has a well-established Internal Compliance Program that reflects Leesburg Electric's longstanding commitment to compliance with the North American Electric Reliability Corporation (NERC) and Regional Entity (Florida Reliability Coordinating Council (FRCC) or SERC Reliability Corporation (SERC)) mandatory Reliability Standards and associated Requirements. The goal of Leesburg Electric's Internal Compliance Program is to maintain a culture that promotes the commitment to adopt and ensure enforcement of new and more effective internal controls, procedures for continued compliance, and to fulfil the Compliance Goals established in the Leesburg Electric Internal Controls for Compliance Monitoring Policy document.

This Internal Compliance Monitoring and Enforcement Program (Internal Compliance Program) is the program used by Leesburg Electric to monitor, assess, and enforce compliance with Reliability Standards and associated Requirements issued and approved by NERC and/or the Regional Entity. This is accomplished through strong leadership, communication, training, monitoring, response, remediation, and enforcement.

This document also provides guidance on how Leesburg Electric's Internal Compliance Program is used and maintained. It also provides an opportunity to establish guidelines for process improvement.

References:

Leesburg Electric Internal Controls for Compliance Monitoring Policy document
NERC Compliance Monitoring Enforcement Program (CMEP)



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Regional Entity Compliance Monitoring Enforcement Program
Regional Entity Implementation Plan
Registered Entity Self-Report and Mitigation Plan User Guide
Leesburg Electric Department Organizational Chart
Compliance Oversight Group Organization Manual
Compliance Oversight Group Organization Chart

Overview:

Leesburg Electric has established electric reliability compliance goals in the Leesburg Electric Internal Controls for Compliance Monitoring Policy document. These goals are as follows:

1. Establish and maintain a culture of compliance with all applicable NERC and Regional Entity Reliability Standards and associated Requirements, and FERC Directives, supported by top-level management, and carried out by a dedicated responsible staff.
2. Provide sufficient staff, necessary budgetary funding, and other resources, to comply with all applicable NERC and Regional Entity Reliability Standards and associated Requirements, and FERC Directives.
3. Establish and maintain independence between those making day-to-day operational decisions and those responsible for compliance with all applicable Reliability Standards.
4. Self-report all potential violations (PV) and cooperate with all authorized internal and external compliance monitoring personnel and actions.
5. Continually review and revise compliance procedures, processes, and activities to achieve and maintain the highest achievable level of compliance performance.



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6. Schedule periodic review and approval of the Policy Statement by top-level management.
7. Establish, disseminate, and train on the administrative guidelines and procedures designed to promote and maintain a culture of compliance, self-assessment, self-enforcement, and prevention of reoccurrence, of Reliability Standard violations.

Objectives and Scope:

The objective of this Compliance Program is to articulate Leesburg Electric's compliance philosophy, and establish a compliance governance structure within Leesburg Electric and the Compliance Oversight Group (COG). The program also delineates the roles and responsibilities of the groups and individuals tasked with implementing and managing the Compliance Program and defines procedures that are used to administer the Compliance Program.

The scope of the Compliance Program is to ensure that Leesburg Electric addresses the goals established in the City of Leesburg Electric Internal Controls for Compliance Monitoring Policy document through establishment of a hierarchy of NERC compliance responsibilities, which includes senior management. It also addresses the monitoring of development activities concerning NERC and Regional Entity Reliability Standards and the tracking of asset ownership and equipment changes for activities that may change Leesburg Electric's compliance profile. This program also supports the development of procedures to demonstrate compliance with all applicable NERC and Regional Entity compliance standards. Also addressed are scheduled and periodic assessments to maintain compliance readiness at all times and training for those responsible for performing compliance related tasks. This program defines procedures to be followed when a PV is discovered, investigated, reported, and mitigated.



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1. Compliance Culture and Compliance Responsibilities

1.1 Compliance Culture:

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1.2 Compliance Responsibilities:

Leesburg Electric is organized as a “Top Down” Organization, except in the area of NERC Compliance and Standards Monitoring. In this area, the COG has been established to monitor, review and developed compliance processes’ and procedures to ensure that Leesburg Electric maintains compliance with all applicable NERC and Regional Entity approved Reliability Standards. The organizational structure and authority of the COG has been established and approved through Senior Management as signatories on this document:

- City Manager – Senior Management
- Director of Electric – Senior Management
- Electric Superintendent – Senior Management
- Electric Operations Manager/Compliance Manager - Primary contact between Senior Management and the Compliance Oversight Group and is charged with directing the operation of the Compliance Oversight Group.



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2. Compliance Staffing:

Staffing of the COG is scalable. The two (2) permanent members of the COG are the Compliance Manager and the Compliance Officer. Associate members are added as necessary to provide technical expertise to allow the COG to meet the required compliance goals. Examples of technical experts that can be utilized are: Human Resource Personnel, Engineering Experts, Legal Advisors, Technicians, and Subject Matter Experts (SME's).

Sufficient Budgetary consideration is provided to the COG. Leesburg Electric is a small municipal utility that shares staffing resources and technical expertise. Although a specific budgetary line item may not exist for some functions of the COG, the resources are expended under other budgetary line items. As an example: no individual line items exist for the Compliance Manager or the Compliance Officer, but their pay is absorbed under the Electric Operation Manager position and a Senior System Operator/NERC Compliance Officer position respectively. Duties and responsibilities of the COG can be found in the Compliance Oversight Group Organization Manual.

3. Compliance Independence:

The COG, as defined, makes compliance decisions independent of those decisions made for day to day electric operation. The COG has two permanent members. The two permanent members are required to make day to day electric operational decisions as part of the specific operational jobs they are assigned. Those permanent members are conscious of and sensitive to maintaining the required independence when performing compliance tasks associated with the duties assigned as part of the COG. If a potential conflict is identified, senior management would be consulted to ensure any proposed decision would not violate any applicable NERC and/or Regional Entity Reliability Standard. The Director of Electric maintains an open-door policy, specifically in regards to NERC compliance issues. Leesburg Electric encourages employees, as a first step, to seek out an immediate supervisor or manager to discuss reliability compliance issues. If



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the reliability compliance issue is not successfully resolved, an employee may pursue the issue directly with the next level of management, and if necessary, to the Electric Operations Manager/Compliance Manager, the Electric Superintendent, and/or the Director of Electric

4. Compliance Monitoring and Violations:

When a PV of an applicable NERC or Regional Entity Reliability Standard is detected, Leesburg Electric's COG will commence an investigation of the PV utilizing the tenants established in the NERC" Registered Entity Self-Report and Mitigation Plan User Guide". The critical steps to resolve any instance of noncompliance must be completed as soon as practical: by prompt cessation of, correction, and reporting the noncompliance activity. The most important action is to mitigate any potential or actual risk to the reliability of the Bulk Power System (BPS) as quickly as possible. Notification of Leesburg Electric's Senior Management will be conducted by the Compliance Manager. Leesburg Electric will typically use a root cause analysis approach to analyze and formulate corrective actions proportional to the issue at hand. Reporting of the PV to the Regional Entity as the Compliance Enforcement Authority (CEA) will be performed as soon as practical, even if all mitigation steps have not been completed. The COG will coordinate all Self Reporting, Risk Assessment, and Mitigation activities with the CEA. Violation of a NERC or Regional Entity Reliability Standard is a serious matter. Personnel creating a NERC Reliability Standard PV are subject to disciplinary action in accordance with the City of Leesburg Personnel Policy Manual up to and including termination.

5. Compliance Reviews and Procedural Improvement:

Leesburg Electric has available several types of monitoring processes to collect information in order to assess compliance risk. Under the direction of the Compliance Manager, the COG conducts:

- Internal Compliance Audits
- Self-Certifications



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- Peer Reviews
- Annual Reviews
- Investigations of allegations of non-compliance
- Leesburg Electric can and does work with the Florida Municipal Power Agency's (FMPA) NERC Compliance Staff and other member agencies' NERC Compliance Staff to request analysis, evaluations, information, and best practices concerning compliance issues.

6. Scheduled Review

Leesburg Electric conducts a scheduled review of the Internal Compliance Program documents and the Internal Controls for Compliance Monitoring Policy statement and goals on a regular basis. This review provides an opportunity to assess the processes and procedures used by Leesburg Electric to ensure that the program is meeting the intended compliance goals and that the checks and balances of the system are adequate to eliminate incidents of non-compliance. At the conclusion of the scheduled review, an assessment report will be provided by the Compliance Manager to Senior Management. If any updates to the Leesburg Electric Compliance Policy Statement and Goals are necessary, it will be provided to Senior Management for review and approval.

7. Training and Education

Leesburg Electric believes that an important tenant of a strong compliance program is training and education of those employees who have compliance responsibilities. This training emphasizes their obligation to comply with all NERC and Regional Entity Reliability Standards that are applicable to Leesburg Electric's NERC registration. Leesburg Electric regularly reviews and updates the training to ensure that it is relevant and current with the applicable standards and the employees assigned duties. The Compliance Manager directs and approves the compliance training provided by the COG to all employees with compliance responsibilities. Members of the COG are encouraged to participate in training,



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presentations, roundtables, and workshops provided by NERC, Regional Entities, and peer groups such as FMPA and APPA.

Entity NERC Registration and Compliance Requirements

Leesburg Electric is currently registered with NERC as a Distribution Provider Under Frequency Load Shed only (DP-UFLS only). As a DP-UFLS only registered entity, Leesburg Electric is required to be compliant with the following Protection and Control (PRC) NERC and/or Regional Entity Reliability Standards:

PRC 005 – 6

PRC 006 – 3

(PRC 006 – SERC – 02 when required)



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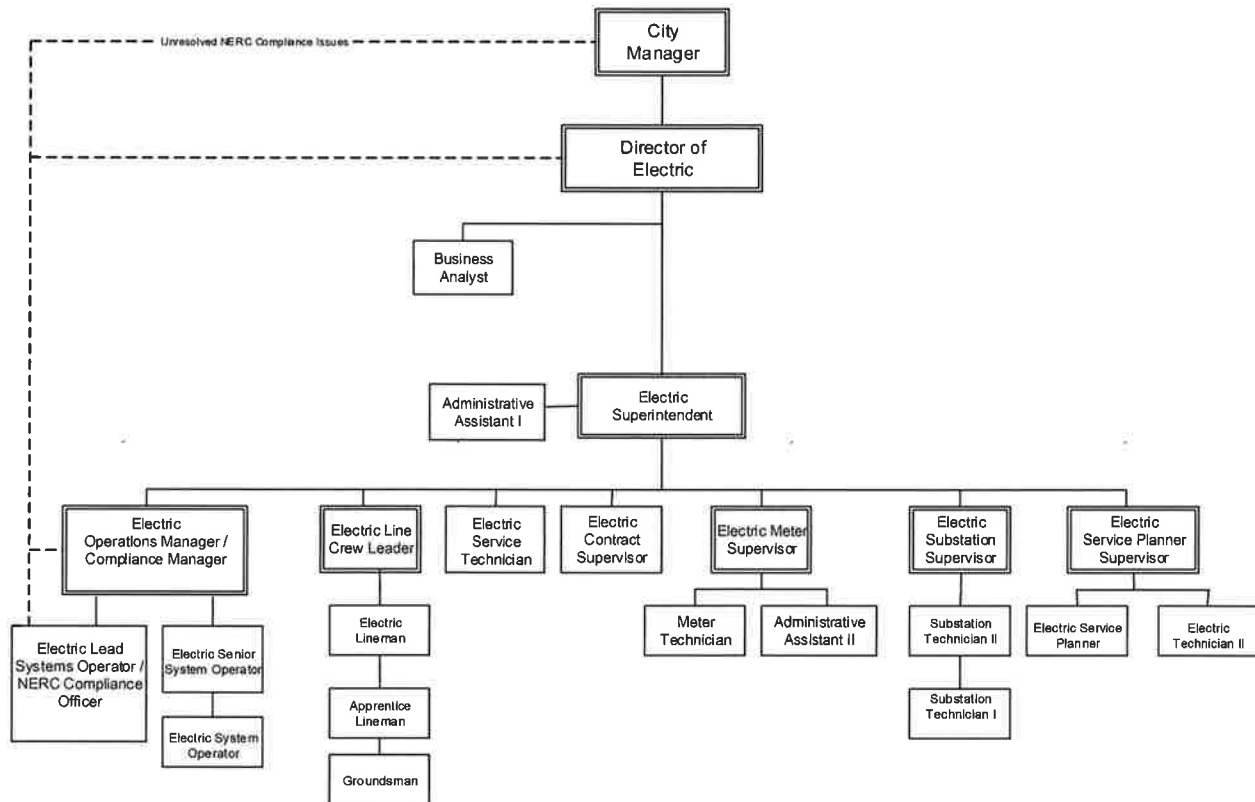
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APPENDIX A

Electric Organizational Chart



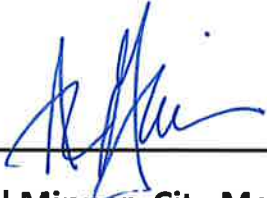
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APPROVAL



Al Minner, City Manager

5/31/19

Date



Glenn Spurlock, Director of Electric

5-31-19

Date



Greg David, Electric Superintendent

5-31-19

Date



**Chris Adkins, Electric Operations Manager/
Compliance Manager**

5-31-19

Date



**Rich Olson, Senior Electric System Operator/
Compliance Officer**

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Date



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REVISION HISTORY

REV. No.	Date	Description	By	Approval
0	5/31/19	Initial Creation	Rich Olson	Chris Adkins



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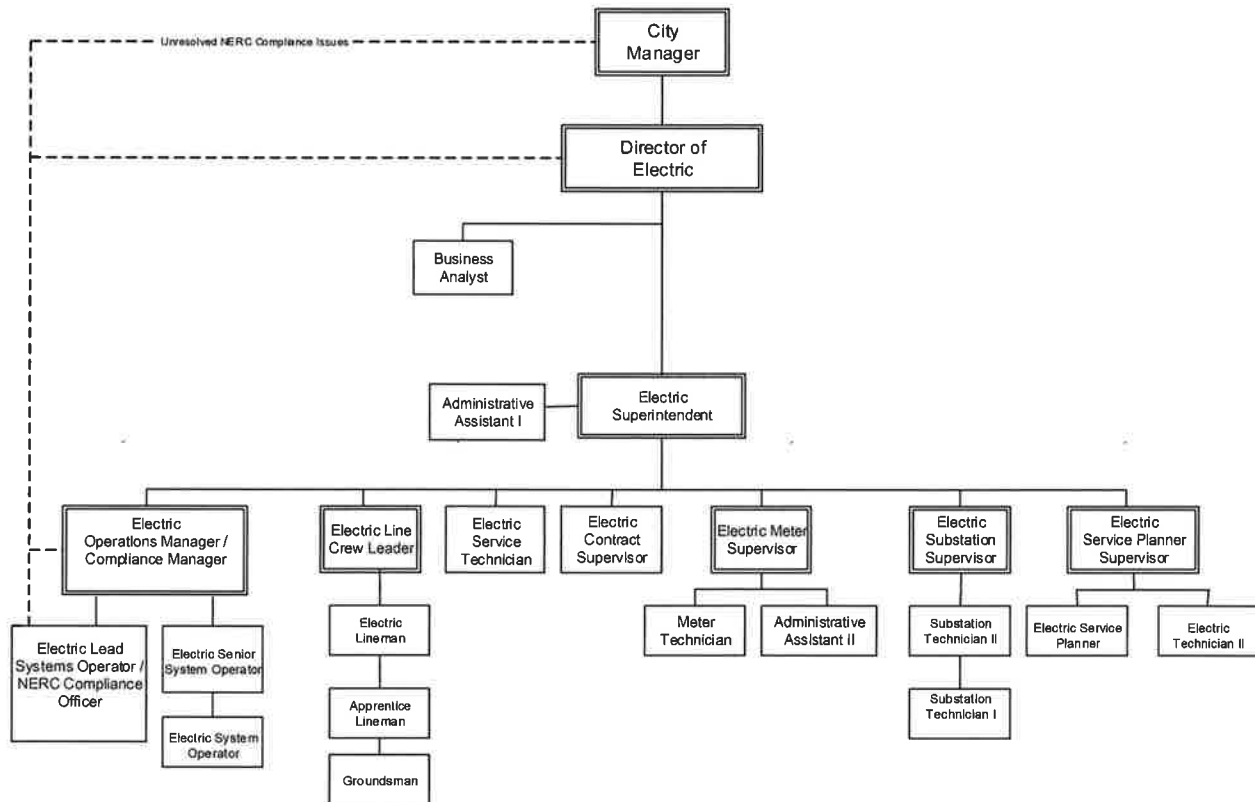
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APPENDIX A

Electric Organizational Chart



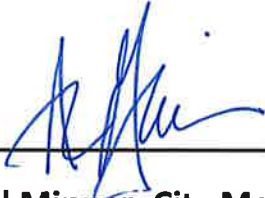
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APPROVAL



Al Minner, City Manager

5/31/19

Date



Glenn Spurlock, Director of Electric

5-31-19

Date



Greg David, Electric Superintendent

5-31-19

Date



**Chris Adkins, Electric Operations Manager/
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Date



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REVISION HISTORY

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City of Leesburg Lake Front City

Agenda Memorandum

Item No: 5.C.4.

Meeting Date: November 23, 2020

From: Cliff Kelsey, (Public Works Director)

Subject: Resolution of the City Commission of the City of Leesburg, Florida authorizing the Mayor and City Clerk to execute Amendment 1 to Municipal Solid Waste Disposal and Services Agreement with Covanta Lake II, Inc. for continued disposal of municipal solid waste; and providing an effective date.

Staff Recommendation:

Staff recommends execution of Amendment 1 to Municipal Solid Waste Disposal and Services Agreement with Covanta Lake II, Inc. for continued disposal of municipal solid waste.

Analysis:

When the City's inter-local agreement with Lake County for disposal of solid waste expired on June 30, 2014, the City Commission authorized the Mayor and City Clerk to execute a long term solid waste disposal and services agreement with Covanta Lake II, Inc. based on an economic and environmental cost benefit analysis and Covanta's annexation into the City. The initial five-year term for the agreement began on January 1, 2015 and will expire on December 31, 2020. The agreement also allows for the execution of three additional, consecutive five year term options.

Amendment 1 to the agreement will be a five year term and will allow for an optional two additional, consecutive terms. The initial disposal fee for the amendment is \$32.96/ton and includes provisions for CPI base annual increases, if warranted. Compared to the higher rates of the Heart of Florida Landfill at \$39.29/ton and the associated increase to travel costs, Covanta is the most economically viable option for disposal of solid waste. With a round trip of less than 29 miles compared to the next closest option and an average travel cost of \$3.85/mile, Covanta is approximately \$3,000/month cheaper than the Heart of Florida Landfill.

In addition, the annual tax increase to Covanta from the agreement has been approximately \$50,000/year to the General Fund.

Procurement Analysis:

Options:

1. Execute Amendment #1 with Covanta Lake II, Inc. for municipal solid waste disposal; or

2. Such alternative action as the Commission may deem appropriate.

Fiscal Impact:

The annual savings on solid waste disposal are estimated to be approximately \$36,000/year and the benefits to the General Fund in Ad Valorem Taxes are estimated at \$50,000/year.

Submission Date and Time: 11/18/2020 1:38:39 PM

RESOLUTION NO. _____

**RESOLUTION OF THE CITY COMMISSION OF THE CITY OF LEESBURG,
FLORIDA AUTHORIZING THE MAYOR AND CITY CLERK TO EXECUTE
AMENDMENT 1 TO MUNICIPAL SOLID WASTE DISPOSAL AND SERVICES
AGREEMENT WITH COVANTA LAKE II, INC. FOR CONTINUED DISPOSAL
OF MUNICIPAL SOLID WASTE; AND PROVIDING AN EFFECTIVE DATE.**

BE IT RESOLVED BY THE CITY COMMISSION OF THE CITY OF LEESBURG, FLORIDA:

THAT the Mayor and City Clerk are hereby authorized to execute an amendment 1 to an existing agreement with Covanta Lake II, Inc. whose address is 3830 Rogers Park Road, Okahumpka, Florida 34762, for disposal of municipal solid waste.

THAT this resolution shall become effective immediately.

PASSED AND ADOPTED by the City Commission of the City of Leesburg, Florida, at a regular meeting held the 23rd day of November 2020.

Mayor

ATTEST:

City Clerk

**AMENDMENT #1 TO MUNICIPAL SOLID WASTE
DISPOSAL AND SERVICES AGREEMENT**

This Amendment #1, dated as of July 30, 2020, amends the Municipal Solid Waste Disposal and Services Agreement dated as of October 27, 2014 (the “**Agreement**”) by and between Covanta Lake II, Inc. and City of Leesburg, Florida.

The terms used herein with the initial letter capitalized, unless otherwise defined herein, shall have the meanings therefore set forth in the Agreement.

THEREFORE, in consideration of their mutual promises set forth below and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and intending to be legally bound, the parties hereby agree to amend the Agreement as follows:

1. Pursuant to Section 1.3 of the Agreement, the Initial Term is hereby extended for five years, hereinafter referred to as the first Renewal Term, and shall expire on December 31, 2025.

All terms and conditions set forth in the Agreement not specifically amended hereby shall remain in full force and effect.

IN WITNESS WHEREOF, the parties hereto have entered into this Amendment #1 to Municipal Solid Waste Disposal and Services Agreement the date first above written.

COVANTA LAKE II, INC.

By: _____
Name: _____
Title: _____

CITY OF LEESBURG, FLORIDA

By: _____
Name: _____
Title: _____

MUNICIPAL SOLID WASTE DISPOSAL AND SERVICES AGREEMENT

THIS MUNICIPAL SOLID WASTE DISPOSAL AND SERVICES AGREEMENT (this "Agreement"), is entered into as of October 27, 2014 (the "Effective Date"), by and between COVANTA LAKE II, INC., a Florida corporation ("Covanta"), and the City of Leesburg, (the "Customer"). Covanta and the Customer are each referred to individually herein as a "Party" and together as the "Parties."

WITNESSETH:

WHEREAS, Covanta owns and operates a solid waste disposal and resource recovery facility located in Okahumpka, Florida; and

WHEREAS, the Customer and Covanta have agreed to enter into this Agreement pursuant to which, beginning on January 1, 2015 (the "Commencement Date"), the Customer will deliver and pay for the disposal of, and Covanta will accept and dispose of, Acceptable Waste generated within the boundaries of the Customer, all in accordance with the terms and conditions set forth herein.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties, intending to be legally bound, hereby agree as follows:

ARTICLE 1. General Provisions.

1.1 Definitions. Unless otherwise defined herein, capitalized terms shall have the following meanings when used in this Agreement:

"Acceptable Waste" means mixed household solid waste and commercial solid waste (including trash, refuse and garbage) which has the characteristics of Solid Waste and which is (i) normally collected or disposed of by householders or other residents and by churches, schools and other municipal buildings (which for purposes of this Agreement shall be deemed to be household waste) or by commercial businesses, including bulky waste specified by Covanta and that is segregated and delivered by or on behalf of the Customer to the Facility, and (ii) permitted under then Applicable Law to be accepted, processed and disposed of at the Facility and the Backup Facility, and which is not Unacceptable Waste.

"Applicable Law" means each and every applicable Federal, state or local law, statute, charter, ordinance, rule, regulation, order, permit, license or approval of any governmental, quasi-governmental, regulatory or administrative agency or authority or court or other tribunal having jurisdiction.

"Authorized Hauler" means a Person other than the Customer which, at the time of reference thereto, (i) is engaging generally in the business of collecting, transporting and delivering Solid Waste; (ii) is then designated by the Customer pursuant to Section 2.3(a) as an Authorized Hauler for Acceptable Waste generated within the boundaries of the Customer; and (iii) has then privileges granted by Covanta to deliver Acceptable Waste to the Facility, and such privileges are not then suspended or terminated.

"Backup Facility(ies)" means a properly permitted and licensed solid waste disposal facility.

"Change-in-Law" means either (a) the enactment, adoption, promulgation, modification, written interpretation or reinterpretation, written guideline or repeal, subsequent to the Effective Date, of any law, ordinance, code, rule, regulation or similar legislation by any Federal, State, County or other governmental body, or (b) the modification of or the imposition of any conditions on the issuance, modification or renewal of any official permit, license or approval subsequent to the Effective Date, which in the case of either (a) or (b), establishes requirements affecting the operation of the Facility or Backup Facility which are more burdensome than and adversely inconsistent with the most stringent requirements which are applicable to the Facility or Backup Facility and which are contained in any applicable laws with respect to the Facility or Backup Facility in effect as of the Effective Date.

"Commencement Date" is defined in the recitals.

"Confidential Information" means all information relating to Covanta's (including any Covanta affiliate or related entity), technology, equipment and methodology for converting waste to energy, their services, financial records, processes, plants, including further processes and products, technology, and development, and their customers and other commercial information, disclosed by Covanta directly or indirectly, or any such information that Customer acquires or receives, in writing, electronically or orally, or through observation of the Facility or Backup Facility.

"Contract Year" means each twelve-month period during the Term beginning on January 1st and ending on December 31st of the same year.

"Covanta" means Covanta Lake II, Inc., its permitted assignees and successors.

"CPI" means the Consumer Price Index -- All Urban Consumers, Miami Series ID: CUURA320SA0, all items, as determined by the United States Department of Labor, Bureau of Labor Statistics; provided that, in the event that the foregoing CPI index ceases to be available, the Parties shall agree upon the use of a closely comparable index then available.

"Customer" is defined in the preamble.

"Disposal Fees" means all amounts payable by the Customer hereunder, including the Tip Fees payable pursuant to Section 3.1(a), any fees, costs and Losses for which the Customer becomes responsible pursuant to Section 4.2, Section 7.1(b) or Section 9.4, and any other fees, costs, expenses and indemnity amounts payable by the Customer to Covanta hereunder.

"Effective Date" is defined in the preamble.

"Event of Force Majeure" means any of the following occurring on or after the Effective Date: (i) an occurrence or occurrences beyond the reasonable control of the Party affected which, separately or in the aggregate, adversely affects (including a material increase in the costs associated with) the Facility, or the ownership, use or operations of the Facility or the ability of any Party to perform its obligations hereunder (including the ability of Covanta or any of its contractors or subcontractors to accept, transport, process or dispose of any Acceptable Waste delivered hereunder) or the ability of Covanta, or any Person acting on behalf of Covanta, to comply with the requirements of any Applicable Law; (ii) acts of God, landslides, lightning, earthquakes, hurricanes, tornadoes, windstorms, blizzards, fires, explosions, floods, acts of a public enemy, wars, blockades, insurrections, riots, acts of terrorism or vandalism or civil disturbances; (iii) Non-Covanta Strikes; (iv) an order or judgment of any Federal, state or local court, administrative agency or other governmental, quasi-governmental or other regulatory body or agency, if not the result of the willful misconduct or gross negligence of the Party relying thereon; provided, however, that the contesting in good faith by such Party of any such order and/or judgment shall not constitute or be construed to constitute the willful misconduct or gross negligence of such Party; (v) blockage of access to a the Facility, if not the result of the willful misconduct or gross negligence of the Party relying thereon; (vi) a complete or partial suspension of services at the Facility, or an adverse effect on the operations at the Facility, arising from or related to any surface or subsurface condition (including the presence of hazardous materials) thereon, to the extent not directly created by Covanta or an affiliate; (vii) the condemnation, taking, seizure, involuntary conversion or requisition of title to or use of the Facility, or any portion thereof by action of any Federal, state or local governmental, quasi-governmental or regulatory agency or authority; (viii) a Change-in-Law; and/or (ix) one or more of the foregoing if, separately or in the aggregate, it or they result in a material increase in the costs and/or expenses associated with the ownership, use and/or operation of the Facility and/or with the performance by Covanta of its obligations hereunder (and Covanta provides a minimum of thirty (30) days' prior written notice to Customer of Covanta's intent to declare an Event of Force Majeure due to such material increase in costs and/or expenses).

"Facility" shall mean the energy-from-waste facility located at 3830 Rogers Industrial Park Road, Okahumpka, Florida and any Backup Facilities.

"Florida Prompt Payment Act" means Local Government Prompt Payment Act as set forth in FL Statutes Chapter 218 Part VII

"Hauler's Rules and Regulations" means the rules and regulations for the Facility or the Backup Facility, as applicable, as adopted and amended by Covanta and/or the owner or operator of the Facility or the Backup Facility from time to time and at any time, which rules and regulations are hereby made a part of, and incorporated into, this Agreement.

"Incremental Transportation Cost" shall mean, as it relates to Acceptable Waste, the direct cost per mile, for labor, depreciation and fuel, to the Customer or an Authorized Hauler, as applicable, to transport each Ton of Acceptable Waste to a Backup Facility, to the extent that such cost exceeds the direct cost per mile of transporting a Ton of Acceptable Waste from the geographic center of the Customer to the Facility, as determined jointly by Covanta and Customer, taking into account appropriate documentation submitted by the Customer or the Authorized Hauler, as applicable. "Incremental Transportation Cost" shall not include any indirect expenses, including overhead or any lost profits or other Losses.

"Indemnified Parties" is defined in Section 9.4(b).

"Initial Term" is defined in Section 1.3.

"Loss" or "Losses" means actual or alleged claims, demands, liabilities, obligations, losses, damages, fines, penalties, Taxes, interest, suits, administrative proceedings, costs, expenses (including the fees and costs of investigators, accountants and attorneys) and disbursements, or whatever nature, liquidated or unliquidated, including amounts paid in satisfaction of judgments or as a settlement or compromise thereof.

"Non-Covanta Strikes" means strikes, slowdowns, walk-outs, work stoppages or similar industrial or labor actions that are not directed solely at Covanta and its affiliates.

"Party" and "Parties" are defined in the Preamble.

"Person" means a Customer, corporation, partnership, limited partnership, limited liability company, limited liability partnership, business trust, trust, joint venture, company, firm, entity or individual.

"PRA" is defined in Section 11.12(b).

"Process" means the combustion of Acceptable Waste at the Facility.

"Qualified Covanta Affiliate" means an entity which is owned or controlled, directly or indirectly, by Covanta Holding Corporation, a Delaware corporation, or any successor thereto, which is creditworthy and capable of performing the obligations of Covanta hereunder.

"Renewal Term" is defined in Section 1.3.

"Solid Waste" means unwanted or discarded solid materials, consistent with the licenses, approvals and permits issued for the Facility; provided, however, that semi-solid, liquid and gaseous materials of the type which are customarily collected and treated in municipal sewage facilities, water supply treatment facilities, water pollution abatement facilities, air pollution control facilities and sludges or other residues from any of the foregoing facilities are not Solid Waste.

"Tax" or "Taxes" means all net income, capital gains, gross income, gross receipts, sales, use, transfer, ad valorem, escheats, franchise, profits, license, capital, withholding, payroll, employment, excise, goods and services, severance, stamp, occupation, premium, property, assessments or other governmental charges, levies or surcharges or any kind whatsoever, including a solid waste assessment, and a payment due to the Customer in which a solid waste disposal facility is located, together with any interest, fines and any penalties, additions to tax or additional amounts incurred or accrued, under any applicable federal, state, local or foreign tax law or assessed, charged or imposed by any authority, domestic or foreign.

"Term" is defined in Section 1.3.

"Tip Fee" means for the first Contract Year of the Term Twenty-Nine dollars and Fifty Cents (\$29.50) per Ton, and for each subsequent Contract Year during the Term an amount determined by increasing the Tip Fee for the immediately preceding Contract Year by an amount equal to the product of (i) the Tip Fee for the immediately preceding Contract Year multiplied by (ii) the percentage increase, if any, in the CPI during the twelve-month period of such immediately preceding Contract Year.

"Ton" means 2,000 pounds.

"Unacceptable Waste" means (a) any waste that is specifically prohibited for admittance or processing at the Facility by the Florida Department of Environmental Protection or other regulatory agency having jurisdiction over the Facility, (b) any material that has the reasonable possibility of adversely affecting the operation of any part of the Facility, and (c) any waste regulated as hazardous by any local, State or Federal authority.

"Yard Trash" means vegetative matter resulting from landscaping maintenance and land clearing operations and includes de minimus associated rocks and soils.

1.2 Waste Delivery and Acceptance Obligations.

(a) During the Term, the Customer shall deliver in accordance with the terms of this Agreement the following Acceptable Waste to the Facility: (i) all Acceptable Waste whose collection is by Customer employees or Customer contractors or agents; and (ii) all Acceptable Waste that is from, or was collected at or delivered to, a transfer

station or other solid waste facility owned, leased, operated or controlled by the Customer. The parties acknowledge and agree that all types of Acceptable Waste may be comingled and that Customer is not required or expected to separate different types of Acceptable Waste before delivery to Covanta. The Parties further acknowledge that the Customer is not obligated to deliver segregated loads of Yard Waste or recyclable materials collected as part of the Customers recycling program. The Customer may, at its option, deliver segregated loads of Yard Waste or recyclable materials collected as part of the Customers recycling program as Acceptable Waste to the Facility for disposal, provided it contains no Unacceptable Waste. Lastly, the Customer at its option may deliver "storm related debris" that does not include Unacceptable Waste to the Facility for disposal. Covanta will make reasonable efforts to afford the Customer priority in the disposal of such "storm related debris" if there is un-contracted disposal capacity available.

(b) During the Term, Covanta shall, to the extent permitted by Applicable Law and in accordance with the terms of this Agreement, accept and dispose of all Acceptable Waste generated within the boundaries of the Customer and delivered to the Facility by the Customer or an Authorized Hauler; provided, however, that:

(i) Covanta may, at its sole discretion, divert to a Backup Facility any delivery by the Customer of Acceptable Waste during a Contract Year, and the Customer shall deliver or cause to be delivered such diverted Acceptable Waste to the Backup Facility for the Disposal Fees provided hereunder; provided, further, that Covanta shall pay to the Customer the Incremental Transportation Cost, if any, for each Ton of Acceptable Waste diverted to a Backup Facility and accepted by Covanta during a Contract Year pursuant to this Subsection 1.2(b).

(c) Covanta shall have the right to reject Solid Waste under any of the following circumstances:

(i) Covanta may reject a delivery of Acceptable Waste that (A) is not generated within the boundaries of the Customer or is not delivered by the Customer or an Authorized Hauler, (B) is not delivered to the Facility in accordance with Applicable Law and this Agreement, including the applicable Hauler's Rules and Regulations, or (C) is delivered at a time when the Customer or any of its Authorized Haulers is in breach of its obligations under this Agreement, including the Hauler's Rules and Regulations;

(ii) Subject to Section 7.1(b), Covanta shall have the right to reject Acceptable Waste during an Event of Force Majeure; and

(iii) Covanta shall have the right in its reasonable discretion to reject any waste delivered by the Customer or any of its Authorized Haulers which Covanta determines is not Acceptable Waste, subject to Covanta's rights under Section 4.2 with respect to Unacceptable Waste.

(d) On any given day, if the wait time at the Facility is confirmed by the Parties to be in excess of one (1) hour, measured from the time the vehicle weighs in at the Facility scale to the time the vehicle weighs out at the Facility scale, the Customer shall have the right to divert the balance of their deliveries for that day to the Covanta designated Backup Facility; provided, however, that Covanta shall not pay the Incremental Transportation Cost for any such diverted deliveries.

Title to Acceptable Waste delivered by or on behalf of the Customer shall pass to Covanta or its designee at the time that Covanta or its designee accepts such Acceptable Waste upon Covanta's determination that such Acceptable Waste meets all of the requirements of this Agreement, including the applicable Hauler's Rules and Regulations. In the event that Covanta subsequently determines that any Solid Waste accepted from the Customer or an Authorized Hauler is not Acceptable Waste generated within the boundaries of the Customer, Covanta and/or its designee may revoke its acceptance of such Solid Waste and title thereto shall revert to the Customer. At no time will Covanta or its designee be deemed to accept or take title to Unacceptable Waste or to any other Solid Waste rightfully rejected by Covanta pursuant to this Agreement.

1.3 Term. This Agreement is effective as of the Effective Date. The initial five (5) year term of this Agreement shall begin on the Commencement Date and shall expire on December 31, 2020 (the "Initial Term"), unless sooner terminated as provided herein. If no event of default by the Customer has occurred and is continuing, the Parties shall have the option to extend the term of this Agreement for three (3) additional consecutive five (5) year periods (each, a "Renewal Term" and together the "Renewal Terms") upon such terms and conditions as are mutually agreed to by the Parties. The Initial Term and the Renewal Term(s), if any, are referred to herein collectively as the "Term." Notwithstanding anything contained herein to the contrary, if Covanta elects to shut down the Facility for any reason at its discretion, then Covanta may terminate this Agreement upon 120 days prior written notice to Customer. Upon the expiration or termination of the Term, the obligations of the Customer to deliver Acceptable Waste to the Facility, and the obligation of Covanta to accept and dispose of such Acceptable Waste shall terminate; provided, however, (i) each Party shall remain liable to the other with respect to any liability arising prior to such expiration or termination and such liabilities shall survive and continue until the same are fully satisfied or waived; and (ii) the indemnification obligations of each Party hereunder, the post-termination insurance obligations under Sections 2.3(e) and 9.3, the confidentiality obligations under Section 11.12 and any confidentiality agreement executed pursuant to Section 3.2, or Section 11.12(a) and the provisions of Articles 10 and 11, shall survive the termination or expiration of this Agreement.

1.4 Delivery Forecast for Planning Purposes. To assist Covanta in its planning for the use and operation of the Facilities, the Customer shall, on or before July 1st of each calendar year after the Effective Date and prior to the expiration of the Term, use reasonable efforts to determine and provide in writing to Covanta a reasonable estimated range of the number of Tons of Acceptable Waste to be delivered to the Facility hereunder during the next immediate Contract Year.

1.5 Reserved.

1.6 Special Collection Days. During the Term, if no event of default by the Customer has occurred and is then continuing, Covanta shall conduct, at its expense, two (2) events each Contract Year, at locations agreed to with the Customer, at which individual residents of the Customer can recycle household electronic devices, shred household paper waste and dispose of typical and reasonable amounts and kinds of household hazardous waste.

1.7 Curbside Yard Waste Collection. Covanta shall work with the Customer to identify potential alternative options for the Customer to collect and transport yard waste at the Customer's expense.

ARTICLE 2. Delivery Procedures and Authorized Haulers.

2.1 Delivery Procedures. All deliveries of Acceptable Waste hereunder shall conform to the requirements of this Agreement and the applicable Hauler's Rules and Regulations. The Hauler's Rules and Regulations are applicable generally to customers utilizing the Facility and the Backup Facility, and shall have reasonable terms and conditions consistent with the operational requirements of such Facility. Covanta shall provide to the Customer a copy of the Hauler's Rules and Regulations for the Facility and the Backup Facility at least thirty (30) calendar days prior to the Commencement Date. Covanta reserves the right for it and/or the owner or operator of the Facility and Backup Facility to modify, amend and repeal the applicable Hauler's Rules and Regulations from time to time and at any time and will endeavor to provide at least thirty (30) calendar days' advance written notice to the Customer and its Authorized Haulers of any material change in the Hauler's Rules and Regulations for the Facility and Backup Facility utilized pursuant to this Agreement.

2.2 Vehicle Identification. Covanta may establish a system for the identification of delivery vehicles (which procedures may require the identification of the name of the Customer and the tare weight of each vehicle used to deliver waste to the Facility or the Backup Facility) and may modify or amend such system from time to time. Covanta shall be allowed to rely on representations made by the individual operators of vehicles owned by or operated on behalf of the Customer or any Authorized Hauler as to the Person against whose account is to be charged for the Solid Waste being delivered to the Facility or Backup Facility. Covanta may reject Acceptable Waste delivered by any Person or vehicle that does not comply with the identification system or the applicable Hauler's Rules and Regulations. Covanta may enforce compliance with identification and delivery procedures by termination or suspension of any Person's disposal privileges and such other means as it may reasonably determine to be necessary or appropriate.

2.3 Authorized Haulers.

(a) The Customer may designate one or more Authorized Haulers to deliver Acceptable Waste to the Facility or Backup Facility (subject to the prior written consent of Covanta as provided in Section 1.2(a)), generated within the boundaries of the Customer, pursuant to this Agreement. Such designation or designations shall not relieve the Customer of any of its duties or responsibilities under this Agreement. The designation by a Customer of one or more Authorized Haulers shall not affect the right of Covanta or a Covanta affiliate to rely on the representations of the Person or Persons delivering such waste as to its composition, place of origin, and other relevant characteristics. At least thirty (30) calendar days prior to the commencement of each Contract Year, commencing with the Second Contract Year, Covanta shall send to the Customer a written list of Authorized Haulers previously designated as Authorized Haulers by the Customer to deliver Acceptable Waste to the Facility and Backup Facility; the Customer will then verify that the list is accurate and complete and return a signed copy to Covanta prior to the commencement of such Contract Year. Covanta shall be entitled to rely upon the list of Authorized Haulers provided to the Customer if the Customer fails to timely verify and return the signed list. Upon request by the Customer, Covanta shall provide reasonable assistance to the Customer in the identification of Authorized Haulers to transport and deliver Acceptable Waste to the Facility and Backup Facility pursuant to this Agreement.

(b) Prior to the designation or use of any new Authorized Hauler and prior to the termination of an existing Authorized Hauler or the extension of an agreement with an existing Authorized Hauler, the Customer shall deliver written notice to Covanta of the name, address and other relevant information regarding such Authorized Hauler. Covanta shall notify the Customer within seven (7) calendar days of receipt of such notice, whether the proposed Authorized Hauler has delivery privileges at the Facility or Backup Facility or is then subject to revocation or suspension of those privileges for cause (as defined in Subsection (c) below). Approval of the Customer's Authorized Hauler(s) shall not be unreasonably withheld, conditioned or delayed. The Customer shall not enter into any agreement or extension of any agreement with any hauler which does not have delivery privileges at the Facility or Backup Facility, as applicable, or whose delivery privileges at the Facility or Backup Facility have been terminated or suspended.

(c) Covanta shall be entitled to terminate or suspend a Person's delivery privileges at the Facility and/or Backup Facility for cause. For purposes of this Section 2.3, the term "cause" shall include any act or omission of the Person (including individual vehicle operators) which involves a material misrepresentation, or negligence resulting in material harm to persons or property, or constitutes a material, or is part of a persistent and repeated, violation of Applicable Law, or constitutes a material, or is part of a persistent and repeated, breach of the Customer's obligations hereunder, including the Hauler's Rules and Regulations (as provided therein) and the insurance requirements described in Subsection (d) below.

ARTICLE 3. Tipping Fees.

3.1 Tip Fees. The Customer shall pay the Tip Fee to Covanta (i) for each Ton of Acceptable Waste delivered to the Facility or the Backup Facility (as described in Section 1.2) and accepted by Covanta; (ii) for each Ton of Unacceptable Waste delivered to the Facility or the Backup Facility and disposed of by Covanta as provided in Section 4.2; and (iii) for each Ton of Acceptable Waste the disposal of which is arranged for by Covanta as provided in Section 7.1(b) (such Tip Fee, in each instance, to be in addition to the payment of all other Disposal Fees payable by the Customer hereunder).

3.2 Inspection of Books and Records. Subject to the terms and conditions set forth in this Section 3.2, Covanta shall cause those Covanta books and records relating to the quantity of Acceptable Waste delivered by the Customer and its Authorized Haulers and accepted by Covanta to be available to a representative of the Customer for inspection upon reasonable notice and during normal business hours. All such inspections by the representatives of the Customer shall be conducted in such manner as not to cause interference with the operation of a Facility and such representatives shall comply with all reasonable rules adopted by Covanta or the owners or operators of the location where such Covanta books and records are made available, including rules relating to maintaining the safety of those persons present on the site where the books and records are located and rules requiring persons who will be given access to Confidential Information to enter into a reasonable confidentiality agreement with terms and conditions substantially similar to those set forth in Section 11.12 and other rules relating to the protection of the Confidential Information of Covanta and its contractors and subcontractors.

ARTICLE 4. Quality of Solid Waste.

4.1 Acceptable Waste. The Customer agrees that the Solid Waste delivered hereunder to the Facility or the Backup Facility shall be Acceptable Waste, generated within the Customer's boundaries and shall otherwise comply with the requirements of this Agreement, the applicable Hauler's Rules and Regulations and Applicable Law. The Customer will permit no new deliveries, and will discontinue or cause to be discontinued current deliveries of Solid Waste that do not comply with the provisions of this Section 4.1. The retention of waste enforcers by Covanta or the owner or operator of the Facility or the Backup Facility, which retention shall not be required of Covanta or of any such owner or operator, or any act or omission on their part, shall not relieve the Customer of its obligation to deliver or cause to be delivered only Acceptable Waste generated within the boundaries of the Customer to the Facility, and to provide or pay for the disposal of waste that is other than Acceptable Waste delivered to the Facility or Backup Facility.

4.2 Unacceptable Waste. The Customer agrees that neither it nor any of its Authorized Haulers shall knowingly deliver Unacceptable Waste to the Facility or the Backup Facility. If a delivery of waste is made which contains both Acceptable Waste and Unacceptable Waste, the entire delivery shall constitute Unacceptable Waste if the

Unacceptable Waste cannot be separated from the Acceptable Waste, without unreasonable efforts by or expense to Covanta as determined by Covanta in its sole discretion. If Unacceptable Waste is delivered to the Facility or the Backup Facility, Covanta shall promptly notify the Customer of such delivery by telephone (telephone number: _____), Email (Email address: _____) or by facsimile (facsimile number: _____) and, in addition to any other rights and remedies to which Covanta may have hereunder or under Applicable Law, at its sole option may (i) reject such waste and require the Person who delivered such Unacceptable Waste to reload and dispose of such waste at the sole cost and expense of such Person, or (ii) if Covanta does not discover such Unacceptable Waste in time to reject and require the reloading such Unacceptable Waste, and the Customer does not collect and dispose of such Unacceptable Waste within twenty-four (24) hours after receiving the above-mentioned notice from Covanta or Covanta is otherwise required by Applicable Law to remove and/or dispose of such Unacceptable Waste prior to the collection and disposal of such Unacceptable Waste by the Customer or the expiration of such twenty-four-hour period, Covanta may dispose of such Unacceptable Waste, as agent for the Customer and at Customer's expense, at a location or facility that is authorized to accept such Unacceptable Waste in accordance with all Applicable Law, and the Customer shall pay to Covanta the Tip Fee for each Ton of such Unacceptable Waste and all other costs associated with management, transportation and disposal of such Unacceptable Waste. None of the foregoing actions by Covanta shall constitute acceptance of such Unacceptable Waste by Covanta, transfer of the ownership of such Unacceptable Waste to Covanta, consent by Covanta to any future deliveries by the Customer or its Authorized Haulers of Unacceptable Waste, or waiver by Covanta of any rights or remedies it may have against the Customer or its Authorized Haulers because of the delivery of such Unacceptable Waste. CUSTOMER SHALL BE SOLELY RESPONSIBLE FOR COSTS ASSOCIATED WITH UNACCEPTABLE WASTE, SPECIFICALLY INCLUDING ALL COSTS ASSOCIATED WITH COVANTA'S NEGLIGENCE, BUT EXCLUDING COSTS ASSOCIATED WITH COVANTA'S GROSS NEGLIGENCE AND INTENTIONAL MISCONDUCT, IN HANDLING OR DISPOSING OF SUCH UNACCEPTABLE WASTE.

ARTICLE 5. Invoicing and Payments.

5.1 Monthly Payments. After the end of each calendar month, Covanta will render an invoice to the Customer for the total Disposal Fees due from the Customer hereunder for such period, and the Customer shall pay to Covanta the amount of such invoice on or before the close of the thirtieth (30th) calendar day following the date of the invoice to the Customer.

5.2 Interest on Overdue Charges; Collection Charges. If payment in full of the Disposal Fees is not made by the Customer on or before the close of the thirtieth (30th) calendar day following the date of the invoice to the Customer, any amount remaining unpaid as of such date shall bear interest at the rate of one percent (1%) per month in accordance with FL Statutes Section 218.74 (4) of the Florida Prompt Payment Act.

5.3 Disputes. In the event of a dispute as to any monthly invoice, (i) the Customer shall pay when due the full amount of the invoice, including any amount in dispute, and (ii) the Customer shall give Covanta, at the time such payment is made, written notice of the dispute. Acceptance by Covanta of payment of an amount less than the full amount of the invoice shall not constitute accord and satisfaction of the amount in dispute and shall not prevent the accrual of interest as provided in Section 5.2 with respect to disputed amounts finally determined to be due to Covanta. Such notice shall identify said dispute with reasonable particularity, state the amount in dispute and set forth a full statement of the grounds which form the basis of such dispute. Upon settlement by the Parties of the dispute, Covanta shall refund promptly the amount of any overpayment or the Customer shall promptly pay the outstanding portion of the invoice, plus interest and costs of collection, whichever is applicable.

5.4 Obligation of the Customer to Make Payments. This Agreement shall be binding on the Customer, and the Customer covenants and agrees to appropriate in its annual budget, including by amendment, if required and to the extent permitted and in accordance with budgetary procedures provided by the laws of the State of Florida, to meet its obligations under this Agreement. The Customer agrees that its obligation to make any such payments in the amounts and at the times herein specified shall be absolute and unconditional, shall not be subject to any setoff, abatement, counterclaim, recoupment, defense (other than payment itself) or other right which the Customer may have against Covanta or any other Person for any reason whatsoever or any reason, known or unknown, foreseeable or unforeseeable, which might otherwise constitute a legal or equitable defense or discharge of the liabilities of the Customer or limit recourse against the Customer. Payment made pursuant to this provision shall not prejudice the right of the Customer to claim abatements, refunds or adjustments to which it is entitled under this Agreement or pursuant to Applicable Law. Moreover, the Customer's obligation to make such payments shall not be affected by any damage to the Facility or Backup Facility, or any interruption or cessation in the possession, use or operation of the Facility or Backup Facility by Covanta or any other Person, so long as the Facility or Backup Facility is capable of accepting Acceptable Waste delivered by or on behalf of the Customer pursuant to this Agreement.

ARTICLE 6. Governmental Regulation.

6.1 Jurisdiction. Covanta and the Customer acknowledge that the collection, transportation and disposal of solid waste is subject to the jurisdiction of various governmental agencies, including agencies of the United States of America, the State of Florida and the states and municipalities in which the Facility and the Backup Facilities are located.

6.2 Compliance. Covanta and the Customer each agree, at its own expense, (subject to the provisions herein relating to Events of Force Majeure), to comply with all Applicable Law applicable to it in connection with this Agreement and the transactions

contemplated hereby. Such Applicable Law shall include actions taken by a Customer to regulate vehicular traffic in and around the Facility and the Backup Facility and the making of deliveries to the Facility and Backup Facility.

ARTICLE 7. Events of Force Majeure and Change-in-Law.

7.1 Suspension of Obligations.

(a) A delay or failure of performance hereunder by a Party shall not constitute an event of default or result in any liability for a breach of its obligations under this Agreement during an Event of Force Majeure affecting such Party; provided, however, an Event of Force Majeure shall not excuse the Customer's obligation to pay any amounts due hereunder. Such delay or failure shall be excused at any time such Party is adversely affected by an Event of Force Majeure and during such period thereafter as may be reasonably necessary for the Party so affected, using its reasonable efforts, to correct or mitigate the adverse effects of such Event of Force Majeure. An Event of Force Majeure shall not terminate or suspend the Customer's obligation to make any payments pursuant to this Agreement for waste which has been delivered to the Facility or Backup Facility prior to a suspension for an Event of Force Majeure or its obligations under Section 1.2(a).

(b) If an Event of Force Majeure gives Covanta the right to reject Acceptable Waste pursuant to Section 1.2(c), Covanta shall notify the Customer in writing and by contacting the Customer at the telephone number or facsimile number provided in Section 4.2 and:

(i) Covanta shall use commercially reasonable efforts to identify and, as agent for the Customer, arrange for the delivery of such rejected Acceptable Waste to a location or facility that is authorized to accept such Acceptable Waste in accordance with all Applicable Law, and Covanta may charge the Customer, and the Customer shall pay, the Tip Fee for each Ton of such Acceptable Waste and, in addition, all out-of-pocket costs incurred by Covanta arising from or related to the collection, handling, storage, transportation, processing and disposal of such Acceptable Waste, including the reasonable charges of any affiliate of Covanta;

(ii) Notwithstanding the foregoing, the Customer may in its discretion and with prior written notice to Covanta, elect and provide for, at the Customer's expense, alternate arrangements for the disposal of the Acceptable generated within the boundaries of the Customer to the extent necessitated, and for the duration of, the Event of Force Majeure; and

(iii) If, during an Event of Force Majeure, Covanta does not accept Acceptable Waste for a continuous period of thirty (30) calendar days or more after written notice to Covanta, the Customer and Covanta shall each have the option to

terminate this Agreement upon written notice to the other Party without liability to the other Party except as expressly provided in Section 1.3.

(c) The Party relying on an Event of Force Majeure as an excuse for a delay or failure of performance hereunder shall give the other Party prompt written notice of such Event of Force Majeure.

(d) The Customer shall have no liability or obligation to Covanta or its affiliates for any costs or expenses incurred as a result of an Event of Force Majeure, except for the Customer's obligations under Subsection (b)(i) above during any period that it elects to have Covanta arrange for alternative disposal or its obligations under Section 9.4(a).

7.2 Efforts to Remove Condition. The provisions of this Article allowing a Party to claim excuse due to an Event of Force Majeure shall not relieve such Party from using its commercially reasonable efforts to mitigate or remove such Event of Force Majeure.

ARTICLE 8. Default and Remedies.

8.1 Events of Default by Covanta. Each of the following shall be an event of default by Covanta under this Agreement:

(a) Covanta fails to perform its obligation to accept delivery of Acceptable Waste in accordance with this Agreement and such failure continues for a period of five (5) calendar days after written notice to Covanta by the Customer;

(b) Covanta fails to observe and perform any other material term, covenant or agreement contained in this Agreement on its part to be performed and the continuance of such failure for a period of thirty (30) calendar days after written notice to Covanta by the Customer specifying the nature of such failure and requesting that it be remedied; or

(c) Covanta or any of its partners makes a general assignment for the benefit of creditors, files a petition in bankruptcy, is adjudicated insolvent or bankrupt, petitions or applies to any tribunal for any custodian, receiver or trustee for it or any substantial part of its property, commences any proceeding relating to it under any bankruptcy, reorganization, arrangement, readjustment of debt, dissolution or liquidation law or statute of any jurisdiction whether now or hereafter in effect, or if there shall have been filed any such proceeding, in which an order for relief is entered or which remains undismissed for a period of one hundred twenty (120) calendar days or more or if by any act indicates its consent to, approval of or acquiescence in any such petition, application or proceeding or order for relief or the appointment of any custodian, receiver of or any trustee for

it or any substantial part of its property or suffers any such custodianship, receivership or trusteeship to continue undismissed for a period of one hundred twenty (120) calendar days or more.

8.2 Events of Default by the Customer. Each of the following shall be an event of default by the Customer under this Agreement:

(a) The Customer fails to pay any Disposal Fees, including the Tip Fees or any other amounts payable pursuant to Section 1.2, 3.1, 4.2, 5.1, 5.2 or 7.1(b), which is due from the Customer hereunder, or any other amounts to be paid or reimbursed by the Customer hereunder, within thirty (30) calendar days after notice of delinquency from Covanta;

(b) The Customer or any Authorized Hauler fails to observe and perform any other material term, covenant or agreement contained in this Agreement, including the Hauler's Rules and Regulations, or other agreements or policies to which either the Customer or its Authorized Haulers are subject in accordance with this Agreement and such failure continues for, or is not remedied within, a period of thirty (30) calendar days after written notice to the Customer specifying the nature of such failure and requesting that it be remedied; or

(c) The Customer makes a general assignment for the benefit of creditors, files a petition in bankruptcy or makes a request to the Governor of the State of Florida to file such a petition in bankruptcy, is adjudicated insolvent or bankrupt, petitions or applies to any tribunal for any custodian, receiver or trustee for it or any substantial part of its property, commences any proceeding relating to it under any bankruptcy, receivership, reorganization, arrangement, readjustment of debt, dissolution or liquidation law or statute of any jurisdiction whether now or hereafter in effect, or if there shall have been filed any such proceeding, in which an order for relief is entered or which remains undismissed for a period of one hundred twenty (120) calendar days or more or if by any act indicates its consent to, approval of or acquiescence in any such petition, application or proceeding or order for relief or the appointment of any custodian, receiver or any trustee for it or any substantial part of its property or suffers any such custodianship, receivership or trusteeship to continue undismissed for a period of one hundred twenty (120) calendar days or more.

8.3 Remedies on Default. Whenever any event of default shall have occurred and is continuing, the non-defaulting Party shall have the following rights and remedies:

(a) If Covanta is then in default (other than an event of default under Section 8.1(a)), the Customer shall have the option, upon at least thirty (30) calendar days prior written notice to Covanta, to terminate this Agreement unless the event of default is cured prior to the expiration of such thirty (30) calendar day period or unless during such period Covanta has taken, and continues to take with commercially reasonable diligence, remedial steps the effect of which would

be to enable Covanta to cure such event of default within a reasonable period of time (which, if the event of default is a default in the payment of monies and results from restraint by a court or regulatory agency, shall mean the undertaking and prosecution of prompt, diligent, good faith efforts to remove such restraint);

(b) If the Customer is then in default, Covanta shall have the option, upon at least thirty (30) calendar days prior written notice to the Customer by Covanta, to terminate this Agreement unless the event of default is cured prior to the expiration of such thirty (30) calendar day period or unless during such period the Customer has taken, and continues to take with commercially reasonable diligence, remedial steps the effect of which would be to enable the Customer to cure such event of default within a reasonable period of time (which, if the event of default is a default in the payment of monies and results from restraint by a court or regulatory agency, shall mean the undertaking and prosecution of prompt, diligent, good faith efforts to remove such restraint);

(c) If the Customer is then in default, Covanta shall have the option, upon written notice to the Customer, without terminating this Agreement, to stop accepting Acceptable Waste generated within the boundaries of the Customer, until such default is cured or this Agreement is terminated;

(d) If an event of default has occurred pursuant to Section 8.1(a), the Customer shall have the option, upon written notice by the Customer to Covanta, to terminate this Agreement; and

(e) In no event shall either Party be liable to the other for monetary damages on account of a breach of the terms of this Agreement caused by a declaration of an Event of Force Majeure made in good faith; provided, however, that nothing in this Section shall be deemed to limit the obligation of the Customer to make the payments described in Article 3, Article 5 or Section 7.1(b) as a result of an Event of Force Majeure.

8.4 Remedies Cumulative. All rights and remedies under this Agreement are cumulative to, and not exclusive of, any rights or remedies otherwise available at law or in equity. Except as otherwise expressly provided herein, neither Party shall have any liability to the other under this Agreement for any special, consequential, punitive, indirect or incidental damages.

ARTICLE 9. Representations and Warranties, Insurance and Indemnification.

9.1 Representations and Warranties of the Customer. The Customer hereby represents and warrants to Covanta that:

(a) this Agreement has been executed by representatives of the Customer acting with the approval and under the authority of the legislative body

of the Customer, and the Customer has heretofore delivered to Covanta evidence of such approval and authority;

(b) the Customer is authorized (i) to enter into a long-term contract for resource recovery and waste disposal processing services, (ii) to pay the fees and charges established by this Agreement, and (iii) to obligate itself to annually appropriate funds and levy taxes for the payment of such fees and charges;

(c) the Customer has the full power and authority to execute and deliver this Agreement to Covanta and carry out the Customer's obligations hereunder, all of which have been duly authorized in accordance with Applicable Law, and this Agreement shall be in full force and effect and be legally binding upon, and enforceable against, the Customer in accordance with its terms upon its due execution and delivery by the Customer and Covanta;

(d) there is no action, suit, investigation or other proceeding pending or, to the knowledge of the Customer, threatened, which questions the enforceability of this Agreement or which affects or may affect the performance of the Customer's obligations hereunder.

9.2 Representations and Warranties of Covanta. Covanta hereby represents and warrants to the Customer that:

(a) Covanta has the full power and authority to execute and deliver this Agreement to the Customer and to carry out Covanta's obligations hereunder, and this Agreement shall be in full force and effect and be legally binding upon, and enforceable against, Covanta in accordance with its terms upon its due execution and delivery by Covanta and the Customer;

(b) there is no action, suit, investigation or other proceeding pending or, to the knowledge of Covanta or its partners, threatened, which questions the enforceability of this Agreement or which affects or may affect the performance of Covanta's obligations hereunder; and

(c) the Facility and the Backup Facility is duly licensed, permitted or otherwise authorized to accept Acceptable Waste, except as excused hereunder, during the Term, Covanta and/or its contractors and subcontractors shall have all material licenses and permits necessary to operate the Facility and the Backup Facility and to carry out its obligations under this Agreement, and shall operate the Facility and the Backup Facility in material compliance with Applicable Law.

9.3 Insurance. Each party shall maintain, and Customer shall cause its Authorized Haulers to maintain, and furnish to the other, upon request, certificates attesting to the existence of, workers' compensation insurance providing statutory benefits, employer's liability insurance with policy limits of not less than \$1,000,000, automobile and commercial general liability insurance with policy limits of not less than

\$2,000,000 each occurrence for bodily injury or death and \$2,000,000 each occurrence for property damage liability, and pollution liability insurance having a minimum limit of \$2,000,000 per occurrence. Each such certificate shall contain a statement of the insurer's obligation to notify the other party at least 30 days prior to cancellation of any policy covered thereunder. Each party shall cause the aforesaid liability policies (with the exception of workers' compensation and pollution liability) to be duly and properly endorsed by its insurance underwriters as follows: a) to provide an endorsement naming as additional insured, and waiving subrogation in favor of, the Indemnified Parties; b) to contain a standard cross liability and severability clause; c) to provide that said insurance shall be primary in all instances with respect to Covanta's insurance, which shall be secondary and non-contributing at all times; and d) to provide contractual liability coverage.

9.4 Indemnification.

(a) Covanta shall indemnify and hold harmless the Customer from and against any and all Losses, damages, suits, liabilities and expenses (including, but not limited to, reasonable investigation and legal expenses) arising out of any claim for loss of or damage to property, including the Facility's and Backup Facility's property, contamination of or adverse effects on the environment, and injuries to or death of persons, including Customer's, Covanta's or Facility's employees, caused by or resulting from: (1) the negligence or willful misconduct of Covanta, its employees, haulers, contractors, subcontractors or agents; or (2) Covanta's breach of any term or provision of this Agreement.

(b) Customer shall indemnify and hold harmless Covanta, the Facility, and the Backup Facility(ies), their partners, parent companies, subsidiaries, and affiliates (collectively, the "**Indemnified Parties**"), up to but not in excess of the amount of the statutory waiver of sovereign immunity provided in Sec. 768.28, Fla. Stat., from and against any and all Loss, damages, suits, liabilities and expenses (including, but not limited to, reasonable investigation and legal expenses) arising out of any claim for loss of or damage to property, including Covanta's, the Facility's and the Backup Facility's property, contamination of or adverse effect on the environment, and injuries to or death of persons, including Customer's, Covanta's, the Facility's or the Backup Facility's employees, caused by or resulting from: (1) the negligence or willful misconduct of Customer, its employees, Authorized Haulers, contractors, subcontractors or agents; or (2) Customer's breach of any term or provision of this Agreement. Notwithstanding anything contained in this Agreement to the contrary, subject however to the limitations of Sec. 768.28 as aforesaid, Customer assumes responsibility for (1) any injury or loss incurred by its employees, agents or Authorized Haulers while on the Facility's or Backup Facility's premises (except that caused by Covanta's gross negligence), (2) any damage to Customer's property, including, but not limited to Customer's vehicles or Authorized Hauler's vehicles, that results from Covanta, the Facility or the Backup Facility providing unloading assistance to Customer while Customer is on the Facility's or Backup Facility's premises

(except that caused by Covanta's gross negligence), and (3) the compliance with all of the Facility's and Backup Facility's rules and regulations, particularly those relating to safety and health.

ARTICLE 10. Governing Law.

10.1 Governing Law. The interpretation and performance of this Agreement shall be governed by the laws of the State of Florida without regard to its conflict of law principles. Venue for any action or proceeding arising under this Agreement shall be in Lake County, Florida.

ARTICLE 11. Miscellaneous.

11.1 Assignment. Except for the designation of Authorized Haulers as provided in Article 2, the Customer may not assign or transfer, directly or indirectly, any of its rights or duties under this Agreement. Covanta may, upon prior written notice to the Customer, assign all or any portion of its rights and obligations under this Agreement or delegate any of its obligations under this Agreement at any time so long as such assignee or delegee shall be creditworthy and capable of performing the obligations of Covanta under this Agreement. Such assignment or delegation shall not relieve Covanta of any obligations or liabilities hereunder arising on or after the date of the assignment or delegation unless such assignment or delegation is to a Qualified Covanta Affiliate or the Customer consents in writing to such assignment or delegation, which consent shall not be unreasonably withheld, conditioned or delayed. Any assignment in violation of this Section 11.1 shall be null and void and of no effect.

11.2 Entire Agreement. This Agreement constitutes the entire agreement between the Parties in respect of the subject matter hereof. This Agreement supersedes all prior negotiations, representations and agreements between the Parties with respect to the subject matter hereof.

11.3 Waiver. No delay in exercising or failure to exercise any right or remedy accruing to or in favor of any Party shall impair any such right, remedy, or constitute a waiver thereof. Every right and remedy given hereunder or by law may be exercised from time to time and as often as may be deemed expedient by the Parties. Any extension of time for payment hereunder or other indulgences shall not alter, affect or waive rights or obligations hereunder. Acceptance of any payment, whether partial or otherwise, after it shall have become due, shall not be deemed to alter, affect or waive the obligations of either Party.

11.4 Modifications. Except as otherwise provided herein, this Agreement may not be modified or amended except in writing signed by or on behalf of both Parties by their duly authorized officers.

11.5 Successors and Assigns. This Agreement shall inure to the benefit of and bind the respective successors and permitted assigns of the Parties.

11.6 Notices. Except as provided in Section 4.2, all notices, reports and other communications required or permitted under this Agreement shall be in writing and shall be deemed to have been given when delivered personally or deposited in the mails, postage prepaid, registered or certified mail, return receipt requested, or by commercial overnight courier addressed to the Party to whom notice is being given at its address set forth below. Either Party may change its address by notice similarly given, and the Customer may change the telephone number and/or facsimile number provided in Section 4.2 by notice given in accordance with this Section 11.6.

If to the Customer:

Attn: _____

If to Covanta:

Covanta Lake II, Inc.
3830 Rogers Industrial Park Road
Okahumpka, FL 34762
Attention: Business Manager

With a copy to:

Covanta Energy Corporation
445 South Street
Morristown, NJ 07960
Attention: General Counsel

11.7 Further Actions. Each Party agrees that it will, at its own expense, to the extent not reimbursable by the other Party under this Agreement, execute any and all certificates, documents and other instruments, and take such other further actions as may be reasonably necessary to give effect to the terms of this Agreement.

11.8 Counterparts. This Agreement may be executed in several counterparts, any one of which shall be considered an original hereof for all purposes.

11.9 Severability. In the event that any of the provisions, portions or applications of this Agreement are held to be unenforceable or invalid by any court of competent jurisdiction, the remaining provisions, portions and applications thereof shall not be affected thereby. In such event, the Parties agree that the court making such determination shall have the power to alter or amend such provision so that it shall be enforceable.

11.10 No Third Party Beneficiaries. Nothing in this Agreement is intended to confer any right to any Person other than the Parties and their respective successors and permitted assigns; nor is anything in this Agreement intended to modify or discharge the obligation or liability of any third party to any Party or give any third party any right of subrogation or action over or against any Party.

11.11 Headings for Convenience. The headings in this Agreement are for convenience and reference only and in no way define or limit the scope or content of this Agreement or in any way affect its provisions.

11.12 Confidentiality.

(a) Prior to the disclosure of Confidential Information by Covanta to the Customer or its representatives or agents under this Agreement or Applicable Law, Covanta may require the Customer and its representatives and agents, as the case may be, to execute and deliver to Covanta a reasonable confidentiality agreement that will require the signatory to: (i) treat as confidential all Confidential Information which may be made available to the Customer or any agent or representative of the Customer; (ii) maintain in a secure place all Confidential Information made available to it and limit access to the Confidential Information to those agents or representatives of the Customer to whom it is necessary to disclose the Confidential Information in furtherance of the Customer's obligations under this Agreement; (iii) prevent disclosure of any Confidential Information by any agent or representative of the Customer to unauthorized parties and assume liability on the part of the Customer and the signatory for any breach of this Agreement and/or such confidentiality agreement, or for any unauthorized disclosure or use of Confidential Information by the Customer or any of its agents or representatives; and (iv) not use any Confidential Information other than in furtherance of its obligations under this Agreement.

(b) If the Customer receives a request for disclosure of any Confidential Information under Florida's Public Records Act (the "PRA"), the Customer shall, before complying with such request, provide written notice of the request, and the opportunity to review and discuss it, to Covanta. If a complaint is thereafter filed with a court of competent jurisdiction, the Customer shall give Covanta prompt notice of such complaint to allow Covanta to file a motion to intervene in such proceeding and shall not oppose such motion. Nothing in this Agreement shall be deemed to prevent the Customer from complying with the requirements of the PRA as those requirements are determined by the Customer in its reasonable discretion.

(c) If the Customer receives any other request or demand for disclosure of any Confidential Information (whether in the form of a subpoena, an investigative inquiry by a governmental agency, discovery demands in litigation, or otherwise), the Customer agrees to give prompt notice to Covanta of such request or demand and to allow Covanta an opportunity to seek judicial protection for the Confidential Information, unless the Customer is expressly prohibited by court order from so disclosing the demand.

12.1 Interpretation. In this Agreement, unless the context otherwise requires:

(a) The terms "hereby", "hereof", "herein", "hereunder" and any similar terms refer to this Agreement, and the term "heretofore" shall mean before, and the term "hereafter" shall mean after the Effective Date;

(b) Words of masculine gender shall mean and include correlative words of feminine and neuter genders and words importing the similar number shall mean and include the plural number and vice versa;

(c) The use of the word "including" in this Agreement shall be by way of example rather than by limitation;

(d) Reference to any agreement, document or instrument, including this Agreement or any appendix hereto, means such agreement, document or instrument as amended or otherwise modified from time to time in accordance with the terms thereof, and if applicable hereof;

(e) The use of the words "or", "either" and "any" shall not be exclusive;

(f) All references to statutory provisions and current or proposed rules and regulations shall be deemed to include any amendment or other revision to those laws and regulations and shall also be construed to refer to the corresponding provisions of any laws and regulations enacted to replace the laws and regulations referenced in this Agreement;

(g) All accounting terms not otherwise defined herein have the meanings assigned to them in accordance with generally accepted accounting principles, and the term "generally accepted accounting principles" with respect to any computation required or permitted hereunder shall mean such accounting principles which are generally accepted at the date or time of such computation;

(h) Words which have well-known technical or trade meanings are used herein in accordance with such recognized meanings unless otherwise specifically provided;

(i) Reference to a particular Party shall include that Party's employees and the authorized agents of that Party; and

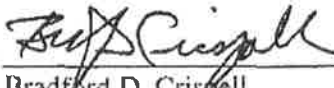
(j) Reference to any governmental, quasi-governmental or other regulatory authority or agency shall include any agency or authority of, and, the United States of America, the State of Florida and any other state, any county, any Customer, any district, and any political subdivision or instrumentality of any of the foregoing, with jurisdiction.

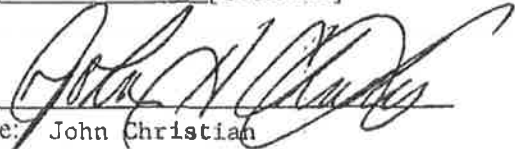
Both Parties hereto have participated jointly in the negotiation and drafting of this Agreement. If an ambiguity or question of intent or interpretation arises, this Agreement shall be construed as if drafted jointly by the Parties, and no presumption or burden of proof shall arise favoring or disfavoring any Party by virtue of the authorship of any of the provisions of this Agreement.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, the Parties have caused this Municipal Solid Waste Disposal and Services Agreement to be executed by their duly authorized representatives as of the day and year first above written.

COVANTA LAKE II, INC.

By: 
Bradford D. Crispell
Title: Vice President
Regional Business Management

City of Leesburg [Customer]
By: 
Name: John Christian
Title: Mayor

ATTEST:

Betty M. Richardson
City Clerk