WINTER HAVEN
THE CHAIN OF LAKES CITY

CITY COMMISSION MEETING

DATE: Monday, May 13, 2024, 6:00 p.m.

LOCATION: City Hall - John Fuller Auditorium
451 Third Street NW
Winter Haven, FL 33881

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1. **CALL TO ORDER** - Nathaniel J. Birdsong, Jr., Mayor

2. **ROLL CALL** - Vanessa Castillo, MMC, City Clerk

3. **INVOCATION** - Dr. Steve Negley, First Presbyterian Church of Winter Haven

4. **PLEDGE OF ALLEGIANCE** - Vanessa Castillo, MMC, City Clerk

5. **PRESENTATIONS**

5.A **"National Safe Boating Week" Proclamation - Gilbert F. Thomas, Flotilla Commander for Flotilla 77, United States Coast Guard Auxiliary**

Staff Contact: *LaTonya Harris, City Historian & Archivist | Deputy City Clerk, lharris@mywinterhaven.com*

Proclamation

5.B **"Public Works Week" Proclamation - Brittany Hart, Public Works Director**

Staff Contact: *Brittany Hart, Public Works Director, bhart@mywinterhaven.com*

Proclamation

5.C **Recognition of Winter Haven Public Works Department as Accredited Agency by American Public Works Association - Robert Garland, Regional Director, American Public Works Association.**

Staff Contact: *Brittany Hart, Public Works Director, bhart@mywinterhaven.com*

5.D **"Police Week" Proclamation - Charles Bird, Assistant City Manager, Public Safety**

Staff Contact: *Charles Bird, Assistant City Manager Public Safety, cbird@mywinterhaven.com*

Proclamation

6. **DEVELOPMENTS OF NOTE**

7. **MINUTES**

7.A **April 17, 2024, City Commission Agenda Review Session Meeting Minutes**

Staff Contact: *Vanessa Castillo, MMC, City Clerk, vcastillo@mywinterhaven.com*

2024-04-17 DRAFT Agenda Review Session Minutes with Link and Attachment

7.B **April 22, 2024, Regular City Commission Meeting Minutes**

Staff Contact: *Vanessa Castillo, MMC, City Clerk, vcastillo@mywinterhaven.com*

2024-04-22 DRAFT Regular City Commission Meeting Minutes with Link and Attachment

8. COMMENTS FROM THE AUDIENCE

9. ORDINANCE(S) - SECOND READING - PUBLIC HEARING

9.A **O-24-18 - Request by Blue Sky Communities to rezone a portion of a parcel from Single Family Residential- Small Lot (R-2) zoning district to Multi-Family Residential- Low Density (R-3) zoning district.**

Staff Contact: *Heather Reuter, Senior Planner, hreuter@mywinterhaven.com*

Summary - O-24-18
O-24-18

9.B **O-24-24 - Ordinance Amending Ordinance O-23-54 appropriating funds for the fiscal year ending September 30, 2024**

Staff Contact: *CJ Scott, Chief Financial Officer, cjscott@mywinterhaven.com*

Summary - O-24-24
O-24-24

10. CONSENT AGENDA

10.A **Traffic Agreement for Ruby Lake Homeowners Association (HOA) Private Roads**

Staff Contact: *David Brannan, Chief of Police, dbrannan@mywinterhaven.com*

Summary - Ruby Lake HOA Traffic Agreement
Agreement for Traffic Control and Enforcement on Private Roads

10.B **Axon Master Service Agreement**

Staff Contact: *David Brannan, Chief of Police, dbrannan@mywinterhaven.com*

Summary Axon Master Services and Purchasing Agreement For Customer and City of Winter Haven Contract Addendum
Master Services and Purchasing Agreement For Customer
City of Winter Haven Contract Addendum Axon

10.C **Authorization for Travel & Training: Florida League of Cities (FLC) 2024 Federal Action Strike Team (FAST) Fly-In (Yates)**

Staff Contact: *AJ Nicholson, Assistant to the City Manager, anicholson@mywinterhaven.com*

Summary - FLC FAST Fly-In
2024 FAST Fly-In Information

10.D **Authorization for Travel & Training - Winter Haven Chamber Strategic Planning Retreat (Stavres)**

Staff Contact: *T. Michael Stavres, City Manager, mstavres@mywinterhaven.com*

Summary - Travel & Training WH Chamber Strategic Planning Retreat

WH Chamber 2024 Strategic Planning Retreat Agenda

10.E **Owners Representative Professional Services for Water Resource Facility (WRF) at Pollard Road - Approval of Task Order No. 1 (RFQ-24-15)**

Staff Contact: *Gary M. Hubbard, Water Department Director, ghubbard@mywinterhaven.com*

Summary - Design Criteria and Owners Representative Professional Services for Water Resource Facility WRF
Water Resource Facility - Owner Representative Services

10.F **Water Plants, Ground Storage Tanks (GST) Repairs**

Staff Contact: *Gary M. Hubbard, Water Department Director, ghubbard@mywinterhaven.com*

Summary - Water Plants, Ground Storage Tanks (GST) Repairs
CROM - Sole Source Certificate
Inwood 025 MG Proposal - 20240111
Inwood 075 MG Proposal - 20240139
Fairfax 060 MG Proposal - 20240119
Winterset 050 MG Proposal - 20240131
Ridge-Vo-Tech 010 MG Proposal - 20240142

10.G **Amendment No. 7 to the Agreement between the City of Winter Haven and RHL Corporation d/b/a Richard's Fine Coffees**

Staff Contact: *Julie Adams , Parks, Recreation and Culture Director , jadams@mywinterhaven.com*

Summary - Amendment No.7 to the Agreement City and RHL Corporation dba Richard's Fine Coffee
Tuttles Richard's Fine Coffee Amendment No. 7

10.H **Small Municipal and County Government Enterprise License Agreement Renewal with Environmental Systems Research Institute, Inc. (Redlands, CA)**

Staff Contact: *Hiep Nguyen, Smart City Officer, hnguyen@mywinterhaven.com*

Summary ESRI Enterprise License Agreement Renewal 2024
City of Winter Haven EA Renewal 2024
City of Winter Haven Contract Addendum

10.I **Request for approval of an Easement in favor of Tampa Electric Company (TECO) in order to operate and maintain existing above-ground and existing and new underground electrical lines at 1254 Fairfax Avenue NE, Winter Haven.**

Staff Contact: *Charlie Bird, Assistant City Manager - Public Safety, cbird@mywinterhaven.com*

Summary - TECO Easement 1245 Fairfax Avenue NE
Easement - TECO - 1245 Fairfax Avenue NE

10.J **Safe Streets and Roads for All (SS4A) and Florida Commerce Vision Zero Transportation Plan - Community Planning Technical Assistance Grant Applications**

Staff Contact: *Brittany Hart, Public Works Department Director, bhart@mywinterhaven.com*

Summary - Safe Streets for All and Community Planning Technical Assistance Grants

11. RESOLUTION(S)

11.A **R-24-24 - Amendment to the 2014 Interlocal Agreement creating the Polk Transportation Planning Organization (TPO) relating voting member reapportionment**

Staff Contact: *Sean Byers, Planning Manager, sbyers@mywinterhaven.com*

Summary Resolution R-24-24

2024 Amendment to POLK TPO Interlocal Agreement
2014 Polk TPO Interlocal Agreement
October 12 2023 Membership Apportionment Plan
R-24-24

11.B **R-24-25 - Acceptance of Easement from Prose Winter Haven Ventures, LP for installation, operation, and maintenance of fire protection and water infrastructure at the Prose Cypress Point Apartments**

Staff Contact: *Sean Byers, Planning Manager, sbyers@mywinterhaven.com*

Summary - Resolution R-24-25
R-24-25

12. ORDINANCE(S) - FIRST READING

12.A **O-24-25 - Voluntary annexation of a parcel generally located north of Highway 540 West, east of King Road, and south of Crosstower Drive**

Staff Contact: *Heather Reuter, Senior Planner, hreuter@mywinterhaven.com*

Summary - Ordinance O-24-25
O-24-25

12.B **O-24-26 - Ordinance Amending Ordinance O-24-21 appropriating surplus funds for Construction Projects**

Staff Contact: *CJ Scott, Chief Financial Officer, cjscott@mywinterhaven.com*

Summary Ordinance O-24-26
O-24-26

12.C **O-24-28 - Authorizing the City Manager or his designee to opt in or out of any declared Polk County Fire Department Burn Bans within the municipal limits of the City Of Winter Haven**

Staff Contact: *Michael T. Waters, Fire Operations Chief, mwaters@mywinterhaven.com*

Summary - O-24-28 Burn Ban
Ordinance O-24-28
Polk County Ordinance 08-015 (amended)

13. NEW BUSINESS

14. CITY COMMISSIONERS/LIAISON REPORTS

15. CITY ATTORNEY REPORT

16. CITY MANAGER REPORT

17. DEPUTY CITY MANAGER REPORT

18. CITY CLERK REPORT

19. EMERGENCY MATTERS NOT RECEIVED FOR THE AGENDA

20. ADJOURNMENT

If a person decides to appeal any decision made by the Commission with respect to any matter considered at such meeting or hearing, they will need a record of the proceedings, and that, for such purpose, they may need to ensure that a verbatim record of the proceeding is made which record includes the testimony and evidence upon which the appeal is to be based (FS 286.0105). In accordance with the Americans with Disabilities Act and Florida Statutes, Section 286.26, persons with disabilities needing special accommodations to participate in this proceeding,

should contact the City Clerk's Office, 451 Third Street, NW, Winter Haven, Florida 33881, in writing, not later than 48 hours prior to the proceeding; if not in writing, then not later than four (4) days prior to the proceeding at (863) 291-5600. Vision or hearing impaired please call (800) 955-8771 for assistance.

WINTER HAVEN
THE CHAIN OF LAKES CITY

Proclamation

WHEREAS, for over 100 million Americans, boating continues to be a popular recreational activity. From coast to coast, and everywhere in between, people are taking to the water and enjoying time together boating, sailing, paddling, and fishing. During *National Safe Boating Week*, the U.S. Coast Guard and the National Safe Boating Council, along with federal, state, and local safe boating partners, encourage all boaters to explore and enjoy America's beautiful waters responsibly; and

WHEREAS, safe boating begins with preparation. The Coast Guard estimates that human error accounts for most boating accidents and that life jackets could prevent nearly 75 percent of boating fatalities. Through basic boating safety procedures – carrying lifesaving emergency distress and communications equipment, wearing life jackets, attending safe boating courses, participating in free boat safety checks, and staying sober when navigating – we can help ensure that boaters on America's coastal, inland, and offshore waters stay safe throughout the season; and

WHEREAS, *National Safe Boating Week* is observed to bring attention to important life-saving tips for recreational boaters so that they can have a safer, more fun experience out on the water throughout the year; and

WHEREAS, on average, 650 people die each year in boating-related accidents in the U.S. and 75 percent of these are fatalities caused by drowning; and

WHEREAS, the vast majority of these accidents are caused by human error or poor judgment and not by the boat, equipment, or environmental factors; and

WHEREAS, a significant number of boaters who lose their lives by drowning each year would be alive today had they worn their life jackets.

NOW, THEREFORE, I, Nathaniel J. Birdsong, Jr., Mayor of the City of Winter Haven, Florida, do hereby proclaim May 20th through 26th, 2024, as

"National Safe Boating Week"

in the City of Winter Haven and urge all citizens to support the goals of the Safe Boating Campaign and the start of the year-round effort to promote safe boating. Also, to urge all those who boat to practice safe boating habits and wear a life jacket at all times while boating.

IN WITNESS WHEREOF, I have hereunto set my hand and cause the Seal of the City of Winter Haven, Florida, to be affixed this 13th day of May, 2024.



Nathaniel J. Birdsong, Jr.
Nathaniel J. Birdsong, Jr., Mayor

ATTEST:
Vanessa Castillo
Vanessa Castillo, MMC, City Clerk

WINTER HAVEN
THE CHAIN OF LAKES CITY

Proclamation

WHEREAS, public works professionals focus on infrastructure, facilities, and services that are of vital importance to sustainable and resilient communities and to the public health, high quality of life, and well-being of the people of Winter Haven; and

WHEREAS, these infrastructure, facilities and services could not be provided without the dedicated efforts of public works professionals, from state and local governments and the private sector, who are responsible for rebuilding, improving, and protecting our nation's transportation, solid waste systems, natural resources, fleet, water utilities, and other infrastructure essential for our citizens; and

WHEREAS, it is in the public interest for the citizens, civic leaders and children in Winter Haven to gain knowledge of and to maintain a progressive interest and understanding of the importance of public works and public works programs in their respective communities; and

WHEREAS, the American Public Works Association (APWA) has celebrated the annual *National Public Works Week* since 1960.

NOW, THEREFORE, I, Nathaniel J. Birdsong, Jr., Mayor of the City of Winter Haven, Florida, do hereby proclaim May 19th through 25th, 2024 as

"National Public Works Week"

in the City of Winter Haven and urge all citizens to join with representatives of the American Public Works Association and government agencies in activities, events and ceremonies designed to pay tribute to our public works professionals, and to recognize the substantial contributions they make to protecting our health, safety, and quality of life..

IN WITNESS WHEREOF, I have hereunto set my hand and cause the Seal of the City of Winter Haven, Florida, to be affixed this 13th day of May, 2024.



Nathaniel J. Birdsong, Jr.

Nathaniel J. Birdsong, Jr., Mayor

ATTEST:

Vanessa Castillo

Vanessa Castillo, MMC, City Clerk

WINTER HAVEN
THE CHAIN OF LAKES CITY

Proclamation

WHEREAS, law enforcement agencies play an essential role in safeguarding the rights and freedoms which have been guaranteed by the Constitution to every American citizen; and

WHEREAS, it is important that people throughout our community know and understand the problems, duties, and responsibilities of law enforcement agencies and that members recognize their duty to serve the people of the community by safeguarding life and property, by protecting them against violence or disorder, and by protecting the innocent against deception and the weak against oppression or intimidation; and

WHEREAS, law enforcement agencies unceasingly provide a vital public service; and

WHEREAS, the City Commission, has designated the week of May 12th through 18th, 2024, as *Police Week* in recognition of the contribution, law enforcement officers have made to our civilization through their dedicated and selfless efforts in enforcing our laws, and has also designated May 15th as *Peace Officers Memorial Day* in honor of the Federal, State, and municipal peace officers who have been killed or disabled in line of duty; and

NOW, THEREFORE, I, Nathaniel J. Birdsong, Jr., Mayor of the City of Winter Haven, Florida, do hereby call upon the people of Winter Haven, to observe the week of May 12th through 18th, 2024, as

"Police Week"

in the City of Winter Haven, which all of our citizens may join in commemorating police officers, past and present, who by their faithful and loyal devotion to their responsibilities have rendered a dedicated service to this community and, in so doing, have established for themselves an enviable and enduring reputation for preserving the rights and security of all citizens.

IN WITNESS WHEREOF, I have hereunto set my hand and cause the Seal of the City of Winter Haven, Florida, to be affixed this 13th day of May, 2024.



Nathaniel J. Birdsong, Jr.

Nathaniel J. Birdsong, Jr., Mayor

ATTEST:

Vanessa Castillo

Vanessa Castillo, MMC, City Clerk

WINTER HAVEN
THE CHAIN OF LAKES CITY

CITY COMMISSION AGENDA REVIEW SESSION MINUTES

DATE: Wednesday, April 17, 2024, 5:30 p.m.

LOCATION: City Hall – John Fuller Auditorium
451 Third Street NW, Winter Haven, FL 33881

NOTE:
PowerPoint slides of certain agenda items were also presented during this meeting. Link to PowerPoint here:
https://acrobat.adobe.com/id/urn:aaid:sc:VA6C2:26eddc70-e2a1-405c-bdd6-ee41e9ae4a9f
A hard copy of the PowerPoint will be attached to the original signed minutes.

1. CALL TO ORDER - Mayor Birdsong called the meeting to order at 5:30 p.m.

2. ROLL CALL - Vanessa Castillo, MMC, City Clerk

Commissioners Present: Mayor Nathaniel J. Birdsong, Jr.; Mayor Pro Tem Brian Yates; Commissioner Bradley T. Dantzler; Commissioner Tracy Mercer; and Commissioner Clifton E. Dollison.

Staff Present: City Manager T. Michael Stavres; Deputy City Manager Michael "M.J." Carnevale; City Attorney John Murphy; City Clerk Vanessa Castillo; Assistant City Manager for Public Safety Charlie Bird; Police Chief David Brannan; Economic Opportunity and Community Investment Director Eric Labbe; Winter Haven Water Director Gary Hubbard; Affairs and Communications Director Katrina Hill; and Public Works Director Brittany Hart.

5. PRESENTATION(S)

A. "2024 Earth Day" Proclamation - Dustin W. Everitt, Natural Resources Manager

B. "First Responder Mental Health Awareness Day" Proclamation - Morgan Volpe, M.S., CTP, Mental Health Coordinator, Public Safety

C. "Mental Health Awareness Month" Proclamation - Morgan Volpe, M.S., CTP, Mental Health Coordinator, Public Safety

D. "Drinking Water Week" Proclamation - Steven Warder, Water Plants Manager and Damon Irvis, Water Plant Chief Operator

E. "Girls Inc. Week" Proclamation - Peggy Threlkel, Executive Director, Girls Inc. of Winter Haven

City Manager Stavres said items 5A through 5 E would be presented at the April 22, 2024, Regular City Commission Meeting.

There were no questions or discussion.

F. Annual Comprehensive Financial Report - 2023 Presentation of Audit Results

City Manager Stavres said that the City's new auditor was Mauldin and Jenkins. He noted that item 10A under Consent would be the acceptance of the Annual Comprehensive Financial Report.

There were no questions or discussion.

DRAFT

6. DEVELOPMENTS OF NOTE - None

7. MINUTES

A. March 25, 2024, Regular City Commission Meeting Minutes

B. April 3, 2024, City Commission Agenda Review Session Minutes

C. April 8, 2024, Regular City Commission Meeting Minutes

There were no questions or discussion for items 7A through 7C.

8. COMMENTS FROM THE AUDIENCE – N/A

9. ORDINANCE(S) – SECOND READING – PUBLIC HEARING

A. O-24-20 - Voluntary annexation of 250 Cypress Gardens Boulevard

There were no questions or discussion.

10. CONSENT AGENDA

A. Acceptance of the Annual Comprehensive Financial Report (ACFR) and the Community Redevelopment Agency Report for the Year Ended September 30, 2023

This item was already discussed under Item 5F.

There were no questions or discussion.

B. Library Board Appointments

City Manager Stavres gave an overview of this item.

There were no questions or discussion.

C. First Amendment to Southwest Florida Water Management District (SWFWMD) Q176 Grant Agreement

Winter Haven Water Director gave an overview of this item.

Mayor Birdsong asked about the signs of what would be done. Director Hubbard said they were creating a water budget, a water balance to know roughly how much water was received each year and estimate how much flowed through the ground surface based on areas that were not developed or were partially undeveloped. The engineers and scientist had developed a way to tie that to the amount of recharge, which he explained in more detail.

D. Amendment to Cypresswood Water Treatment Plant, design, permitting and construction services for production/monitoring wells (RFQ-19-21)

Winter Haven Water Director gave an overview of this item.

There were no questions or discussion.

E. Amendment to Pollard Road Water Production Facility, design, permitting and construction services for production/monitoring wells (RFQ-21-34)

Winter Haven Water Director Hubbard gave an overview of this item.

City Manager Stavres added that this was an intermediary step in getting to the full construction and build out of those production sources.

Director Hubbard said that during this process, they would be exploring the upper regions of the lower Floridan [Aquifer] to see if the water quality was sufficient there to provide permitting for our water use. If not, then they would move towards the upper Floridan [Aquifer]. This would provide the information needed for actual design of the treatment facilities.

DRAFT

Mayor Birdsong asked with the two treatment plants how much water would be expected. Director Hubbard said he believed it was approximately 1.5 million gallons per day from Cypresswood [Water Treatment Plant] (WTP) and confirmed that was already factored into what was needed. He added that it would be approximately 4 million gallons per day from the Pollard Road Water Production Facility (WPF).

City Manager Stavres clarified that Cypresswood WTP would replace an existing site and Pollard Road WPF would take Winterset Gardens offline. Discussion ensued.

Commissioner Mercer inquired if wells would be onsite at Cypresswood WTP. Director Hubbard said the City purchased property a couple years ago where the old wastewater plant was located on the proposed Cypresswood WTP site and that would be the new location for the new water plant and wells associate therewith. Discussion ensued.

F. Police Department Roof Replacement

City Manager Stavres gave an overview of this item.

Mayor Birdsong asked for clarification of the projected price and bids. City Manager Stavres said the total estimated cost was $292,390 inclusive of the roof and would be done through a continuing contract that the City had for roofing.

Commissioner Dantzler inquired if a metal roof was considered. City Manager Stavres said it was a membrane roof so it could not be done.

G. Agreement for Transfer of Public Roads - Coon Lake Road

Economic Opportunity and Community Investment Director Labbe gave an overview of this item. He pointed out that while the developer was required to construct Coon Lake Road from the Thompson Nursery Road intersection south to his entrance point to the subdivision, from the entrance point to the subdivision traveling west to County Road 653 would be a multipurpose trail and landscaping also constructed by the developer.

Commissioner Dantzler asked where the entrance would be located. Director Labbe said where the little dirt road headed south and pointed to the place on the map in the slide. He added that there would be a boulevard entrance into the multifamily development. Discussion ensued regarding roads, neighboring schools, lighting, the multipurpose trail, right of way, retention in the form of a swale, potential for the Polk County School Board to develop parking facilities for a new middle school, and traffic.

Commissioner Dollison expressed that a road named 'Coon Lake Road' was a challenge for him. He also said that it was offensive to many people and inquired if the name could be changed. City Manager Stavres said there were no properties fronting it, therefore there would be no impact to doing a road name change. Director Labbe said this could be explored further. Discussion ensued.

Commissioner Dantzler concurred with Commissioner Dollison regarding the name change.

Discussion ensued on the extensive traffic in this area.

H. Authorization for transfer of City-owned parcel to the Florida Department of Transportation

City Manager Stavres gave an overview of this item.

Commissioner Dantzler asked if a sign would be needed at this location since there was frontage on both roads and once the City sold it, it would be gone. City Manager Stavres said if the property could be utilized for economic activity in the area a sign could be placed, but he did not think there would be much benefit other than for people heading southbound. He added that signage would be better placed on the land the Florida Department of Transportation (FDOT) dedicated to the City on Third Street where it split at Andy's Igloo and U.S. 17 curved off to the left. Discussion ensued.

Mayor Pro Tem Yates said the smaller parcel needed to come back before the Commission to determine pricing and see what the FDOT sales price was on the larger parcel. City Manager Stavres said he thought that the City's parcel would be more valuable because there was less of it.

Mayor Pro Tem Yates inquired if the City would be responsible for maintaining the parcel if it went back to FDOT. Director Labbe said he had talked through this with an FDOT representative and it was determined that if FDOT could not come to terms with Mr. Cameron, the parcel would likely come back to the City to maintain it. Discussion ensued.

DRAFT

City Attorney Murphy noted some eminent domain case law that may be applicable to FDOT's acquisition of property through eminent domain and that the timing of when FDOT had acquired this property via eminent domain if prior to 2005 may have an impact on potential disposition. Discussion ensued.

11. RESOLUTION(S)

A. R-24-22 - Approving a Florida Department of Transportation (FDOT) Local Agency Program (LAP) Agreement for the Design of the Avenue C SE from 1st Street S to 6th Street SE

Public Works Director Hart gave an overview of this item.

Commissioner Dantzler asked if it took it that long [December 31, 2026] to get a study done. Public Works Director Hart said it did not typically take that long and explained it needed to be done by this date in order to be reimbursed and explained further. City Manager Stavres pointed out the significance of this project and explained how enhancing the Complete Street design of that corridor would have a significant improvement on the safety of school-age children from the neighboring schools.

B. R-24-23 - Request by Lennar Homes, LLC to release the subdivision Performance Bond and confirming acceptance of improvements, infrastructure, and dedications in favor of the Public/City of Winter Haven for the eastern half of the Peace Creek Reserve Subdivision

City Manager Stavres gave an overview of this item.

There were no questions or discussion.

12. ORDINANCE(S) - FIRST READING

A. O-24-18 - Request by Blue Sky Communities to rezone a portion of a parcel from Single Family Residential- Small Lot (R-2) zoning district to Multi-Family Residential- Low Density (R-3) zoning district

Economic Opportunity and Community Investment Director Labbe gave an overview of this item.

City Manager Stavres said that he believed that if this item were approved, the developer would do this as an affordable housing project and pursue tax credit financing similar to Florence Place [Apartments] so he expected the City would be asked to entertain a request for a local match.

Commissioner Dantzler asked if there was any way this could be tied to [City employee] workforce housing. Director Labbe said this request and workforce housing or affordable housing requests were separate requests. He explained that you could not tie it to a specific use and that whichever uses were allowed in that zoning district, such as multi-family, was an allowable use. The City established the maximum densities, but it was the zoning that they would need to pursue their project and respond appropriately to the anticipated request for proposals from Florida Housing for funding. Discussion ensued.

(The following was discussed after 16B):

Commissioner Dantzler said he thought this was a Planned Unit Development (PUD) and expressed that he struggled with "regular" developments [as opposed to developments with affordable housing]. City Manager Stavres explained that typically future land use and zoning was done at the same time on an annexed parcel because it would not have such designated by the City, which he explained in more detail. Commissioner Dantzler said he was supportive of another Blue Sky community for affordable and workforce housing, however, this appeared to be regular apartments. Director Labbe explained that from a planning perspective the future land use was consistent and allowed for R-3 zoning, therefore, there was not an issue. This was why the future land use already identified through the Comprehensive Plan for this parcel did not need to be changed since it was identified in the existing land use as an area appropriate for multi-family. Discussion ensued.

B. O-24-19 - PUBLIC HEARING - Administrative request to amend the Sanitary Sewer Subelement of the 2035 Winter Haven Comprehensive Plan, by adding goals, objectives, and policies relating to septic to sewer conversions

Economic Opportunity and Community Investment Director Labbe gave an overview of this item and said that Planning Staff had worked with Winter Haven Water staff to ensure that what was going in the Comprehensive Plan would not only meet with legislative requirements, but was in the direction that Winter Haven Water staff envisioned within the master planning efforts done by Wright-Pierce Engineering for conversions of septic systems within the City.

Mayor Birdsong commented that there had been discussions regarding septic to sewer projects with Wright-Pierce to include Boggy Bottom and another area he believed to be by the [Winter Haven Regional] Airport. City Manager Stavres said by Lake Hartridge in an area west of Home Depot (located at the corner of Martin Luther King Boulevard and U.S. 17). Discussion ensued.

Mayor Birdsong inquired if the City had applied for any grants. Winter Haven Water Director Hubbard said yes and that they had applied through the Florida Department of Environmental Protection (FDEP) and Heartland each year for septic to sewer funding, however, the City did not get it this time.

Commissioner Mercer asked what kind of criteria was used to say which [project] was next. Director Hubbard said there had been a number of criteria to establish priorities. Distance to a water body was one of the primary factors that was considered, another was distance to the closest sewer line, among others.

C. O-24-24 - Ordinance Amending Ordinance O-23-54 appropriating funds for the fiscal year ending September 30, 2024

City Manager Stavres gave an overview of this item, which pertained back to the roof replacement.

There were no questions or discussion.

13. NEW BUSINESS - None

14. CITY COMMISSIONERS/LIAISON REPORTS

Commissioner Dantzler asked for an update on the Historic Ritz Theatre and negotiations. City Manager Stavres reported he had just done an interview with Bay News 9 about the Ritz and [Board of Directors President] Tom Westbury also participated. He also reported that all was going well and that Mr. Westbury had had officially reached out to the City, on behalf of the Board, and to ask if the City was interested in purchasing. He said City Attorney Murphy, Parks, Recreation and Culture Director Adams, and himself had met with Mr. Westbury and Board Member Kim Short to begin negotiating a Purchase and Sale Agreement. They would work directly with City Attorney Murphy's office and Mark Turner, Board Member and Legal Counsel to the Ritz to get all arranged. The City had solicited a boundary survey and a phase one environmental and asbestos survey to ensure that everything was sound. Lastly, they expected to have a proposed purchase and sale agreement one of the two Regular City Commission Meetings in May and the price would be aligned with the balance due on the existing mortgage.

Commissioner Dollison asked for an update regarding Theatre Winter Haven (TWH). City Manager Stavres said he had spoken with [Producing Director] Dan Chesnika and it was his understanding that TWH was on board. He would craft a Use Agreement not only for the Ritz, but also to revise and reinstitute a solid Use Agreement for TWH at the Chain of Lakes Complex.

City Manager Stavres said he believed there had been a Ritz Board of Directors Meeting today and asked if they had shared anything beyond what he had shared for the Commission. Mayor Pro Tem Yates said no and that the Board was committed to working through these matters in order to achieve a successful outcome and still had taxes to file. If this did not move forward, the Board was ready to take any steps necessary.

15. CITY ATTORNEY REPORT – No report

16. CITY MANAGER REPORT

A. Second City Commission Meeting in May, 2024

City Manager Stavres explained that the May 27, 2024, Regular City Commission Meeting fell on the Memorial Day holiday and therefore, the meeting would then fall on May 28, 2024 pursuant to Section 2-26 of the City's Code of Ordinances.

Mayor Pro Tem Yates noted that the Winter Haven High School graduation would take place on May 22, 2024 and asked if the Agenda Review Session would still be held. Public Affairs and Communications Director Hill added that the graduation was at 5:00 p.m.

There was consensus of the Commission to cancel the May 22, 2024, Agenda Review Session.

DRAFT

B. Grant & Aid Application Recap

City Manager Stavres reported that grant and aid applications had closed. He said that Director Hill distributed a spreadsheet listing the applications *(see attached)* received this year as of today, which were still being audited, and gave an overview as follows:

- 51 applications were received this year. Last year we received 53.
- 19 were first-time applications.
- 24 were returning applications, with 2 of these not funded in the current year and were in red in the green section but would be moved into the blue section because they were not funded in the current year.
- 5 requests were received for single large-scale initiatives, which were at the top of the spreadsheet, however, they could not be funded because of the number of applications received. This would be discussed with the Grant and Aid Review Committee (GAARC).
- The first GAARC Meeting would be held on May 9, 2024, at City Hall in the John Fuller Auditorium.
- Committee Members: Tina Summerlin, Alex Santiago, Abdurrahim Al-Khatib, Steve Negley, and Melinda Kalogridis, who filled Alex Cam's spot.
- Committee Ex-officio members representing the City Manager's Office and Financial Services: Diversity and Inclusivity Director Samuel, Budget and Management Officer Allen Weeks, and Procurement Manager Bethany Owen.

City Manager Stavres said the committee members would review all of the applications and give a recommendation to the Commission in June and they had a second meeting scheduled, if needed. He noted that last year they had used the Polk County *United Community Needs Assessment* done by GiveWell and United Way, as a baseline.

Commissioner Dantzler asked City Manager Stavres to express gratitude, on behalf of the Commission, to the committee.

City Manager Stavres said they met twice per year and that they would be brought in to get any feedback from them and make any adjustments to the process.

Mayor Birdsong said he noticed that many organizations did not reapply. Director Hill said yes and explained they had been notified several times. The names of these organizations were listed on page two at the bottom in white.

Discussion ensued.

17. DEPUTY CITY MANAGER REPORT – No report

18. CITY CLERK REPORT – No report

19. EMERGENCY MATTERS NOT RECEIVED FOR THE AGENDA – None

20. ADJOURNMENT – 6:36 p.m.

ATTEST:

Vanessa Castillo, MMC
City Clerk

CITY OF WINTER HAVEN, FLORIDA

Nathaniel J. Birdsong, Jr.
Mayor

DRAFT

Returning Applicants (Eligible for up-to $20,000)

licants (Eligible for up to $5,000)

Grant Applicants			Remaining Budget:	$ 305,000					
Organization Name	Project Name	Report?	$ -	$ 790,000	$ 305,000	$ 305,000	$ 311,000	$ 209,060	
Grant Applicants			2024-25		2023-24	2022-23	2021-22	2020-21	
Organization Name	Project Name	Report?	Amt. Awarded	Amt. Requested	Amt. Awarded	Amt. Awarded	Amt. Awarded	Amt. Awarded	
			$ -	$ 790,000	$ 305,000	$ 305,000	$ 311,000	$ 209,060	
Organization Name	Project Name	Report?	2024-25		2023-24	2022-23	2021-22	2020-21	
			Amt. Awarded	Amt. Requested	Amt. Awarded	Amt. Awarded	Amt. Awarded	Amt. Awarded	
Cypress Junction Montessori	School Nutrition Scholarship Program			$ 40,000	$ 5,000.00				
Girl Scouts of West Central Florida	Girl Scout Community Troops			$ 40,000					
NEIGHBORHOOD SERVICE CENTER INC.	SENIOR FOOD PROGRAM			$ 40,000	$ 20,000.00	$ 20,000.00	$ 20,000.00	$ 20,000.00	
Talbot House Ministries of Lakeland, Inc.	Showered by Grace: Mobile Shower and Laundry Facilities for Winter			$ 40,000	$ -	$ 3,000.00			
The Mission of Winter Haven	Strengthening Community Through Sustainable Meal			$ 40,000	$ 2,500.00				
Boys & Girls Clubs of Polk County	Winter Haven EmpowerED!			$ 45,000	$ 45,000.00	$ 45,000.00	$ 45,000.00	$ 45,000.00	
The Haley Center Inc	Continued medical support for the 200% and below poverty level in			$ 33,000	$ 20,000.00		$ 33,000.00	$ 33,000.00	
Catholic Charities of Central Florida, Inc.	Keeping Seniors in Stable Housing			$ 20,000	$ 2,500.00				
Concerned Citizens of Winter Haven	Feeding the hunger/ homeless			$ 20,000	$ 10,000.00	$ 10,000.00	$ 10,000.00		
Cypress Gardens Water Ski Team, Inc.	Community Instruction Events: Learn-to-ski and Adaptive ski clinic			$ 10,000	$ 5,000.00				
Cypress Junction Montessori	Early Education Scholarship Fund			$ 20,000	$ 5,000.00				
Faith Xtreme, Inc.	Free Access for All			$ 20,000	$ 7,000.00	$ 14,602.00	$ 15,000.00	$ 10,000.00	
Forever Outreach Inc.	Forever Hoops			$ 20,000	$ 2,500.00				
Girls Incorporated of Winter Haven	After-School and Summer Program			$ 20,000	$ 18,000.00	$ 18,000.00	$ 18,000.00	$ 15,000.00	
Habitat for Humanity of East Polk County, Inc	Critical Home Repairs			$ 20,000	$ 3,000.00	$ 3,000.00			
Helpers one 2 another	Operational Cost Help			$ 20,000	$ 2,500.00				
House of Hope of Polk County, Inc.	26' Refrigerated Box Truck with liftgate			$ 20,000	$ -	$ 3,000.00			
Jewett Golf Association Inc	Jewett Golf First Swing Junior Golf Program			$ 16,000	$ 5,000.00				
kidsPACK	Just Feed Kids			$ 20,000	$ -	$ 13,646.00	$ 20,000.00	$ 14,000.00	
Kiwanis Club of Winter Haven Foundation Inc.	Kiwanis Club of Winter Haven Foundation Inc.			$ 20,000	$ 2,500.00				
Lighthouse for the Blind & Low Vision	Independence for Blind & Vision Impaired Adults			$ 15,000	$ 5,000.00	$ 3,000.00			
Meals on Wheels of Polk County, Inc.	Food Costs for the Winter Haven area including our "Angel Meal"			$ 20,000	$ 17,500.00	$ 15,000.00	$ 15,000.00	$ 15,000.00	
Neighborborhood Service Center	Senior Services and Programs			$ 20,000	$ 20,000.00	$ 20,000.00	$ 20,000.00	$ 20,000.00	
Peyton's Purpose Inc	Care Packages, Financial and Grief Support for Families			$ 5,000	$ 3,000.00	$ 3,000.00			
Polk State College Foundation	Dress for Success			$ 20,000	$ 5,000.00				
StepN2ourlane	Filling The Lane			$ 20,000	$ 10,000.00	$ 10,000.00	$ 10,000.00		
The Freedom Tour	Mobile Food Pantry			$ 8,000	$ -	$ 2,000.00			
The Mission of Winter Haven	Nourishment Center Expanstion			$ 20,000	$ 2,500.00				
The Public Education Partnership of Winter Haven, Inc.	PEP Programming			$ 20,000	$ 20,000.00	$ 20,000.00	$ 20,000.00	$ 20,000.00	
Top Buttons, Inc.	Wearing Confidence			$ 20,000	$ 5,000.00	$ 3,000.00			
We Care of Central Florida (WCCF)	Eliminating Barriers to Specialty Care			$ 5,000	$ 3,000.00	$ 3,000.00			
Achievement Academy, Inc.	Early Intervention for Winter Haven's At-Risk Infants & Toddlers			$ 5,000					
ANGELS OF DESTINY INC	Becoming a Better Her Mentoring Program			$ 5,000		$ -			
Central Florida Healthcare, Inc.	Copay Relief Program			$ 3,000					
ECHO Ministries Inc.	ECHO Ministries of Winter Haven			$ 5,000					
First Missionary Baptist Church	FMBC Food Pantry			$ 5,000		$ 3,000			
Florence Villa Community Association, Inc. (FVCA)	Lake Maude Cemetery Restoration Project			$ 5,000					
Florida Children's Museum	Winter Haven Family Engagement			$ 5,000					
Girl Scouts of West Central Florida	Girl Scout Community Troops			$ 5,000					
Integrity Youth Association, Inc.	Out-Of-School and Summer Programs			$ 5,000					
J. Owens Academy of Fine Arts, Inc.	Bese Saka (Black Historical Spiritual Music Festival)			$ 5,000					
Lakeland Volunteers in Medicine	Empowering a HealthyWinter Haven			$ 5,000		$ -			
LifeChoice Pregnancy Center	Earn While You Learn Parenting Program			$ 5,000					
Polk County Bully Project	Safe Space			$ 5,000					

New Appl

Grant Applicants			Remaining Budget:	$ 305,000									
				$ -	$ 790,000	$ 305,000	$ 305,000	$ 311,000	$ 209,060				
Organization Name	Project Name	Report?		2024-25		2023-24	2022-23	2021-22	2020-21				
				Amt. Awarded	Amt. Requested	Amt. Awarded	Amt. Awarded	Amt. Awarded	Amt. Awarded				
Polk Musuem of Art	General Support 2024-2025				$ 5,000								
Positively U Inc	Support for Winter Haven Residents Experiencing Homelessness				$ 5,000								
Restoration Dedication Life Center Inc.	Expanding Food Insecurity Program				$ 5,000								
Talbot House Ministries of Lakeland, Inc.	Winter Haven Hope Reach - Outreach for the Unhoused and Housing				$ 5,000	$ -	$ 3,000						
Total Life Community Health Inc	Winter Haven Mental Wellness Initiative				$ 5,000		$ -						
Valor Living Foundation	Serving Homeless Families for the Holidays				$ 5,000								
Abiding Savior Lutheran Church of Winter Haven, Inc.						$ -							
AEA Avenues Inc.						$ -							
Angels Care Center of Eloise, Inc.						$ 2,500	$ 2,500						
Aspiring Aviators Aero Club						$ 7,000	$ 5,000						
Bruised but not Destroyed, Inc.						$ 10,000	$ 10,000	$ 10,000					
Building Bridges Ministries International Inc							$ -						
Chain of Lakes Achievers, Inc.						$ -	$ 3,000	$ 5,000	$ 5,000				
Church of God and True Holiness								$ 2,000					
Circle of Love of Polk Country, Inc.						$ 10,000	$ 14,602	$ 20,000	$ 17,560				
ElderPoint Ministries of Greater Lakeland, Inc.						$ 4,000	$ 3,000		$ 1,500				
GCTE Center Inc.							$ 7,500	$ 7,500	$ 7,500				
Havendale Community Development (Multiply Christian Church)						$ 2,500	$ -						
Heart For Winter Haven, Inc.						$ 4,000	$ 3,650	$ 5,000					
Human Environment Linking People, Inc							$ -						
Junior League of Greater Winter Haven							$ -						
Kids Nation Cares Foundation							$ 3,000	$ 4,000	$ 3,000				
Living Word of Faith Assembly of God						$ -							
Metronews Paper INC							$ 9,000	$ 9,000					
Mid Florida Community Services, Inc.								$ 2,500	$ 2,500				
Mind, Body, and Soul Outreach Inc.						$ 1,000							
Mulberry Community Service Center, Inc.							$ -						
Our Career Centered Academy, Inc.						$ 2,500	$ 2,500						
Pieces To Peace Counseling Charities							$ -						
Polk County Pressure Youth Sports						$ -							
Polk Musum of Art							$ 3,000						
Potege's Multi Service Community Center Inc. (PMSCC)						$ -	$ 3,000						
Project Love of Eloise, Inc.						$ 2,500	$ -						
RISE UP FEED AND SEED MINITRIES						$ -							
RPC Helps Food Pantry, Inc.						$ -	$ 3,000						
Self Excel, Inc.						$ 40,000	$ 40,000	$ 40,000	$ 47,000 (CRA)				
SOAR Education						$ -	$ -						
Tabernacle of Praise Christian Center						$ -							
Talbot House Ministries of Lakeland, Inc.						$ -							
The Historic Ritz Theatre, Inc.													
William's Temple CME													
Winter Haven Hospital Foundation													
Winter Haven Hospital, Inc.													

WINTER HAVEN
THE CHAIN OF LAKES CITY

REGULAR CITY COMMISSION MEETING MINUTES

DATE: Monday, April 22, 2024, 6:00 p.m.

LOCATION: City Hall – John Fuller Auditorium
451 Third Street NW, Winter Haven, FL 33881

NOTE:
PowerPoint slides of certain agenda items were also presented during this meeting. Link to PowerPoint here:
https://acrobat.adobe.com/id/urn:aaid:sc:VA6C2:43b7f554-20b9-4f2f-9594-41b02b04ea53
A hard copy of the PowerPoint will be attached to the original signed minutes.

1. **CALL TO ORDER -** Mayor Birdsong called the regular meeting to order at 6:00 p.m. and noted that Commissioner Mercer would be absent.

2. **ROLL CALL -** Vanessa Castillo, MMC, City Clerk

Commissioners Present: Mayor Nathaniel Birdsong; Mayor Pro Tem Brian Yates; Commissioner Brad Dantzler; and Commissioner Dollison

Commissioners Absent: Commissioner Tracy Mercer

Staff Present: City Manager T. Michael Stavres; Michael "M.J." Carnevale; City Attorney John Murphy; City Clerk Vanessa Castillo; Assistant City Manager for Public Safety Charlie Bird; Police Chief David Brannan; Economic Opportunity and Community Investment Director Eric Labbe; Winter Haven Water Director David Brannan; Public Affairs and Communications Director Katrina Hill; Parks, Recreation, and Culture Director Julie Adams; Chief Financial Officer Colleen "C.J." Scott; and Public Works Director Brittany Hart.

3. **INVOCATION** – Pastor Tim Clark, Haven Worship Center

4. **PLEDGE OF ALLEGIANCE** – Vanessa Castillo, MMC, City Clerk

5. **PRESENTATION(S)**

A. "2024 Earth Day" Proclamation - Dustin W. Everitt, Natural Resources Manager

Deputy City Manager Carnevale read aloud the proclamation declaring April 22, 2024, as "2024 Earth Day" in the City of Winter Haven. Natural Resources Manager expressed appreciation.

B. "First Responder Mental Health Awareness Day" Proclamation - Morgan Volpe, M.S., CTP, Mental Health Coordinator, Public Safety

City Manager Stavres read aloud the proclamation declaring May 10, 2024, as "First Responder Mental Health Awareness Day" in the City of Winter Haven. Mental Health Coordinator Volpe expressed appreciation.

C. "Mental Health Awareness Month" Proclamation - Morgan Volpe, M.S., CTP, Mental Health Coordinator, Public Safety

Deputy City Manager Carnevale read aloud the proclamation declaring May 2024, as "Mental Health Awareness Month" in the City of Winter Haven. Mental Health Coordinator Volpe expressed appreciation.

DRAFT

D. "Drinking Water Week" Proclamation - Steven Warder, Water Plants Manager and Damon Irvis, Water Plant Chief Operator

City Manager Stavres read aloud the proclamation declaring May 5 through 11, 2024, as "Drinking Water Week" in the City of Winter Haven. Water Plant Chief Operator Warder, Water Plants Manager Damon Irvis, Water Program Administrator Keeli Carlton and daughter were present. Administrator Carlton explained that the cupcakes that were distributed were in celebration of today's 70 years the City had been treating drinking water at the Water Treatment Plant at the Fairfax Water Treatment Facility so they wanted to highlight all of the operators that were there 24/7

E. "Girls Inc. Week" Proclamation - Peggy Threlkel, Executive Director, Girls Inc. of Winter Haven

Deputy City Manager Carnevale read aloud the proclamation declaring May 6 through 10, 2024, as "Girls Inc." in the City of Winter Haven. Ms. Threlkel expressed appreciation to the City. Members of the Board of Directors were also present to accept the proclamation.

F. "55th Annual Professional Municipal Clerks Week" Proclamation - Vanessa Castillo, MMC, City Clerk and LaTonya Harris, Deputy City Clerk

City Manager Stavres read aloud the proclamation declaring May 5 through 11, 2024, as "55th Annual Professional Municipal Clerks Week" in the City of Winter Haven. City Clerk Castillo expressed appreciation to the City. Deputy City Clerk LaTonya Harris was also present to accept the proclamation.

G. Annual Comprehensive Financial Report - 2023 Presentation of Audit Results

City Manager Stavres gave an introduction of this item.

Chief Financial Officer Scott said it was a pleasure to work with Daniel Anderson, Partner at Mauldin and Jenkins, CPAs and Advisors, and his team. Audits were stressful and this year went really well. She added that per the Florida Statutes, the City had three audits: the Annual Comprehensive Financial Report (ACFR), Grants and the Community Redevelopment Agency (CRA). She noted that books were up on the dais for the Commission.

Mr. Anderson gave an ACFR *2023 Presentation of Audit Results to: City of Winter Haven, Florida* PowerPoint presentation *(see attached/link)*.

Discussion ensued regarding implied interest rate, the General Employees' Pension Plan in comparison to the Fire and Police Pension Plans, trends, assumptions, how the City of Winter Haven was doing very well in comparison to other cities, and that there were zero findings.

City Manager Stavres thanked Mauldin & Jenkins and said it was great to work with them.

6. DEVELOPMENTS OF NOTE – None

7. MINUTES

A. March 25, 2024, Regular City Commission Meeting Minutes

B. April 3, 2024, City Commission Agenda Review Session Minutes

C. April 8, 2024, Regular City Commission Meeting Minutes

Motion by Mayor Pro Tem Yates to approve the minutes as presented.

Mayor Birdsong stated that anyone wishing to speak to the minutes could make comments now by coming to the podium and stating their name and address for the record and make comments.

No one spoke for or against.

Motion carried 4:0.

8. COMMENTS FROM THE AUDIENCE – None

9. ORDINANCE(S) – SECOND READING – PUBLIC HEARING

A. O-24-20 - Voluntary annexation of 250 Cypress Gardens Boulevard

City Attorney Murphy read Ordinance O-24-20 by title only and Economic Opportunity and Community Investment Director Labbe presented.

Motion by Mayor Pro Tem Yates to approve Ordinance O-24-20 on second reading – public hearing.

Mayor Birdsong closed the Regular City Commission Meeting and opened a Public Hearing stating anyone wishing to speak to this Ordinance may come to the podium and state their name and address for the record. No one spoke for or against.

Mayor Birdsong closed the Public Hearing and reopened the Regular Commission Meeting.

Motion carried 4:0.

10. CONSENT AGENDA

A. Acceptance of the Annual Comprehensive Financial Report (ACFR) and the Community Redevelopment Agency Report for the Year Ended September 30, 2023

B. Library Board Appointment

C. First Amendment to Southwest Florida Water Management District (SWFWMD) Q176 Grant Agreement

D. Amendment to Cypresswood Water Treatment Plant, design, permitting and construction services for production/monitoring wells (RFQ-19-21)

E. Amendment to Pollard Road Water Production Facility, design, permitting and construction services for production/monitoring wells (RFQ-21-34)

F. Police Department Roof Replacement

G. Agreement for Transfer of Public Roads - Coon Lake Road

H. Authorization for transfer of City-owned parcel to the Florida Department of Transportation (FDOT)

Motion by Mayor Pro Tem Yates to approve the entire Consent Agenda as presented.

Mayor Birdsong stated anyone wishing to speak to the consent agenda could come to the podium and state their name and address for the record. No one spoke for or against.

Motion carried 4:0.

City Manager Stavres noted that item 10A was the acceptance of the item 5G ACFR.

11. RESOLUTION(S)

A. R-24-22 - Approving a Florida Department of Transportation (FDOT) Local Agency Program (LAP) Agreement for the Design of the Avenue C SE from 1st Street S to 6th Street SE

City Attorney Murphy read Resolution R-24-22 by title only and Public Works Director Hart presented.

Discussion ensued regarding total cost, length, sidewalks, and neighboring schools.

Motion by Mayor Pro Tem Yates to approve Resolution R-24-22.

Mayor Birdsong closed the Regular City Commission Meeting and opened a Public Hearing stating anyone wishing to speak to this Resolution may come to the podium and state their name and address for the record. No one spoke for or against.

Mayor Birdsong closed the Public Hearing and reopened the Regular Commission Meeting.

Motion carried 4:0.

B. R-24-23 - Request by Lennar Homes, LLC to release the subdivision Performance Bond and confirming acceptance of improvements, infrastructure, and dedications in favor of the Public/City of Winter Haven for the eastern half of the Peace Creek Reserve Subdivision

City Attorney Murphy read Resolution R-24-23 by title only and Economic Opportunity and Community Investment Director Labbe presented.

Motion by Commissioner Dantzler to approve Resolution R-24-23.

Mayor Birdsong closed the Regular City Commission Meeting and opened a Public Hearing stating anyone wishing to speak to this Resolution may come to the podium and state their name and address for the record. No one spoke for or against.

Mayor Birdsong closed the Public Hearing and reopened the Regular Commission Meeting.

Motion carried 4:0.

12. ORDINANCE(S) - FIRST READING

A. O-24-18 - Request by Blue Sky Communities to rezone a portion of a parcel from Single Family Residential- Small Lot (R-2) zoning district to Multi-Family Residential- Low Density (R-3) zoning district

City Attorney Murphy read Ordinance O-24-18 by title only and Economic Opportunity and Community Investment Director Labbe presented.

Mayor Birdsong reported this item would come back for a second reading and public hearing at the May 13, 2024, Regular City Commission Meeting.

City Manager Stavres noted there were representatives from Blue Sky Communities present, including Shawn Wilson, President and CEO.

Discussion ensued regarding Blue Sky not doing anything outside affordable/workforce housing; the recreation amenities they offered; if sex offenders were allowed to reside in proximity to playground; if there would be a phase 2, and how many facilities Blue Sky had completed; retention and flooding behind Florence Place Apartments; security at Florence Place

B. O-24-19 - PUBLIC HEARING - Administrative request to amend the Sanitary Sewer Subelement of the 2035 Winter Haven Comprehensive Plan, by adding goals, objectives, and policies relating to septic to sewer conversions

City Attorney Murphy read Ordinance O-24-19 by title only and Economic Opportunity and Community Investment Director Labbe presented.

Motion by Mayor Pro Tem Yates to approve Ordinance O-24-19 on first reading – public hearing for transmittal to the Florida Department of Commerce for review.

Mayor Birdsong closed the Regular City Commission Meeting and opened a Public Hearing stating anyone wishing to speak to this Ordinance may come to the podium and state their name and address for the record. No one spoke for or against.

Mayor Birdsong closed the Public Hearing and reopened the Regular Commission Meeting.

Motion carried 4:0.

C. O-24-24 - Ordinance Amending Ordinance O-23-54 appropriating funds for the fiscal year ending September 30, 2024

City Attorney Murphy read Ordinance O-24-24 by title only and City Manager Stavres presented.

Mayor Birdsong reported this item would come back for a second reading and public hearing at the May 13, 2024, Regular City Commission Meeting.

13. NEW BUSINESS – None

14. CITY COMMISSIONERS/LIAISON REPORTS

Mayor Pro Tem Yates said he had nothing to report this evening, but wanted to clarify what he was looking for [in his discussion earlier]. He read Florida Statute 775.215 [Residency restriction for persons convicted of certain sex offenses] aloud regarding sex offenders not being able to live within 1,000 feet of a school, child care facility, park or playground. He added that it would be great if every community had a playground.

Commissioner Dollison reported the following: attended the ribbon cutting for the Jade Apartments; attended the Florence Villa Community Development Corporation Banquet; attended the Polk State College A Night of Legacy - *Gala in the Garden*; attended the *Centennial Celebration* at the Woman's Club of Winter Haven; attended the *Feeding Tampa Bay* which he had been a part of for a few years with other participating partners; and attended the Public Safety Oath of Office Ceremony.

Commissioner Dantzler reported the following: spoke at Lake Ashton [Country Club] this morning about the City of Winter Haven *State of the City Address* and tag-teamed with [Winter Haven Economic Development Council (WHEDC) President] Bruce Lyon; attended the Cypress Gardens Water Ski Show; attended the [Paws & Poems] Poetry Night at Veterinary Healthcare Associates on Dundee Road; attended the *Centennial Celebration* at the Woman's Club of Winter Haven; attended the Winter Haven Kids Spring Fishing Derby; attended the Sun 'n Fun [Aerospace Expo] on behalf of the Polk County Tourist Development Council (TDC); attended the ribbon cutting for the Jade Apartments; attended the Polk Vision Board of Directors Meeting via ZOOM; and saw the eclipse.

Mayor Birdsong reported the following: attended the ribbon cutting for the Villamar Community which was by Maronda Homes; attended the Polk State College A Night of Legacy - *Gala in the Garden*; attended the ribbon cutting for the Jade Apartments; was inducted as a friend of Tri-County Human Services, an organization that was also building, along with Blue Sky, a special project in Auburndale that was very unique.

15. CITY ATTORNEY REPORT

City Attorney Murphy gave an update on *Form 6 [Full and Public Disclosure of Financial Interests for the calendar year 2023]* litigation. He said this was in reference to the federal lawsuit where individually elected officials consented to join that included the five City of Winter Haven Commissioners. He reported that there was a hearing today in the Federal Courthouse down in Fort Lauderdale in front of the federal judge assigned on the plaintiff's motion for a preliminary injunction and that hearing took several hours. The court received argument and there were some additional filings, but as soon as the court issued an order, he would let everyone know the outcome. He noted that the City of Winter Haven's individually elected officials who have consented to be a party to that lawsuit were officially parties to that lawsuit pursuant to an order that the judge signed just before the hearing this morning. There was more to come on that, however, he would keep the Commission posted on how many municipalities. Currently, there were approximately 170 elected municipal officials as partisan the federal the lawsuit. City Attorney Murphy said it was his understanding that the judge allowed the Florida Commission on Ethics to submit supplemental information if they choose to do so. Lastly, the plaintiffs would be permitted to reply to any supplemental information filed by the Florida Commission on Ethics within the next week or so and he believed that once all information was received and the reviewed by the court reviewed that the judge would make her decision. Discussion ensued.

16. CITY MANAGER REPORT

City Manager Stavres reported that next week he, Deputy City Manager Carnevale, Mayor Birdsong, Mayor Pro Tem Yates, and Public Affairs and Communications Director Hill were traveling to Washington, D.C. for legislative matters and gave background on this item noting that it was still being refined. Director Hill distributed an agenda *(see attached)*, which he went over in more detail.

17. DEPUTY CITY MANAGER REPORT – None

18. CITY CLERK REPORT – None

19. EMERGENCY MATTERS NOT RECEIVED FOR THE AGENDA – None

20. ADJOURNMENT – 7:28 p.m.

ATTEST:

Vanessa Castillo, MMC
City Clerk

CITY OF WINTER HAVEN, FLORIDA

Nathaniel J. Birdsong, Jr.
Mayor

2024 WASHINGTON D.C. LEGISLATIVE TRIP

Agenda

WINTER HAVEN
THE CHAIN OF LAKES CITY

SUNDAY, APRIL 28, 2024

- Travel to D.C.
  - Mayor Pro Tem Yates

MONDAY, APRIL 29, 2024

- Travel to D.C.
  - Mayor Birdsong, Stavres, Carnevale, Hill
- Dinner
  - Winter Haven Group, Dan McFaul

TUESDAY, APRIL 30, 2024

- Behind-the-Scenes Tour
  - Capitol Building
- Congressional Visits
  - Congressman Franklin
  - Congressman Lee
  - Congressman Soto
  - Additional Meetings TBD

WEDNESDAY, MAY 1, 2024

- Administration Visits
  - EPA (PFAS, Wastewater, Infrastructure)
  - FAA (Thank You, Air Traffic Control Tower)
- Congressional Visits
  - Congressman Webster
  - Additional Meetings TBD
- Dinner
  - Winter Haven Group, Dan McFaul
- Social Event (TBD)

PENDING REQUESTS

- Congressman Bean
- Senator Scott
- Senator Rubio

THURSDAY, MAY 2, 2024

- Travel to Winter Haven
  - Mayor Birdsong, Mayor Pro-Tem Yates, Stavres, Carnevale, Hill

DATE: April 4, 2024

TO: Honorable Mayor and City Commissioners

VIA: T. Michael Stavres, City Manager
M.J. Carnevale, Deputy City Manager
Eric Labbe, Economic Opportunity and Community Investment Director
Sean Byers, Planning Manager

FROM: Heather Reuter, Senior Planner

SUBJECT: Ordinance O-24-18: Request by Blue Sky Communities to rezone a portion of a parcel from Single Family Residential- Small Lot (R-2) zoning district to Multi-Family Residential- Low Density (R-3) zoning district. General Location: The eastern portion of a parcel generally located east of the intersection of Recker Highway and 21st Street, SW. The area covered by this request is 8.8± acres.

BACKGROUND

Blue Sky Communities, petitioner, requests the City rezone a portion of a parcel from Single Family Residential- Small Lot (R-2) zoning district to Multi-Family Residential- Low Density (R-3) zoning district. The area subject to this request is the eastern portion of a parcel generally located east of the intersection of Recker Highway and 21st Street, SW. The property contains approximate 8.8± acres is currently undeveloped. The western portion of the parcel is designated as Commercial- Highway (C-3) zoning district.

The petitioner proposes to develop the property with multi-family residential. Based on the maximum permitted density of 15 units per acre for properties zoned R-3 and mapped in the Central Urban Core by the Comprehensive Plan's Future Land Use Map, a maximum of 132 units could potentially be developed on the property. This represents an increase of 88 units over the maximum number of units potentially developed under the current R-2 zoning.

SURROUNDING USES

Uses surrounding the subject property include the Stonebridge Villas single-family attached subdivision, developed at approximately 10.6 units per acre, and the Stonebridge single-family detached subdivision to the south; CSX railroad tracks to the east; vacant property zoned R-2 to the north; and vacant property zoned C-3 to the west.

INFRASTRUCTURE

The request increases the overall permitted development intensity of the subject property. The table below illustrates the anticipated changes in demands from the current R-2 zoning designation and the proposed R-3 zoning designation.

Infrastructure		R-2 Maximum Potential Demands	R-3 Maximum Potential Demands	Difference
Potable Water		11,088 gpd	33,264 gpd	+22,176 gpd
Sanitary Sewer		9,702 gpd	29,106 gpd	+19,404 gpd
Transportation		41 trips	82 trips	+41 trips
Schools	Elementary	9 seats	26 seats	+17 seats
	Middle	4 seats	6 seats	+2 seats
	High	6 seats	9 seats	+3 seats

The table below illustrates the potential overall demands on supporting infrastructure should the property be developed at its maximum potential of 132 residential units under the proposed R-3 zoning district.

Potable Water				
Current Available Capacity (February 29, 2024)		Current Vested Demands	R-3 Maximum Potential Demands	Remaining Capacity
2,930,000 gpd		1,878,400 gpd	33,264 gpd	1,018,336 gpd
Sanitary Sewer (WWTP 3)				
Current Available Capacity (February 29, 2024)		Current Vested Demands	R-3 Maximum Potential Demands	Remaining Capacity
2,901,000 gpd		990,900 gpd	29,106 gpd	1,880,994 gpd
Transportation (Traffic Count Data from Polk Transportation Planning Organization)				
Current Available Capacity (PM Peak Hour)		Current Vested Demands	R-3 Maximum Potential Demands	Remaining Capacity
Recker Highway				
Northbound	276 trips	0 trips	40 trips	236 trips
Southbound	268 trips	0 trips	42 trips	226 trips

The petitioner's request results in an increase in public infrastructure demands. At this time, sufficient potable water, wastewater, and roadway capacity is available to support the maximum potential development of the subject property under the requested zoning designation.

Public school availability is highly variable due to frequent changes in school enrollments over the course of a year; therefore, available capacity is determined by the Polk County Public Schools at the time of final platting for subdivisions or upon final site plan approval for multi-family developments. Availability can be met by having capacity at the zoned schools or an adjacent zoned school as permitted under State Statute. Based on the maximum potential for up to 132 units, up to 26 elementary, 6 middle, and 9 high school seats may be required if the site is developed with multi-family.

As with all developments in the City, a final concurrency determination for all supporting public infrastructure will be made prior to final site development approval.

COMPREHENSIVE PLAN

The current adopted Future Land Use on the property is Traditional Neighborhood Area. The requested R-3 zoning is consistent with the Traditional Neighborhood Area Future Land Use designation.

NOTIFICATION

All public notification requirements for this request were met.

FINANCIAL IMPACT

There is no direct financial impact to the City with this request.

This is an ordinance enacted to implement requirements contained in Part II, Chapter 163 of Florida Statutes. In accordance with Chapter 2023-309, Laws of Fla. (CS/CS/SB 170 (2023)), ordinances implementing Part II, Chapter 163, F.S. are exempt from providing Business Impact Estimates.

PLANNING COMMISSION RECOMMENDATION

The Planning Commission, at its April 2, 2024 regular meeting, voted to recommend approval of this request. Three (3) members of the public spoke with concerns regarding road access, drainage issues in the area, and multi-family development adjacent to single-family residences.

CONCLUSION

Staff's review of the petitioner's request yields the following conclusions:

- The requested R-3 zoning district will serve as a transition between single-family uses located to the south of the subject property and the higher intensity uses located along the Recker Highway corridor, as well as an active railroad track located to the east;
- The proposed R-3 zoning district is consistent with the intensity of the Stonebridge Villas located to the south which are designated R-3 and developed at an approximate 10.6 units per acre;
- The requested R-3 zoning district is consistent with the Traditional Neighborhood Area Future Land Use assigned to the property; and
- This request will result in a potential increase in public infrastructure demands; however, at this time, there is sufficient capacity to support the maximum potential development under R-3.

RECOMMENDATION

Staff recommends City Commission approve Ordinance O-24-18.

ATTACHMENTS

- Future Land Use Map
- Zoning Map
- Aerial Map
- Ordinance O-24-18


O-24-18
Future Land Use Map
WINTER HAVEN
THE CHAIN OF LAKES CITY
Lake Howard
Lake Shipp
MAYFAIR PL
15TH ST SW
LAKE HOWARD DR SW
FOXRIDGE RUN SW
KENWOOD AVE SW
ROSECLAWN ST SW
LAKE SHIPP DR N
SHERIDAN ST SW
NOTTINGHAM ST SW
QUEENSTER SW
STONEBRIDGE DR SW
ABBEY RD
KNIGHTS RD
21ST ST SW
RECKER HWY
NE WAY SW
RSHALL RD SW
N
Legend
Subject Property
Future Land Use 2035
FLU
Conservation
Neighborhood Mixed Use Hub
Neighborhood Support
Recreation/Open Space
Neighborhood Suburban
Traditional Neighborhood Area
NS
The map is created from a subset of data from the City of Winter Haven Geographic Information System (GIS) database.
The City of Winter Haven makes no claims, no representations, and no warranties, express or implied, concerning the validity (express or implied), the reliability or the accuracy of the GIS data and GIS data products furnished by the City, including the implied validity of any uses of such data.


O-24-18
Zoning Map
WINTER HAVEN
THE CHAIN OF LAKES CITY
Lake Howard
Lake Shipp
15TH ST SW
MAYFAIR PL
LAKE HOWARD DR SW
FOXRIDGE RUN SW
KENWOOD AVE SW
ROSELAWN ST SW
LAKE SHIPP DR N
SHERIDAN ST SW
NOTTINGHAM ST SW
QUEENSTER SW
STONEBRIDGE DR SW
ABBEY RD
KNIGHTS RD
21ST ST SW
RECKER HWY
SUNSHINE WAY SW
LL RD SW
R-2
R-3
C-3
CON
PUD
N
Legend
Subject Property
Commercial- Highway (C-3)
Conservation (CN)
Planned Unit Development (PUD)
Single Family Residential- Large Lot (R-1)
Single Family Residential- Small Lot (R-2)
Multi-Family Residential- Low Density (R-3)
The map is created from a subset of data from the City of Winter Haven Geographic Information System (GIS) database.
The City of Winter Haven makes no claims, no representations, and no warranties, express or implied, concerning the validity (express or implied), the reliability or the accuracy of the GIS data and GIS data products furnished by the City, including the implied validity of any uses of such data.


O-24-18
Aerial Map
WINTER HAVEN
THE CHAIN OF LAKES CITY
Lake Howard
Lake Shipp
MAYFAIR PL
15TH ST SW
LAKE HOWARD DR SW
FOXRIDGE RUN SW
KENWOOD AVE SW
ROSELAWN ST SW
SHERIDAN ST SW
LAKE SHIPP DR N
NOTTINGHAM ST SW
QUEENS TER SW
STONEBRIDGE DR SW
ABBEY RD
KNIGHTS RD
21ST ST SW
SUNSHINE WAY SW
MARSHALL RD SW
RECKER HWY
N
Legend
Subject Property
The map is created from a subset of data from the City of Winter Haven Geographic Information System (GIS) database.
The City of Winter Haven makes no claims, no representations, and no warranties, express or implied, concerning the validity (express or implied), the reliability or the accuracy of the GIS data and GIS data products furnished by the City, including the implied validity of any uses of such data.

ORDINANCE NO. O-24-18

AN ORDINANCE AMENDING CHAPTER 21 OF THE CODE OF ORDINANCES OF THE CITY OF WINTER HAVEN, FLORIDA, BY REZONING A PORTION OF A PARCEL FROM SINGLE FAMILY RESIDENTIAL- SMALL LOT (R-2) ZONING DISTRICT TO MULTI-FAMILY RESIDENTIAL- LOW DENSITY (R-3) ZONING DISTRICT; PROVIDING FOR THE ADMINISTRATIVE CORRECTION OF SCRIVENER'S ERRORS; REPEALING ALL ORDINANCES IN CONFLICT HEREWITH; PROVIDING FOR SEVERABILITY; AND PROVIDING AN EFFECTIVE DATE. (General Location: The eastern portion of a parcel generally located east of the intersection of Recker Highway and 21st Street, SW. The area covered by this request is 8.8± acres.)

WHEREAS, there has been a request to rezone the property described below, and;

WHEREAS, the action will further the general health, safety, and welfare and be a benefit to the City as a whole;

WHEREAS, the requested zoning is consistent with the Future Land Use Element of the Winter Haven Comprehensive Plan, and;

WHEREAS, the request implements requirements contained in Part II, Chapter 163 of Florida Statutes, and therefore is exempt from requiring a Business Impact Estimate as set forth by Chapter 2023-309, Laws of Fla. (CS/CS/SB 170 (2023)).

NOW THEREFORE, BE IT ENACTED BY THE PEOPLE OF THE CITY OF WINTER HAVEN, FLORIDA, AS FOLLOWS:

1. That Chapter 21 of the Code of Ordinances of the City of Winter Haven, Florida, is hereby amended to rezone that land, described in Exhibit "A" attached hereto and made a part of this ordinance, from Single Family Residential- Small Lot (R-2) zoning district to Multi-Family Residential- Low Density (R-3) zoning district.

2. This ordinance shall not be codified, but the City Clerk shall retain this ordinance as a permanent record of action taken by the City Commission of the City of Winter Haven.

3. The correction of typographical and/or scrivener's errors which do not affect the intent may be authorized by the City Manager or designee, without need of public hearing, by filing a corrected or recodified copy of same with the City Clerk.

4. All ordinances in conflict herewith are hereby repealed.

5. If any provision or portion of this Ordinance is declared by any court of competent jurisdiction to be void, unconstitutional, or unenforceable, then all remaining provisions and portions of this Ordinance shall remain in full force and effect.

6. This Ordinance shall be effective immediately upon passage at second reading; however, that such change shall first be noted on the official zoning map of the City of Winter Haven.

INTRODUCED on first reading this 22nd day of April, 2024.

PASSED on second reading this 13th day of May, 2024.

CITY OF WINTER HAVEN, FLORIDA

_____
MAYOR-COMMISSIONER
Nathaniel J. Birdsong, Jr.

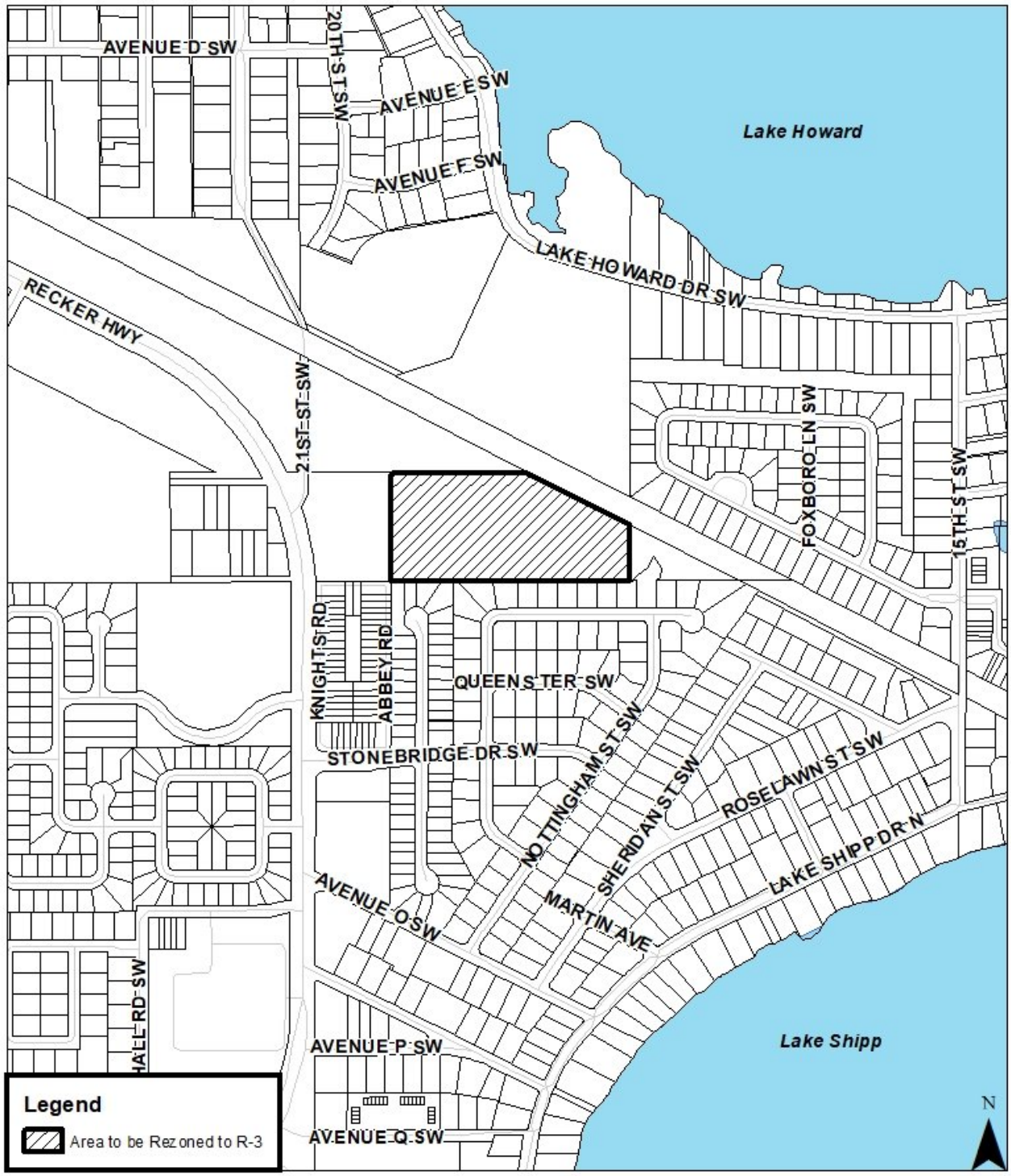
ATTEST:

_____
CITY CLERK
Vanessa Castillo, MMC

Approved as to form:

_____
CITY ATTORNEY
Frederick J. Murphy, Jr.

Exhibit “A”


AVENUE D SW
20TH ST SW
AVENUE E SW
AVENUE F SW
Lake Howard
LAKE HOWARD DR SW
RECKER HWY
21ST ST SW
FOXBORO LN SW
15TH ST SW
KNIGHT ST RD
ABBEY RD
QUEENS TER SW
STONEBRIDGE DR SW
NOTTINGHAM ST SW
SHERIDAN ST SW
ROSELAWN ST SW
LAKE SHIPP DR N
AVENUE O SW
MARTIN AVE
HALL RD SW
AVENUE P SW
Lake Shipp
AVENUE Q SW
Legend
Area to be Rezoned to R-3
N

DATE: April 23, 2024

TO: Honorable Mayor and City Commissioners

VIA: T. Michael Stavres, City Manager
M.J. Carnevale, Deputy City Manager
Charlie Bird, Assistant City Manager

FROM: C.J. Scott, Chief Financial Officer
Allen Weeks, Budget and Management Officer

SUBJECT: Ordinance No. O-24-24 an Ordinance Amending Ordinance O-23-54 appropriating funds for the fiscal year ending September 30, 2024

BACKGROUND

Due to the current condition of the Police Department's roof it has been determined that a roof replacement is necessary. Repairs have been made over the years to address leaks but the structural condition has declined. Facility Maintenance Superintendent Richard Artz informed staff that the condition of the roof has drastically declined and there is concern that a hurricane or strong storm could cause the roof to fail.

The cost of a roof replacement was not budgeted in the current fiscal year. The estimated cost of the replacement is $292,390. Due to robust interest earnings, a budget amendment to recognize these additional revenue earnings is projected to offset the cost of the roof replacement.

RECOMMENDATION

Staff recommends the City Commission approve Ordinance No. O-24-24 approving a budget amendment of $292,390 increasing the General Fund's Interest on Investments account to offset the cost of the roof replacement reflected in the Police Department's Building account.

ATTACHMENT

Ordinance No. O-24-24

ORDINANCE NO. O-24-24

AN ORDINANCE OF THE CITY OF WINTER HAVEN, FLORIDA, AMENDING ORDINANCE NO. O-23-54, REGARDING APPROPRIATION OF FUNDS FOR DEFRAYING EXPENSES OF THE MUNICIPAL GOVERNMENT OF THE CITY OF WINTER HAVEN FOR THE FISCAL YEAR COMMENCING OCTOBER 1, 2023; PROVIDING FOR SEVERABILITY; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, on September 25, 2023, the City Commission passed Ordinance O-23-54 making appropriations of funds for defraying the expenses of the municipal government of the City of Winter Haven for Fiscal Year 2023-2024, adopting the Budget of the City of Winter Haven, Florida, Fiscal Year Commencing October 1, 2023, as the Official Budget of the City of Winter Haven, Florida, Fiscal Year 2023-2024; and

WHEREAS, revenue and expenditure estimates are made prior to the beginning of each fiscal year, and

WHEREAS, events occur during each fiscal year which were not anticipated by the beginning estimates, and

WHEREAS, departmental budgets shall not exceed their appropriations; and

WHEREAS, the City Commission of the City of Winter Haven, does hereby find that it is in the best interest of the City and its citizens amending Ordinance No. O-23-54, regarding appropriation of funds for defraying expenses of the municipal government of the City of Winter Haven for the fiscal year commencing October 1, 2023, as provided herein,

NOW THEREFORE, BE IT ENACTED BY THE PEOPLE OF THE CITY OF WINTER HAVEN, FLORIDA, AS FOLLOWS:

1. The following revenue line in the General Fund is hereby amended as follows:

Interest on Investments 001-361100-000	Increase from $600,000 to $892,390

2. The following expenditure line in the General Fund is hereby amended as follows:

General Fund – Police: Buildings
001-05-200-6201 Increase from $0 to $292,390

3. All ordinances or parts of ordinances in conflict herewith are hereby repealed.

4. If any word, sentence, clause, phrase or provision of this Ordinance, for any reason, is held to be unconstitutional, void, or invalid, the validity of the remainder of this Ordinance shall not be affected thereby.

5. It is the intention of the City Commission that the provisions of this Ordinance may be renumbered or relettered and the correction of typographical and/or scrivener's errors which do not affect the intent may be authorized by the City Manager or her designee, without need of public hearing, by filing a corrected or recodified copy of same with the City Clerk.

6. This Ordinance shall take effect immediately upon its passage.

INTRODUCED on first reading this 22nd day of April, 2024.

PASSED on second reading this 13th day of May, 2024.

CITY OF WINTER HAVEN, FLORIDA

_____
MAYOR-COMMISSIONER
Nathanial J. Birdsong, Jr.

ATTEST:

_____
CITY CLERK
Vanessa Castillo, MMC

Approved as to form:

_____

CITY ATTORNEY
Frederick J. Murphy, Jr.

DATE: April 4, 2023

TO: Honorable Mayor and City Commissioners

VIA: T. Michael Stavres, City Manager
M.J. Carnevale, Deputy City Manager

FROM: Frederick J. Murphy, Jr., Esquire, City Attorney
Charlie Bird, Director of Public Safety
Police Chief David Brannan

SUBJECT: Agreement for Traffic Control and Enforcement on Private Roads between the City of Winter Haven and Ruby Lake Homeowners Association, Inc., a Florida corporation

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BACKGROUND

Ruby Lake Homeowners Association, Inc., a Florida corporation, is the owner to and has under its control all the private roadways lying within the community known and referred to as Ruby Lake Homeowners Association, Inc., a Florida corporation (hereinafter referred to as "RUBY LAKE HOA"). The RUBY LAKE HOA has requested that the City exercise jurisdiction for traffic control over the roads within the RUBY LAKE HOA. Pursuant to Section 316.006(2)(b), Florida Statutes, the City may exercise jurisdiction over private roads owned by the RUBY LAKE HOA located in the incorporated area within the City's boundaries if the City and the RUBY LAKE HOA provided an approved written agreement.

The planning, scheduling, organization, direction, and supervision of law enforcement officers in all matters incidental to the delivery of traffic control or enforcement shall be solely determined by and at the discretion of the Chief of Police of the City (hereinafter referred to as "Chief").

All fines collected from traffic citations issued by the Chief or his officers for violation of traffic laws on the roads that are located within the City's municipal limits shall be transferred to the City and/or appropriate governmental entity and disbursed as any other traffic fines collected absent the agreement consistent with applicable rules, regulations, ordinances and laws. In the event the RUBY LAKE HOA requests, and as a result the Chief in fact provides, traffic control and enforcement services over the roads within the RUBY LAKE HOA at a level greater than those services provided in similar geographic areas of the City of Winter Haven, Florida, the RUBY LAKE HOA shall reimburse the City, if deemed

necessary by either the City or the Chief or both, for actual costs attributed to only those additional traffic control and enforcement services provided hereunder.

The Agreement allows for an initial term of one (1) year and shall be automatically renewed on an annual basis. The Agreement includes the following:

- The City will exercise traffic control jurisdiction over the roads within the RUBY LAKE HOA known as Ruby Lake that are located within the municipal limits of the City.
- The traffic control and enforcement shall be accomplished by the Chief under terms and conditions consistent with the level of service provided in similar geographic areas of the City.
- All fines collected from traffic citations issued by the Chief or his officers for violation of traffic laws on the roads that are located within the City's municipal limits shall be transferred to the City and/or appropriate governmental entity and disbursed as any other traffic fines collected absent the agreement consistent with applicable rules, regulations, ordinances and laws. In the event the RUBY LAKE HOA requests, and as a result the Chief in fact provides, traffic control and enforcement services over the roads within the RUBY LAKE HOA at a level greater than those services provided in similar geographic areas of the City of Winter Haven, Florida, the RUBY LAKE HOA shall reimburse the City, if deemed necessary by either the City or the Chief or both, for actual costs attributed to only those additional traffic control and enforcement services provided hereunder.
- The RUBY LAKE HOA agrees, at its own expense, to comply with all applicable requirements for signage and traffic control and enforcement as required by Florida law, City ordinances, and Florida Department of Transportation standards. The RUBY LAKE HOA will comply with Florida Statutes, section 316.0745, Uniform Signals and Devices and the Manual on Uniform Traffic Control Devices.
- The Agreement may be terminated by either party, without cause or liability, upon thirty (30) days written notice to the other party. It is explicitly noted that should the Chief request that the City terminate this Agreement, the City will honor that request.
- The Agreement may not be assigned without the express written consent of the City. The City will not provide such written consent prior to consulting with the Chief.

The Agreement has been reviewed by the City Manager and the Chief and approved by the City Attorney.

FINANCIAL IMPACT

There is no financial impact for this item.

RECOMMENDATION

Staff recommends that the City Commission approve the Agreement for Traffic Control and Enforcement on Private Roads between the City of Winter Haven and Ruby Lake Homeowners Association, Inc., a Florida corporation, and authorize the Mayor and other appropriate City officials to execute said Agreement for Traffic Control and Enforcement on Private Roads and the City Manager and/or his designee to take all further actions necessary to implement and perform the City's obligations under the subject Agreement for Traffic Control and Enforcement on Private Roads.

ATTACHMENT

- Agreement for Traffic Control and Enforcement on Private Roads between the City of Winter Haven and Ruby Lake Homeowners Association, Inc., a Florida corporation.

AGREEMENT FOR TRAFFIC CONTROL AND ENFORCEMENT
ON PRIVATE ROADS

This Agreement is entered into by and between the City of Winter Haven, Florida municipal corporation ("City") and the Ruby Lake Homeowners' Association, Inc. a Florida not for profit corporation (herein after "RUBY LAKE HOA") for Traffic Control and Enforcement on Private Roads located within the community of RUBY LAKE in Winter Haven and owned by and under the control of the RUBY LAKE HOA.

WITNESSETH:

WHEREAS, RUBY LAKE HOA owns fee simple title to and has under its control all of the private roadways lying within the community known and referred to herein as RUBY LAKE HOA more specifically described in Exhibit A which is attached hereto and incorporated herein; and

WHEREAS, pursuant to Florida law the City does not have traffic control and enforcement jurisdiction over private roads such as those owned by RUBY LAKE HOA in the absence of a request by the RUBY LAKE; and

WHEREAS, Section 316.006(2)(b) of the Florida Statutes provides that a city may exercise jurisdiction over private roads if the city and either a special district and/or the Board of Directors of a HOA defined in Chapter 720 of the Florida Statutes who has ownership and control of such private roads by majority vote elects to have the city provide traffic control and enforcement jurisdiction pursuant to a written agreement approved by the governing board of the City; and

WHEREAS, the RUBY LAKE HOA has experienced numerous traffic control problems, such as motorists' failure to obey traffic regulations; and

WHEREAS, RUBY LAKE HOA by a majority vote of its Board of Directors has indicated its desire to have the City exercise traffic control and enforcement jurisdiction upon Private Roads within RUBY LAKE in Winter Haven for which the RUBY LAKE HOA owns and has under its control. A copy of RUBY LAKE's Resolution No. _____ is attached hereto as Exhibit B; and

WHEREAS, pursuant to consultations between the parties and the Chief of Police of the City, the City through its Chief of Police is willing to exercise traffic control jurisdiction and enforcement upon the Private Roads within RUBY LAKE in Winter Haven for which RUBY LAKE HOA owns and has under its control pursuant to the terms of this Agreement; and

NOW, THEREFORE, in consideration of the premises set forth herein above, the terms of which are incorporated herein, the mutual promises hereinafter set forth, the sufficiency and adequacy of which are hereby acknowledged, the parties hereto, intending to be legally bound hereby, agree as follows:

1. The above recitals are true and correct, and are incorporated herein by reference and form a material part of this Agreement.

2. Jurisdiction. The City agrees to exercise jurisdiction over traffic control and enforcement upon the Private Roads within RUBY LAKE HOA in Winter Haven and that are owned and under the control of the RUBY LAKE pursuant to the terms and conditions expressed in Section 316.006(2)(b) of the Florida Statutes and subject to the terms and conditions set forth in this Agreement.

3. Signage. The RUBY LAKE HOA agrees, at its own expense, to comply with all applicable requirements for signage and traffic control and enforcement as required by Florida law, City ordinances, and Florida Department of Transportation standards. Specifically, the RUBY LAKE HOA agrees to comply with Florida Statutes, Section 316.0745, Uniform Signals and Devices and the Manual on Uniform Traffic Control Devices. The RUBY LAKE HOA agrees to comply with said requirements for all future installations and to maintain all current installations in accordance with said requirements. The RUBY LAKE HOA agrees to comply with any warrant studies performed by City. The RUBY LAKE HOA agrees, within thirty (30) days of the date of notice from City, to remove any multi-way stops or other installations that a study finds not to be warranted. The RUBY LAKE HOA agrees not to install any new multi-way stop or other installation without prior approval of City. The City agrees to conduct, if necessary, speed studies on the Roads that are located within the City's municipal limits to determine the appropriate speed limit to be posted. The RUBY LAKE HOA shall reimburse the City for the actual cost of the speed study and/or the inspection to determine if existing signage meets or exceeds the standards set forth in the Manual of Uniform Traffic Control Devices MUTCD). The RUBY LAKE HOA shall be responsible for installing and maintaining all posted signage.

4. Authority in Addition to Existing Authority. The City's exercise of traffic control and enforcement jurisdiction pursuant to this Agreement shall be in addition to any authority that the City may presently have and/or exercise over the Private Roads within RUBY LAKE in Winter Haven as provided in Florida law and the City's Charter and Code of Ordinances and nothing herein shall be construed to limit or remove any such authority. The City agrees to continue to provide such police and fire services as may be required by law. Provided further nothing herein shall be construed to obligate the City in any way beyond said traffic control and enforcement.

5. Supervision. The planning, scheduling, organization, direction, and supervision of law enforcement officers in all matters incidental to the delivery of traffic control or enforcement under the terms of this Agreement shall be solely determined by and at the discretion of the City's Chief of Police.

6. Disbursement of Fines and Reimbursement of Costs. All fines collected from traffic citations issued by the City's Chief of Police or his officers for violation of traffic laws on the private roads that are located within RUBY LAKE in Winter Haven and

that are the subject of this Agreement shall be transferred to the City and/or appropriate governmental entity and disbursed as any other traffic fines collected absent this Agreement consistent with applicable rules, regulations, ordinances and laws. In the event the RUBY LAKE HOA requests, and as a result the City' s Chief of Police in fact provides, traffic control and enforcement services over the private roads within RUBY LAKE in Winter Haven at a level greater than those services provided in similar geographic areas of the City, the RUBY LAKE HOA shall reimburse the City, if deemed necessary by either the City or the City' s Chief of Police or both, for actual costs attributed to only those additional traffic control and enforcement services provided hereunder.

7. Liability not Increased. Neither the existence of this Agreement nor anything contained herein shall give rise to any greater liability on the part of the City than that which the City would ordinarily be subjected to when providing its normal police and fire and public safety services.

8. Indemnification. In consideration for making and entering into this Agreement and for other good and valuable consideration the receipt and sufficiency of which is hereby acknowledged and to the fullest extent permitted by law, but as limited by applicable Florida law the RUBY LAKE HOA shall indemnify, defend, and hold harmless the City and/or its elected and appointed officials and/or the Chief of Police and all of their respective agents, employees, law enforcement officers or representatives, from any claim, loss, damage, cost, charge, or expense, including attorney's fees and costs, arising out of any act, action, neglect, or omission during the performance of this Agreement or work performed thereunder, whether direct or indirect, and whether or not due to or caused by negligence of the City and/or the Chief of Police and/or all of their respective agents, employees, law enforcement officers or representatives, except that RUBY LAKE HOA will not be liable under this provision for damages arising out of the injury or damage to persons or property directly caused or resulting from the negligence, any intentional action or any omission of the City and/or the Chief of Police and/or all of their respective agents, employees, law enforcement officers or representatives. The RUBY LAKE HOA's obligation to defend and indemnify shall not be excused because of the RUBY LAKE HOA's inability to evaluate liability, or because the RUBY LAKE HOA evaluates liability and determines that the RUBY LAKE HOA is not liable, or determines that the City and/or the Chief of Police is solely negligent. Only a final adjudication or judgment finding the City or the Chief of Police solely negligent shall excuse performance of this provision by the RUBY LAKE HOA. If a judgment finding the City or the Chief of Police solely negligent is appealed, and the finding of sole negligence is reversed, the RUBY LAKE HOA will, to the extent permitted by law, be obligated to indemnify the City and the Chief of Police for the cost of the appeal(s). The RUBY LAKE HOA shall pay all costs including but not limited to attorney's fees related to this obligation and its enforcement by the City or the Chief of Police. This provision shall also pertain to any claims brought against the City and/or its elected and/or appointed officials and/or the Chief of Police by any employee of the RUBY LAKE HOA, subcontractor, or anyone directly or indirectly employed by any of them. The RUBY LAKE HOA's obligation under this provision shall not be limited in any way to the agreed upon contract price, if any, as shown in this agreement or the RUBY LAKE HOA's limit of or lack of sufficient insurance protection.

Nothing herein is intended to act as a waiver of the City's sovereign immunity and/or the limits of liability set forth in S768.28 of the Florida Statutes regardless of whether any such obligations are based in tort, contract, statute, strict liability, and negligence, product liability or otherwise.

Furthermore, nothing in this Agreement shall inure to the benefit of any third party for the purpose of allowing any claim which could otherwise be barred under the Doctrine of Sovereign Immunity or by operation of law. The provisions of this paragraph shall survive the termination of this Agreement.

9. Road Maintenance. Neither the existence of this Agreement nor anything contained herein shall impose any obligation or duty upon the City to provide maintenance on and/or drainage of the Private Roads within RUBY LAKE at Winter Haven. The maintenance, repair and construction or reconstruction of all roads, drainage and signage within RUBY LAKE in Winter Haven shall at all times be solely and exclusively the responsibility of the RUBY LAKE HOA.

10. Cost attributed to Ruby Lake. Regardless of any other provision in this Agreement, before City takes any action that would require payment from RUBY LAKE HOA (including but not limited to speed or traffic studies) City shall inform RUBY LAKE HOA of the expense in advance and obtain prior approval from RUBY LAKE HOA. If RUBY LAKE HOA refuses approval for any expense desired by City, then City may cancel this Agreement. If RUBY LAKE HOA refuses to make a change requested by City, then City may cancel this Agreement.

11. Term. The term of this Agreement shall be for two years, commencing on the date of the execution by the last of the two parties signing hereto, and this Agreement shall thereafter automatically continue for successive one year terms unless terminated by any party by thirty (30) days written notice to the other parties in the manner provided in Paragraph fourteen (14) of this Agreement; provided however payments are made by RUBY LAKE HOA in accordance with Paragraph six (6) of this Agreement.

12. Entire Agreement. This Agreement, including all Exhibits attached hereto, constitutes the entire understanding and agreement between the parties regarding the subject matter hereof and may not be changed, altered, or otherwise modified except when reduced to writing and executed in the same manner, with approval by the City Commission of the City.

13. Non-Agent Status. This Agreement shall not be construed to constitute that the City and/or the Chief of Police, or any of their respective agents, employees, law enforcement officers or representatives are agents or employees of the RUBY LAKE HOA, or vice versa.

14. Notice. All notices to be given shall be in writing and sent by United States certified mail, return receipt requested, to the following addresses:

David Brannan, Chief of Police
125 N Lake Silver Dr N.W.
Winter Haven, FL 33881

As to City of Winter Haven: (which shall not constitute notice)
Attention: T. Michael Stavres, City Manager
451 3rd Street N.W.
Winter Haven, FL 33881

As to City Attorney (which shall not constitute notice):
Fredrick J. Murphy, Jr.
City Attorney for City of Winter Haven
245 South Central Avenue
Bartow, FL 33830

As to HOA:
Board of Directors Ruby Lake Homeowners' Association, Inc.
c/o Michellette Ramos
Don Asher Management
16 W Dakin Avenue
Kissimmee, FL 34741

As to HOA Attorney (which shall not constitute notice):
Charles Eldredge, Jr.
Larsen Slaten, PLLC
4700 Millenia Blvd. Suite 500
Orlando, FL 32839

15. Severability. If any one or more of the covenants, agreements or provisions of this Agreement should be held contrary to any express provision of law or contrary to any policy of expressed law, although not expressly prohibited, or shall be deemed null and void by a court of competent jurisdiction, such covenant, agreement, or provision shall be deemed separate from the remaining covenants, agreements or provisions of this Agreement which shall remain intact and fully enforceable.

16. Governing Law and Venue. This Agreement shall be governed by and construed in accordance with the laws of the State of Florida. Venue for any actions arising out of this Agreement shall be exclusively in the State Courts in and for Polk County, Florida.

17. Assignment. This Agreement shall not be assigned, or other responsibilities herein transferred, delegated, or conveyed in any manner, without the express written

consent of the City. The City will not provide such written consent prior to consulting with the Chief of Police.

18. Successors. This Agreement shall be binding upon the parties, their heirs, permitted assigns, and successors in interest.

IN WITNESS WHEREOF, the parties have executed this Agreement on the date indicated below.

CITY OF WINTER HAVEN
A Florida Municipal Corporation.

BY: _____
Bradley T. Dantzler, Mayor

BY: _____
Vanessa Castillo, MMC, City Clerk

Approved as to Form:

BY: _____
Frederick J. Murphy, Jr., City Attorney
Date: _____

RUBY LAKE HOMEOWNERS' ASSOCIATION, INC.
A Florida Not For Profit Corporation



BY: _____
Julia Trella, President

Date: December 20, 2023

Exhibit "A"

Ruby Lake

Ruby Lake Phase One according to the plat thereof recorded on Plat Book 105, Page 19, Public Records of Polk County, Florida

Ruby Lake Phase Two according to the plat thereof recorded on Plat Book XX, Page XX, Public Records of Polk County, Florida

Ruby Lake Phase Three according to the plat thereof recorded on Plat Book 105, Page 34, Public Records of Polk County, Florida

Ruby Lake Phase Four according to the plat thereof recorded on Plat Book 108, Page 21, Public Records of Polk County, Florida

Exhibit "B"
(Resolution from RUBY LAKE HOA to be attached here)

DATE: April 30, 2024

TO: Honorable Mayor and City Commissioners

VIA: T. Michael Stavres, City Manager
M.J. Carnevale, Deputy City Manager

FROM: David Brannan, Chief of Police

SUBJECT: Axon Master Service and Purchasing Agreement For Customer

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BACKGROUND

The City of Winter Haven has two service agreements with Axon for TASER and body cameras with different renewal dates and separate invoicing. The TASER agreement was executed in 2019 and will expire October 2024. The body camera agreement was executed in 2021 with a renewal due in 2026. Staff discovered that the two agreements can be bundled into one agreement; however, this will require a new agreement. Bundling of agreements does produce a cost savings but the main advantage is the access to updates due to changing and improving technology.

The new Master Service and Purchasing Agreement For Customer with Axon will provide the latest model of TASER and body cameras, unlimited digital evidence storage, redaction software and the addition of virtual reality (VR) training. The VR system is the latest and most advanced system and not currently in use by any other agency in Polk County. It provides training for TASER, firearms and also human interaction. The human interaction training can also be used for non-law enforcement such as other City employees and citizens.

While this is a significant investment for the next five years, it will provide the latest in technology and equipment not in use by any other law enforcement agency in Polk County and possibly central Florida. Not only can this investment increase the proficiency of our officers it can also increase safety for officers and citizens. Based on estimates from Axon, bundling these services compared to continuing separate contracts can produce a cost savings of $285,946 over five years.

FINANCIAL IMPACT

The five-year Master Services and Purchasing Agreement For Customer cost is $1,183,744.32; however, this cost is spread out over the five years in the form of annual payments via a Sole Source Procurement. The annual cost is $236,748.86, which would be included in the police department's annual budget. The

first annual payment would not be due until after implementation of the FY 2025 budget in October 2024.

RECOMMENDATION

Staff recommends the City Commission approve the Master Services and Purchasing Agreement for Customer and City of Winter Haven Contract Addendum with Axon and authorize the City Manager to execute the Master Services Agreement and Purchasing Agreement for Customer and City of Winter Haven Contract Addendum with Axon and to take all other necessary actions related thereto.

ATTACHMENT

- Master Services Agreement and Purchasing Agreement for Customer
- City of Winter Haven Contract Addendum

This Master Services and Purchasing Agreement ("**Agreement**") is between Axon Enterprise, Inc. ("**Axon**"), and the customer listed below or, if no customer is listed below, the customer on the Quote attached hereto ("**Customer**"). This Agreement is effective as of the later of the (a) last signature date on this Agreement or (b) date of acceptance of the Quote ("**Effective Date**"). Axon and Customer are each a "**Party**" and collectively "**Parties**". This Agreement governs Customer's purchase and use of the Axon Devices and Services detailed in the Quote Appendix ("**Quote**"). It is the intent of the Parties that this Agreement will govern all subsequent purchases by Customer for the same Axon Devices and Services in the Quote, and all such subsequent quotes accepted by Customer shall be also incorporated into this Agreement by reference as a Quote. The Parties agree as follows:

1. **Definitions**.

   1.1. "**Axon Cloud Services"** means Axon's web services, including but not limited to, Axon Evidence, Axon Records, Axon Dispatch, FUSUS services and interactions between Axon Evidence and Axon Devices or Axon client software. Axon Cloud Service excludes third-party applications, hardware warranties, and my.evidence.com.

   1.2. "**Axon Device**" means all hardware provided by Axon under this Agreement. Axon-manufactured Devices are a subset of Axon Devices.

   1.3. "**Quote**" means an offer to sell and is only valid for devices and services on the offer at the specified prices. Any inconsistent or supplemental terms within Customer's purchase order in response to a Quote will be void. Orders are subject to prior credit approval. Changes in the deployment estimated ship date may change charges in the Quote. Shipping dates are estimates only. Axon is not responsible for typographical errors in any Quote by Axon, and Axon reserves the right to cancel any orders resulting from such errors.

   1.4. "**Services**" means all services provided by Axon under this Agreement, including software, Axon Cloud Services, and professional services.

2. **Term**. This Agreement begins on the Effective Date and continues until all subscriptions hereunder have expired or have been terminated ("**Term**").

   2.1. All subscriptions including Axon Evidence, Axon Fleet, Officer Safety Plans, Technology Assurance Plans, and TASER 7 or TASER 10 plans begin on the date stated in the Quote. Each subscription term ends upon completion of the subscription stated in the Quote ("**Subscription Term**").

   2.2. Upon completion of the Subscription Term, the Subscription Term will automatically renew for an additional 5 years ("**Renewal Term**"). For purchase of TASER 7 or TASER 10 as a standalone, Axon may increase pricing to its then-current list pricing for any Renewal Term. For all other purchases, Axon may increase pricing on all line items in the Quote by up to 3% at the beginning of each year of the Renewal Term. New devices and services may require additional terms. Axon will not authorize services until Axon receives a signed Quote or accepts a purchase order, whichever is first.

3. **Payment**. Axon invoices for Axon Devices upon shipment, or on the date specified within the invoicing plan in the Quote. Payment is due net 30 days from the invoice date. Axon invoices for Axon Cloud Services on an upfront yearly basis prior to the beginning of the Subscription Term and upon the anniversary of the Subscription Term. Payment obligations are non-cancelable. Unless otherwise prohibited by law, Customer will pay interest on all past-due sums at the lower of one-and-a-half percent (1.5%) per month or the highest rate allowed by law. Customer will pay invoices without setoff, deduction, or withholding. If Axon sends a past due account to collections, Customer is responsible for collection and attorneys' fees.

4. **Taxes**. Customer is responsible for sales and other taxes associated with the order unless Customer provides Axon a valid tax exemption certificate.

5. **Shipping**. Axon may make partial shipments and ship Axon Devices from multiple locations. All shipments are EXW (Incoterms 2020) via common carrier. Title and risk of loss pass to Customer upon Axon's delivery to the common carrier. Customer is responsible for any shipping charges in the Quote.

6. **Returns**. All sales are final. Axon does not allow refunds or exchanges, except warranty returns or as provided by state or federal law.

7. **Warranty**.

   7.1. **Limited Warranty**. Axon warrants that Axon-manufactured Devices are free from defects in workmanship and materials for one (1) year from the date of Customer's receipt, except Signal Sidearm and Axon-manufactured accessories, which Axon warrants for thirty (30) months and ninety (90) days, respectively, from the date of Customer's receipt. Used conducted energy weapon ("**CEW**") cartridges are deemed to have operated properly. Extended warranties run from the expiration of the one (1) year hardware warranty through the extended warranty term purchased.

7.2. **Disclaimer. All software and Axon Cloud Services are provided "AS IS," without any warranty of any kind, either express or implied, including without limitation the implied warranties of merchantability, fitness for a particular purpose and non-infringement. Axon Devices and Services that are not manufactured, published or performed by Axon ("Third-Party Products") are not covered by Axon's warranty and are only subject to the warranties of the third-party provider or manufacturer.**

7.3. **Claims**. If Axon receives a valid warranty claim for an Axon-manufactured Device during the warranty term, Axon's sole responsibility is to repair or replace the Axon-manufactured Device with the same or like Axon-manufactured Device, at Axon's option. A replacement Axon-manufactured Device will be new or like new. Axon will warrant the replacement Axon-manufactured Device for the longer of (a) the remaining warranty of the original Axon-manufactured Device or (b) ninety (90) days from the date of repair or replacement.

7.3.1. If Customer exchanges an Axon Device or part, the replacement item becomes Customer's property, and the replaced item becomes Axon's property. Before delivering an Axon-manufactured Device for service, Customer must upload Axon-manufactured Device data to Axon Evidence or download it and retain a copy. Axon is not responsible for any loss of software, data, or other information contained in storage media or any part of the Axon-manufactured Device sent to Axon for service.

7.4. **Spare Axon Devices**. At Axon's reasonable discretion, Axon may provide Customer a predetermined number of spare Axon Devices as detailed in the Quote ("**Spare Axon Devices**"). Spare Axon Devices are intended to replace broken or non-functioning units while Customer submits the broken or non-functioning units, through Axon's warranty return process. Axon will repair or replace the unit with a replacement Axon Device. Title and risk of loss for all Spare Axon Devices shall pass to Customer in accordance with shipping terms under Section 5. Axon assumes no liability or obligation in the event Customer does not utilize Spare Axon Devices for the intended purpose.

7.5. **Limitations**. Axon's warranty excludes damage related to: (a) failure to follow Axon Device use instructions; (b) Axon Devices used with equipment not manufactured or recommended by Axon; (c) abuse, misuse, or intentional damage to Axon Device; (d) force majeure; (e) Axon Devices repaired or modified by persons other than Axon without Axon's written permission; or (f) Axon Devices with a defaced or removed serial number. Axon's warranty will be void if Customer resells Axon Devices.

7.5.1. To the extent permitted by law, the above warranties and remedies are exclusive. Axon disclaims all other warranties, remedies, and conditions, whether oral, written, statutory, or implied. If statutory or implied warranties cannot be lawfully disclaimed, then such warranties are limited to the duration of the warranty described above and by the provisions in this Agreement. Customer confirms and agrees that, in deciding whether to sign this Agreement, it has not relied on any statement or representation by Axon or anyone acting on behalf of Axon related to the subject matter of this Agreement that is not in this Agreement.

7.5.2. Axon's cumulative liability to any party for any loss or damage resulting from any claim, demand, or action arising out of or relating to this Agreement will not exceed the purchase price paid to Axon for the Axon Device, or if for Services, the amount paid for such Services over the twelve (12) months preceding the claim. Neither Party will be liable for special, indirect, incidental, punitive or consequential damages, however caused, whether for breach of warranty or contract, negligence, strict liability, tort or any other legal theory.

7.6. **Online Support Platforms**. Use of Axon's online support platforms (e.g., Axon Academy and MyAxon) is governed by the Axon Online Support Platforms Terms of Use Appendix available at www.axon.com/sales-terms-and-conditions.

7.7. **Third-Party Software and Services**. Use of software or services other than those provided by Axon is governed by the terms, if any, entered into between Customer and the respective third-party provider, including, without limitation, the terms applicable to such software or services located at www.axon.com/sales-terms-and-conditions, if any.

7.8. **Axon Aid**. Upon mutual agreement between Axon and Customer, Axon may provide certain products and services to Customer, as a charitable donation under the Axon Aid program. In such event, Customer expressly waives and releases any and all claims, now known or hereafter known, against Axon and its officers, directors, employees, agents, contractors, affiliates, successors, and assigns (collectively, "**Releasees**"), including but not limited to, on account of injury, death, property damage, or loss of data, arising out of or attributable to the Axon Aid program whether arising out of the negligence of any Releasees or otherwise. Customer agrees not to make or bring any such claim against any Releasee, and forever release and discharge all Releasees from liability under such claims. Customer expressly allows Axon to publicly announce its participation in Axon Aid and use its name in marketing materials. Axon may terminate the Axon Aid program without cause immediately

upon notice to the Customer.

8. **Statement of Work**. Certain Axon Devices and Services, including Axon Interview Room, Axon Channel Services, and Axon Fleet, may require a Statement of Work that details Axon's Service deliverables ("**SOW**"). In the event Axon provides an SOW to Customer, Axon is only responsible for the performance of Services described in the SOW. Additional services are out of scope. The Parties must document scope changes in a written and signed change order. Changes may require an equitable adjustment in fees or schedule. The SOW is incorporated into this Agreement by reference.

9. **Axon Device Warnings**. See www.axon.com/legal for the most current Axon Device warnings.

10. **Design Changes**. Axon may make design changes to any Axon Device or Service without notifying Customer or making the same change to Axon Devices and Services previously purchased by Customer.

11. **Bundled Offerings**. Some offerings in bundled offerings may not be generally available at the time of Customer's purchase. Axon will not provide a refund, credit, or additional discount beyond what is in the Quote due to a delay of availability or Customer's election not to utilize any portion of an Axon bundle.

12. **Insurance**. Axon will maintain General Liability, Workers' Compensation, and Automobile Liability insurance. Upon request, Axon will supply certificates of insurance.

13. **Indemnification**. Axon will indemnify Customer's officers, directors, and employees ("Agency Indemnitees") against all claims, demands, losses, and reasonable expenses arising out of a third-party claim against an Agency Indemnitee resulting from any negligent act, error or omission, or willful misconduct by Axon under this Agreement, except to the extent of Agency's negligence or willful misconduct, or claims under workers compensation.

14. **IP Rights**. Axon owns and reserves all right, title, and interest in Axon-manufactured Devices and Services and suggestions to Axon, including all related intellectual property rights. Customer will not cause any Axon proprietary rights to be violated.

15. **IP Indemnification**. Axon will indemnify Customer against all claims, losses, and reasonable expenses from any third-party claim alleging that the use of Axon-manufactured Devices or Services infringes or misappropriates the third-party's intellectual property rights. Customer must promptly provide Axon with written notice of such claim, tender to Axon the defense or settlement of such claim at Axon's expense and cooperate fully with Axon in the defense or settlement of such claim. Axon's IP indemnification obligations do not apply to claims based on (a) modification of Axon-manufactured Devices or Services by Customer or a third-party not approved by Axon; (b) use of Axon-manufactured Devices and Services in combination with hardware or services not approved by Axon; (c) use of Axon Devices and Services other than as permitted in this Agreement; or (d) use of Axon software that is not the most current release provided by Axon.

16. **Customer Responsibilities**. Customer is responsible for (a) Customer's use of Axon Devices; (b) breach of this Agreement or violation of applicable law by Customer or an Customer end user; (c) disputes between Customer and a third-party over Customer's use of Axon Devices; (d) ensuring Axon Devices are destroyed and disposed of securely and sustainably at Customer's cost; and (e) any regulatory violations or fines, as a result of improper destruction or disposal of Axon Devices.

17. **Termination**.

    17.1. **For Breach**. A Party may terminate this Agreement for cause if it provides thirty (30) days written notice of the breach to the other Party, and the breach remains uncured at the end of thirty (30) days. If Customer terminates this Agreement due to Axon's uncured breach, Axon will refund prepaid amounts on a prorated basis based on the effective date of termination.

    17.2. **By Customer**. If sufficient funds are not appropriated or otherwise legally available to pay the fees, Customer may terminate this Agreement. Customer will deliver notice of termination under this section as soon as reasonably practicable.

    17.3. **Effect of Termination**. Upon termination of this Agreement, Customer rights immediately terminate. Customer remains responsible for all fees incurred before the effective date of termination. If Customer purchases Axon Devices for less than the manufacturer's suggested retail price ("**MSRP**") and this Agreement terminates before the end of the Term, Axon will invoice Customer the difference between the MSRP for Axon Devices received, including any Spare Axon Devices, and amounts paid towards those Axon Devices. Only if terminating for non-appropriation, Customer may return Axon Devices to Axon within thirty (30) days of termination. MSRP is the standalone price of the individual Axon Device at the time of sale. For bundled Axon Devices, MSRP is the standalone price of all individual components.

18. **Confidentiality**. "**Confidential Information**" means nonpublic information designated as confidential or, given the nature of the information or circumstances surrounding disclosure, should reasonably be understood to be

confidential. Each Party will take reasonable measures to avoid disclosure, dissemination, or unauthorized use of the other Party's Confidential Information. Unless required by law, neither Party will disclose the other Party's Confidential Information during the Term and for five (5) years thereafter. To the extent permissible by law, Axon pricing is Confidential Information and competition sensitive. If Customer receives a public records request to disclose Axon Confidential Information, to the extent allowed by law, Customer will provide notice to Axon before disclosure. Axon may publicly announce information related to this Agreement.

19. **General**.

19.1. **Force Majeure**. Neither Party will be liable for any delay or failure to perform due to a cause beyond a Party's reasonable control.

19.2. **Independent Contractors**. The Parties are independent contractors. Neither Party has the authority to bind the other. This Agreement does not create a partnership, franchise, joint venture, Customer, fiduciary, or employment relationship between the Parties.

19.3. **Third-Party Beneficiaries**. There are no third-party beneficiaries under this Agreement.

19.4. **Non-Discrimination**. Neither Party nor its employees will discriminate against any person based on race; religion; creed; color; sex; gender identity and expression; pregnancy; childbirth; breastfeeding; medical conditions related to pregnancy, childbirth, or breastfeeding; sexual orientation; marital status; age; national origin; ancestry; genetic information; disability; veteran status; or any class protected by local, state, or federal law.

19.5. **Export Compliance**. Each Party will comply with all import and export control laws and regulations.

19.6. **Assignment**. Neither Party may assign this Agreement without the other Party's prior written consent. Axon may assign this Agreement, its rights, or obligations without consent: (a) to an affiliate or subsidiary; or (b) for purposes of financing, merger, acquisition, corporate reorganization, or sale of all or substantially all its assets. This Agreement is binding upon the Parties respective successors and assigns.

19.7. **Waiver**. No waiver or delay by either Party in exercising any right under this Agreement constitutes a waiver of that right.

19.8. **Severability**. If a court of competent jurisdiction holds any portion of this Agreement invalid or unenforceable, the remaining portions of this Agreement will remain in effect.

19.9. **Survival**. The following sections will survive termination: Payment, Warranty, Axon Device Warnings, Indemnification, IP Rights, Customer Responsibilities and any other Sections detailed in the survival sections of the Appendices.

19.10. **Governing Law**. The laws of the country, state, province, or municipality where Customer is physically located, without reference to conflict of law rules, govern this Agreement and any dispute arising from it. The United Nations Convention for the International Sale of Goods does not apply to this Agreement.

19.11. **Notices**. All notices must be in English. Notices posted on Customer's Axon Evidence site are effective upon posting. Notices by email are effective on the sent date of the email. Notices by personal delivery are effective immediately. Notices to Customer shall be provided to the address on file with Axon. Notices to Axon shall be provided to Axon Enterprise, Inc., Attn: Legal, 17800 North 85th Street, Scottsdale, Arizona 85255 with a copy to legal@axon.com.

19.12 **Entire Agreement**. This Agreement, the Appendices, the City of Winter Haven Contract Addendum attached hereto and incorporated herein, including any applicable Appendices not attached herein for the products and services purchased, which are incorporated by reference and located in the Master Purchasing and Services Agreement located at https://www.axon.com/sales-terms-and-conditions, Quote and any SOW(s), represents the entire agreement between the Parties. This Agreement supersedes all prior agreements or understandings, whether written or verbal, regarding the subject matter of this Agreement. This Agreement may only be modified or amended in a writing signed by the Parties.

Each Party, by and through its respective representative authorized to execute this Agreement, has duly executed and delivered this Agreement as of the date of signature.

AXON:	**CUSTOMER**:
Axon Enterprise, Inc.	_____
Signature: _____	Signature: _____
Name: _____	Name: _____
Title: _____	Title: _____
Date: _____	Date: _____

Axon Cloud Services Terms of Use Appendix

1. **Definitions**.

    a. **"Customer Content"** is data uploaded into, ingested by, or created in Axon Cloud Services within Customer's tenant, including media or multimedia uploaded into Axon Cloud Services by Customer. Customer Content includes Evidence but excludes Non-Content Data.

    b. "**Evidence**" is media or multimedia uploaded into Axon Evidence as 'evidence' by an Customer. Evidence is a subset of Customer Content.

    c. "**Non-Content Data**" is data, configuration, and usage information about Customer's Axon Cloud Services tenant, Axon Devices and client software, and users that is transmitted or generated when using Axon Devices. Non-Content Data includes data about users captured during account management and customer support activities. Non-Content Data does not include Customer Content.

    d. "**Personal Data**" means any information relating to an identified or identifiable natural person. An identifiable natural person is one who can be identified, directly or indirectly, in particular by reference to an identifier such as a name, an identification number, location data, an online identifier or to one or more factors specific to the physical, physiological, genetic, mental, economic, cultural or social identity of that natural person.

    e. "**Provided Data**" means de-identified, de-personalized, data derived from Customer's TASER energy weapon deployment reports, related TASER energy weapon logs, body-worn camera footage, and incident reports.

    f. "**Transformed Data**" means the Provided Data used for the purpose of quantitative evaluation of the performance and effectiveness of TASER energy weapons in the field across a variety of circumstances.

2. **Access**. Upon Axon granting Customer a subscription to Axon Cloud Services, Customer may access and use Axon Cloud Services to store and manage Customer Content. Customer may not exceed more end users than the Quote specifies. Axon Air requires an Axon Evidence subscription for each drone operator. For Axon Evidence Lite, Customer may access and use Axon Evidence only to store and manage TASER CEW and TASER CAM data ("**TASER Data**"). Customer may not upload non-TASER Data to Axon Evidence Lite.

3. **Customer Owns Customer Content**. Customer controls and owns all right, title, and interest in Customer Content. Except as outlined herein, Axon obtains no interest in Customer Content, and Customer Content is not Axon's business records. Customer is solely responsible for uploading, sharing, managing, and deleting Customer Content. Axon will only have access to Customer Content for the limited purposes set forth herein. Customer agrees to allow Axon access to Customer Content to (a) perform troubleshooting, maintenance, or diagnostic screenings; and (b) enforce this Agreement or policies governing use of the Axon products.

4. **Security**. Axon will implement commercially reasonable and appropriate measures to secure Customer Content against accidental or unlawful loss, access or disclosure. Axon will maintain a comprehensive information security program to protect Axon Cloud Services and Customer Content including logical, physical access, vulnerability, risk, and configuration management; incident monitoring and response; encryption of uploaded digital evidence; security education; and data protection. Axon agrees to the Federal Bureau of Investigation Criminal Justice Information Services Security Addendum for its digital evidence management systems or records.

5. **Customer Responsibilities**. Customer is responsible for (a) ensuring Customer owns Customer Content; (b) ensuring no Customer Content or Customer end user's use of Customer Content or Axon Cloud Services violates this Agreement or applicable laws; and (c) maintaining necessary computer equipment and Internet connections for use of Axon Cloud Services. If Customer becomes aware of any violation of this Agreement by an end user, Customer will immediately terminate that end user's access to Axon Cloud Services.

    a. Customer will also maintain the security of end usernames and passwords and security and access by end users to Customer Content. Customer is responsible for ensuring the configuration and utilization of Axon Cloud Services meet applicable Customer regulation and standards. Customer may not sell, transfer, or sublicense access to any other entity or person. Customer shall contact Axon immediately if an unauthorized party may be using Customer's account or Customer Content, or if account information is lost or stolen.

6. **Privacy**. Customer's use of Axon Cloud Services is subject to the Axon Cloud Services Privacy Policy, a current version of which is available at https://www.axon.com/legal/cloud-services-privacy-policy. Customer agrees to allow Axon access to Non-Content Data from Customer to (a) perform troubleshooting, maintenance, or diagnostic screenings; (b) provide, develop, improve, and support current and future Axon products and related services; and (c) enforce this Agreement or policies governing the use of Axon products.

7. **Axon Body Wi-Fi Positioning**. Axon Body cameras may offer a feature to enhance location services where GPS/GNSS signals may not be available, for instance, within buildings or underground. Customer administrators can manage their choice to use this service within the administrative features of Axon Cloud Services. If Customer chooses to use this service, Axon must also enable the usage of the feature for Customer's Axon Cloud Services tenant. Customer will not see this option with Axon Cloud Services unless Axon has enabled Wi-Fi Positioning for Customer's Axon Cloud Services tenant. When Wi-Fi Positioning is enabled by both Axon and Customer, Non-Content and Personal Data will be sent to Skyhook Holdings, Inc. ("**Skyhook**") to facilitate the Wi-Fi Positioning functionality. Data controlled by Skyhook is outside the scope of the Axon Cloud Services Privacy Policy and is subject to the Skyhook Services Privacy Policy.

8. **Storage**. For Axon Unlimited Device Storage subscriptions, Customer may store unlimited data in Customer's Axon Evidence account only if data originates from Axon Capture or the applicable Axon Device. Axon may charge Customer additional fees for exceeding purchased storage amounts. Axon may place Customer Content that Customer has not viewed or accessed for six (6) months into archival storage. Customer Content in archival storage will not have immediate availability and may take up to twenty-four (24) hours to access.

   For Third-Party Unlimited Storage the following restrictions apply: (i) it may only be used in conjunction with a valid Axon's Evidence.com user license; (ii) is limited to data of the law enforcement Customer that purchased the Third-Party Unlimited Storage and the Axon's Evidence.com end user or Customer is prohibited from storing data for other law enforcement agencies; and (iii) Customer may only upload and store data that is directly related to: (1) the investigation of, or the prosecution of a crime; (2) common law enforcement activities; or (3) any Customer Content created by Axon Devices or Evidence.com.

9. **Location of Storage**. Axon may transfer Customer Content to third-party subcontractors for storage. Axon will determine the locations of data centers for storage of Customer Content. For United States agencies, Axon will ensure all Agency Content stored in Axon Cloud Services remains within the United States. Ownership of Customer Content remains with Customer.

10. **Suspension**. Axon may temporarily suspend Customer's or any end user's right to access or use any portion or all of Axon Cloud Services immediately upon notice, if Customer or end user's use of or registration for Axon Cloud Services may (a) pose a security risk to Axon Cloud Services or any third-party; (b) adversely impact Axon Cloud Services, the systems, or content of any other customer; (c) subject Axon, Axon's affiliates, or any third-party to liability; or (d) be fraudulent. Customer remains responsible for all fees incurred through suspension. Axon will not delete Customer Content because of suspension, except as specified in this Agreement.

11. **Axon Cloud Services Warranty**. Axon disclaims any warranties or responsibility for data corruption or errors before Customer uploads data to Axon Cloud Services.

12. **TASER Data Science Program**. Axon will provide a quantitative evaluation on the performance and effectiveness of TASER energy weapons in the field across a variety of circumstances.

    If Customer purchases the TASER Data Science Program, Customer grants Axon, its affiliates, and assignees an irrevocable, perpetual, fully paid, royalty-free, and worldwide right and license to use Provided Data solely for the purposes of this Agreement and to create Transformed Data. Customer shall own all rights and title to Provided Data. Axon shall own all rights and title to Transformed Data and any derivatives of Transformed Data.

    Axon grants to Customer an irrevocable, perpetual, fully paid, royalty-free, license to use to TASER Data Science report provided to Customer for its own internal purposes. **The Data Science report is provided "as is" and without any warranty of any kind.**

    In the event Customer seeks Axon's deletion of Provided Data, it may submit a request to privacy@axon.com. Where reasonably capable of doing so, Axon will implement the request but at a minimum will not continue to collect Provided Data from Customer.

13. **Axon Records**. Axon Records is the software-as-a-service product that is generally available at the time Customer purchases an OSP 7 or OSP 10 bundle. During Customer's Axon Records Subscription Term, if any, Customer will be entitled to receive Axon's Update and Upgrade releases on an if-and-when available basis.

a. The Axon Records Subscription Term will end upon the completion of the Axon Records Subscription as documented in the Quote, or if purchased as part of an OSP 7 or OSP 10 bundle, upon completion of the OSP 7 or OSP 10 Term ("**Axon Records Subscription**")

b. An "**Update**" is a generally available release of Axon Records that Axon makes available from time to time. An "**Upgrade**" includes (i) new versions of Axon Records that enhance features and functionality, as solely determined by Axon; and/or (ii) new versions of Axon Records that provide additional features or perform additional functions. Upgrades exclude new products that Axon introduces and markets as distinct products or applications.

c. New or additional Axon products and applications, as well as any Axon professional services needed to configure Axon Records, are not included. If Customer purchases Axon Records as part of a bundled offering, the Axon Record subscription begins on the later of the (1) start date of that bundled offering, or (2) date Axon provisions Axon Records to Customer.

d. Users of Axon Records at the Customer may upload files to entities (incidents, reports, cases, etc) in Axon Records with no limit to the number of files and amount of storage. Notwithstanding the foregoing, Axon may limit usage should the Customer exceed an average rate of one-hundred (100) GB per user per year of uploaded files. Axon will not bill for overages.

14. **Axon Cloud Services Restrictions**. Customer and Customer end users (including employees, contractors, agents, officers, volunteers, and directors), may not, or may not attempt to:

    a. reverse engineer, disassemble, or decompile Axon Cloud Services or apply any process to derive any source code included in Axon Cloud Services, or allow others to do the same;

    b. copy, modify, tamper with, repair, or create derivative works of any part of Axon Cloud Services;

    c. access or use Axon Cloud Services with the intent to gain unauthorized access, avoid incurring fees or exceeding usage limits or quotas;

    d. use Axon Cloud Serves as a service bureau, or as part of an Customer infrastructure as a service;

    e. use trade secret information contained in Axon Cloud Services, except as expressly permitted in this Agreement;

    f. access Axon Cloud Services to build a competitive device or service or copy any features, functions, or graphics of Axon Cloud Services;

    g. remove, alter, or obscure any confidentiality or proprietary rights notices (including copyright and trademark notices) of Axon's or Axon's licensors on or within Axon Cloud Services; or

    h. use Axon Cloud Services to store or transmit infringing, libelous, or other unlawful or tortious material; material in violation of third-party privacy rights; or malicious code.

15. **Axon Narrative.** AI-Assisted Report Writing feature. Axon may impose usage restrictions if a single user generates more than one hundred (100) reports per month for two or more consecutive months.

16. **After Termination**. Axon will not delete Customer Content for ninety (90) days following termination. There will be no functionality of Axon Cloud Services during these ninety (90) days other than the ability to retrieve Customer Content. Customer will not incur additional fees if Customer downloads Customer Content from Axon Cloud Services during this time. Axon has no obligation to maintain or provide Customer Content after these ninety (90) days and will thereafter, unless legally prohibited, delete all Customer Content. Upon request, Axon will provide written proof that Axon successfully deleted and fully removed all Customer Content from Axon Cloud Services.

17. **Post-Termination Assistance**. Axon will provide Customer with the same post-termination data retrieval assistance that Axon generally makes available to all customers. Requests for Axon to provide additional assistance in downloading or transferring Customer Content, including requests for Axon's data egress service, will result in additional fees and Axon will not warrant or guarantee data integrity or readability in the external system.

18. **U.S. Government Rights**. If Customer is a U.S. Federal department or using Axon Cloud Services on behalf of a U.S. Federal department, Axon Cloud Services is provided as a "commercial item," "commercial computer software," "commercial computer software documentation," and "technical data", as defined in the Federal Acquisition Regulation and Defense Federal Acquisition Regulation Supplement. If Customer is using Axon Cloud

Services on behalf of the U.S. Government and these terms fail to meet the U.S. Government's needs or are inconsistent in any respect with federal law, Customer will immediately discontinue use of Axon Cloud Services.

19. **Survival**. Upon any termination of this Agreement, the following sections in this Appendix will survive: Customer Owns Customer Content, Privacy, Storage, Axon Cloud Services Warranty, Customer Responsibilities and Axon Cloud Services Restrictions.

Axon Customer Experience Improvement Program Appendix

1. **Axon Customer Experience Improvement Program (ACEIP)**. The ACEIP is designed to accelerate Axon's development of technology, such as building and supporting automated features, to ultimately increase safety within communities and drive efficiency in public safety. To this end, subject to the limitations on Axon as described below, Axon, where allowed by law, may make limited use of Customer Content from all of its customers to provide, develop, improve, and support current and future Axon products (collectively, "ACEIP Purposes"). However, at all times, Axon will comply with its obligations pursuant to the Axon Cloud Services Terms of Use Appendix to maintain a comprehensive data security program (including compliance with the CJIS Security Policy for Criminal Justice Information), privacy program, and data governance policy, including high industry standards of de-identifying Personal Data, to enforce its security and privacy obligations for the ACEIP. ACEIP has 2 tiers of participation, Tier 1 and Tier 2. By default, Customer will be a participant in ACEIP Tier 1. If Customer does not want to participate in ACEIP Tier 1, Customer can revoke its consent at any time. If Customer wants to participate in Tier 2, as detailed below, Customer can check the ACEIP Tier 2 box below. If Customer does not want to participate in ACEIP Tier 2, Customer should leave box unchecked. At any time, Customer may revoke its consent to ACEIP Tier 1, Tier 2, or both Tiers.

2. **ACEIP Tier 1.**

   2.1. When Axon uses Customer Content for the ACEIP Purposes, Axon will extract from Customer Content and may store separately copies of certain segments or elements of the Customer Content (collectively, "**ACEIP Content**"). When extracting ACEIP Content, Axon will use commercially reasonable efforts to aggregate, transform or de-identify Customer Content so that the extracted ACEIP Content is no longer reasonably capable of being associated with, or could reasonably be linked directly or indirectly to a particular individual ("**Privacy Preserving Technique(s)**"). For illustrative purposes, some examples are described in footnote 1[1]. For clarity, ACEIP Content will still be linked indirectly, with an attribution, to the Customer from which it was extracted. This attribution will be stored separately from the data itself, but is necessary for and will be solely used to enable Axon to identify and delete all ACEIP Content upon Customer request. Once de-identified, ACEIP Content may then be further modified, analyzed, and used to create derivative works. At any time, Customer may revoke the consent granted herein to Axon to access and use Customer Content for ACEIP Purposes. Within 30 days of receiving the Customer's request, Axon will no longer access or use Customer Content for ACEIP Purposes and will delete any and all ACEIP Content. Axon will also delete any derivative works which may reasonably be capable of being associated with, or could reasonably be linked directly or indirectly to Customer. In addition, if Axon uses Customer Content for the ACEIP Purposes, upon request, Axon will make available to Customer a list of the specific type of Customer Content being used to generate ACEIP Content, the purpose of such use, and the retention, privacy preserving extraction technique, and relevant data protection practices applicable to the Customer Content or ACEIP Content ("**Use Case**"). From time to time, Axon may develop and deploy new Use Cases. At least 30 days prior to authorizing the deployment of any new Use Case, Axon will provide Customer notice (by updating the list of Use Case at https://www.axon.com/aceip and providing Customer with a mechanism to obtain notice of that update or another commercially reasonable method to Customer designated contact) ("**New Use Case**").

   2.2. **Expiration of ACEIP Tier 1**. Customer consent granted herein will expire upon termination of the Agreement. In accordance with section 1.1.1, within 30 days of receiving the Customer's request, Axon will no longer access or use Customer Content for ACEIP Purposes and will delete ACEIP Content. Axon will also delete any derivative works which may reasonably be capable of being associated with, or could reasonably be linked directly or indirectly to, Customer.

3. **ACEIP Tier 2**. In addition to ACEIP Tier 1, if Customer wants to help further improve Axon's services, Customer may choose to participate in Tier 2 of the ACEIP. ACEIP Tier 2 grants Axon certain additional rights to use Customer

[1] For example; (a) when extracting specific text to improve automated transcription capabilities, text that could be used to directly identify a particular individual would not be extracted, and extracted text would be disassociated from identifying metadata of any speakers, and the extracted text would be split into individual words and aggregated with other data sources (including publicly available data) to remove any reasonable ability to link any specific text directly or indirectly back to a particular individual; (b) when extracting license plate data to improve Automated License Plate Recognition (ALPR) capabilities, individual license plate characters would be extracted and disassociated from each other so a complete plate could not be reconstituted, and all association to other elements of the source video, such as the vehicle, location, time, and the surrounding environment would also be removed; (c) when extracting audio of potential acoustic events (such as glass breaking or gun shots), very short segments (<1 second) of audio that only contains the likely acoustic events would be extracted and all human utterances would be removed.

Content, in addition to those set forth in Tier 1 above, without the guaranteed deployment of a Privacy Preserving Technique to enable product development, improvement, and support that cannot be accomplished with aggregated, transformed, or de-identified data.

☐ Check this box if Customer wants to help further improve Axon's services by participating in ACEIP Tier 2 in addition to Tier 1. Axon will not enroll Customer into ACEIP Tier 2 until Axon and Customer agree to terms in writing providing for such participation in ACEIP Tier 2.

Professional Services Appendix

If any of the Professional Services specified below are included on the Quote, this Appendix applies.

1. **Utilization of Services**. Customer must use professional services as outlined in the Quote and this Appendix within six (6) months of the Effective Date.

2. **Axon Full Service (Axon Full Service)**. Axon Full Service includes advance remote project planning and configuration support and up to four (4) consecutive days of on-site service and a professional services manager to work with Customer to assess Customer's deployment and determine which on-site services are appropriate. If Customer requires more than four (4) consecutive on-site days, Customer must purchase additional days. Axon Full Service options include:

System set up and configuration • Instructor-led setup of Axon View on smartphones (if applicable) • Configure categories and custom roles based on Customer need • Register cameras to Customer domain • Troubleshoot IT issues with Axon Evidence and Axon Dock ("**Dock**") access • One on-site session included
Dock configuration • Work with Customer to decide the ideal location of Docks and set configurations on Dock • Authenticate Dock with Axon Evidence using admin credentials from Customer • On-site assistance, not to include physical mounting of docks
Best practice implementation planning session • Provide considerations for the establishment of video policy and system operations best practices based on Axon's observations with other agencies • Discuss the importance of entering metadata in the field for organization purposes and other best practices for digital data management • Provide referrals of other agencies using the Axon camera devices and Axon Evidence • Recommend rollout plan based on review of shift schedules
System Admin and troubleshooting training sessions Step-by-step explanation and assistance for Customer's configuration of security, roles & permissions, categories & retention, and other specific settings for Axon Evidence
Axon instructor training (Train the Trainer) Training for Customer's in-house instructors who can support Customer's Axon camera and Axon Evidence training needs after Axon has fulfilled its contractual on-site obligations
Evidence sharing training Tailored workflow instruction for Investigative Units on sharing Cases and Evidence with local prosecuting agencies
End user go-live training and support sessions • Assistance with device set up and configuration • Training on device use, Axon Evidence, and Evidence Sync
Implementation document packet Axon Evidence administrator guides, camera implementation guides, network setup guide, sample policies, and categories & roles guide
Post go-live review

3. **Body-Worn Camera Starter Service (Axon Starter)**. Axon Starter includes advance remote project planning and configuration support and one (1) day of on-site Services and a professional services manager to work closely with Customer to assess Customer's deployment and determine which Services are appropriate. If Customer requires more than one (1) day of on-site Services, Customer must purchase additional on-site Services. The Axon Starter options include:

System set up and configuration (Remote Support)

• Instructor-led setup of Axon View on smartphones (if applicable) • Configure categories & custom roles based on Customer need • Troubleshoot IT issues with Axon Evidence and Dock access
Dock configuration • Work with Customer to decide the ideal location of Dock setup and set configurations on Dock • Authenticate Dock with Axon Evidence using "Administrator" credentials from Customer • Does not include physical mounting of docks
Axon instructor training (Train the Trainer) Training for Customer's in-house instructors who can support Customer's Axon camera and Axon Evidence training needs after Axon's has fulfilled its contracted on-site obligations
End user go-live training and support sessions • Assistance with device set up and configuration • Training on device use, Axon Evidence, and Evidence Sync
Implementation document packet Axon Evidence administrator guides, camera implementation guides, network setup guide, sample policies, and categories & roles guide

4. **Body-Worn Camera Virtual 1-Day Service (Axon Virtual)**. Axon Virtual includes all items in the BWC Starter Service Package, except one (1) day of on-site services.

5. **CEW Services Packages**. CEW Services Packages are detailed below:

System set up and configuration • Configure Axon Evidence categories & custom roles based on Customer need. • Troubleshoot IT issues with Axon Evidence. • Register users and assign roles in Axon Evidence. • **For the CEW Full Service Package**: On-site assistance included • **For the CEW Starter Package**: Virtual assistance included
Dedicated Project Manager Assignment of specific Axon representative for all aspects of planning the rollout (Project Manager). Ideally, Project Manager will be assigned to Customer 4–6 weeks before rollout
Best practice implementation planning session to include: • Provide considerations for the establishment of CEW policy and system operations best practices based on Axon's observations with other agencies • Discuss the importance of entering metadata and best practices for digital data management • Provide referrals to other agencies using TASER CEWs and Axon Evidence • **For the CEW Full Service Package:** On-site assistance included • **For the CEW Starter Package:** Virtual assistance included
System Admin and troubleshooting training sessions On-site sessions providing a step-by-step explanation and assistance for Customer's configuration of security, roles & permissions, categories & retention, and other specific settings for Axon Evidence
Axon Evidence Instructor training • Provide training on the Axon Evidence to educate instructors who can support Customer's subsequent Axon Evidence training needs. • **For the CEW Full Service Package:** Training for up to 3 individuals at Customer • **For the CEW Starter Package:** Training for up to 1 individual at Customer
TASER CEW inspection and device assignment Axon's on-site professional services team will perform functions check on all new TASER CEW Smart weapons and assign them to a user on Axon Evidence.
Post go-live review **For the CEW Full Service Package**: On-site assistance included. **For the CEW Starter Package**: Virtual assistance included.

6. **Smart Weapon Transition Service**. The Smart Weapon Transition Service includes:

Archival of CEW Firing Logs Axon's on-site professional services team will upload CEW firing logs to Axon Evidence from all TASER CEW

Smart Weapons that Customer is replacing with newer Smart Weapon models.
Return of Old Weapons Axon's on-site professional service team will ship all old weapons back to Axon's headquarters. Axon will provide Customer with a Certificate of Destruction

*Note: CEW Full Service packages for TASER 7 or TASER 10 include Smart Weapon Transition Service instead of 1-Day Device Specific Instructor Course.

7. **VR Services Package.** VR Service includes advance remote project planning and configuration support and one (1) day of on-site service and a professional services manager to work with Customer to assess Customer's deployment and determine which Services are appropriate. The VR Service training options include:

System set up and configuration (Remote Support) • Instructor-led setup of Axon VR headset content • Configure Customer settings based on Customer need • Troubleshoot IT issues with Axon VR headset
Axon instructor training (Train the Trainer) Training for up to five (5) Customer's in-house instructors who can support Customer's Axon VR CET and SIM training needs after Axon's has fulfilled its contracted on-site obligations
Classroom and practical training sessions Step-by-step explanation and assistance for Customer's configuration of Axon VR CET and SIM functionality, basic operation, and best practices

8. **Axon Air, On-Site Training.** Axon Air, On-Site training includes advance remote project planning and configuration support and one (1) day of on-site Services and a professional services manager to work closely with Customer to assess Customer's deployment and determine which Services are appropriate. If Customer's requires more than one (1) day of on-site Services, Customer must purchase additional on-site Services. The Axon Air, On-Site training options include:

System set up and configuration (Remote Support) • Instructor-led setup of Axon Air App (ASDS) • Configure Customer settings based on Customer need • Configure drone controller • Troubleshoot IT issues with Axon Evidence
Axon instructor training (Train the Trainer) Training for Customer's in-house instructors who can support Customer's Axon Air and Axon Evidence training needs after Axon's has fulfilled its contracted on-site obligations
Classroom and practical training sessions Step-by-step explanation and assistance for Customer's configuration of Axon Respond+ livestreaming functionality, basic operation, and best practices

9. **Axon Air, Virtual Training.** Axon Air, Virtual training includes all items in the Axon Air, On-Site Training Package, except the practical training session, with the Axon Instructor training for up to four hours virtually.

10. **Signal Sidearm Installation Service**.

    a. **Purchases of 50 SSA units or more**: Axon will provide one (1) day of on-site service and one professional services manager and will provide train the trainer instruction, with direct assistance on the first of each unique holster/mounting type. Customer is responsible for providing a suitable work/training area.

    b. **Purchases of less than 50 SSA units:** Axon will provide a 1-hour virtual instruction session on the basics of installation and device calibration**.**

11. **Out of Scope Services**. Axon is only responsible to perform the professional services described in the Quote and this Appendix. Any additional professional services are out of scope. The Parties must document scope changes in a written and signed change order. Changes may require an equitable adjustment in the charges or schedule.

12. **Delivery of Services**. Axon personnel will work Monday through Friday, 8:30 a.m. to 5:30 p.m., except holidays. Axon will perform all on-site tasks over a consecutive timeframe. Axon will not charge Customer travel time by Axon

personnel to Customer premises as work hours.

13. **Access Computer Systems to Perform Services**. Customer authorizes Axon to access relevant Customer computers and networks, solely for performing the Services. Axon will work to identify as soon as reasonably practicable resources and information Axon expects to use and will provide an initial itemized list to Customer. Customer is responsible for and assumes the risk of any problems, delays, losses, claims, or expenses resulting from the content, accuracy, completeness, and consistency of all data, materials, and information supplied by Customer.

14. **Site Preparation**. Axon will provide a hardcopy or digital copy of current user documentation for the Axon Devices ("**User Documentation**"). User Documentation will include all required environmental specifications for the professional services and Axon Devices to operate per the Axon Device User Documentation. Before installation of Axon Devices (whether performed by Customer or Axon), Customer must prepare the location(s) where Axon Devices are to be installed ("**Installation Site**") per the environmental specifications in the Axon Device User Documentation. Following installation, Customer must maintain the Installation Site per the environmental specifications. If Axon modifies Axon Device User Documentation for any Axon Devices under this Agreement, Axon will provide the update to Customer when Axon generally releases it

15. **Acceptance**. When Axon completes professional services, Axon will present an acceptance form ("**Acceptance Form**") to Customer. Customer will sign the Acceptance Form acknowledging completion. If Customer reasonably believes Axon did not complete the professional services in substantial conformance with this Agreement, Customer must notify Axon in writing of the specific reasons for rejection within seven (7) calendar days from delivery of the Acceptance Form. Axon will address the issues and re-present the Acceptance Form for signature. If Axon does not receive the signed Acceptance Form or written notification of reasons for rejection within seven (7) calendar days of delivery of the Acceptance Form, Axon will deem Customer to have accepted the professional services.

16. **Customer Network**. For work performed by Axon transiting or making use of Customer's network, Customer is solely responsible for maintenance and functionality of the network. In no event will Axon be liable for loss, damage, or corruption of Customer's network from any cause.

Technology Assurance Plan Appendix

If Technology Assurance Plan ("**TAP**") or a bundle including TAP is on the Quote, this appendix applies.

1. **TAP Warranty**. The TAP warranty is an extended warranty that starts at the end of the one- (1-) year hardware limited warranty.

2. **Officer Safety Plan**. If Customer purchases an Officer Safety Plan ("**OSP**"), Customer will receive the deliverables detailed in the Quote. Customer must accept delivery of the TASER CEW and accessories as soon as available from Axon.

3. **OSP 7 or OSP 10 Term**. OSP 7 or OSP 10 begins on the date specified in the Quote ("**OSP Term**").

4. **TAP BWC Upgrade**. If Customer has no outstanding payment obligations and purchased TAP, Axon will provide Customer a new Axon body-worn camera ("**BWC Upgrade**") as scheduled in the Quote. If Customer purchased TAP, Axon will provide a BWC Upgrade that is the same or like Axon Device, at Axon's option. Axon makes no guarantee the BWC Upgrade will utilize the same accessories or Axon dock.

5. **TAP Dock Upgrade**. If Customer has no outstanding payment obligations and purchased TAP, Axon will provide Customer a new Axon Dock as scheduled in the Quote ("**Dock Upgrade**"). Accessories associated with any Dock Upgrades are subject to change at Axon discretion. Dock Upgrades will only include a new Axon dock bay configuration unless a new Axon dock core is required for BWC compatibility. If Customer originally purchased a single-bay Axon dock, the Dock Upgrade will be a single-bay Axon dock model that is the same or like Axon Device, at Axon's option. If Customer originally purchased a multi-bay Axon dock, the Dock Upgrade will be a multi-bay Axon dock that is the same or like Axon Device, at Axon's option.

6. **Upgrade Delay**. Axon may ship the BWC and Dock Upgrades as scheduled in the Quote without prior confirmation from Customer unless the Parties agree in writing otherwise at least ninety (90) days in advance. Axon may ship the final BWC and Dock Upgrade as scheduled in the Quote sixty (60) days before the end of the Subscription Term without prior confirmation from Customer.

7. **Upgrade Change**. If Customer wants to upgrade Axon Device models from the current Axon Device to an upgraded Axon Device, Customer must pay the price difference between the MSRP for the current Axon Device and the MSRP for the upgraded Axon Device. If the model Customer desires has an MSRP less than the MSRP of the offered BWC Upgrade or Dock Upgrade, Axon will not provide a refund. The MSRP is the MSRP in effect at the time of the upgrade.

8. **Return of Original Axon Device**. Within thirty (30) days of receiving a BWC or Dock Upgrade, Customer must return the original Axon Devices to Axon or destroy the Axon Devices and provide a certificate of destruction to Axon including serial numbers for the destroyed Axon Devices. If Customer does not return or destroy the Axon Devices, Axon will deactivate the serial numbers for the Axon Devices received by Customer.

9. **Termination**. If Customer's payment for TAP, OSP, or Axon Evidence is more than thirty (30) days past due, Axon may terminate TAP or OSP. Once TAP or OSP terminates for any reason:

   9.1. TAP and OSP coverage terminate as of the date of termination and no refunds will be given.

   9.2. Axon will not and has no obligation to provide the Upgrade Models.

   9.3. Customer must make any missed payments due to the termination before Customer may purchase any future TAP or OSP.

TASER Device Appendix

This TASER Device Appendix applies to Customer's TASER 7/10, OSP 7/10, OSP Plus, or OSP 7/10 Plus Premium purchase from Axon, if applicable.

1. **Duty Cartridge Replenishment Plan**. If the Quote includes "**Duty Cartridge Replenishment Plan**", Customer must purchase the plan for each CEW user. A CEW user includes officers that use a CEW in the line of duty and those that only use a CEW for training. Customer may not resell cartridges received. Axon will only replace cartridges used in the line of duty.
2. **Training**. If the Quote includes a TASER On Demand Certification subscription, Customer will have on-demand access to TASER Instructor and TASER Master Instructor courses only for the duration of the TASER Subscription Term. Axon will issue a maximum of ten (10) TASER Instructor vouchers and ten (10) TASER Master Instructor vouchers for every thousand TASER Subscriptions purchased. Customer shall utilize vouchers to register for TASER courses at their discretion however Customer may incur a fee for cancellations less than 10 business days prior to a course date or failure to appear to a registered course. The voucher has no cash value. Customer cannot exchange voucher for any other device or service. Any unused vouchers at the end of the Term will be forfeited. A voucher does not include any travel or other expenses that might be incurred related to attending a course.
3. **Extended Warranty**. If the Quote includes an extended warranty, the extended warranty coverage period warranty will be for a five- (5-) year term, which includes the hardware manufacturer's warranty plus the four- (4-) year extended term.
4. **Trade-in**. If the Quote contains a discount on CEW-related line items and that discount is contingent upon the trade-in of hardware, Customer must return used hardware and accessories associated with the discount ("**Trade-In Units**") to Axon within the below prescribed timeline. Customer must ship batteries via ground shipping. Axon will pay shipping costs of the return. If Axon does not receive Trade-In Units within the timeframe below, Axon will invoice Customer the value of the trade-in credit. Customer may not destroy Trade-In Units and receive a trade-in credit.

Customer Size	Days to Return from Start Date of TASER 10 Subscription
Less than 100 officers	60 days
100 to 499 officers	90 days
500+ officers	180 days

5. **TASER Device Subscription Term**. The TASER Device Subscription Term for a standalone TASER Device purchase begins on shipment of the TASER Device. The TASER Device Subscription Term for OSP 7/10 begins on the OSP 7/10 start date.
6. **Access Rights**. Upon Axon granting Customer a TASER Device Axon Evidence subscription, Customer may access and use Axon Evidence for the storage and management of data from TASER Devices devices during the TASER Device Subscription Term. Customer may not exceed the number of end users the Quote specifies.
7. **Customer Warranty.** If Customer is located in the US, Customer warrants and acknowledges that TASER 10 is classified as a firearm and is being acquired for official Customer use pursuant to a law enforcement Customer transfer under the Gun Control Act of 1968.
8. **Purchase Order.** To comply with applicable laws and regulations, Customer must provide a purchase order to Axon prior to shipment of TASER 10.
9. **Apollo Grant (US only).** If Customer has received an Apollo Grant from Axon, Customer must pay all fees in the Quote prior to upgrading to any new TASER Device offered by Axon.
10. **Termination**. If payment for TASER Device is more than thirty (30) days past due, Axon may terminate Customer's TASER Device plan by notifying Customer. Upon termination for any reason, then as of the date of termination:

    10.1. TASER Device extended warranties and access to Training Content will terminate. No refunds will be given.
    10.2. Axon will invoice Customer the remaining MSRP for TASER Devices received before termination. If terminating for non-appropriations, Axon will not invoice Customer if Customer returns the TASER Device, rechargeable battery, holster, dock, core, training suits, and unused cartridges to Axon within thirty (30) days of the date of

termination.

10.3. Customer will be responsible for payment of any missed payments due to the termination before being allowed to purchase any future TASER Device plan.

Axon Auto-Tagging Appendix

If Auto-Tagging is included on the Quote, this Appendix applies.

1. **Scope.** Axon Auto-Tagging consists of the development of a module to allow Axon Evidence to interact with Customer's Computer-Aided Dispatch ("**CAD**") or Records Management Systems ("**RMS**"). This allows end users to auto-populate Axon video meta-data with a case ID, category, and location-based on data maintained in Customer's CAD or RMS.

2. **Support**. For thirty (30) days after completing Auto-Tagging Services, Axon will provide up to five (5) hours of remote support at no additional charge. Axon will provide free support due to a change in Axon Evidence, if Customer maintains an Axon Evidence and Auto-Tagging subscription. Axon will not provide support if a change is required because Customer changes its CAD or RMS.

3. **Changes**. Axon is only responsible to perform the Services in this Appendix. Any additional Services are out of scope. The Parties must document scope changes in a written and signed change order. Changes may require an equitable adjustment in fees or schedule.

4. **Customer Responsibilities**. Axon's performance of Auto-Tagging Services requires Customer to:

   4.1. Make available relevant systems, including Customer's current CAD or RMS, for assessment by Axon (including remote access if possible);

   4.2. Make required modifications, upgrades or alterations to Customer's hardware, facilities, systems and networks related to Axon's performance of Auto-Tagging Services;

   4.3. Provide access to the premises where Axon is performing Auto-Tagging Services, subject to Customer safety and security restrictions, and allow Axon to enter and exit the premises with laptops and materials needed to perform Auto-Tagging Services;

   4.4. Provide all infrastructure and software information (TCP/IP addresses, node names, network configuration) necessary for Axon to provide Auto-Tagging Services;

   4.5. Promptly install and implement any software updates provided by Axon;

   4.6. Ensure that all appropriate data backups are performed;

   4.7. Provide assistance, participation, and approvals in testing Auto-Tagging Services;

   4.8. Provide Axon with remote access to Customer's Axon Evidence account when required;

   4.9. Notify Axon of any network or machine maintenance that may impact the performance of the module at Customer; and

   4.10. Ensure reasonable availability of knowledgeable staff and personnel to provide timely, accurate, complete, and up-to-date documentation and information to Axon.

5. **Access to Systems**. Customer authorizes Axon to access Customer's relevant computers, network systems, and CAD or RMS solely for performing Auto-Tagging Services. Axon will work diligently to identify the resources and information Axon expects to use and will provide an initial list to Customer. Customer is responsible for and assumes the risk of any problems, delays, losses, claims, or expenses resulting from the content, accuracy, completeness, and consistency of all data, materials, and information supplied by Customer.

Axon Fleet Appendix

If Axon Fleet is included on the Quote, this Appendix applies.

1. Customer Responsibilities.

   1.1. Customer must ensure its infrastructure and vehicles adhere to the minimum requirements to operate Axon Fleet 2 Axon Fleet 3 or a future Fleet iteration (collectively, "**Axon Fleet**") as established by Axon during the qualifier call and on-site assessment at Customer and in any technical qualifying questions. If Customer's representations are inaccurate, the Quote is subject to change.

   1.2. Customer is responsible for providing a suitable work area for Axon or Axon third-party providers to install Axon Fleet systems into Customer vehicles. Customer is responsible for making available all vehicles for which installation services were purchased, during the agreed upon onsite installation dates, Failure to make vehicles available may require an equitable adjustment in fees or schedule.

2. **Cradlepoint**. If Customer purchases Cradlepoint Enterprise Cloud Manager, Customer will comply with Cradlepoint's end user license agreement. The term of the Cradlepoint license may differ from the Axon Evidence Subscription. If Customer requires Cradlepoint support, Customer will contact Cradlepoint directly.

3. **Third-party Installer**. Axon will not be liable for the failure of Axon Fleet hardware to operate per specifications if such failure results from installation not performed by, or as directed by Axon.

4. **Wireless Offload Server**.

   4.1. **License Grant**. Axon grants Customer a non-exclusive, royalty-free, worldwide, perpetual license to use Wireless Offload Server ("**WOS**"). "Use" means storing, loading, installing, or executing WOS solely for data communication with Axon Devices for the number of licenses purchased. The WOS term begins upon the start of the Axon Evidence Subscription.

   4.2. **Restrictions**. Customer may not: (a) modify, alter, tamper with, repair, or create derivative works of WOS; (b) reverse engineer, disassemble, or decompile WOS, apply any process to derive the source code of WOS, or allow others to do so; (c) access or use WOS to avoid incurring fees or exceeding usage limits; (d) copy WOS in whole or part; (e) use trade secret information contained in WOS; (f) resell, rent, loan or sublicense WOS; (g) access WOS to build a competitive device or service or copy any features, functions or graphics of WOS; or (h) remove, alter or obscure any confidentiality or proprietary rights notices (including copyright and trademark notices) of Axon or Axon's licensors on or within WOS.

   4.3. **Updates**. If Customer purchases WOS maintenance, Axon will make updates and error corrections to WOS ("**WOS Updates**") available electronically via the Internet or media as determined by Axon. Customer is responsible for establishing and maintaining adequate Internet access to receive WOS Updates and maintaining computer equipment necessary for use of WOS. The Quote will detail the maintenance term.

   4.4. **WOS Support**. Upon request by Axon, Customer will provide Axon with access to Customer's store and forward servers solely for troubleshooting and maintenance.

5. **Axon Vehicle Software.**

   5.1. **License Grant**. Axon grants Customer a non-exclusive, royalty-free, worldwide, perpetual license to use ViewXL or Dashboard (collectively, "**Axon Vehicle Software**".) "Use" means storing, loading, installing, or executing Axon Vehicle Software solely for data communication with Axon Devices. The Axon Vehicle Software term begins upon the start of the Axon Evidence Subscription.

   5.2. **Restrictions**. Customer may not: (a) modify, alter, tamper with, repair, or create derivative works of Axon Vehicle Software; (b) reverse engineer, disassemble, or decompile Axon Vehicle Software, apply any process to derive the source code of Axon Vehicle Software, or allow others to do so; (c) access or use Axon Vehicle Software to avoid incurring fees or exceeding usage limits; (d) copy Axon Vehicle Software in whole or part; (e) use trade secret information contained in Axon Vehicle Software; (f) resell, rent, loan or sublicense Axon Vehicle Software; (g) access Axon Vehicle Software to build a competitive device or service or copy any features, functions or graphics of Axon Vehicle Software; or (h) remove, alter or obscure any confidentiality or proprietary rights notices (including copyright and trademark notices) of Axon or Axon's licensors on or within Axon Vehicle Software.

6. **Acceptance Checklist**. If Axon provides services to Customer pursuant to any statement of work in connection with Axon Fleet, within seven (7) days of the date on which Customer retrieves Customer's vehicle(s) from the Axon installer, said vehicle having been installed and configured with tested and fully and properly operational in-car hardware and software identified above, Customer will receive a Professional Services Acceptance Checklist to submit to Axon indicating acceptance or denial of said deliverables.

7. **Axon Fleet Upgrade**. If Customer has no outstanding payment obligations and has purchased the "Fleet Technology Assurance Plan" (Fleet TAP), Axon will provide Customer with the same or like model of Fleet hardware ("**Axon Fleet Upgrade**") as scheduled on the Quote.

   7.1. If Customer would like to change models for the Axon Fleet Upgrade, Customer must pay the difference between the MSRP for the offered Axon Fleet Upgrade and the MSRP for the model desired. The MSRP is the MSRP in effect at the time of the upgrade. Customer is responsible for the removal of previously installed hardware and installation of the Axon Fleet Upgrade.

   7.2. Within thirty (30) days of receiving the Axon Fleet Upgrade, Customer must return the original Axon Devices to Axon or destroy the Axon Devices and provide a certificate of destruction to Axon, including serial numbers of the destroyed Axon Devices. If Customer does not destroy or return the Axon Devices to Axon, Axon will deactivate the serial numbers for the Axon Devices received by Customer.

8. **Axon Fleet Termination.** Axon may terminate Customer's Fleet subscription for non-payment. Upon any termination:

   8.1. Axon Fleet subscription coverage terminates, and no refunds will be given.

   8.2. Axon will not and has no obligation to provide the Axon Fleet Upgrade.

   8.3. Customer will be responsible for payment of any missed payments due to the termination before being allowed to purchase any future Fleet TAP.

Axon Respond Appendix

This Axon Respond Appendix applies to both Axon Respond and Axon Respond Plus, if either is included on the Quote.

1. **Axon Respond Subscription Term**. If Customer purchases Axon Respond as part of a bundled offering, the Axon Respond subscription begins on the later of the (1) start date of that bundled offering, or (2) date Axon provisions Axon Respond to Customer. If Customer purchases Axon Respond as a standalone, the Axon Respond subscription begins the later of the (1) date Axon provisions Axon Respond to Customer, or (2) first day of the month following the Effective Date. The Axon Respond subscription term will end upon the completion of the Axon Evidence Subscription associated with Axon Respond.

2. **Scope of Axon Respond**. The scope of Axon Respond is to assist Customer with real-time situational awareness during critical incidents to improve officer safety, effectiveness, and awareness. In the event Customer uses Axon Respond outside this scope, Axon may initiate good-faith discussions with Customer on upgrading Customer's Axon Respond to better meet Customer's needs.

3. **Axon Body LTE Requirements**. Axon Respond is only available and usable with an LTE enabled body-worn camera. Axon is not liable if Customer utilizes the LTE device outside of the coverage area or if the LTE carrier is unavailable. LTE coverage is only available in the United States, including any U.S. territories. Axon may utilize a carrier of Axon's choice to provide LTE service. Axon may change LTE carriers during the Term without Customer's consent.

4. **Axon Fleet LTE Requirements.** Axon Respond is only available and usable with a Fleet system configured with LTE modem and service. Customer is responsible for providing LTE service for the modem. Coverage and availability of LTE service is subject to Customer's LTE carrier.

5. **Axon Respond Service Limitations**. Customer acknowledges that LTE service is made available only within the operating range of the networks. Service may be temporarily refused, interrupted, or limited because of: (a) facilities limitations; (b) transmission limitations caused by atmospheric, terrain, other natural or artificial conditions adversely affecting transmission, weak batteries, system overcapacity, movement outside a service area or gaps in coverage in a service area, and other causes reasonably outside of the carrier's control such as intentional or negligent acts of third parties that damage or impair the network or disrupt service; or (c) equipment modifications, upgrades, relocations, repairs, and other similar activities necessary for the proper or improved operation of service.

   5.1. With regard to Axon Body, Partner networks are made available as-is and the carrier makes no warranties or representations as to the availability or quality of roaming service provided by carrier partners, and the carrier will not be liable in any capacity for any errors, outages, or failures of carrier partner networks. Customer expressly understands and agrees that it has no contractual relationship whatsoever with the underlying wireless service provider or its affiliates or contractors and Customer is not a third-party beneficiary of any agreement between Axon and the underlying carrier.

6. **Termination**. Upon termination of this Agreement, or if Customer stops paying for Axon Respond or bundles that include Axon Respond, Axon will end Axon Respond services, including any Axon-provided LTE service.

Add-on Services Appendix

This Appendix applies if Axon Community Request, Axon Redaction Assistant, and/or Axon Performance are included on the Quote.

1. **Subscription Term**. If Customer purchases Axon Community Request, Axon Redaction Assistant, or Axon Performance as part of OSP 7 or OSP 10, the subscription begins on the later of the (1) start date of the OSP 7 or OSP 10 Term, or (2) date Axon provisions Axon Community Request Axon Redaction Assistant, or Axon Performance to Customer.

1.1. If Customer purchases Axon Community Request, Axon Redaction Assistant, or Axon Performance as a standalone, the subscription begins the later of the (1) date Axon provisions Axon Community Request, Axon Redaction Assistant, or Axon Performance to Customer, or (2) first day of the month following the Effective Date.

1.2. The subscription term will end upon the completion of the Axon Evidence Subscription associated with the add-on.

2. **Axon Community Request Storage**. For Axon Community Request, Customer may store an unlimited amount of data submitted through the public portal ("**Portal Content**"), within Customer's Axon Evidence instance. The post-termination provisions outlined in the Axon Cloud Services Terms of Use Appendix also apply to Portal Content.

3. **Performance Auto-Tagging Data**. In order to provide some features of Axon Performance to Customer, Axon will need to store call for service data from Customer's CAD or RMS.

Axon Auto-Transcribe Appendix

This Appendix applies if Axon Auto-Transcribe is included on the Quote.

1. **Subscription Term.** If Customer purchases Axon Auto-Transcribe as part of a bundle or Axon Cloud Services subscription, the subscription begins on the later of the (1) start date of the bundle or Axon Cloud Services license term, or (2) date Axon provisions Axon Auto-Transcribe to Customer. If Customer purchases Axon Auto-Transcribe minutes as a standalone, the subscription begins on the date Axon provisions Axon Auto-Transcribe to Customer.

   1.1. If Customer cancels Auto-Transcribe services, any amounts owed by the Parties will be based on the amount of time passed under the annual subscription, rather than on the number of minutes used, regardless of usage.

2. **Auto-Transcribe A-La-Carte Minutes.** Upon Axon granting Customer a set number of minutes, Customer may utilize Axon Auto-Transcribe, subject to the number of minutes allowed on the Quote. Customer will not have the ability to roll over unused minutes to future Auto-Transcribe terms. Axon may charge Customer additional fees for exceeding the number of purchased minutes. Axon Auto-Transcribe minutes expire one year after being provisioned to Customer by Axon.

3. **Axon Unlimited Transcribe.** Upon Axon granting Customer an Unlimited Transcribe subscription to Axon Auto-Transcribe, Customer may utilize Axon Auto-Transcribe with no limit on the number of minutes. Unlimited Transcribe includes automatic transcription of all Axon BWC and Axon Capture footage. With regard to Axon Interview Room, Axon Fleet, Axon Citizen, or third-party transcription, transcription must be requested on demand. Notwithstanding the foregoing, Axon may limit usage after 5,000 minutes per user per month for multiple months in a row. Axon will not bill for overages.

4. **Warranty.** Axon disclaims all warranties, express or implied, for Axon Auto-Transcribe.

Axon Virtual Reality Content Terms of Use Appendix

If Virtual Reality is included on the Quote, this Appendix applies.

1. **Term**. The Quote will detail the products and license duration, as applicable, of the goods, services, and software, and contents thereof, provided by Axon to Customer related to virtual reality (collectively, "**Virtual Reality Media**").

2. **Headsets**. Customer may purchase additional virtual reality headsets from Axon. In the event Customer decides to purchase additional virtual reality headsets for use with Virtual Reality Media, Customer must purchase those headsets from Axon.

3. **License Restrictions**. All licenses will immediately terminate if Customer does not comply with any term of this Agreement. If Customer utilizes more users than stated in this Agreement, Customer must purchase additional Virtual Reality Media licenses from Axon. Customer may not use Virtual Reality Media for any purpose other than as expressly permitted by this Agreement. Customer may not:

   3.1. modify, tamper with, repair, or otherwise create derivative works of Virtual Reality Media;

   3.2. reverse engineer, disassemble, or decompile Virtual Reality Media or apply any process to derive the source code of Virtual Reality Media, or allow others to do the same;

   3.3. copy Virtual Reality Media in whole or part, except as expressly permitted in this Agreement;

   3.4. use trade secret information contained in Virtual Reality Media;

   3.5. resell, rent, loan or sublicense Virtual Reality Media;

   3.6. access Virtual Reality Media to build a competitive device or service or copy any features, functions, or graphics of Virtual Reality Media; or

   3.7. remove, alter, or obscure any confidentiality or proprietary rights notices (including copyright and trademark notices) of Axon or Axon's licensors on or within Virtual Reality Media or any copies of Virtual Reality Media.

4. **Privacy**. Customer's use of the Virtual Reality Media is subject to the Axon Virtual Reality Privacy Policy, a current version of which is available at https://www.axon.com/axonvrprivacypolicy.

5. **Termination**. Axon may terminate Customer's license immediately for Customer's failure to comply with any of the terms in this Agreement.

Axon Evidence Local Software Appendix

This Appendix applies if Axon Evidence Local is included on the Quote.

1. **License**. Axon owns all executable instructions, images, icons, sound, and text in Axon Evidence Local. All rights are reserved to Axon. Axon grants a non-exclusive, royalty-free, worldwide right and license to use Axon Evidence Local. "Use" means storing, loading, installing, or executing Axon Evidence Local exclusively for data communication with an Axon Device. Customer may use Axon Evidence Local in a networked environment on computers other than the computer it installs Axon Evidence Local on, so long as each execution of Axon Evidence Local is for data communication with an Axon Device. Customer may make copies of Axon Evidence Local for archival purposes only. Axon shall retain all copyright, trademark, and proprietary notices in Axon Evidence Local on all copies or adaptations.
2. **Term**. The Quote will detail the duration of the Axon Evidence Local license, as well as any maintenance. The term will begin upon installation of Axon Evidence Local.
3. **License Restrictions**. All licenses will immediately terminate if Customer does not comply with any term of this Agreement. Customer may not use Axon Evidence Local for any purpose other than as expressly permitted by this Agreement. Customer may not:
   - 3.1. modify, tamper with, repair, or otherwise create derivative works of Axon Evidence Local;
   - 3.2. reverse engineer, disassemble, or decompile Axon Evidence Local or apply any process to derive the source code of Axon Evidence Local, or allow others to do the same;
   - 3.3. access or use Axon Evidence Local to avoid incurring fees or exceeding usage limits or quotas;
   - 3.4. copy Axon Evidence Local in whole or part, except as expressly permitted in this Agreement;
   - 3.5. use trade secret information contained in Axon Evidence Local;
   - 3.6. resell, rent, loan or sublicense Axon Evidence Local;
   - 3.7. access Axon Evidence Local to build a competitive device or service or copy any features, functions, or graphics of Axon Evidence Local; or
   - 3.8. remove, alter, or obscure any confidentiality or proprietary rights notices (including copyright and trademark notices) of Axon or Axon's licensors on or within Axon Evidence Local or any copies of Axon Evidence Local.
4. **Support**. Axon may make available updates and error corrections ("**Updates**") to Axon Evidence Local. Axon will provide Updates electronically via the Internet or media as determined by Axon. Customer is responsible for establishing and maintaining adequate access to the Internet to receive Updates. Customer is responsible for maintaining the computer equipment necessary to use Axon Evidence Local. Axon may provide technical support of a prior release/version of Axon Evidence Local for six (6) months from when Axon made the subsequent release/version available.
5. **Termination**. Axon may terminate Customer's license immediately for Customer's failure to comply with any of the terms in this Agreement. Upon termination, Axon may disable Customer's right to login to Axon Evidence Local.

Axon Application Programming Interface Appendix

This Appendix applies if Axon's API Services or a subscription to Axon Cloud Services is included on the Quote.

1. **Definitions**.

   1.1. "**API Client**" means the software that acts as the interface between Customer's computer and the server, which is already developed or to be developed by Customer.

   1.2. "**API Interface**" means software implemented by Customer to configure Customer's independent API Client Software to operate in conjunction with the API Service for Customer's authorized Use.

   1.3. "**Axon Evidence Partner API, API or Axon API**" (collectively "**API Service**") means Axon's API which provides a programmatic means to access data in Customer's Axon Evidence account or integrate Customer's Axon Evidence account with other systems.

   1.4. "**Use**" means any operation on Customer's data enabled by the supported API functionality.

2. **Purpose and License**.

   2.1. Customer may use API Service and data made available through API Service, in connection with an API Client developed by Customer. Axon may monitor Customer's use of API Service to ensure quality, improve Axon devices and services, and verify compliance with this Agreement. Customer agrees to not interfere with such monitoring or obscure from Axon Customer's use of API Service. Customer will not use API Service for commercial use.

   2.2. Axon grants Customer a non-exclusive, non-transferable, non-sublicensable, worldwide, revocable right and license during the Term to use API Service, solely for Customer's Use in connection with Customer's API Client.

   2.3. Axon reserves the right to set limitations on Customer's use of the API Service, such as a quota on operations, to ensure stability and availability of Axon's API. Axon will use reasonable efforts to accommodate use beyond the designated limits.

3. **Configuration**. Customer will work independently to configure Customer's API Client with API Service for Customer's applicable Use. Customer will be required to provide certain information (such as identification or contact details) as part of the registration. Registration information provided to Axon must be accurate. Customer will inform Axon promptly of any updates. Upon Customer's registration, Axon will provide documentation outlining API Service information.

4. **Customer Responsibilities**. When using API Service, Customer and its end users may not:

   4.1. use API Service in any way other than as expressly permitted under this Agreement;

   4.2. use in any way that results in, or could result in, any security breach to Axon;

   4.3. perform an action with the intent of introducing any viruses, worms, defect, Trojan horses, malware, or any items of a destructive nature to Axon Devices and Services;

   4.4. interfere with, modify, disrupt or disable features or functionality of API Service or the servers or networks providing API Service;

   4.5. reverse engineer, decompile, disassemble, or translate or attempt to extract the source code from API Service or any related software;

   4.6. create an API Interface that functions substantially the same as API Service and offer it for use by third parties;

   4.7. provide use of API Service on a service bureau, rental or managed services basis or permit other individuals or entities to create links to API Service;

   4.8. frame or mirror API Service on any other server, or wireless or Internet-based device;

   4.9. make available to a third-party, any token, key, password or other login credentials to API Service;

   4.10. take any action or inaction resulting in illegal, unauthorized or improper purposes; or

   4.11. disclose Axon's API manual.

5. **API Content**. All content related to API Service, other than Customer Content or Customer's API Client content, is considered Axon's API Content, including:

5.1. the design, structure and naming of API Service fields in all responses and requests;

5.2. the resources available within API Service for which Customer takes actions on, such as evidence, cases, users, or reports;

5.3. the structure of and relationship of API Service resources; and

5.4. the design of API Service, in any part or as a whole.

6. **Prohibitions on API Content**. Neither Customer nor its end users will use API content returned from the API Interface to:

6.1. scrape, build databases, or otherwise create permanent copies of such content, or keep cached copies longer than permitted by the cache header;

6.2. copy, translate, modify, create a derivative work of, sell, lease, lend, convey, distribute, publicly display, or sublicense to any third-party;

6.3. misrepresent the source or ownership; or

6.4. remove, alter, or obscure any confidentiality or proprietary rights notices (including copyright and trademark notices).

7. **API Updates**. Axon may update or modify the API Service from time to time ("**API Update**"). Customer is required to implement and use the most current version of API Service and to make any applicable changes to Customer's API Client required as a result of such API Update. API Updates may adversely affect how Customer's API Client access or communicate with API Service or the API Interface. Each API Client must contain means for Customer to update API Client to the most current version of API Service. Axon will provide support for one (1) year following the release of an API Update for all depreciated API Service versions.

Advanced User Management Appendix

This Appendix applies if Axon Advanced User Management is included on the Quote.

1. **Scope**. Advanced User Management allows Customer to (a) utilize bulk user creation and management, (b) automate user creation and management through System for Cross-domain Identity Management ("**SCIM**"), and (c) automate group creation and management through SCIM.

2. **Advanced User Management Configuration**. Customer will work independently to configure Customer's Advanced User Management for Customer's applicable Use. Upon request, Axon will provide general guidance to Customer, including documentation that details the setup and configuration process.

FUSUS APPENDIX

1. **Access**. Upon Axon granting Customer a subscription to FUSUS cloud services in the Quote, Customer may access and use FūsusONE Real Time Interoperability Solution services to for the purpose of viewing and managing Customer Content. Some Customer content contained in Axon's Evidence.com may not be accessible or transferable to the FUSUS cloud services.

2. **Product Limits**. The following limitations apply to the below products:

	Lite	Basic	Pro	Enterprise	Enterprise Plus
Total Number of Managed End Points	150	150	500	1500	4500
Max Number of Video Streams Connected	0	150	500	1500	4500
Indefinite Cloud Storage		2TB	5TB	10TB	30TB

Overages may result in additional fees or the need to upgrade products.

3. **Disclaimer**. Customer is responsible for use of any internet access devices and/or all third-party hardware, software, services, telecommunication services (including Internet connectivity), or other items used by Customer to access the service ("Third-Party Components") are the sole and exclusive responsibility of Customer, and that Axon has no responsibility for such Third-party Components, FUSUS cloud services, or Customer relationships with such third parties. Customer agrees to at all times comply with the lawful terms and conditions of agreements with such third parties. Axon does not represent or warrant that the FUSUS cloud services and the Customer Content are compatible with any specific third-party hardware or software or any other Third-Party Components. Customer is responsible for providing and maintaining an operating environment as reasonably necessary to accommodate and access the FUSUS cloud services.

4. **Data Privacy**. Axon may collect, use, transfer, disclose and otherwise process Customer Content in the context of facilitating communication of data with Customer through their use of FUSUS cloud services FUSUS app (iOS or Android interface), complying with legal requirements, monitoring the Customer's use of FUSUS systems, and undertaking data analytics. Customer Content saved in Axon Cloud Services is the sole property of Customer and may not be distributed by Axon to any third parties outside of the Customer's organization without the Customer's expressed written consent.

Axon Channel Services Appendix

This Appendix applies if Customer purchases Axon Channel Service, as set forth on the Quote.

1. Definitions.

   1.1. "**Axon Digital Evidence Management System**" means Axon Evidence or Axon Evidence Local, as specified in the attached Channel Services Statement of Work.

   1.2. "**Active Channel**" means a third-party system that is continuously communicating with an Axon Digital Evidence Management System.

   1.3. "**Inactive Channel**" means a third-party system that will have a one-time communication to an Axon Digital Evidence Management System.

2. **Scope**. Customer currently has a third-party system or data repository from which Customer desires to share data with Axon Digital Evidence Management. Axon will facilitate the transfer of Customer's third-party data into an Axon Digital Evidence Management System or the transfer of Customer data out of an Axon Digital Evidence Management System as defined in the Channel Services Statement of Work ("**Channel Services SOW**"). Channel Services will not delete any Customer Content. Customer is responsible for verifying all necessary data is migrated correctly and retained per Customer policy.

3. **Changes**. Axon is only responsible to perform the Services described in this Appendix and Channel Services SOW. Any additional services are out of scope. The Parties must document scope changes in a written and signed change order. Changes may require an equitable adjustment in the charges or schedule.

4. **Purpose and Use**. Customer is responsible for verifying Customer has the right to share data from and provide access to third-party system as it relates to the Services described in this Appendix and the Channel Services SOW. For Active Channels, Customer is responsible for any changes to a third-party system that may affect the functionality of the channel service. Any additional work required for the continuation of the Service may require additional fees. An Axon Field Engineer may require access to Customer's network and systems to perform the Services described in the Channel Services SOW. Customer is responsible for facilitating this access per all laws and policies applicable to Customer.

5. **Project Management**. Axon will assign a Project Manager to work closely with Customer's project manager and project team members and will be responsible for completing the tasks required to meet all contract deliverables on time and budget.

6. **Warranty.** Axon warrants that it will perform the Channel Services in a good and workmanlike manner.

7. **Monitoring**. Axon may monitor Customer's use of Channel Services to ensure quality, improve Axon devices and services, prepare invoices based on the total amount of data migrated, and verify compliance with this Agreement. Customer agrees not to interfere with such monitoring or obscure from Axon Customer's use of channel services.

8. **Customer's Responsibilities.** Axon's successful performance of the Channel Services requires Customer:

   8.1. Make available its relevant systems for assessment by Axon (including making these systems available to Axon via remote access);

   8.2. Provide access to the building facilities and where Axon is to perform the Channel Services, subject to safety and security restrictions imposed by the Customer (including providing security passes or other necessary documentation to Axon representatives performing the Channel Services permitting them to enter and exit Customer premises with laptop personal computers and any other materials needed to perform the Channel Services);

   8.3. Provide all necessary infrastructure and software information (TCP/IP addresses, node names, and network configuration) for Axon to provide the Channel Services;

   8.4. Ensure all appropriate data backups are performed;

   8.5. Provide Axon with remote access to the Customer's network and third-party systems when required for Axon to perform the Channel Services;

   8.6. Notify Axon of any network or machine maintenance that may impact the performance of the Channel Services; and

   8.7. Ensure the reasonable availability by phone or email of knowledgeable staff, personnel, system administrators,

and operators to provide timely, accurate, complete, and up-to-date documentation and information to Axon (these contacts are to provide background information and clarification of information required to perform the Channel Services).

VIEVU Data Migration Appendix

This Appendix applies if Customer purchases Migration services, as set forth on the Quote.

1. **Scope**. Customer currently has legacy data in the VIEVU solution from which Customer desires to move to Axon Evidence. Axon will work with Customer to copy legacy data from the VIEVU solution into Axon Evidence ("**Migration**"). Before Migration, Customer and Axon will work together to develop a Statement of Work ("**Migration SOW**") to detail all deliverables and responsibilities. The Migration will require the availability of Customer resources. Such resources will be identified in the SOW. On-site support during Migration is not required. Upon Customer's request, Axon will provide on-site support for an additional fee. Any request for on-site support will need to be pre-scheduled and is subject to Axon's resource availability.

   1.1. A small amount of unexposed data related to system information will not be migrated from the VIEVU solution to Axon Evidence. Upon request, some of this data can be manually exported before Migration and provided to Customer. The Migration SOW will provide further detail.

2. **Changes**. Axon is only responsible to perform the Services described in this Appendix and Migration SOW. Any additional services are out of scope. The Parties must document scope changes in a written and signed change order. Changes may require an equitable adjustment in the charges or schedule.

3. **Project Management**. Axon will assign a Project Manager to work closely with Customer's project manager and project team members and will be responsible for completing the tasks required to meet all contract deliverables on time and budget.

4. **Downtime**. There may be downtime during the Migration. The duration of the downtime will depend on the amount of data that Customer is migrating. Axon will work with Customer to minimize any downtime. Any VIEVU mobile application will need to be disabled upon Migration.

5. **Functionality Changes**. Due to device differences between the VIEVU solution and the Axon's Axon Evidence solution, there may be functionality gaps that will not allow for all migrated data to be displayed the same way in the user interface after Migration.

6. **Acceptance**. Once the Migration is complete, Axon will notify Customer and provide an acceptance form. Customer is responsible for verifying that the scope of the project has been completed and all necessary data is migrated correctly and retained per Customer policy. Customer will have ninety (90) days to provide Axon acceptance that the Migration was successful, or Axon will deem the Migration accepted.

   6.1. In the event Customer does not accept the Migration, Customer agrees to notify Axon within a reasonable time. Customer also agrees to allow Axon a reasonable time to resolve any issue. In the event Customer does not provide Axon with a written rejection of the Migration during these ninety (90) days, Customer may be charged for additional monthly storage costs. After Customer provides acceptance of the Migration, Axon will delete all data from the VIEVU solution ninety (90) days after the Migration.

7. **Post-Migration**. After Migration, the VIEVU solution may not be supported and updates may not be provided. Axon may end of life the VIEVU solution in the future. If Customer elects to maintain data within the VIEVU solution, Axon will provide Customer ninety (90) days' notice before ending support for the VIEVU solution.

8. **Warranty.** Axon warrants that it will perform the Migration in a good and workmanlike manner.

9. **Monitoring**. Axon may monitor Customer's use of Migration to ensure quality, improve Axon Devices and Services, prepare invoices based on the total amount of data migrated, and verify compliance with this Agreement. Customer agrees not to interfere with such monitoring or obscure Customer's use of Migration from Axon.

10.

Axon Technical Account Manager Appendix

This Appendix applies if Axon Support Engineer services are included on the Quote.

1. **Axon Technical Account Manager Payment.** Axon will invoice for Axon Technical Account Manager ("**TAM**") services, as outlined in the Quote, when the TAM commences work on-site at Customer.

2. **Full-Time TAM Scope of Services.**

   2.1. A Full-Time TAM will work on-site four (4) days per week, unless an alternate schedule or reporting location is mutually agreed upon by Axon and Customer.

   2.2. Customer's Axon sales representative and Axon's Customer Success team will work with Customer to define its support needs and ensure the Full-Time TAM has skills to align with those needs. There may be up to a six- (6-) month waiting period before the Full-Time TAM can work on-site, depending upon Customer's needs and availability of a Full-Time TAM.

   2.3. The purchase of Full-Time TAM Services includes two (2) complimentary Axon Accelerate tickets per year of the Agreement, so long as the TAM has started work at Customer, and Customer is current on all payments for the Full-Time TAM Service.

   2.4. The Full-Time TAM **Service options are listed below:**

Ongoing System Set-up and Configuration Assisting with assigning cameras and registering docks Maintaining **Customer's Axon Evidence account** Connecting Customer to "Early Access" programs for new devices
Account Maintenance Conducting on-site training on new features and **devices for Customer leadership team(s)** Thoroughly documenting issues and workflows and suggesting new workflows to improve **the effectiveness of the Axon program** Conducting weekly meetings to cover current issues and program status
Data Analysis Providing on-demand Axon usage data to identify trends and insights for improving daily workflows Comparing **Customer's Axon usage and trends to peers to establish best practices** Proactively monitoring the health of Axon equipment and coordinating returns when needed
Direct Support Providing on-site, Tier 1 and Tier 2 (as defined in Axon's Service Level Agreement) technical support for Axon Devices Proactively monitoring the health of **Axon equipment** Creating and monitoring RMAs **on-site** Providing Axon app support Monitoring and testing new firmware and workflows before they are released to Customer's production environment
Customer Advocacy Coordinating bi-**annual voice of customer meetings with Axon's Device Management team** Recording and tracking Customer feature requests and major bugs

3. **Regional TAM Scope of Services**

   3.1. A Regional TAM will work on-site for three (3) consecutive days per quarter. Customer must schedule the on-site days at least two (2) weeks in advance. The Regional TAM will also be available by phone and email during regular business hours up to eight (8) hours per week.

   3.2. There may be up to a six- (6-) month waiting period before Axon assigns a Regional TAM to Customer, depending upon the availability of a Regional TAM.

   3.3. The purchase of Regional TAM Services includes two (2) complimentary Axon Accelerate tickets per year of the Agreement, so long as the TAM has started work at Customer and Customer is current on all payments for the Regional TAM Service.

   3.4. The Regional TAM service options are listed below:

Account Maintenance Conducting remote training on new features and **devices for Customer's leadership** Thoroughly documenting issues and workflows and suggesting new **workflows to improve the effectiveness of the Axon program** Conducting weekly conference calls to cover **current issues and program status** Visiting Customer quarterly (up to 3 consecutive days) to perform a quarterly business review, discuss Customer's goals for your Axon program, and continue to ensure a successful deployment of Axon Devices
Direct Support **Providing remote, Tier 1 and Tier 2 (As defined Axon's Service Level Agreement) technical support for Axon Devices** Creating and monitoring RMAs remotely
Data Analysis Providing quarterly Axon **usage data to identify trends and program efficiency opportunities** Comparing an **Customer's Axon usage and trends to peers to establish best practices** Proactively monitoring the health of Axon equipment and coordinating returns when needed
Customer Advocacy Coordinating bi-yearly Voice of **Customer meetings with Device Management team** Recording and tracking Customer feature requests and major bugs

4. **Out of Scope Services.** The TAM is responsible to perform only the Services described in this Appendix. Any additional Services discussed or implied that are not defined explicitly in this Appendix will be considered out of the scope.

5. **TAM Leave Time**. The TAM will be allowed up seven (7) days of sick leave and up to fifteen (15) days of vacation time per each calendar year. The TAM will work with Customer to coordinate any time off and will provide Customer with at least two (2) weeks' notice before utilizing any vacation days.

Axon Investigate Appendix

If the Quote includes Axon's On Prem Video Suite known as Axon Investigate or Third Party Video Support License, the following appendix shall apply.

1. **License Grant**. Subject to the terms and conditions specified below and upon payment of the applicable fees set forth in the Quote, Axon grants to Customer a nonexclusive, nontransferable license to install, use, and display the Axon Investigate software ("**Software**") solely for its own internal use only and for no other purpose, for the duration of subscription term set forth in the Quote. This Agreement does not grant Customer any right to enhancements or updates, but if such are made available to Customer and obtained by Customer they shall become part of the Software and governed by the terms of this Agreement.

2. **Third-Party Licenses**. Axon licenses several third-party codecs and applications that are integrated into the Software. Users with an active support contract with Axon are granted access to these additional features. By accepting this agreement, Customer agrees to and understands that an active support contract is required for all of the following features: DNxHD output formats, decoding files via the "fast indexing" method, proprietary file metadata, telephone and email support, and all future updates to the software. If Customer terminates the annual support contract with Axon, the features listed above will be disabled within the Software. It is recommended that users remain on an active support contract to maintain the full functionality of the Software.

3. **Restrictions on Use**. Customer may not permit any other person to use the Software unless such use is in accordance with the terms of this Agreement. Customer may not modify, translate, reverse engineer, reverse compile, decompile, disassemble or create derivative works with respect to the Software, except to the extent applicable laws specifically prohibit such restrictions. Customer may not rent, lease, sublicense, grant a security interest in or otherwise transfer Customer's rights to or to use the Software. Any rights not granted are reserved to Axon.

4. **Term**. For purchased perpetual Licenses only—excluding Licenses leased for a pre-determined period, evaluation licenses, companion licenses, as well as temporary licenses--the license shall be perpetual unless Customer fails to observe any of its terms, in which case it shall terminate immediately, and without additional prior notice. The terms of Paragraphs 1, 2, 3, 5, 6, 8 and 9 shall survive termination of this Agreement. For licenses leased for a pre-determined period, for evaluation licenses, companion licenses, as well as temporary licenses, the license is granted for a period beginning at the installation date and for the duration of the evaluation period or temporary period as agreed between Axon and Customer.

5. **Title**. Axon and its licensors shall have sole and exclusive ownership of all right, title, and interest in and to the Software and all changes, modifications, and enhancements thereof (including ownership of all trade secrets and copyrights pertaining thereto), regardless of the form or media in which the original or copies may exist, subject only to the rights and privileges expressly granted by Axon. This Agreement does not provide Customer with title or ownership of the Software, but only a right of limited use.

6. **Copies**. The Software is copyrighted under the laws of the United States and international treaty provisions. Customer may not copy the Software except for backup or archival purposes, and all such copies shall contain all Axon's notices regarding proprietary rights as contained in the Software as originally provided to Customer. If Customer receives one copy electronically and another copy on media, the copy on media may be used only for archival purposes and this license does not authorize Customer to use the copy of media on an additional server.

7. **Actions Required Upon Termination**. Upon termination of the license associated with this Agreement, Customer agrees to destroy all copies of the Software and other text and/or graphical documentation, whether in electronic or printed format, that describe the features, functions and operation of the Software that are provided by Axon to Customer ("**Software Documentation**") or return such copies to Axon. Regarding any copies of media containing regular backups of Customer's computer or computer system, Customer agrees not to access such media for the purpose of recovering the Software or online Software Documentation.

8. **Export Controls**. None of the Software, Software Documentation or underlying information may be downloaded or otherwise exported, directly or indirectly, without the prior written consent, if required, of the office of Export Administration of the United States, Department of Commerce, nor to any country to which the U.S. has embargoed goods, to any person on the U.S. Treasury Department's list of Specially Designated Nations, or the U.S. Department of Commerce's Table of Denials.

9. **U.S. Government Restricted Rights**. The Software and Software Documentation are Commercial Computer Software provided with Restricted Rights under Federal Acquisition Regulations and Customer supplements to them. Use, duplication or disclosure by the U.S. Government is subject to restrictions as set forth in subparagraph (c)(1)(ii) of the Rights in Technical Data and Computer Software clause at DFAR 255.227-7013 et. Seq. or 252.211-7015, or

subparagraphs (a) through (d) of the Commercial Computer Software Restricted Rights at FAR 52.227-19, as applicable, or similar clauses in the NASA FAR Supplement. Contractor/manufacturer is Axon Enterprise, Inc., 17800 North 85th Street, Scottsdale, Arizona 85255.

My90 Terms of Use Appendix

Definitions.

1.1. "**My90**" means Axon's proprietary platform and methodology to obtain and analyze feedback, and other related offerings, including, without limitation, interactions between My90 and Axon products.

1.2. "**Recipient Contact Information**" means contact information, as applicable, including phone number or email address (if available) of the individual whom Customer would like to obtain feedback.

1.3. "**Customer Data**" means

1.3.1. "My90 Customer Content" which means data, including Recipient Contact Information, provided to My90 directly by Customer or at their direction, or by permitting My90 to access or connect to an information system or similar technology. My90 Customer Content does not include My90 Non-Content Data.

1.3.2. "My90 Non-Content Data" which means data, configuration, and usage information about Customer's My90 tenant, and client software, users, and survey recipients that is Processed (as defined in Section 1.6 of this Appendix) when using My90 or responding to a My90 Survey. My90 Non-Content Data includes data about users and survey recipients captured during account management and customer support activities. My90 Non-Content Data does not include My90 Customer Content.

1.3.3. "Survey Response" which means survey recipients' response to My90 Survey.

1.4. "**My90 Data**" means

1.4.1. "My90 Survey" which means surveys, material(s) or content(s) made available by Axon to Customer and survey recipients within My90.

1.4.2. "Aggregated Survey Response" which means Survey Response that has been de-identified and aggregated or transformed so that it is no longer reasonably capable of being associated with, or could reasonably be linked directly or indirectly to, a particular individual.

1.5. "**Personal Data**" means any information relating to an identified or identifiable natural person. An identifiable natural person is one who can be identified, directly or indirectly, in particular by reference to an identifier such as a name, an identification number, location data, an online identifier or to one or more factors specific to the physical, physiological, genetic, mental, economic, cultural, or social identity of that natural person.

1.6. "**Processing**" means any operation or set of operations which is performed on data or on sets of data, whether or not by automated means, such as collection, recording, organization, structuring, storage, adaptation or alteration, retrieval, consultation, use, disclosure by transmission, dissemination or otherwise making available, alignment or combination, restriction, erasure, or destruction.

1.7. "**Sensitive Personal Data**" means Personal Data that reveals an individual's health, racial or ethnic origin, sexual orientation, disability, religious or philosophical beliefs, or trade union membership.

2. **Access**. Upon Axon granting Customer a subscription to My90, Customer may access and use My90 to store and manage My90 Customer Content, and applicable My90 Surveys and Aggregated Survey Responses. This Appendix is subject to the Terms and Conditions of Axon's Master Service and Purchasing Agreement or in the event you and Axon have entered into a prior agreement to govern all future purchases, that agreement shall govern.

3. **IP address**. Axon will not store survey respondents' IP address.

4. **Customer Owns My90 Customer Content**. Customer controls or owns all right, title, and interest in My90 Customer Content. Except as outlined herein, Axon obtains no interest in My90 Customer Content, and My90 Customer Content is not Axon's business records. Except as set forth in this Agreement, Customer is responsible for uploading, sharing, managing, and deleting My90 Customer Content. Axon will only have access to My90 Customer Content for the limited purposes set forth herein. Customer agrees to allow Axon access to My90 Customer Content to (a) perform troubleshooting, maintenance, or diagnostic screenings; and (b) enforce this Agreement or policies governing use of My90 and other Axon products.

5. **Details of the Processing**. The nature and purpose of the Processing under this Appendix are further specified in Schedule 1 Details of the Processing, to this Appendix.

6. **Security**. Axon will implement commercially reasonable and appropriate measures to secure Customer Data against accidental or unlawful loss, access, or disclosure. Axon will maintain a comprehensive information security program to protect Customer Data including logical, physical access, vulnerability, risk, and configuration management; incident monitoring and response; security education; and data protection. Axon will not treat Customer Data in accordance with FBI CJIS Security Policy requirements and does not agree to the CJIS Security Addendum for this engagement or any other security or privacy related commitments that have been established between Axon and Customer, such as ISO 27001 certification or SOC 2 Reporting.

7. **Privacy**. Customer use of My90 is subject to the My90 Privacy Policy, a current version of which is available at https://www.axon.com/legal/my90privacypolicy. Customer agrees to allow Axon access to My90 Non-Content Data from Customer to (a) perform troubleshooting, maintenance, or diagnostic screenings; (b) provide, develop, improve, and support current and future Axon products including My90 and related services; and (c) enforce this Agreement or policies governing the use of My90 or other Axon products.

8. **Location of Storage**. Axon may transfer Customer Data to third-party subcontractors for Processing. Axon will determine the locations for Processing of Customer Data. For all Customer, Axon will Process and store Customer Data within the country Customer is based. Ownership of My90 Customer Content remains with Customer.

9. **Required Disclosures**. Axon will not disclose Customer Data that Customer shares with Axon except as compelled by a court or administrative body or required by any law or regulation. Axon will notify Customer if any disclosure request is received for Customer Data so Customer may file an objection with the court or administrative body, unless prohibited by law.

10. **Data Sharing**. Axon may share data only with entities that control or are controlled by or under common control of Axon, and as described below:

    10.1. Axon may share Customer Data with third parties it employs to perform tasks on Axon's behalf to provide products or services to Customer.

    10.2. Axon may share Aggregated Survey Response with third parties, such as other Axon customers, local city agencies, private companies, or members of the public that are seeking a way to collect analysis on general policing and community trends. Aggregated Survey Response will not be reasonably capable of being associated with or reasonably be linked directly or indirectly to a particular individual.

11. **License and Intellectual Property**. Customer grants Axon, its affiliates, and assignees the irrevocable, perpetual, fully paid, royalty-free, and worldwide right and license to use Customer Data for internal use including but not limited to analysis and creation of derivatives. Axon may not release Customer Data to any third party under this right that is not aggregated and de-identified. Customer acknowledges that Customer will have no intellectual property right in any media, good or service developed or improved by Axon. Customer acknowledges that Axon may make any lawful use of My90 Data and any derivative of Customer Data including, without limitation, the right to monetize, redistribute, make modification of, and make derivatives of the surveys, survey responses and associated data, and Customer will have no intellectual property right in any good, service, media, or other product that uses My90 Data.

12. **Customer Use of Aggregated Survey Response**. Axon will make available to Customer Aggregated Survey Response and rights to use for any Customer purpose.

13. **Data Subject Rights**. Taking into account the nature of the Processing, Axon shall assist Customer by appropriate technical and organizational measures, insofar as this is reasonable, for the fulfilment of Customer's obligation to respond to a Data Subject Request regarding any Personal Data contained within My90 Customer Content. If in regard to My90 Customer Content, Axon receives a Data Subject Request from Customer's data subject to exercise one or more of its rights under applicable Data Protection Law, Axon will redirect the data subject within seventy-two (72) hours, to make its request directly to Customer. Customer will be responsible for responding to any such request.

14. **Assistance with Requests Related to My90 Customer Content**. With regard to the processing of My90 Customer Content, Axon shall, if not prohibited by applicable law, notify Customer without delay after receipt, if Axon: (a) receives a request for information from the Supervisory Authority or any other competent authority regarding My90 Customer Content; (b) receives a complaint or request from a third party regarding the obligations of Customer or Axon under applicable Data Protection Law; or (c) receives any other communication which directly or indirectly pertains to My90 Customer Content or the Processing or protection of My90 Customer Content. Axon

shall not respond to such requests, complaints, or communications, unless Customer has given Axon written instructions to that effect or if such is required under a statutory provision. In the latter case, prior to responding to the request, Axon shall notify Customer of the relevant statutory provision and Axon shall limit its response to what is necessary to comply with the request.

15. **Axon Evidence Partner Sharing**. If Axon Evidence partner sharing is used to share My90 Customer Content, Customer will manage the data sharing partnership with Axon and access to allow only for authorized data sharing with Axon. Customer acknowledges that any applicable audit trail on the original source data will not include activities and processing performed against the instances, copies or clips that has been shared with Axon. Customer also acknowledges that the retention policy from the original source data is not applied to any data shared with Axon. Except as provided herein, data shared with Axon may be retained indefinitely by Axon.

16. **Data Retention**. Phone numbers provided to Axon directly by Customer or at their direction, or by permitting My90 to access or connect to an information system or similar technology will be retained for twenty-four (24) hours. Axon will not delete Aggregated Survey Response for four (4) years following termination of this Agreement. There will be no functionality of My90 during these four (4) years other than the ability to submit a request to retrieve Aggregated Survey Response. Axon has no obligation to maintain or provide Aggregated Survey Response after these four years and may thereafter, unless legally prohibited, delete all Aggregated Survey Response.

17. **Termination**. Termination of an My90 Agreement will not result in the removal or modification of previously shared My90 Customer Content or the potential monetization of Survey Response and Aggregated Survey Response.

18. **Managing Data Shared**. Customer is responsible for:

    18.1. Ensuring My90 Customer Content is appropriate for use in My90. This includes, prior to sharing: (a) applying any and all required redactions, clipping, removal of metadata, logs, etc. and (b) coordination with applicable public disclosure officers and related legal teams;

    18.2. Ensuring that only My90 Customer Content that is authorized to be shared for the purposes outlined is shared with Axon. Customer will periodically monitor or audit this shared data;

    18.3. Using an appropriately secure data transfer mechanism to provide My90 Customer Content to Axon;

    18.4. Immediately notifying Axon if My90 Customer Content that is not authorized for sharing has been shared. Axon may not be able to immediately retrieve or locate all instances, copies or clips of My90 Customer Content in the event Customer requests to un-share previously shared My90 Customer Content;

19. **Prior to enrollment in My90**. Prior to enrolling in My90, Customer will:

    19.1. determine how to use My90 in accordance with applicable laws and regulations including but not limited to consents, use of info or other legal considerations;

    19.2. develop a set of default qualification criteria of what My90 Customer Content may be shared with Axon; and

    19.3. assign responsibilities for managing what My90 Customer Content is shared with Axon and educate users on what data may or not be shared with Axon.

20. **Customer Responsibilities**. Customer is responsible for:

    20.1. ensuring no My90 Customer Content or Customer end user's use of My90 Customer Content or My90 violates this Agreement or applicable laws;

    20.2. providing, and will continue to provide, all notices and has obtained, and will continue to obtain, all consents and rights necessary under applicable laws for Axon to process Customer Data in accordance with this Agreement; and

    20.3. maintaining necessary computer equipment and Internet connections for use of My90. If Customer becomes aware of any violation of this Agreement by an end user, Customer will immediately terminate that end user's access to My90. Customer will also maintain the security of end usernames and passwords and security and access by end users to My90 Customer Content. Customer is responsible for ensuring the configuration and utilization of My90 meets applicable Customer regulations and standards. Customer may not sell, transfer, or sublicense access to any other entity or person. Customer shall contact Axon

immediately if an unauthorized party may be using Customer's account or My90 Customer Content or if account information is lost or stolen.

21. **Suspension**. Axon may temporarily suspend Customer's or any end user's right to access or use any portion or all of My90 immediately upon notice, if Customer or end user's use of or registration for My90 may (a) pose a security risk to Axon products including My90, or any third-party; (b) adversely impact My90, the systems, or content of any other customer; (c) subject Axon, Axon's affiliates, or any third-party to liability; or (d) be fraudulent. Customer remains responsible for all fees, if applicable, incurred through suspension. Axon will not delete My90 Customer Content or Aggregated Survey Response because of suspension, except as specified in this Agreement.

22. **My90 Restrictions.** Customer and Customer end users (including employees, contractors, agents, officers, volunteers, and directors), may not, or may not attempt to:

22.1. copy, modify, tamper with, repair, or create derivative works of any part of My90;

22.2. reverse engineer, disassemble, or decompile My90 or apply any process to derive any source code included in My90, or allow others to do the same;

22.3. access or use My90 with the intent to gain unauthorized access, avoid incurring fees or exceeding usage limits or quotas;

22.4. use trade secret information contained in My90, except as expressly permitted in this Agreement;

22.5. access My90 to build a competitive product or service or copy any features, functions, or graphics of My90;

22.6. remove, alter, or obscure any confidentiality or proprietary rights notices (including copyright and trademark notices) of Axon's or Axon's licensors on or within My90; or

22.7. use My90 to store or transmit infringing, libelous, or other unlawful or tortious material; to store or transmit material in violation of third-party privacy rights; or to store or transmit malicious code.

Schedule 1- Details of the Processing

1. **Nature and Purpose of the Processing.** To help Customer obtain feedback from individuals, such as members of their community, staff, or officers. Features of My90 may include:

1.1. Survey Tool where Customer may create, distribute, and analyze feedback from individuals it designates. Customer may designate members of the community, staff or officers from whom they would like to obtain feedback;

1.2. Creation of custom forms for surveys. Customer may select questions from a list of pre-drafted questions or create their own;

1.3. Distribution of survey via multiple distribution channels such as text message;

1.4. Ability to access and analyze Survey Response. Axon may also provide Customer Aggregated Survey Responses which contain analysis and insights from the Survey Response;

1.5. Direct integrations into information systems including Computer Aided Dispatch ("**CAD**"). This will enable Customer to share contact information easily and quickly with Axon of any individuals from whom it wishes to obtain feedback, enabling Axon to communicate directly with these individuals;

1.6. Data Dashboard Beta Test ("**Data Dashboard**") where Survey Response and Aggregated Survey Response will be displayed for Customer use. Customer will be able to analyze, interpret, and share results of the Survey Response. My90 may provide beta versions of the Data Dashboard that are specifically designed for Customer to test before they are publicly available;

1.7. Survey Responses will be aggregated and de-identified and may be subsequently distributed and disclosed through various mediums to: (1) Customer; (2) other Axon Customer; (3) private companies; and (4) members of the public. The purpose of disclosure is to provide ongoing insights and comparisons on general policing and community trends. Prior to disclosing this information, Axon will ensure that the Survey Response has been de-identified and aggregated or transformed so that it is no longer reasonably capable of being associated with, or could reasonably be linked directly or indirectly to a particular individual; and

1.8. Provide services and materials to engage Customer stakeholders, market the partnership to the public, and facilitate training.

Axon Event Offer Appendix

If the Agreement includes the provision of, or Axon otherwise offers, ticket(s), travel and/or accommodation for select events hosted by Axon ("Axon Event"), the following shall apply:

10. **General**. Subject to the terms and conditions specified below and those in the Agreement, Axon may provide Customer with one or more offers to fund Axon Event ticket(s), travel and/or accommodation for Customer-selected employee(s) to attend one or more Axon Events. By entering into the Agreement, Customer warrants that it is appropriate and permissible for Customer to receive the referenced Axon Event offer(s) based on Customer's understanding of the terms and conditions outlined in this Axon Event Offer Appendix.

11. **Attendee/Employee Selection**. Customer shall have sole and absolute discretion to select the Customer employee(s) eligible to receive the ticket(s), travel and/or accommodation that is the subject of any Axon Event offer(s).

12. **Compliance**. It is the intent of Axon that any and all Axon Event offers comply with all applicable laws, regulations and ethics rules regarding contributions, including gifts and donations. Axon's provision of ticket(s), travel and/or accommodation for the applicable Axon Event to Customer is intended for the use and benefit of Customer in furtherance of its goals, and not the personal use or benefit of any official or employee of Customer. Axon makes this offer without seeking promises or favoritism for Axon in any bidding arrangements. Further, no exclusivity will be expected by either party in consideration for the offer. Axon makes the offer with the understanding that it will not, as a result of such offer, be prohibited from any procurement opportunities or be subject to any reporting requirements. If Customer's local jurisdiction requires Customer to report or disclose the fair market value of the benefits provided by Axon, Customer shall promptly contact Axon to obtain such information, and Axon shall provide the information necessary to facilitate Customer's compliance with such reporting requirements.

13. **Assignability**. Customer may not sell, transfer, or assign Axon Event ticket(s), travel and/or accommodation provided under the Agreement.

14. **Availability.** The provision of all offers of Axon Event ticket(s), travel and/or accommodation is subject to availability of funds and resources. Axon has no obligation to provide Axon Event ticket(s), travel and/or accommodation.

15. **Revocation of Offer**. Axon reserves the right at any time to rescind the offer of Axon Event ticket(s), travel and/or accommodation to Customer if Customer or its selected employees fail to meet the prescribed conditions or if changes in circumstances render the provision of such benefits impractical, inadvisable, or in violation of any applicable laws, regulations, and ethics rules regarding contributions, including gifts and donations

CITY OF WINTER HAVEN CONTRACT ADDENDUM

This *City of Winter Haven Contract Addendum* ("Addendum") to that Axon Enterprises Master Services and Purchasing Agreement is agreed upon by the parties and appended to the agreement(s), purchase(s), order(s), form(s), service(s), package(s), term(s), and contract(s) identified below by reference by title (together collectively the "Contract Documents"), between the City of Winter Haven, Florida, a Florida municipal corporation (the "City") and the following Vendor (collectively, the "Parties"):

Name of Vendor: Axon Enterprise Inc.
17800 N. 85th St.
Scottsdale, AZ 85255

Name of Contract: Axon Enterprise, Inc. Order Form (the "Quote"), Axon Enterprise Inc. Sales Terms and Conditions (collectively, the "Contract")

§ 1. Initial Provisions and Fact Findings.

The Parties agree upon the following initial provisions and factual findings:

(a) The City is authorized to enter into the Contract and this Addendum as a matter of home rule under Section 2(b) of Article VIII of the Florida Constitution and Chapter 166 of the Florida Statutes. The resulting contract, articulated by the Contract Documents as a whole, is subject to all budgeting and legal requirements of the *Code of Ordinances of the City of Winter Haven, Florida*, the *Charter of the City of Winter Haven, Florida* and the Florida Statutes.

(b) Copies of the *Axon Enterprise Inc. ("Axon") Order Form*, and the *Axon Sales Terms and Conditions* are attached to this Addendum as **Composite Exhibit "A"** and made a part hereof by reference.

(c) Notwithstanding anything in the Quote or the Contract Documents to the contrary, Vendor and the City acknowledge and agree that the Effective Date of the Contract and this Addendum is the date that the governing body of the City approves and enters into the Contract and this Addendum at a duly called open public meeting.

(d) Vendor represents that it is authorized to transact business in the State of Florida.

(e) Vendor and the City acknowledge and represent that certain amendments to the Contract are desirable and necessary in order to comply with applicable Florida law.

(f) Vendor acknowledges and agrees that the Contract and this Addendum are governed by Florida law.

(g) Vendor and the City acknowledge that the City's entry into the Contract, remission of payments, and performance thereunder, is contingent upon the terms and conditions set forth in this Addendum.

(h) Vendor acknowledges and represents that, in consideration for the City's entry into the Contract and this Addendum, and the City's performance thereunder, Vendor has agreed to provide and perform its obligations and services in strict accordance with Florida law, including by way of explanation, but not limitation, Chapters 119, 267, and 668 of the Florida Statutes.

(i) Vendor represents that, prior to executing this Addendum, it has reviewed this Addendum with its legal counsel and fairly negotiated this Addendum at arm's length.

(j) The City acknowledges that the Contract and this Addendum are in the best interest of the City of Winter Haven and its citizens and residents, and execution of the Contract and this Addendum will promote the health, safety and welfare of the citizens and residents of the City of Winter Haven, Florida.

(k) Vendor and the City acknowledge, represent, and agree that mutual consideration has been given, receipt of which is duly acknowledged, in consideration and exchange for entry into this Addendum.

§ 2. Definitions.

Words used in the Contract and Addendum, as well as any and all attachments and exhibits incorporated therein and made a part of the Contract Documents, shall possess their everyday and ordinary meanings, *provided however*, that where one of the following listed terms is used, such term shall possess its corresponding meaning, as follows:

Day(s) means calendar day(s) unless specifically stated otherwise.

Calendar Day(s) means any day(s) in a 365-day calendar year.

Business Day(s) means that (or those) calendar day(s) which is (or are) not a Saturday, a Sunday, or a holiday where the City's City Hall is closed for the transaction of ordinary business (a "City Holiday").

§ 3. Primacy of Addendum.

This Addendum contains specific terms and conditions that are applicable to purchases of goods and services made by the City of Winter Haven, Florida, a Florida municipal corporation. Notwithstanding anything in the Contract Documents to the contrary, whether expressly made or determined to exist by implication, the terms of this Addendum shall be primary and shall control over any conflicting term, condition, duty,

and implication found in the Contract Documents.

§ 4. Calculation of Time.

Unless expressly specified otherwise in the Contract Documents, the calculation of any time period expressed in days or the determination of the number of days that have passed between events or occurrences shall be based on calendar days and every calendar day of the period shall be counted including intermediate Saturdays, Sundays and City Holidays. Unless expressly specified otherwise specified in the Contract Documents, any time period expressed in days that is prescribed in or by the Contract Documents shall commence on the day immediately following the event triggering such time period and shall expire at midnight on the last day of the same, provided that if the last day of the period is a Saturday, Sunday, or City Holiday, the period continues to run until the next day that is not a Saturday, Sunday, or City Holiday. Time periods expressed in the Contract Documents that are not contingent upon an action or event shall commence on the day immediately following the Effective Date.

§ 5. Governing Law; Home Venue Privilege.

The Contract and this Addendum are made in the City of Winter Haven, County of Polk, State of Florida, and shall be governed solely by the internal laws of the State of Florida. The Parties agree that venue for any litigation, suit, action, counterclaim, or proceeding, whether at law or in equity, which arises out of, concerns, or relates to the Contract, the Addendum, the Contract Documents, any and all transactions contemplated thereunder, the performance thereof, or the relationship created hereby, whether sounding in contract, tort, strict liability, or otherwise, shall lie exclusively in courts with geographic jurisdiction over Polk County, Florida, which, as of the Effective Date, are the County Court in and for Polk County, Florida, the Circuit Court of the Tenth Judicial Circuit in and for Polk County, Florida and the United States District Court for the Middle District of Florida, Tampa Division. The Parties waive any objection to jurisdiction and venue in such courts.

§ 6. Financial Matters; City Performance Subject to Appropriation; Invoices; Applicability of the Florida Local Government Prompt Payment Act

(a) The City's obligation to perform under the Contract Documents and furnish payment to Vendor is expressly subject to appropriation of sufficient public funds by the City Commission of the City of Winter Haven, Florida. In the event the City Commission of the City of Winter Haven, Florida, fails to appropriate sufficient funds to satisfy the City's payment obligations to Vendor of any kind or type, the City or the Vendor may immediately terminate the Contract and this Addendum and be released from any future responsibility or liability thereunder, subject to the Effect of Termination clause in Axon's Master Services and Purchasing Agreement.

(b) Invoices for services shall be sent to: City of Winter Haven – Finance Dept.,

P.O. Box 2277, Winter Haven, Florida 33883-227, or preferably, emailed to finance-AP@mywinterhaven.com, or at such other address as may be directed by the City to the Vendor in writing from time to time.

(c) The provisions of the *Local Government Prompt Payment Act*, §§ 218.70, *et seq.*, Florida Statutes (2023), are incorporated herein as if set forth in full, and shall control all payments made by the City to the Vendor required by the Contract Documents. To the extent there is conflict between the text of the Contract Documents and the text of the *Local Government Prompt Payment Act*, the text of the *Local Government Prompt Payment Act* shall control.

§ 7. Public Records Compliance.

Pursuant to Section 119.0701(1)(a) of the Florida Statutes, Vendor agrees to:

(a) Keep and maintain Public Records required by the City to perform the Services specified herein.

(b) Upon request from the City's custodian of Public Records, provide the City with a copy of the requested Public Records or allow the Public Records to be inspected or copies within a reasonable time at a cost that does not exceed the cost provided in this chapter or as otherwise provided by law.

(c) Ensure that Public Records that are exempt or confidential and exempt from Public Records disclosure requirements are not disclosed except as authorized by law for the duration of the term and following completion of the contracted work or service if Vendor does not transfer the Public Records to the City.

(d) Upon completion of the contracted work or service, transfer, at no cost, to the City all Public Records in possession of Vendor or keep and maintain Public Records required by the City to perform the service. If Vendor transfers all Public Records to the City upon completion of the contracted work or service, Vendor shall destroy any duplicate Public Records that are exempt or confidential and exempt from Public Records disclosure requirements. If Vendor keeps and maintains Public Records upon completion of the contracted work or service, Vendor shall meet all applicable requirements for retaining Public Records. All Public Records stored electronically must be provided to the City upon request from the City's custodian of Public Records, in a format that is compatible with the City's information technology systems.

IF VENDOR HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO VENDOR'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS CONTRACT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT 863-291-5600,

RECORDS@MYWINTERHAVEN.COM, 451 THIRD STREET NW, WINTER HAVEN, FL 33881.

If Vendor does not comply with a public records request, the City shall enforce this contract provision, which may include immediate termination.

§ 8. Sovereign Immunity; Limitations of City's Liability.

(a) City is a sovereign Florida municipal government. The Parties agree that nothing contained in the Contract Documents shall be construed to waive the City's sovereign immunity. With respect to the matter of compensation for work performed, or the price of goods sold, the Parties agree that the total potential liability of the City to the Vendor shall not exceed the agreed-upon price established in the Contract Documents, or any related purchase order, subject to annual appropriation performance contingencies. For all other matters, the Parties agree that the total potential liability of the City to the Vendor shall not exceed the limits of the City's potential liability as determined by the State of Florida's waiver of sovereign immunity set forth in the version of § 768.28(5) of the Florida Statutes in effect as of the Effective Date, regardless of whether any such obligations are based in tort, contract, statute, strict liability, or negligence, product liability or otherwise. The Parties also agree that, in addition to the limitations identified in Axon's Master Services and Purchasing Agreement, the City shall not be liable to the Vendor for any indirect, incidental, consequential, special, exemplary, or punitive damages of any kind or nature or interest for the period before judgment.

(b) The Parties agree that the maximum value and monetary limits of any individual express City indemnification and all collective express City indemnifications found in the Contract Documents, if any exist, shall not exceed the limits of the City's potential liability as determined by the State of Florida's waiver of sovereign immunity set forth in the version of § 768.28(5) of the Florida Statutes in effect as of the Effective Date, regardless of whether any such obligation to indemnify or the underlying cause for indemnity is based in tort, contract, statute, strict liability, or negligence, product liability or otherwise. Notwithstanding anything in the Contract Documents to the contrary, to the extent that the City has agreed to an express indemnification, the Parties agree that no City indemnity shall require the City to defend Vendor and no City indemnity shall indemnify Vendor from and against attorneys' fees and costs, fees and costs for experts and witnesses, costs of suit, or any indirect, incidental, consequential, special, exemplary, or punitive damages of any kind or nature or interest for the period before judgment. This limitation provision shall not be construed to create a duty for the City to indemnify the Vendor in the absence of an independent express indemnification clause.

(c) This Section shall survive termination of the Contract and this Addendum.

§ 9. Required Clauses.

Pursuant to Florida Statutes, the following provisions are added to the Contract Documents:

(a) *Convicted Vendor List.* A person or affiliate who has been placed on the State of Florida Convicted Vendor List, following a conviction for a public entity crime, may not submit a bid on a contract to provide any goods or services to a public entity; may not submit a bid on a contract with a public entity for the construction or repair of a public building or public work; may not submit bids on leases of real property to a public entity; may not be awarded or perform work as a contractor, supplier, subcontractor, or consultant under a contract with any public entity; and may not transact business with any public entity, in excess of $35,000.00, for a period of thirty-six (36) months from the date of being placed on the Convicted Vendor List. Vendor acknowledges that it is not on the State of Florida Convicted Vendor List and that it is eligible to enter into the Contract, this Addendum, the Contract Documents, and the resulting contract with the City.

(b) *Scrutinized Companies.* Section 287.135, Florida Statutes, prohibits the City from contracting with companies for goods or services in any amount if at the time of bidding on, submitting a proposal for, or entering into or renewing a contract if the company is on the Scrutinized Companies that Boycott Israel List, created pursuant to Section 215.4725, F.S. or is engaged in a boycott of Israel; and contracting with companies for goods or services over $1,000,000.00 that are on either the Scrutinized Companies with activities in the Iran Petroleum Energy Sector List, created pursuant to s. 215.473, or are engaged in business operations in Cuba or Syria. Vendor acknowledges that it is not on the State of Florida Scrutinized Companies that Boycott Israel list, is not presently engaged in a boycott of Israel, is not on the State of Florida Scrutinized Companies with activities in the Iran Petroleum Energy Sector List, and is not engaged in business operations in Cuba or Syria.

(c) *E-Verify.* By contracting with the City, the Vendor becomes obligated under Florida law to comply with the provisions of Section 448.095(5)(a), Florida Statutes, to register with and use the E-Verify system to verify the work authorization status of all new employees of the Vendor and any subcontractor hired by the Vendor. If the Vendor enters into a contract with a subcontractor, the subcontractor must provide the Vendor with 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 the Contract, this Addendum, the Contract Documents, and all purchase orders 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 Agreement is terminated for a violation of the statute by the Vendor, the Vendor may not be awarded a public contract for a period of one (1) year after the date of termination.

(d) *No Consideration of Social, Political, and Ideological Interests.* The provisions of Section 287.05701 of the Florida Statutes prohibit local governments from giving preference to a prospective contractor based on the prospective contractor's social, political or ideological interests or requesting documentation from, or considering, a prospective contractor's social, political, or ideological interests when determining if the prospective contractor is a responsible vendor.

(e) *Contracting with Foreign Entities.* By executing this Contract, Vendor certifies that it is not owned by the government of the People's Republic of China, the Russian Federation, the Islamic Republic of Iran, the Democratic People's Republic of Korea, the Republic of Cuba, the Venezuelan regime of Nicolás Maduro, or the Syrian Arab Republic (collectively "Foreign Countries of Concern"), nor is it owned by any agency of or any other entity of significant control of any such government. Further, Vendor certifies that no government of a Foreign Country of Concern has a "controlling interest" in Vendor as the term is defined in Section 287.138(1)(a) of the Florida Statutes, nor is the Vendor organized under the laws of a Foreign Country of Concern, nor does the Vendor have its principal place of business located in a Foreign Country of Concern. If this Contract permits the Vendor to access the personal identifying information of any individual, Vendor agrees to notify the City in advance of any contemplated transaction that would cause Vendor to be disqualified from such access under Section 287.138 of the Florida Statutes. Vendor agrees to furnish the City with an affidavit signed by an officer or representative of the Vendor under penalty of perjury at any time and upon request that the statements in this paragraph are true and correct.

§ 10. Force Majeure.

Delays in performance due to fire; flood; hurricane; tornado; earthquake; windstorm; unavailability of materials or equipment; war; declaration of hostilities; terrorist act; civil strife; strike; labor dispute; epidemic; or act of God, shall be deemed events of "Force Majeure" and such delays shall be excused in the manner herein provided. If a Party is delayed in any work or performance pursuant to the Agreement due to the occurrence of an event of Force Majeure, the date for action required or contemplated by the Agreement shall be extended by the number of days equal to the number of days such party is delayed. The party seeking to be excused based on an event of Force Majeure shall give written notice of the delay indicating its anticipated duration. Each party shall use its best efforts to rectify any conditions causing the delay and will cooperate with the other party, except for the incurrence of unreasonable additional costs and expenses, to overcome any loss of time that has resulted.

§ 11. Notices.

All notices under the Contract, this Addendum, and the Contract Documents shall be in writing and may be given by any of the following methods: (1) personal delivery, (2) certified mail, postage prepaid, or (3) overnight delivery service, prepaid, when sent to the following:

THE CITY:

T. Michael Stavres, City Manager
City of Winter Haven, Florida
Physical Address: 451 Third Street NW, Winter Haven, Florida 33831

WITH COPY TO: (*which **shall not** constitute notice*)

Frederick J. Murphy, Jr., City Attorney
Boswell & Dunlap, LLP
Post Office Drawer 30, Bartow, Florida 33831
Physical Address: 245 South Central Avenue, Bartow, Florida 33830

VENDOR:

Vendor's address for notices is specified above on Page 1.

For purposes of the Contract, this Addendum, and the Contract Documents, notice shall be deemed to have been received when either deposited in a United States Postal Service mailbox or personally delivered with signed proof of delivery, whichever is later in time.

§ 12. Compliance with Laws.

Vendor agrees to comply with any and all applicable statutes, laws, rules, regulations, charter provisions, ordinances and resolutions of general applicability of the United States of America, of the State of Florida, of Polk County, of City of Winter Haven, and of any and all other public authority which may be applicable.

§ 13. Assignment by Vendor.

The contract expressed by the Contract, this Addendum, and the Contract Documents shall not be assigned by the Vendor, or any successor thereto, in whole or in part without the prior written consent of the City, which shall not be unreasonably withheld.

§ 14. Specific Modifications.

Without limiting the effectiveness of any of the foregoing provisions in this Addendum, the following specific modifications are made to the text of the Contract Documents:

(a) The following sentence is added to *Axon Enterprises Master Services and Purchasing Agreement*:

"Customer is a Florida local government and is exempt from the payment of taxes on instruments of municipal service. To the extent that a governmental entity or taxing authority properly levies Taxes on the Software, or Subscription Services, or on transactions made in connection with this Agreement, Vendor shall pay any and all such Taxes lawfully imposed by any governmental entity or taxing authority and upon any amount due from the Customer/City hereunder."

(c) The following provision is added to the Contract Documents:

"The *Axon Enterprises Order Form*, and *Axon Enterprises Master Services and Purchasing Agreement*, and the *City of Winter Haven Contract Addendum* may be executed in several counterparts, each constituting a duplicate original, but all such counterparts constitute one agreement."

IN WITNESS WHEREOF, the parties have set their hands hereto on the date indicated:

[*Signatures Follow on Pages 10 and 11*]

City of Winter Haven Contract Addendum
to:
Axon Enterprises Order Form, and Axon Enterprises Master Services and Purchasing Agreement

Signature Page for Vendor

Vendor:

Executed this ____ day of _____, 2024

By: _____

Name:_____

Title: _____

STATE OF _____
COUNTY OF _____

The foregoing instrument was acknowledged before me, by means of □ physical presence or □ online notarization, this _____ day of _____, 2024, by _____, as __ _____, on its behalf, who is personally known to me or who has produced _____ as identification.

_____
Notary Public, State of _____
Printed Name:_____
My commission expires:_____

City of Winter Haven Contract Addendum
to:
Axon Enterprises Order Form, and Axon Enterprises Master Services and Purchasing Agreement

Signature Page for City of Winter Haven, Florida

City of Winter Haven, Florida:

Executed this ____ day of _____, 2024

By: _____
City Manager

Attest:

_____
City Clerk

Approved as to Form and Legal Sufficiency:

_____
City Attorney

DATE: April 16, 2024

TO: Honorable Mayor and City Commissioners

VIA: T. Michael Stavres, City Manager
M.J. Carnevale, Deputy City Manager

FROM: Amanda-Jo Nicholson, Assistant to the City Manager

SUBJECT: Authorization for Travel & Training

BACKGROUND

In April 2011, the City Commission amended the City's Policy Relating to the Travel and Training Expenses for Both Officials, Employees, and City-Sponsored Boards and Committees. As part of the amended policy, any travel and training for the City Manager and City Commissioners must be presented to the City Commission for pre-authorization prior to attending a convention, conference or training program.

In accordance with the City Commission's Policy, authorization is requested for the following:

Event:	FLC Federal Action Strike Team (FAST) Fly-In
Location:	Washington, DC
Dates:	May 21-24, 2024
Attendees:	Mayor Pro Tem Brian Yates

FINANCIAL IMPACT

$100 registration, plus hotel, flights, per diem & mileage. Expenses associated with the travel and training outlined above will be accounted for within the City Commission cost center.

RECOMMENDATION

Staff recommends the City Commission authorize travel for the participant listed above.

ATTACHMENT

- FLC 2024 FAST Fly-In Information

FLC
FLORIDA LEAGUE OF CITIES

#FASTFlyIn

Save the Dates!

FAST Fly-In

to Washington, D.C.

May 22-23, 2024

The **Federal Action Strike Team (FAST) Fly-In** is a federal advocacy trip to Washington, D.C. Events will begin at 9:00 a.m. on the 22nd and conclude around 5:00 p.m. on the 23rd. During this biannual event, attendees will meet with members of Florida's congressional delegation to discuss key federal issues that affect municipalities.

Due to Florida's Sunshine law, we ask that only one elected official from each city attends.

IMPORTANT CHANGE: There is no hotel block. Information about nearby hotels can be found ***HERE***.

The deadline to register is **May 10, 2024**. If you would like to attend the FAST Fly-In, please register by following the link: ***FAST Fly-In Registration***. There is a $100 registration fee.

Please contact Brenda Jones at ***bjones@flcities.com*** or 850.701.3644 with any questions.







DATE: April 16, 2024

TO: Honorable Mayor and City Commissioners

VIA: T. Michael Stavres, City Manager
M.J. Carnevale, Deputy City Manager

FROM: Amanda-Jo Nicholson, Assistant to the City Manager

SUBJECT: Authorization for Travel & Training

BACKGROUND

In April 2011, the City Commission amended the City's Policy Relating to the Travel and Training Expenses for Both Officials, Employees, and City-Sponsored Boards and Committees. As part of the amended policy, any travel and training for the City Manager and City Commissioners must be presented to the City Commission for pre-authorization prior to attending a convention, conference or training program.

In accordance with the City Commission's Policy, authorization is requested for the following:

Event:	Winter Haven Chamber Board Strategic Planning Retreat
Location:	Orlando, FL
Dates:	July 11-13, 2024
Attendees:	City Manager T. Michael Stavres

FINANCIAL IMPACT

Registration $695, plus hotel and per diem. Expenses associated with the travel and training outlined above will be accounted for within the City Manager's cost center.

RECOMMENDATION

Staff recommends the City Commission authorize travel for the participants listed above.

ATTACHMENT

- WH Chamber 2024 Strategic Planning Retreat Agenda

WH WINTER HAVEN
CHAMBER OF COMMERCE

2024 BOARD OF DIRECTORS STRATEGIC PLANNING RETREAT

July 11-14, 2024
Orlando World Center Marriott
8701 World Center Dr, Orlando, FL 32821







THURSDAY, JULY 11

5:00 p.m. Executive Committee Meeting
6:30 p.m. Optional Group Dinner (Dutch Style)

FRIDAY, JULY 12

9:00 a.m. Full Board Meeting (all current, incoming board members and past presidents are welcome to attend)
10:00 a.m. Retreat kick-off
11:30 a.m. Catered lunch
4:00 p.m. Retreat Day 1 adjourns
6:30 p.m. Group Dinner onsite

SATURDAY, JULY 13

8:30 a.m. Breakfast
9:00 a.m. Retreat Day 2
12:00 p.m. Retreat adjourns
6:30 p.m. Optional Group Dinner (Dutch Style)

SUNDAY, JULY 14

For those staying through Sunday, the resort offers a wide variety of recreation, an amazing spa, golf and more!

The group rate is $199/night. Please make your hotel reservations by calling (800) 621-0638 or online with Group Reservations at https://book.passkey.com/go/WinterHavenStrategicPlanning

DATE: April 29, 2024

TO: Honorable Mayor and City Commissioners

VIA: T. Michael Stavres, City Manager
M.J. Carnevale, Deputy City Manager

FROM: Gary M. Hubbard, Water Department Director

SUBJECT: Design Criteria and Owner's Representative Professional Services for Water Resource Facility (WRF) at Pollard Road – Approval of Task Order No. 1

BACKGROUND

On February 7, 2024, the City of Winter Haven issued a Request for Qualifications, RFQ-24-15, for the Design Criteria and Owners Representative Professional Services for Water Resource Facility at Pollard Road. On March 25, 2024, staff recommended and requested authorization to negotiate a contract with Jones Edmunds to serve as a direct representative of the City to provide construction management services during the engineering, design, permitting, and phased construction of the Water Resource Facility at Pollard Road.

The initial scope of work in Task Order No. 1 will provide Design Criteria and Owner's Representative Services for collaboration with the City and the selected Progressive Design Build (PDB) team for the planning, designing, permitting, and funding opportunities for the WRF from the Notice to Proceed (NTP) through acceptance of the Guaranteed Maximum Price (GMP) by the PDB. This initial Phase 1 of work is anticipated to take 24 months to complete.

FINANCIAL IMPACT

The total cost for Task Order No. 1 is $1,092,565.00 and will span budget years FY23/24 through FY25/26. Funds are budgeted in 402-08-305-6311 in FY23/24 and in 402-08-316-6301 for FY24/25, FY25/26 and subsequent years for the completion of the Water Resource Facility at Pollard Road.

RECOMMENDATION

Staff recommends the City Commission approve the Owners Representative Professional Services for Water Resource Facility (WRF) at Pollard Road, Phase 1 Scope of Work to Jones Edmunds per the qualifications submitted for RFQ-24-15 and authorize the City Manager or his designee to take any further actions necessary thereto.

ATTACHMENT

- Water Resource Facility – Design Criteria and Owner's Representative Services

WINTER HAVEN WATER
PROGRESSIVE DESIGN-BUILD (PDB)
OWNER'S REPRESENTATIVE SERVICES
TASK ORDER NO. 1

BACKGROUND

The City of Winter Haven is in the heart of central Florida near the head of the Peace River. The City's water-centric identity is shaped by over 50 nearby lakes that generate an estimated $100 million or more annually in economic impacts. For Winter Haven residents, the Chain of Lakes provides recreation, economic opportunities, scenic views, and a wonderful place to live and work. Rapid growth, aging infrastructure, and wetland degradation due to urbanization are stressing the water supply and have caused the City to shift its water management approach to emphasize water reuse. The more water is reused, the more it preserves natural water resources such as aquifers, wetlands, lakes, rivers, and springs. The City's One Water framework is an integrated approach to protecting central Florida's water supply today and for the long term.

The Water Resources Facility (WRF) improvements at the One Water Campus on Pollard Road are a significant component of the City's One Water framework, which includes decommissioning Wastewater Treatment Plant No. 2, making improvements to convert the plant to a Master Lift Station to pump to the One Water Campus WRF, and maintaining the reclaimed water storage and high-service pump station for distribution to the public access reuse system. The improvements under this program will serve as the foundation for future projects. The City has opted to use a Progressive Design-Build (PDB) delivery for the design and construction services for this program and has selected Jones Edmunds to provide Owner's Engineer services for staff support during the program. The Jones Edmunds Team includes Hale Innovation (HI) to assist the City with Grant Services and Administration setup for the impending Water Infrastructure Finance and Innovation Act (WIFIA) loan, conduct other grant and loan research, and provide application preparation and grant/loan compliance assistance.

SCOPE OF SERVICES

Jones Edmunds will collaboratively work with City staff during the PDB Team's delivery of the planning, designing, and permitting phases for the new WRF. We expect this Scope of Services to provide Owner's Representation Services from Notice-to-Proceed (NTP) through the acceptance of a Guaranteed Maximum Price (GMP) for Phase 1 of the program, which we anticipate within 24 months (730 days) of our NTP.

Task 1 – Program Management and Status Meetings

Program management during the first phase of the program will include the following tasks:

- Jones Edmunds will schedule and attend a kick-off meeting with the City to discuss various topics including but not limited to the following:
  - Identify the team roles and responsibilities.
  - Develop a coordination plan.
  - Determine individual project goals and key success factors for the first phase.
  - Discuss the planning and milestone meetings envisioned for the PDB Team and City staff that are desired to attend each meeting.
- Jones Edmunds will conduct a Partnering Session with the City to discuss and develop the formal management process for the Project in which all parties will adopt a cooperative, team-based approach to project development and dispute resolution to eliminate/reduce conflicts, litigation, and claims.
- Jones Edmunds will attend coordination meetings with the City to discuss and coordinate program elements as needed.
- We will communicate with the City via in-person meetings, telephone, video meetings, email, and written correspondence as needed.

City Responsibility: Make pertinent staff available to meet with Jones Edmunds and assign a Project Manager.

Deliverables: Jones Edmunds will prepare an agenda for the kickoff meeting and provide meeting minutes for distribution to City staff as documentation.

Task 2 – Coordination with PDB Team

The goal is to work with City staff to effectively align the City's vision with the Design-Builder throughout the design and permitting phase of the WRF improvements.

Jones Edmunds will:

- Facilitate a Partnering Meeting with the PDB Team and City to formalize and adopt a written document that outlines a cooperative, team-based approach to project development and dispute resolution to eliminate/reduce conflicts, litigation, and claims.
- Attend the Design-Builder's kickoff and coordination meetings.
- Provide timely feedback and support to the City as needed.
- Communicate with the City via telephone, email, and written correspondence as needed.
- Maintain the City's vision, objectives, and requirements during the process.

City Responsibilities:

- Make pertinent staff available to meet with Jones Edmunds and the Design-Builder.
- Review submissions and provide feedback within the allotted Design-Builder's schedule.
- Provide requested information.
- Provide Jones Edmunds with access to the site.
- Engage in the process.

TASK 3 – PLANNING AND DESIGN MILESTONE SUBMITTAL REVIEW

The goal for these technical reviews is to ensure that the PDB Team's preliminary design reports and evaluations, basis of design report, Florida Department of Environmental Protection (FDEP) substantial permit modification package, concept and final drawings, and supporting documents meet the design criteria, intent, and the City's vision for successful implementation of the program.

Technical review documents submitted by the PDB Team are envisioned to include:

- A plan and timeline to transfer flow from Wastewater Plant No. 2 to Wastewater Treatment Facility No. 3 (Plant No. 2 and Plant No. 3).
- A Maintenance of Plant Operations Plan (MOPO) for both Plant No. 2 and Plant No. 3 to summarize and outline timeframes for keeping the plant in service to meet FDEP permit requirements while upgrading and expanding Plant No. 3 and development of the One Water Campus. This will include projected calendar month and duration in days for the proposed unit treatment processes to be taken off-line and put back on-line for review and discussion with plant operations staff to confirm the feasibility and acceptance, along with a phasing plan for startup, operations training and operation of new unit treatment processes, and decommissioning of those for demolition.
- 30% Preliminary Design Technical Report Documents QC: Review of PDB Team's preliminary design reports (i.e., geotechnical, site boundary and topographic survey, site biotic/endangered species evaluation, wetlands delineation, site phase I and II evaluations, and site stormwater management).
- Process equipment selection and BNR technology selection documents.
- WRF site and unit treatment process layout/configuration.
- 30% basis of design report documents.
- A detailed GMP construction cost summary.
- Value engineering ideas and alternatives list.
- FDEP substantial permit modification package.
- The PDB Team progress drawings for agreed-on design packages.
- The Design-Builder's supporting documents for agreed-on design packages.

City Responsibilities:

- Provide the budget to the PDB Team for the initial phase of the project.
- Provide the PDB Team with the drawings and supporting documents as needed.
- Make pertinent staff available to meet with Jones Edmunds and review Jones Edmunds comments.
- Review and accept provided comments and/or markups before submission to the Design-Builder.

Deliverables: Jones Edmunds will provide the City with meeting minutes and written comments and markups based on the Design-Builder's submittals.

TASK 4 – WORKSHOPS, DESIGN REVIEW MEETINGS, AND SITE VISITS

The goal for workshop and design review meetings is to guide and provide feedback to the PDB Team. These mostly in-person meetings and workshops will help cement the City's vision for successful implementation of the project.

As part of our collaborative efforts, Jones Edmunds will participate in workshop meetings and site visits to facilitate the successful implementation of the WRF improvements at the One Water Campus. Our Team will provide input, feedback, and support to City staff. Our Team expects to be relied on for detailed technical reviews providing the foundation for the input, feedback, and support.

- Attend PDB Team review/workshop meetings, which are envisioned to follow the technical review documents outlined in Task 3.
- Attend the Design-Builder's submittal review meetings.
- Participate in site visits and attend onsite site meetings.

City Responsibility:

- Make pertinent staff available for the meetings and workshops.
- As required, meet with the Jones Edmunds Team before the meetings to confirm input, feedback, and comments aligned with the City's goals.

TASK 5 – FUNDING ASSISTANCE

HI will provide Grant Services and Administrative setup for the impending WIFIA loan during the pre-construction portion of the WRF and assist the City in applying for additional grant/loan funding.

5.1 GRANT RESEARCH

The City will pursue any and all available funding avenues. This subtask includes preliminary meetings, discussions with state agencies, and application due diligence, such as public records requests for similar previously awarded projects.

In addition to grant programs provided and known grant programs, HI will use the Grants.Gov website to identify additional grant opportunities. HI will research grant programs and advise the City of eligible programs that apply to the WRF, including any additional grants uncovered during their research. A potential partial list, to be refined and determined during the grant research phase, includes:

- FDEP Water Quality Improvement Grants
- FDEP Resilient Florida Grants
- FDEP State Revolving Fund (SRF) Loan
    - The SRF program does not require a facilities plan to be supplied by the Design-Build Team.

- US Environmental Protection Agency (EPA) WaterSMART Grants
  - WaterSMART contains several programs, including but not limited to Water and Energy Efficiency Grants and Large-Scale Water Recycling Program Grants.
- US Department of Interior Youth Engagement, Education, and Employment Grants
  - If the project has an outreach/educational component.
- US Geological Service (USGS) Water Use Data and Research Program
- EPA Wastewater Pollution Prevention Grant Programs

5.2 Grant/Loan Applications

This subtask is for pursuing up to three grant programs selected during the Grant Research subtask. The work includes preparing the application and creating a required list of documents required from the selected Design-Builder, such as preliminary design reports, cost estimates, etc.

5.3 Compliance Preparation

This subtask includes preparing a list of requirements set forth by WIFIA and other grant and loan agencies. The goal of this list is to research pending grant and loan funding that will have specialized design or material-ordering requirements. The list will include items such as American Iron and Steel (AIS) and Build America Buy America Act (BABA). This list and documentation will allow the PDB Team and City to purchase long-lead items so that construction is not delayed by specialized equipment purchasing. HI will prepare a risk matrix for each grant expected to be pursued to allow for the City to understand the impact of the grant award. Some grants may include provisions that drastically slow or impede the construction process. Compliance preparation will also allow time to set up invoicing procedures so that money spent by the City will be readily available for rapid reimbursement and drawdowns from the funding programs.

Grant compliance will include coordinating National Environmental Policy Act (NEPA) compliance through uploading documents and reviewing necessary materials and may provide supplemental desktop research to facilitate compliance.

5.4 Meetings

This subtask is for grant/funding assistance meetings. A 1-hour video-call-style meeting every other week is expected to occur for the duration of the pre-construction services. One in-person meeting per quarter on site is also budgeted. One-half of the meetings are expected to be attended by two people and the other half by the primary funding point of contact for the project.

The primary purpose for these funding assistance progress meetings is to ensure HI can provide key input during design development and to assist in analyzing the design development in real time as it relates to potential grant pursuits.

City Responsibilities: The City's Project Manager will engage in the process, submit required reports and documentation, and route and coordinate agreements.

Deliverables: Jones Edmunds and HI will provide the City with support in grant research and recommended programs to pursue and prepare applications and reporting, grant compliance requirements, and meeting minute summaries as needed.

TASK 6 – PROCUREMENT ASSISTANCE

Jones Edmunds will provide procurement assistance (as requested) to support the City's successful implementation of the WRF improvements including the following tasks:

- Prepare the Design Criteria package.
- Review the Request for Qualifications (RFQ) submittals for each of PDB Team.
- Attend PDB shortlist presentations.
- Attend review meetings for the Guaranteed Maximum Price (GMP).
- Provide Value Engineering Reviews and Responses.
- Review Owner Direct Purchase packages of materials for tax savings and long lead items.
- Generate Owner Direct Purchase packages, if requested.
- Prepare conceptual drawings for City staff to assist in clarifying modifications to the existing system in preparation for the PDB Team.

City Responsibilities:

- Advertise public solicitations.
- Distribute public solicitations.
- Tack public solicitations.
- Post any addenda.
- Host meetings.
- Award bids.
- Provide final review, available budgets/funding, and contracting.

Deliverables: Jones Edmunds will provide the City with written comments and markups based on the procurement submittal.

SCHEDULE

We expect that the Scope of Services above to provide Owner's Representation Services from NTP through the acceptance of a GMP for Phase 1 of the program. Based on our understanding of the City's timeline, we expect an accepted GMP within 24 months (730 days) of our NTP.

COMPENSATION

Services included under this Work Scope will be invoiced monthly on a time-and-materials basis as described in the Professional Services Agreement from City RFQ 24-15 with not-to-exceed total fee of $1,092,565. The task-by-task breakdowns are estimates only. Jones Edmunds will coordinate with the City Project Manager if individual task fees need to be adjusted based on the requests of the City and the interactions with the selected PDB Team.

Estimate Fee by Task

Tasks	Total Cost
Task 1 – Program Management and Status Meetings	$123,815
Task 2 – Coordination with PDB Team	$89,880
Task 3 – Planning and Design Milestone Reviews	$422,720
Task 4 – Workshops, Design Review Meetings, and Site Visits	$164,180
Task 5 – Funding Assistance	$137,670
Task 6 – Procurement Assistance	$154,300
Total Task Order 1 (Not-to-Exceed)	$1,092,565

EXCLUSIONS AND CONDITIONS

All items included in this Work Order are specifically listed in this document. The following are specific exclusions to and conditions of this Task Order:

- This Scope of Services excludes any design, permitting, or construction services for the improvements that may be identified, which shall remain the sole responsibility of the Design-Builder.
- Review, approval, or acceptance by Jones Edmunds or its agents of services or Work Products furnished by the Design-Builder, or any of its subconsultant(s), vendor(s) or subcontractor(s) engaged by the Design-Builder, shall not in any way relieve the Design-Builder of responsibility for the adequacy, completeness, and accuracy of its services or Work Products or any and all of its subconsultant(s), vendor(s) and/or subcontractor(s) engaged by the Design-Builder to provide and perform its services.
- This Scope of Services excludes permitting fees, plan review fees, and other regulatory fees.
- This Scope of Services excludes archaeological services.
- This Scope of Services excludes environmental services.
- This Scope of Services excludes hazardous or toxic waste services.
- This Scope of Services excludes groundwater remediation services.
- This Scope of Services excludes any modeling.
- This Scope of Services excludes any Federal Emergency Management Agency (FEMA) flood map revisions.
- This Scope of Services excludes land acquisition services.
- The expected hours listed in the attached Fee Estimate are intended as documentation and justification for the total cost of the project. Fees may shift between tasks. Deviations or changes in the hours shall not be reason for nonpayment if the total project cost has not been exceeded.

ATTACHMENTS

Attachment 1 – Rates
Attachment 2 – Time and Materials Fee Summary by Task
Attachment 3 – Hale Innovation Time and Materials Fee Summary for Funding Assistance

Attachment 1

Rates

JonesEdmunds
Integrity • Knowledge • Service

2024 Standard Hourly Rates

Labor Category	Hourly Rate
Project Officer	$ 300
Senior Project Manager	$ 265
Project Manager	$ 215
Chief Engineer or Scientist	$ 280
Senior Engineer	$ 265
Senior Scientist	$ 215
Project Engineer	$ 215
Project Scientist	$ 160
Engineer	$ 160
Scientist	$ 145
Engineer Intern	$ 145
Associate Scientist	$ 125
Designer	$ 125
Senior CADD Designer	$ 160
CADD Designer	$ 145
Senior CADD Technician	$ 125
CADD Technician	$ 115
Systems Analyst	$ 210
Senior GIS Analyst or Senior GIS Programmer	$ 160
GIS Analyst or Programmer	$ 135
GIS Specialist	$ 150
GIS Technician	$ 115
Senior Database Administrator	$ 195
Database Administrator	$ 160
Environmental Data Analyst	$ 115
Senior Field Technician Environmental	$ 125
Field Technician Environmental	$ 115
Senior Construction Administrator	$ 210
Construction Administrator	$ 160
Senior Field Representative Construction	$ 145
Field Representative Construction	$ 125
Construction Project Coordinator	$ 115
Senior Administrative Assistant	$ 115
Administrative Assistant	$ 90
Senior Technical Editor	$ 165

Travel − Company Vehicle − $0.70/mile plus 15%
Travel − Personal Vehicle − IRS Standard Mileage Rate plus 15%
Travel − Miscellaneous − Cost plus 15%
Deliverable Production - Cost plus 15%
Subconsultants − Cost plus 15%

Rates Effective January 1, 2024

Attachment 2

Time and Materials
Fee Summary by Task

JonesEdmunds

Project Name:	**Winter Haven Water PDB Owner's Representative Services**	**Prepared On:**	04/10/24		
Client:	**City of Winter Haven**	**Prepared By:**	J. French		
Opportunity Number:	**95300-050-24**	**Revised On:**	4/8/2024	04/09/24	04/10/24	04/12/24
Project Number:		**Revised By:**		B. Icerman	T. Friedrich	T. Friedrich

Task No.	Task Description	Project Officer	Sr Proj Manager	Sr. Engineer	Project Engineer	Engineer	Engineer Intern	Senior CADD Design	Sr. Construction Administrator	Sr. Administrative Assistant	Field Representative	Labor Hours	Labor Costs	Direct Expenses	Subconsultants	Total Fee
		Billing Rates														
		$300.00	$265.00	$265.00	$215.00	$160.00	$145.00	$160.00	$210.00	$115.00	$125.00					
		Estimated Hours														
1	PROGRAM MANAGEMENT AND STATUS MEETINGS	80	80	175	8	144	16	0	0	24	0	527.0	$121,415.00	$2,400.00	$0.00	$123,815.00
2	COORDINATION WITH PDB TEAM	40	8	144	8	144	16	0	40	8	0	408.0	$88,680.00	$1,200.00	$0.00	$89,880.00
3	PLANNING AND DESIGN MILESTONE REVIEWS (assume 8 reviews)	240	120	480	240	240	96	80	240	40	120	1,896.0	$417,720.00	$5,000.00	$0.00	$422,720.00
4	WORKSHOPS, DESIGN REVIEW MEETINGS, AND SITE VISITS	120	48	184	60	80	80	0	80	40	24	716.0	$159,180.00	$5,000.00	$0.00	$164,180.00
5	FUNDING ASSISTANCE	0	20	16	0	20	40	24	0	16	0	136.0	$24,220.00	$500.00	$112,950.00	$137,670.00
6	PROCUREMENT ASSISTANCE	80	24	200	80	80	120	80	40	16	0	720.0	$153,800.00	$500.00	$0.00	$154,300.00
	Task 1 Totals	**560**	**300**	**1199**	**396**	**708**	**368**	**184**	**400**	**144**	**144**	**4,403.0**	**$965,015.00**	**$14,600.00**	**$112,950.00**	**$1,092,565.00**

Attachment 3

Hale Innovation
Time and Materials Fee Summary for Funding Assistance

Hale Innovation - Winter Haven Owner's Representative Fee Breakdown								
Task	**Position**	**Rate**		**Quantity**		**Fee**		
Grant Research	Senior Consultant	$ 210.00	/hr	48	hours	$ 10,080.00	$ 23,080.00	
	Funding Manager	$ 125.00	/hr	104	hours	$ 13,000.00		
	Project Admin	$ 95.00	/hr	0	hours	$ -		
Compliance Preparation	Senior Consultant	$ 210.00	/hr	96	hours	$ 20,160.00	$ 40,160.00	
	Funding Manager	$ 125.00	/hr	160	hours	$ 20,000.00		
	Project Admin	$ 95.00	/hr	0	hours	$ -		
Meetings	Senior Consultant	$ 210.00	/hr	76	hours	$ 15,960.00	$ 20,710.00	
	Funding Manager	$ 125.00	/hr	38	hours	$ 4,750.00		
	Project Admin	$ 95.00	/hr	0	hours	$ -		
Grant Pursuit (2025 WQI)	Senior Consultant	$ 210.00	/hr	8	hours	$ 1,680.00	$ 8,440.00	
	Funding Manager	$ 125.00	/hr	48	hours	$ 6,000.00		
	Project Admin	$ 95.00	/hr	8	hours	$ 760.00		
Grant Pursuit (2025 Resilient)	Senior Consultant	$ 210.00	/hr	8	hours	$ 1,680.00	$ 8,440.00	
	Funding Manager	$ 125.00	/hr	48	hours	$ 6,000.00		
	Project Admin	$ 95.00	/hr	8	hours	$ 760.00		
Grant Pursuit (2025 SRF)	Senior Consultant	$ 210.00	/hr	16	hours	$ 3,360.00	$ 12,120.00	
	Funding Manager	$ 125.00	/hr	64	hours	$ 8,000.00		
	Project Admin	$ 95.00	/hr	8	hours	$ 760.00		
						FY 2024-2025 Fee	**$ 112,950.00**	

Hale Innovation, LLC | 111 S Maitland Ave, Maitland, FL 32751 | (304) 767-5165 | Lee@HaleInnovation.com

DATE: April 24, 2024

TO: Honorable Mayor and City Commissioners

VIA: T. Michael Stavres, City Manager
M.J. Carnevale, Deputy City Manager

FROM: Gary M. Hubbard, Water Department Director

SUBJECT: Water Plants, Ground Storage Tanks (GST) Repairs

BACKGROUND

The Ground Storage Tanks (GST) at the Water Treatment Plants are required by the Florida Department of Health to be inspected every five years. Included in this year's inspections were Inwood 0.25 MG and 0.75 MG, Fairfax 0.60 MG, Winterset 0.50 MG, and Ridge Vo-Tech 0.10 MG tanks. The inspection reports found deficiencies that require repairs to the exterior and interiors of the tanks. The tank repairs include crack sealing, spalling repairs, level sensor repairs, dome hatch and vent repairs, and resurfacing the exterior and interior coatings.
The design and fabrication of the GST's are a unique form of construction that require thorough knowledge of the components and technology. The City currently has a sole source agreement with CROM to provide the tank inspections, repairs, cleaning, and preventative maintenance on their tanks.

FINANCIAL IMPACT

The total cost for the five GST repairs is $1,185,615.00 and will be completed in budget years FY23/24, FY24/25. Funds are budgeted in 402-08-301-4605 in each fiscal year for the work. A construction time of 30 weeks is estimated to complete the five tanks.

RECOMMENDATION

Staff recommends the City Commission award the Water Plants, Ground Storage Tanks repairs to our sole source provider CROM and authorize the City Manager or his designee to take any further actions necessary thereto.

ATTACHMENTS

- CROM – Sole Source Certificate
- Inwood 0.25 MG, Proposal - 20240111
- Inwood 0.75 MG, Proposal – 20240139
- Fairfax 0.60 MG, Proposal -20240119

- Winterset 0.50 MG, Proposal - 20240131
- Ridge-Vo-Tech 0.10 MG, Proposal - 20240142

WINTER HAVEN
The Chain of Lakes City

Office of Procurement

SOLE SOURCE

CERTIFICATE OF CONDITIONS AND CIRCUMSTANCES

Instructions: The purpose of this form is to certify conditions and circumstances for the purchase of goods and services under the single source exception to the competitive bid process. This request is to be executed by the Department Director and submitted to the Procurement Officer for consideration.

Items or services required: Tank inspections, repairs, cleaning and preventative maintenance on CROM tanks at Water Treatment Plants

Name of company considered a Sole Source: The CROM Corporation dba: Crom Coatings & Restorations

List the conditions and circumstances that require this to be a Sole Source purchase. Be specific:
The CROM Corporation is the only company with design, construction and repair experience and qualifications to properly inspect and facilitate repairs to the CROM tanks currently in operation at COWH Water Treatment Plants

Proper documentation for verification of Sole Source must be attached.

Department Director's signature: Mark Bumbaugh **Date requested:** 4/22/24

****

Procurement action/findings: Sole source contractor for insp/repairs of existing tanks. Unapproved repairs will void warranties. APPROVED.

Procurement Officer's signature: Bethany Owen **Date:** 4/22/2024

Per Florida Statute 838.22(2) It is unlawful for a public servant, with "corrupt intent" to obtain a benefit for any person or to cause unlawful harm to another to circumvent a competitive bidding process required by law or rule by using a sole-source contract for commodities or services.

CROM

TRUSTED | EXPERIENCED | RELIABLE SINCE 1953

April 18, 2024

Via Email: swarder@mywinterhaven.com

Mr. Steven Warder
Water Plant Manager
City of Winterhaven
PO Box 2277
Winter Haven, FL 33883

RE: Repairs Based on Inspections
Winter Haven, Florida
CCR PR# 20240111, 20240119, 20240131, 20240139, and 20240142

Dear Mr. Warder:

CROM Coatings and Restorations ("CCR") is offering ground storage tank inspection and repair services as an approved representative of CROM, LLC. CCR is a division of CROM, LLC which was formed to carry out the specific tasks to inspect, repair and modify prestressed composite tanks as well as other concrete structures.

The construction of prestressed composite tanks is a unique form of construction. The combination of materials and construction methods make the structures difficult to understand if not thoroughly knowledgeable in this technology. In order to properly address modifications, maintenance and repairs on prestressed tanks, the companies involved need to have considerable experience in how the tanks are designed and built. Current AWWA Standards state that maintenance and inspections performed on prestressed tanks should only be "performed under the direction of a professional engineer thoroughly familiar with wire- and strand-wrapped prestressed composite tanks and their construction." CROM, LLC approves CCR as the sole company for any repairs and modifications performed on all of their prestressed composite tanks. CCR has unparalleled experience in the design, construction, modification and repair of prestressed composite tanks. No other service company provides this background.

The warranty as stated by the tank manufacturer requires that they be notified before any work is performed. Any work performed is required to be done by an approved contractor. Any work performed by an unapproved contractor will void any written or implied warranties.

Thank you for giving us the opportunity to assist you. Please let us know if you have any further questions.

Sincerely,

CROM COATINGS AND RESTORATIONS



Robert G. Oyenarte, P.E.
President

April 18, 2024

PROPOSAL 20240111

REPAIRS BASED ON INSPECTION
250,000-GALLON GROUND STORAGE TANK
WINTER HAVEN, FLORIDA

CROM Coatings and Restorations, a Division of CROM, LLC ("CCR") proposes to provide labor and material for the repair/coating of the prestressed concrete tank for the **City of Winter Haven** ("Client"). All work will be completed in accordance with all applicable codes and standards including OSHA, AWWA, ACI and standard prestressed concrete tank design.

1. DRAWINGS, SPECIFICATIONS, AND OTHER REQUIRED DATA

The Client or a duly authorized representative, is responsible for providing CCR with a clear understanding of the project nature and scope as is reasonably known to the Client. The Client shall supply CCR with sufficient and adequate information, including, but not limited to, maps, site plans, reports, surveys, and designs, to allow CCR to properly complete the specified services. The Client shall also communicate changes in the nature and scope of the project as soon as possible during performance of the work so that the changes can be incorporated into the work product.

Prior to starting work, CCR will request from Client data reasonably required for submittal purposes for the repair/coating of the aforementioned storage tank, including any available computations, detailed drawings, and specifications. If, in the opinion of CCR, adequate data is not available or is incomplete, Client will be informed and arrangements made for creation of needed data. CCR will not perform engineering studies or perform work requiring professional engineering duties but will assist Client in obtaining such services.

2. INSURANCE

CCR represents and warrants that it and its agents, staff and Consultants employed by it is and are protected by worker's compensation insurance and that CCR has such coverage under public liability and property damage insured policies which CCR deems to be adequate. Certificates for all such policies of insurance shall be provided to Client upon request in writing. Within the limits and conditions of such insurance, CCR agrees to indemnify and save Client harmless from and against loss, damage, or liability arising from negligent acts by CCR, its agents, staff and consultants employed by it. CCR shall not be responsible for any loss, damage or liability beyond the amounts, limits, and conditions of such insurance or the limits described in Section 7, whichever is less. The Client agrees to defend, indemnify, and save CCR harmless for loss, damage or liability arising from acts by Client, Client's agent, staff, and other consultants employed by Client. Any bond requirement(s) by Client will carry an additional cost unless the parties agree otherwise.

3. SERVICES TO BE FURNISHED BY CCR

CCR proposes to furnish all supervision, labor, material, and equipment required to complete the work, except as noted in Paragraph 4. The services to be furnished by CCR are specifically:

This scope of work is to be performed on the following tank:

- 0.25 MG Ground Storage Tank
  55'-0" ID X 14'-0" SWD
  (CROM Job No. 1965-M-016)

a. Mobilization of crew, materials and equipment needed to complete the proposed scope.

Exterior Work:

b. Exterior Dome, Wall, and Emergency Overflow Openings:
   1) Pressure wash exterior concrete surfaces at a minimum of 3,500 psi to remove dirt, dust, and other contaminants from the substrate.
   2) Mechanically rout **up to 1,950 linear feet** of cracks larger than 1/8" located on the dome and wall removing any lose material from the substrate. Apply a surfacing epoxy to the prepared cracks bringing the repair flush with adjacent surfaces.
   3) Apply a stripe coat **up to 1,950 linear feet** to cracks smaller than 1/8" located on the dome and wall with a modified 154.
   4) Apply 2 coats of an Acrylic Emulsion at 2.0-3.0 mils DFT to the concrete surfaces of the tank wall, dome, and emergency overflows per manufacturer's recommendation.

c. Dome Probe:
   1) Mechanically prepare the surfaces of the dome probe and apply coatings per manufacturer's recommendation.

d. Liquid Level Indicator repair:
   1) Visually inspect LLI (target, board, cables and clamps).
   2) Mechanically evaluate the working components of the LLI.
   3) Make all necessary repairs to restore LLI.
   4) Evaluate the LLI to insure proper functionality.

e. Dome Access Hatch:
   1) Prepare and coat dome access hatch door with gelcoat.
   2) Replace insect barrier around the dome access hatch door.

f. Dome Center Vent:
   1) Prepare surface and coat the dome center vent with gelcoat.
   2) Replace deteriorated dome center vent screens with 24/24 polyester mesh.

g. Aerator:
   1) Remove trays and set aside. Aerator trays will be re-installed after the aerator refurbishment work is complete.
   2) Mechanically prepare the surfaces for the interior aerator floor concrete surfaces removing laitance and hardeners while providing a surface profile equal to an ICRI CSP 5 or greater as per SSPC-13/NACE 6 standards.
   3) Abrasive blast the inlet pipe of the aerator to remove rust, corrosion, and other contaminants from the substrate.
   4) Pressure wash all surfaces of the aerator including the inlet pipe at a minimum 3500 psi to remove dirt, oil, grease, surface blisters, any lose coating material due to loss of adhesion, and other contaminants from the substrate.
   5) Apply two coats of a Polyamidomine Epoxy, at 2.0 – 10.0 mils DFT per coat, to the aerator's interior concrete surfaces and inlet pipe, per manufacturer recommendations.
   6) Rescreen aerator perimeter with new 24/24 mesh screen.

Interior Work:

h. Interior Dome
   1) Chip away loose and or damaged spalled concrete **up to 1,230** until firm / non-degraded concrete is reached.

2) Abrasive blast the interior dome concrete surfaces removing rust and corrosion from exposed bolster feet, loosely adhered coatings, and degraded concrete while providing a surface profile equal to an ICRI CSP 5 or greater as per SSPC-13/NACE 6 standards.
3) Pressure wash the interior dome concrete surfaces at a minimum 3500 psi to remove laitance, hardeners, and remaining sand and debris left over from abrasive blasting preparing the surfaces for new coatings.
4) Apply a High-Strength Bonding Epoxy **up to 1,230 square feet** to the prepared surfaces of the exposed reinforcing steel and concrete.
5) Resurface **up to 1,230 square feet** of the interior dome concrete surfaces with a cementitious repair mortar as needed filling voids and bug holes while achieving a monolithic smooth pinhole free surface, per the manufacturer's recommendation.
6) Apply two coats of a Polyamidomine Epoxy, at 2.0 – 10.0 mils DFT per coat, to the interior dome concrete surfaces, per manufacturer recommendations.

i. Interior tank wall:
1) Abrasive blast the interior wall concrete surfaces removing loosely adhered coatings, and degraded concrete while providing a surface profile equal to an ICRI CSP 5 or greater as per SSPC-13/NACE 6 standards.
2) Pressure wash the interior wall concrete surfaces at a minimum 3500 psi to remove laitance, hardeners, and remaining sand and debris left over from abrasive blasting preparing the surfaces for new coatings.
3) Apply two coats of a Polyamidomine Epoxy, at 2.0 – 10.0 mils DFT per coat, to the interior wall concrete surfaces, per manufacturer recommendations.

j. Baffle wall:
1) Abrasive blast the baffle wall concrete surfaces removing loosely adhered coatings, and degraded concrete while providing a surface profile equal to an ICRI CSP 5 or greater as per SSPC-13/NACE 6 standards.
2) Pressure wash the baffle wall concrete surfaces at a minimum 3500 psi to remove laitance, hardeners, and remaining sand and debris left over from abrasive blasting preparing the surfaces for new coatings.
3) Resurface **up to 100 square feet at a maximum depth of 1-inch** of the baffle wall concrete surfaces with a cementitious repair mortar as needed filling voids and bug holes while achieving a monolithic smooth pinhole free surface, per the manufacturer's recommendation.
4) Apply two coats of a Polyamidomine Epoxy, at 2.0 – 10.0 mils DFT per coat, to the baffle wall concrete surfaces, per manufacturer recommendations.

k. Interior DIP Piping:
1) Abrasive blast the interior piping **up to 120 square feet** to remove rust, corrosion, and other contaminants from the substrate.
2) Pressure wash the interior piping **up to 120 square feet** at a minimum 3500 psi to remove laitance, hardeners, and remaining sand and debris left over from abrasive blasting preparing the surfaces for new coatings.
3) Apply two coats to the interior piping **up to 120 square feet** of a Polyamidomine Epoxy, at 2.0 – 10.0 mils DFT per coat, per manufacturer recommendations.

l. Tank disinfection in accordance with AWWA C652.

Please Note:
The resurfacing of areas on the baffle wall are estimated to be 100 square feet at a depth of 1-inch or approximately 8 cubic feet. If areas of the baffle receiving the resurfacing repair mortar exceeds a depth of more than 1-inch, a different repair material will be required. The client will be notified, and a change order will be required to account for the materials needed and the new repair process involved.

4. MATERIALS AND SERVICES FURNISHED BY CLIENT OR OTHERS

It is understood that the following services shall be provided by others without expense to CCR:

a. Client will grant or obtain free and uninterrupted access to the structure(s) for all equipment and personnel necessary for CCR to perform the work set forth in this Proposal. It is imperative that hatch covers are not installed prior to the completion of CCR's scope of work to allow for maximum hatch opening. The Client will notify any and all processors of the project site that Client has granted CCR free and uninterrupted access to the site. CCR shall be responsible for site cleanup and repair of damages caused by CCR or its subcontractors.

b. The Client is responsible for the accuracy of locations for all subterranean structures and utilities. CCR will take responsible precautions to avoid known subterranean structures, and the Client waives any claim against CCR and agrees to defend, indemnify, and hold CCR harmless from any claim or liability for injury or loss, including costs to defend, arising from damage done to subterranean structures and utilities not identified or accurately located. In addition, Client agrees to compensate CCR for any time spent or expenses incurred by CCR in defense of any such claim, with compensation to be based upon CCR's prevailing fee schedule and expense reimbursement policy.

c. A continuous supply of potable water under 50 psi pressure at the rate of 60 gallons per minute for the use of the CCR crew within 100 feet of each tank site.

d. A continuous supply of electricity during the period of work: one 100-AMP, 110/220-volt service for the operation of our power tools and accessories, located not more than 100 feet from each tank. Please be sure that all circuit breakers are ground-fault protected. If it is necessary for CCR to supply its own electric power, add $500.00 per week to the contract amount.

e. Any permit or other fees from any AHJ as may be required for the work including but not limited to all connect/disconnect, impact and building/construction fees.

f. A suitable container conveniently located on site for the use of the CCR crew to dispose of construction debris generated during the repairs/modifications.

g. Sanitary facilities for the CCR crew for the duration of the project.

h. Drainage and disposal of the tank's contents.

i. Refilling, disinfecting, bacteriological sampling, and testing of the tank's contents.

j. Cleaning the interior and exterior of the tank and accessories.

k. Complete lock-out and tag-out of the subject tank prior to personnel entering each tank. The Client will be required to provide all materials for this process. The Client will be responsible for demonstrating to CCR that the lock-out procedure is complete, and the tank is rendered "safe" before CCR will perform air quality testing to enter each tank.

l. All professional engineering design services.

m. Method A "X-Cut Tape Test", per ASTM D3359, shall be completed by a qualified coatings inspector or coatings manufacturer representative prior to application of new coating system. Results of this test must be 4A or greater. If the results of this test are less than a 4A, CCR and the Client will have to re-evaluate the proposed scope of work and pricing.

n. Adhesion testing as required by the specifications.

o. Hazardous material removal and disposal as required by the specifications.

5. BACK CHARGES AND CLAIMS FOR EXTRAS

No claim for extra services rendered or materials furnished will be valid by either party unless written notice thereof is given during the first ten days of the calendar month following that in which the claim originated. CCR's claims for extras shall carry 30% for overhead and 10% for profit. Any mutually agreed upon deductive change order will provide only a credit for 10% profit but will not provide a credit for 30% overhead.

6. LIMIT ON INDIVIDUAL LIABILITY OF DESIGN PROFESSIONAL

LIMITATION ON INDIVIDUAL LIABILITY OF DESIGN PROFESSIONAL - TO THE EXTENT PERMITTED BY LAW, AN EMPLOYEE, AGENT, DESIGN PROFESSIONALS, OR ENGINEERS EMPLOYED BY CCR SHALL NOT BE INDIVIDUALLY LIABLE FOR NEGLIGENCE OCCURRING WITHIN THE COURSE AND SCOPE OF EMPLOYMENT WITH CCR UNDER THIS PROPOSAL TO AN OWNER, CONTRACTOR, SUBCONTRACTOR, OR TO ANY THIRD PARTY CLAIMING BY AND THROUGH THESE PARTIES.

7. RISK ALLOCATION

Client agrees that CCR's liability for any damage on account of any error, omission or other professional negligence will be limited to a sum not to exceed $50,000 or CCR's fee, whichever is greater. Client agrees that the foregoing limits of liability extend to all of CCR's employees and professionals who perform any services for Client. If Client prefers to have higher limits on general or professional liability, CCR agrees to increase the limits up to a maximum of $1,000,000.00 upon Clients' written request at the time of accepting our proposal, provided that Client agrees to pay an additional consideration of four percent of the total fee, or $400.00, whichever is greater. The additional charge for the higher liability limits is because of the greater risk assumed and is not strictly a charge for additional professional liability insurance.

8. ASSIGNMENT AND THIRD PARTIES

Neither the Client nor CCR may delegate, assign, sublet or transfer their duties or any interest in this Proposal without the written consent of the other party. Both parties agree there are no intended third-party beneficiaries to this Proposal, including other contractors or parties working on the project, or, if necessary, a surety of CCR.

9. LABOR

This proposal is predicated on open-shop labor conditions, using our own personnel. If we are required to employ persons of an affiliation desirable to the Client, or other contractor employed by him or the general contractor thereby resulting in increased costs to us, the contract price shall be adjusted accordingly. Such requirement shall not provide that CCR sign a contract with any labor organization. In the event of a labor stoppage, we shall not be in default or be deemed responsible for delay of the progress of this contract or damage to the Client or the contractor so long as CCR has sufficient qualified employees available to perform the work.

Our proposal is based on our crew performing our Scope of Work in accordance with our standard safety program. If any additional safety requirements are placed on us (not required by OSHA) such as: site training, additional safety equipment or permit required confined space, the cost for such additional requirements plus 30% for overhead shall be reimbursed to us.

10. SCHEDULE, COMMENCEMENT, AND DELAYS

This quotation is valid for **30 days**. Should this quotation expire, a new quotation will be required to reflect updated pricing due to market changes. Furthermore, a Commencement Date that is mutually agreeable to both parties will be incorporated into this Proposal (or other agreement between us) with sufficient time for Preparation of design drawings and other submittals. Delays to the mutually agreed upon Commencement Date shall be compensated by change order for actual cost damages for the delay(s) to CCR.

The above-mentioned mutually agreeable Commencement Date must reflect sufficient time for all milestones and construction durations required to reach final completion of the project. CCR will be prepared to start work and will undertake to furnish sufficient labor, materials, and equipment to complete construction of our scope of work within the Anticipated Construction Start Time noted below:

Tank 1: 6 Weeks

If the readiness of the project site or conditions do not allow efficient execution of our work on or before the Anticipated Construction Start Time or Commencement Date (whichever governs), our contract price will increase $55.00 per man hour of crew delay until other productive work can be scheduled for the assigned crew.

It is agreed that CCR shall be permitted to execute our work without interruption. If delayed at any time for a period of 24 hours or more by an act or neglect of the owner, his representative, or other contractor employed by him, or by the general contractor, or by reason of any changes ordered in the work, CCR shall be reimbursed for our actual additional expense caused by such delay, plus 30% for overhead.

In the event an agreement apart from this proposal is preferred, such agreement shall include this Proposal and all the conditions herein unless both parties agree in writing to specifically omit any condition.

11. QUOTATION

We are prepared to carry out this work in accordance with the foregoing for the lump sum:

Mobilization:		**$ 4.500.00**
Exterior Repairs and Coatings:		**$ 67,172.00**
Interior Repairs and Coatings:		**$ 171,993.00**
	Total:	**$ 243,665.00**

Please Note:
Pricing is based on CROM being able to complete all work in a single mobilization. If additional mobilizations are required, a charge of $4500.00 per mobilization will be added to the final bill.

Periodic and final payment, including any retention, shall be made within **7 days** from the date our work is completed, or the billing is received, or in accordance with applicable state Prompt Payment law, whichever is earlier, and is to be received by us in our accounting office at 250 SW 36th Terrace, Gainesville, Florida 32607. All costs for third party contracts and billing management services, or use of any software, as may be required by the Client or Owner, will be added to the Contract Price by change order. Final payment shall not be held due to delays in testing. Payment not received by that date will be considered past due and will be subject to a late payment charge of 1½% per calendar month, or any fraction thereof until received in our office.

If CCR does not receive payment within 7 days after such payment is due as defined herein, CCR may give notice, without prejudice to and in addition to any other legal remedies, and may stop work until payment of the full amount owing has been received. The Proposal Amount and Time shall be adjusted by the amount of CCR's reasonable and verified cost of shutdown, delay, and startup, which shall be effected by an appropriate change order.

Any reasonable legal or other expense necessary for the enforcement of this Proposal or for the collection of monies due shall be borne by the party at fault. If sales tax is excluded from our price, or on materials contained in our price, in accordance with project specifications, such exclusion is subject to receipt of adequate tax exemption documents from you or the project owner prior to commencement of Work to allow for our application of same. If proper tax exemption documentation is not received or is not adequate to provide exemption, we reserve the right to receive reimbursement of all sales tax CCR is obligated to pay due to the tardiness, lack of, or inadequate exemption

documentation on behalf of you or the owner.

12. ARBITRATION/DISPUTE RESOLUTION AND VENUE

Any controversy or claim relating to the contract between us shall be settled by arbitration in accordance with the Construction Industry Arbitration Rules of the American Arbitration Association, and judgment by the arbitrator(s) may be entered in any court having jurisdiction. The claim will be brought and tried in judicial jurisdiction of the court of the state and county where CCR's principal place of business is located and Client waives the right to remove the action to any other county or judicial jurisdiction, and the prevailing party will be entitled to recovery of all reasonable costs incurred, including staff time, court costs, attorneys' fees and other claim related expenses the venue for any litigation under this Agreement shall be in Alachua County, Florida. If CCR engages an attorney for the collection of the amounts due from the Client, the Client shall pay CCR its reasonable attorney's fees and costs through any appeal. The laws of the State of Florida will govern the validity of these terms, their interpretation, and performance. If any of the provisions contained in this Agreement are held illegal, invalid, or unenforceable, the enforceability of the remaining provisions will not be impaired. Limitations of liability and indemnities will survive termination of this Agreement for any cause.

13. CHANGES IN SCOPE AND LIMITATIONS

If the Client wishes to have CCR perform any additional repairs or remediation of the tank or accessories, it shall authorize such work in writing and pay CCR its standard rates for such work.

It is agreed that CCR shall not be responsible for any consequential, special, or delay damages, or any force majeure events, including but not limited to acts of God and pandemic. CCR does not assume responsibility for differing, latent, or concealed conditions which differ materially from those indicated in the Subcontract/Contract documents or from those ordinarily found to exist and not inherent in the Work, including but not limited to weather or subsurface conditions, and not caused by CCR's fault or negligence.

14. TERMINATION

This agreement may be terminated by either party upon seven (7) days written notice in the event of substantial failure by the other party to perform in accordance with the terms hereof. Such termination shall be effective if that substantial failure has been redeemed before expiration of the period specified in the written notice. In the event of termination, CCR shall be paid for services performed to the termination notice date plus reasonable termination expenses.

In the event of termination, or suspension for more than three (3) months prior to completion of all work contemplated by the proposal, CCR may complete such analyses and records as necessary to complete their files and may also complete a report on the services performed to the date of notice of termination or suspension. The expense of termination or suspension shall include all direct costs of CCR in completing such analyses, records and reports if necessary.

15. GUARANTEE

CCR will guarantee its workmanship and materials on its work covered in this Proposal for a period of one year after completion of its work. Prior to leaving the location, CCR personnel will perform a walk through with the responsible party overseeing our work for the Client. In case any defects in CCR's workmanship or materials appear within the one-year period after completion and acceptance of CCR's work, CCR shall promptly make repairs at its own expense upon written notice by the Client that such defects have been found. CCR's guarantee is limited to defects in CCR's workmanship and materials, excluding inspections, cleaning, and disinfection services ("Services"). CCR shall endeavor to perform these Services with that degree of care and skill ordinarily exercised under similar circumstances by contractors practicing in the same discipline at the same time and location. CCR shall not be responsible for, nor liable for, delamination of previous coatings application, any ordinary wear and tear, or for damage caused from negligent or inappropriate use or by any other entity beyond our control, including but not limited to modifications, work, or repairs by others.

If a bond is required for the Scope of Work included in this contract, CCR will furnish a one-year Performance and Payment Bond. The cost of this bond is **not included** in our price. Please add $9.00 per $1,000 of contract value.

16. ACCEPTANCE

This proposal is offered for your acceptance within **30 days** from the proposal date. We reserve the right after that period to amend our proposal to reflect our changing construction schedules and materials and labor rate changes. The return to this company of a copy of this proposal with your acceptance endorsed thereon within the time aforesaid will constitute a contract between us. This proposal shall be made a part of any subcontract agreement or purchase order.

Sincerely,

CROM Coatings and Restorations, a Division of CROM, LLC

Cliff Dykes
Business Development Manager

Joseph C. Swann, PE
Region Lead

/mkk

ACCEPTED BY CLIENT

_____

PRINT: T. Michael Stavres

TITLE: City Manager

DATE: 5/13/2024

April 18, 2024

PROPOSAL 20240139

REPAIRS BASED ON INSPECTION
750,000-GALLON GROUND STORAGE TANK
WINTER HAVEN, FLORIDA

CROM Coatings and Restorations, a Division of CROM, LLC ("CCR") proposes to provide labor and material for the repair/coating of the prestressed concrete tank for the **City of Winter Haven** ("Client"). All work will be completed in accordance with all applicable codes and standards including OSHA, AWWA, ACI and standard prestressed concrete tank design.

1. DRAWINGS, SPECIFICATIONS, AND OTHER REQUIRED DATA

The Client or a duly authorized representative, is responsible for providing CCR with a clear understanding of the project nature and scope as is reasonably known to the Client. The Client shall supply CCR with sufficient and adequate information, including, but not limited to, maps, site plans, reports, surveys, and designs, to allow CCR to properly complete the specified services. The Client shall also communicate changes in the nature and scope of the project as soon as possible during performance of the work so that the changes can be incorporated into the work product.

Prior to starting work, CCR will request from Client data reasonably required for submittal purposes for the repair/coating of the aforementioned storage tank, including any available computations, detailed drawings, and specifications. If, in the opinion of CCR, adequate data is not available or is incomplete, Client will be informed and arrangements made for creation of needed data. CCR will not perform engineering studies or perform work requiring professional engineering duties but will assist Client in obtaining such services.

2. INSURANCE

CCR represents and warrants that it and its agents, staff and Consultants employed by it is and are protected by worker's compensation insurance and that CCR has such coverage under public liability and property damage insured policies which CCR deems to be adequate. Certificates for all such policies of insurance shall be provided to Client upon request in writing. Within the limits and conditions of such insurance, CCR agrees to indemnify and save Client harmless from and against loss, damage, or liability arising from negligent acts by CCR, its agents, staff and consultants employed by it. CCR shall not be responsible for any loss, damage or liability beyond the amounts, limits, and conditions of such insurance or the limits described in Section 7, whichever is less. The Client agrees to defend, indemnify, and save CCR harmless for loss, damage or liability arising from acts by Client, Client's agent, staff, and other consultants employed by Client. Any bond requirement(s) by Client will carry an additional cost unless the parties agree otherwise.

3. SERVICES TO BE FURNISHED BY CCR

CCR proposes to furnish all supervision, labor, material, and equipment required to complete the work, except as noted in Paragraph 4. The services to be furnished by CCR are specifically:

This scope of work is to be performed on the following tank:

- 0.75 MG Ground Storage Tank
  92'-0" ID X 15'-1" SWD
  (CROM Job No. 1977-M-051)

a. Mobilization of crew, materials and equipment needed to complete the proposed scope.

Exterior Work:

b. Exterior Dome, Wall, Aerator, Center Vent, Emergency Overflow Openings and Dome Hatch:
   1) Pressure wash exterior concrete surfaces at a minimum of 3,500 psi to remove dirt, dust, and other contaminants from the substrate.
   2) Mechanically rout **up to 2,249 linear feet** of cracks larger than 1/8" located on the dome and wall removing any lose material from the substrate. Apply a surfacing epoxy to the prepared cracks bringing the repair flush with adjacent surfaces.
   3) Apply a stripe coat **up to 2,249 linear feet** to cracks smaller than 1/8" located on the dome and wall with a modified 154.
   4) Apply 2 coats of an Acrylic Emulsion at 2.0-3.0 mils DFT to the concrete surfaces of the tank wall, dome, and emergency overflows per manufacturer's recommendation.

c. Liquid Level Indicator repair:
   1) Visually inspect LLI (target, board, cables and clamps).
   2) Mechanically evaluate the working components of the LLI.
   3) Make all necessary repairs to restore LLI.
   4) Evaluate the LLI to insure proper functionality.

d. Dome Access Hatch:
   1) Prepare and coat dome access hatch door with gelcoat.
   2) Replace control arm and all corroded hardware with 316 SS hardware.
   3) Replace insect barrier around the dome access hatch door.

e. Dome Center Vent:
   1) Prepare surface and coat the dome center vent with gelcoat.
   2) Replace deteriorated dome center vent screens with 24/24 polyester mesh.

f. Emergency Overflow Openings:
   1) Replace deteriorated dome center vent screens with 24/24 polyester mesh.
   2) Replace corroded hardware with 316 SS hardware.

g. Aerator:
   1) Remove trays and set aside. Aerator trays will be re-installed after the aerator refurbishment work is complete.
   2) Mechanically prepare the surfaces for the interior aerator floor concrete surfaces removing laitance and hardeners while providing a surface profile equal to an ICRI CSP 5 or greater as per SSPC-13/NACE 6 standards.
   3) Abrasive blast the inlet pipe of the aerator to remove rust, corrosion, and other contaminants from the substrate.
   4) Pressure wash all surfaces of the aerator including the inlet pipe at a minimum 3500 psi to remove dirt, oil, grease, surface blisters, any lose coating material due to loss of adhesion, and other contaminants from the substrate.
   5) Apply two coats of a Polyamidomine Epoxy, at 2.0 – 10.0 mils DFT per coat, to the aerator's interior concrete surfaces and inlet pipe, per manufacturer recommendations.
   6) Rescreen aerator perimeter with new 24/24 mesh screen.

h. Destructive Investigations
   1) Setup scaffolding to access investigation areas.

2) Controlled demolition of the interior corewall inside the tank to examine the condition of the diaphragm. Patch back with a cementitious repair mortar flush with the wall.
   (a) Create (5) 8" x 8" openings on the interior crack back to the diaphragm for examination.
3) Controlled demolition of the exterior covercoat outside the tank to examine the condition of the prestressing wires. Patch back with a cementitious repair mortar flush with the wall.
   (a) Create (5) 8" x 8" openings on the exterior crack back to the prestressing wires for examination.

Interior Work:

i. Interior Dome
   1) Chip away loose and or damaged spalled concrete **up to 3,444** until firm / non-degraded concrete is reached.
   2) Abrasive blast the interior dome concrete surfaces removing rust and corrosion from exposed bolster feet, loosely adhered coatings, and degraded concrete while providing a surface profile equal to an ICRI CSP 5 or greater as per SSPC-13/NACE 6 standards.
   3) Pressure wash the interior dome concrete surfaces at a minimum 3500 psi to remove laitance, hardeners, and remaining sand and debris left over from abrasive blasting preparing the surfaces for new coatings.
   4) Apply a High-Strength Bonding Epoxy **up to 1,377 square feet** to the prepared surfaces of the exposed reinforcing steel and concrete.
   5) Resurface **up to 1,377 square feet** of the interior dome concrete surfaces with a cementitious repair mortar as needed filling voids and bug holes while achieving a monolithic smooth pinhole free surface, per the manufacturer's recommendation.
   6) Apply two coats of a Polyamidomine Epoxy, at 2.0 – 10.0 mils DFT per coat, to the interior dome concrete surfaces, per manufacturer recommendations.

j. Interior tank wall:
   1) Abrasive blast the interior wall concrete surfaces removing loosely adhered coatings, and degraded concrete while providing a surface profile equal to an ICRI CSP 5 or greater as per SSPC-13/NACE 6 standards.
   2) Pressure wash the interior wall concrete surfaces at a minimum 3500 psi to remove laitance, hardeners, and remaining sand and debris left over from abrasive blasting preparing the surfaces for new coatings.
   3) Apply two coats of a Polyamidomine Epoxy, at 2.0 – 10.0 mils DFT per coat, to the interior wall concrete surfaces, per manufacturer recommendations.

k. Interior DIP Piping:
   1) Abrasive blast the interior piping **up to 138 square feet** to remove rust, corrosion, and other contaminants from the substrate.
   2) Pressure wash the interior piping **up to 138 square feet** at a minimum 3500 psi to remove laitance, hardeners, and remaining sand and debris left over from abrasive blasting preparing the surfaces for new coatings.
   3) Apply two coats to the interior piping **up to 138 square feet** of a Polyamidomine Epoxy, at 2.0 – 10.0 mils DFT per coat, per manufacturer recommendations.

l. Tank disinfection in accordance with AWWA C652.

4. MATERIALS AND SERVICES FURNISHED BY CLIENT OR OTHERS

It is understood that the following services shall be provided by others without expense to CCR:

a. Client will grant or obtain free and uninterrupted access to the structure(s) for all equipment and personnel necessary for CCR to perform the work set forth in this Proposal. It is imperative that hatch covers are not installed prior to the completion of CCR's scope of work to allow for maximum hatch opening. The Client will notify any and all processors of the project site that Client has granted CCR free and uninterrupted access to

the site. CCR shall be responsible for site cleanup and repair of damages caused by CCR or its subcontractors.

b. The Client is responsible for the accuracy of locations for all subterranean structures and utilities. CCR will take responsible precautions to avoid known subterranean structures, and the Client waives any claim against CCR and agrees to defend, indemnify, and hold CCR harmless from any claim or liability for injury or loss, including costs to defend, arising from damage done to subterranean structures and utilities not identified or accurately located. In addition, Client agrees to compensate CCR for any time spent or expenses incurred by CCR in defense of any such claim, with compensation to be based upon CCR's prevailing fee schedule and expense reimbursement policy.

c. A continuous supply of potable water under 50 psi pressure at the rate of 60 gallons per minute for the use of the CCR crew within 100 feet of each tank site.

d. A continuous supply of electricity during the period of work: one 100-AMP, 110/220-volt service for the operation of our power tools and accessories, located not more than 100 feet from each tank. Please be sure that all circuit breakers are ground-fault protected. If it is necessary for CCR to supply its own electric power, add $500.00 per week to the contract amount.

e. Any permit or other fees from any AHJ as may be required for the work including but not limited to all connect/disconnect, impact and building/construction fees.

f. A suitable container conveniently located on site for the use of the CCR crew to dispose of construction debris generated during the repairs/modifications.

g. Sanitary facilities for the CCR crew for the duration of the project.

h. Drainage and disposal of the tank's contents.

i. Refilling, disinfecting, bacteriological sampling, and testing of the tank's contents.

j. Cleaning the interior and exterior of the tank and accessories.

k. Complete lock-out and tag-out of the subject tank prior to personnel entering each tank. The Client will be required to provide all materials for this process. The Client will be responsible for demonstrating to CCR that the lock-out procedure is complete, and the tank is rendered "safe" before CCR will perform air quality testing to enter each tank.

l. All professional engineering design services.

m. Method A "X-Cut Tape Test", per ASTM D3359, shall be completed by a qualified coatings inspector or coatings manufacturer representative prior to application of new coating system. Results of this test must be 4A or greater. If the results of this test are less than a 4A, CCR and the Client will have to re-evaluate the proposed scope of work and pricing.

n. Adhesion testing as required by the specifications.

o. Hazardous material removal and disposal as required by the specifications.

5. BACK CHARGES AND CLAIMS FOR EXTRAS

No claim for extra services rendered or materials furnished will be valid by either party unless written notice thereof is given during the first ten days of the calendar month following that in which the claim originated.

CCR's claims for extras shall carry 30% for overhead and 10% for profit. Any mutually agreed upon deductive change order will provide only a credit for 10% profit but will not provide a credit for 30% overhead.

6. LIMIT ON INDIVIDUAL LIABILITY OF DESIGN PROFESSIONAL

LIMITATION ON INDIVIDUAL LIABILITY OF DESIGN PROFESSIONAL - TO THE EXTENT PERMITTED BY LAW, AN EMPLOYEE, AGENT, DESIGN PROFESSIONALS, OR ENGINEERS EMPLOYED BY CCR SHALL NOT BE INDIVIDUALLY LIABLE FOR NEGLIGENCE OCCURRING WITHIN THE COURSE AND SCOPE OF EMPLOYMENT WITH CCR UNDER THIS PROPOSAL TO AN OWNER, CONTRACTOR, SUBCONTRACTOR, OR TO ANY THIRD PARTY CLAIMING BY AND THROUGH THESE PARTIES.

7. RISK ALLOCATION

Client agrees that CCR's liability for any damage on account of any error, omission or other professional negligence will be limited to a sum not to exceed $50,000 or CCR's fee, whichever is greater. Client agrees that the foregoing limits of liability extend to all of CCR's employees and professionals who perform any services for Client. If Client prefers to have higher limits on general or professional liability, CCR agrees to increase the limits up to a maximum of $1,000,000.00 upon Clients' written request at the time of accepting our proposal, provided that Client agrees to pay an additional consideration of four percent of the total fee, or $400.00, whichever is greater. The additional charge for the higher liability limits is because of the greater risk assumed and is not strictly a charge for additional professional liability insurance.

8. ASSIGNMENT AND THIRD PARTIES

Neither the Client nor CCR may delegate, assign, sublet or transfer their duties or any interest in this Proposal without the written consent of the other party. Both parties agree there are no intended third-party beneficiaries to this Proposal, including other contractors or parties working on the project, or, if necessary, a surety of CCR.

9. LABOR

This proposal is predicated on open-shop labor conditions, using our own personnel. If we are required to employ persons of an affiliation desirable to the Client, or other contractor employed by him or the general contractor thereby resulting in increased costs to us, the contract price shall be adjusted accordingly. Such requirement shall not provide that CCR sign a contract with any labor organization. In the event of a labor stoppage, we shall not be in default or be deemed responsible for delay of the progress of this contract or damage to the Client or the contractor so long as CCR has sufficient qualified employees available to perform the work.

Our proposal is based on our crew performing our Scope of Work in accordance with our standard safety program. If any additional safety requirements are placed on us (not required by OSHA) such as: site training, additional safety equipment or permit required confined space, the cost for such additional requirements plus 30% for overhead shall be reimbursed to us.

10. SCHEDULE, COMMENCEMENT, AND DELAYS

This quotation is valid for **30 days**. Should this quotation expire, a new quotation will be required to reflect updated pricing due to market changes. Furthermore, a Commencement Date that is mutually agreeable to both parties will be incorporated into this Proposal (or other agreement between us) with sufficient time for Preparation of design drawings and other submittals. Delays to the mutually agreed upon Commencement Date shall be compensated by change order for actual cost damages for the delay(s) to CCR.

The above-mentioned mutually agreeable Commencement Date must reflect sufficient time for all milestones and construction durations required to reach final completion of the project. CCR will be prepared to start work and will undertake to furnish sufficient labor, materials, and equipment to complete construction of our scope of work within the Anticipated Construction Start Time noted below:

Tank 1: 9 Weeks

If the readiness of the project site or conditions do not allow efficient execution of our work on or before the Anticipated Construction Start Time or Commencement Date (whichever governs), our contract price will increase $55.00 per man hour of crew delay until other productive work can be scheduled for the assigned crew.

It is agreed that CCR shall be permitted to execute our work without interruption. If delayed at any time for a period of 24 hours or more by an act or neglect of the owner, his representative, or other contractor employed by him, or by the general contractor, or by reason of any changes ordered in the work, CCR shall be reimbursed for our actual additional expense caused by such delay, plus 30% for overhead.

In the event an agreement apart from this proposal is preferred, such agreement shall include this Proposal and all the conditions herein unless both parties agree in writing to specifically omit any condition.

11. QUOTATION

We are prepared to carry out this work in accordance with the foregoing for the lump sum:

Mobilization:		**$ 4,500.00**
Exterior Repairs and Coatings:		**$ 127,931.00**
Interior Repairs and Coatings:		**$ 252,919.00**
	Total:	**$ 385,350.00**

Periodic and final payment, including any retention, shall be made within **7 days** from the date our work is completed, or the billing is received, or in accordance with applicable state Prompt Payment law, whichever is earlier, and is to be received by us in our accounting office at 250 SW 36th Terrace, Gainesville, Florida 32607. All costs for third party contracts and billing management services, or use of any software, as may be required by the Client or Owner, will be added to the Contract Price by change order. Final payment shall not be held due to delays in testing. Payment not received by that date will be considered past due and will be subject to a late payment charge of 1½% per calendar month, or any fraction thereof until received in our office.

If CCR does not receive payment within 7 days after such payment is due as defined herein, CCR may give notice, without prejudice to and in addition to any other legal remedies, and may stop work until payment of the full amount owing has been received. The Proposal Amount and Time shall be adjusted by the amount of CCR's reasonable and verified cost of shutdown, delay, and startup, which shall be effected by an appropriate change order.

Any reasonable legal or other expense necessary for the enforcement of this Proposal or for the collection of monies due shall be borne by the party at fault. If sales tax is excluded from our price, or on materials contained in our price, in accordance with project specifications, such exclusion is subject to receipt of adequate tax exemption documents from you or the project owner prior to commencement of Work to allow for our application of same. If proper tax exemption documentation is not received or is not adequate to provide exemption, we reserve the right to receive reimbursement of all sales tax CCR is obligated to pay due to the tardiness, lack of, or inadequate exemption documentation on behalf of you or the owner.

12. ARBITRATION/DISPUTE RESOLUTION AND VENUE

Any controversy or claim relating to the contract between us shall be settled by arbitration in accordance with the Construction Industry Arbitration Rules of the American Arbitration Association, and judgment by the arbitrator(s) may be entered in any court having jurisdiction. The claim will be brought and tried in judicial jurisdiction of the court of the state and county where CCR's principal place of business is located and Client waives the right to remove the

action to any other county or judicial jurisdiction, and the prevailing party will be entitled to recovery of all reasonable costs incurred, including staff time, court costs, attorneys' fees and other claim related expenses the venue for any litigation under this Agreement shall be in Alachua County, Florida. If CCR engages an attorney for the collection of the amounts due from the Client, the Client shall pay CCR its reasonable attorney's fees and costs through any appeal. The laws of the State of Florida will govern the validity of these terms, their interpretation, and performance. If any of the provisions contained in this Agreement are held illegal, invalid, or unenforceable, the enforceability of the remaining provisions will not be impaired. Limitations of liability and indemnities will survive termination of this Agreement for any cause.

13. CHANGES IN SCOPE AND LIMITATIONS

If the Client wishes to have CCR perform any additional repairs or remediation of the tank or accessories, it shall authorize such work in writing and pay CCR its standard rates for such work.

It is agreed that CCR shall not be responsible for any consequential, special, or delay damages, or any force majeure events, including but not limited to acts of God and pandemic. CCR does not assume responsibility for differing, latent, or concealed conditions which differ materially from those indicated in the Subcontract/Contract documents or from those ordinarily found to exist and not inherent in the Work, including but not limited to weather or subsurface conditions, and not caused by CCR's fault or negligence.

14. TERMINATION

This agreement may be terminated by either party upon seven (7) days written notice in the event of substantial failure by the other party to perform in accordance with the terms hereof. Such termination shall be effective if that substantial failure has been redeemed before expiration of the period specified in the written notice. In the event of termination, CCR shall be paid for services performed to the termination notice date plus reasonable termination expenses.

In the event of termination, or suspension for more than three (3) months prior to completion of all work contemplated by the proposal, CCR may complete such analyses and records as necessary to complete their files and may also complete a report on the services performed to the date of notice of termination or suspension. The expense of termination or suspension shall include all direct costs of CCR in completing such analyses, records and reports if necessary.

15. GUARANTEE

CCR will guarantee its workmanship and materials on its work covered in this Proposal for a period of one year after completion of its work. Prior to leaving the location, CCR personnel will perform a walk through with the responsible party overseeing our work for the Client. In case any defects in CCR's workmanship or materials appear within the one-year period after completion and acceptance of CCR's work, CCR shall promptly make repairs at its own expense upon written notice by the Client that such defects have been found. CCR's guarantee is limited to defects in CCR's workmanship and materials, excluding inspections, cleaning, and disinfection services ("Services"). CCR shall endeavor to perform these Services with that degree of care and skill ordinarily exercised under similar circumstances by contractors practicing in the same discipline at the same time and location. CCR shall not be responsible for, nor liable for, delamination of previous coatings application, any ordinary wear and tear, or for damage caused from negligent or inappropriate use or by any other entity beyond our control, including but not limited to modifications, work, or repairs by others.

If a bond is required for the Scope of Work included in this contract, CCR will furnish a one-year Performance and Payment Bond. The cost of this bond is **not included** in our price. Please add $9.00 per $1,000 of contract value.

16. ACCEPTANCE

This proposal is offered for your acceptance within **30 days** from the proposal date. We reserve the right after that period to amend our proposal to reflect our changing construction schedules and materials and labor rate changes.

The return to this company of a copy of this proposal with your acceptance endorsed thereon within the time aforesaid will constitute a contract between us. This proposal shall be made a part of any subcontract agreement or purchase order.

Sincerely,

CROM Coatings and Restorations, a Division of CROM, LLC

Cliff Dykes
Business Development Manager

Joseph C. Swann, PE
Region Lead

/mkk

ACCEPTED BY CLIENT

_____

PRINT: T. Michael Stavres

TITLE: City Manager

DATE: 5/13/2024

April 18, 2024

PROPOSAL 20240119

REPAIRS BASED ON INSPECTION
600,000-GALLON GROUND STORAGE TANK
WINTER HAVEN, FLORIDA

CROM Coatings and Restorations, a Division of CROM, LLC ("CCR") proposes to provide labor and material for the repair/coating of the prestressed concrete tank for the **City of Winter Haven** ("Client"). All work will be completed in accordance with all applicable codes and standards including OSHA, AWWA, ACI and standard prestressed concrete tank design.

1. DRAWINGS, SPECIFICATIONS, AND OTHER REQUIRED DATA

The Client or a duly authorized representative, is responsible for providing CCR with a clear understanding of the project nature and scope as is reasonably known to the Client. The Client shall supply CCR with sufficient and adequate information, including, but not limited to, maps, site plans, reports, surveys, and designs, to allow CCR to properly complete the specified services. The Client shall also communicate changes in the nature and scope of the project as soon as possible during performance of the work so that the changes can be incorporated into the work product.

Prior to starting work, CCR will request from Client data reasonably required for submittal purposes for the repair/coating of the aforementioned storage tank, including any available computations, detailed drawings, and specifications. If, in the opinion of CCR, adequate data is not available or is incomplete, Client will be informed and arrangements made for creation of needed data. CCR will not perform engineering studies or perform work requiring professional engineering duties but will assist Client in obtaining such services.

2. INSURANCE

CCR represents and warrants that it and its agents, staff and Consultants employed by it is and are protected by worker's compensation insurance and that CCR has such coverage under public liability and property damage insured policies which CCR deems to be adequate. Certificates for all such policies of insurance shall be provided to Client upon request in writing. Within the limits and conditions of such insurance, CCR agrees to indemnify and save Client harmless from and against loss, damage, or liability arising from negligent acts by CCR, its agents, staff and consultants employed by it. CCR shall not be responsible for any loss, damage or liability beyond the amounts, limits, and conditions of such insurance or the limits described in Section 7, whichever is less. The Client agrees to defend, indemnify, and save CCR harmless for loss, damage or liability arising from acts by Client, Client's agent, staff, and other consultants employed by Client. Any bond requirement(s) by Client will carry an additional cost unless the parties agree otherwise.

3. SERVICES TO BE FURNISHED BY CCR

CCR proposes to furnish all supervision, labor, material, and equipment required to complete the work, except as noted in Paragraph 4. The services to be furnished by CCR are specifically:

This scope of work is to be performed on the following tank:

- 0.6 MG Ground Storage Tank
  100'-0" ID X 10'-6" SWD
  (CROM Job No. 2010-M-033)

a. Mobilization of crew, materials and equipment needed to complete the proposed scope.

Exterior Work:

b. Exterior Dome, Wall, and Emergency Overflow Openings:
   1) Pressure wash exterior concrete surfaces at a minimum of 3,500 psi to remove dirt, dust, and other contaminants from the substrate.
   2) Mechanically rout **up to 4,574 linear feet** of cracks larger than 1/8" located on the dome and wall removing any lose material from the substrate. Apply a surfacing epoxy to the prepared cracks bringing the repair flush with adjacent surfaces.
   3) Apply a stripe coat **up to 4,574 linear feet** to cracks smaller than 1/8" located on the dome and wall with a modified 154.
   4) Apply 2 coats of an Acrylic Emulsion at 2.0-3.0 mils DFT to the concrete surfaces of the tank wall, dome, and emergency overflows per manufacturer's recommendation.

c. Liquid Level Indicator repair:
   1) Visually inspect LLI (target, board, cables and clamps).
   2) Mechanically evaluate the working components of the LLI.
   3) Make all necessary repairs to restore LLI.
   4) Evaluate the LLI to insure proper functionality.

d. Dome Center Vent:
   1) Replace deteriorated dome center vent screens with 24/24 polyester mesh.

e. Emergency Overflow Openings:
   1) Replace deteriorated dome emergency overflow screens with 24/24 polyester mesh.

Interior Work:

f. Interior Dome
   1) Abrasive blast the interior wall concrete surfaces removing loosely adhered coatings, and degraded concrete while providing a surface profile equal to an ICRI CSP 5 or greater as per SSPC-13/NACE 6 standards.
   2) Pressure wash the interior wall concrete surfaces at a minimum 3500 psi to remove laitance, hardeners, and remaining sand and debris left over from abrasive blasting preparing the surfaces for new coatings.
   3) Apply two coats of a Polyamidomine Epoxy, at 2.0 – 10.0 mils DFT per coat, to the interior wall concrete surfaces, per manufacturer recommendations.

g. Interior tank wall:
   1) Abrasive blast the interior wall concrete surfaces removing loosely adhered coatings, and degraded concrete while providing a surface profile equal to an ICRI CSP 5 or greater as per SSPC-13/NACE 6 standards.
   2) Pressure wash the interior wall concrete surfaces at a minimum 3500 psi to remove laitance, hardeners, and remaining sand and debris left over from abrasive blasting preparing the surfaces for new coatings.
   3) Apply two coats of a Polyamidomine Epoxy, at 2.0 – 10.0 mils DFT per coat, to the interior wall concrete surfaces, per manufacturer recommendations.

h. Interior DIP Piping:
   1) Abrasive blast the interior piping **up to 140 square feet** to remove rust, corrosion, and other contaminants from the substrate.
   2) Pressure wash the interior piping **up to 140 square feet** at a minimum 3500 psi to remove laitance, hardeners, and remaining sand and debris left over from abrasive blasting preparing the surfaces for new coatings.
   3) Apply two coats to the interior piping **up to 140 square feet** of a Polyamidomine Epoxy, at 2.0 – 10.0 mils DFT per coat, per manufacturer recommendations.

i. Tank disinfection in accordance with AWWA C652.

4. MATERIALS AND SERVICES FURNISHED BY CLIENT OR OTHERS

It is understood that the following services shall be provided by others without expense to CCR:

a. Client will grant or obtain free and uninterrupted access to the structure(s) for all equipment and personnel necessary for CCR to perform the work set forth in this Proposal. It is imperative that hatch covers are not installed prior to the completion of CCR's scope of work to allow for maximum hatch opening. The Client will notify any and all processors of the project site that Client has granted CCR free and uninterrupted access to the site. CCR shall be responsible for site cleanup and repair of damages caused by CCR or its subcontractors.

b. The Client is responsible for the accuracy of locations for all subterranean structures and utilities. CCR will take responsible precautions to avoid known subterranean structures, and the Client waives any claim against CCR and agrees to defend, indemnify, and hold CCR harmless from any claim or liability for injury or loss, including costs to defend, arising from damage done to subterranean structures and utilities not identified or accurately located. In addition, Client agrees to compensate CCR for any time spent or expenses incurred by CCR in defense of any such claim, with compensation to be based upon CCR's prevailing fee schedule and expense reimbursement policy.

c. A continuous supply of potable water under 50 psi pressure at the rate of 60 gallons per minute for the use of the CCR crew within 100 feet of each tank site.

d. A continuous supply of electricity during the period of work: one 100-AMP, 110/220-volt service for the operation of our power tools and accessories, located not more than 100 feet from each tank. Please be sure that all circuit breakers are ground-fault protected. If it is necessary for CCR to supply its own electric power, add $500.00 per week to the contract amount.

e. Any permit or other fees from any AHJ as may be required for the work including but not limited to all connect/disconnect, impact and building/construction fees.

f. A suitable container conveniently located on site for the use of the CCR crew to dispose of construction debris generated during the repairs/modifications.

g. Sanitary facilities for the CCR crew for the duration of the project.

h. Drainage and disposal of the tank's contents.

i. Refilling, bacteriological sampling, and testing of the tank's contents.

j. Cleaning the interior and exterior of the tank and accessories.

k. Complete lock-out and tag-out of the subject tank prior to personnel entering each tank. The Client will be required to provide all materials for this process. The Client will be responsible for demonstrating to CCR that the lock-out procedure is complete, and the tank is rendered "safe" before CCR will perform air quality testing to enter each tank.

l. All professional engineering design services.

m. Method A "X-Cut Tape Test", per ASTM D3359, shall be completed by a qualified coatings inspector or coatings manufacturer representative prior to application of new coating system. Results of this test must be 4A or greater.

If the results of this test are less than a 4A, CCR and the Client will have to re-evaluate the proposed scope of work and pricing.

n. Adhesion testing as required by the specifications.

o. Hazardous material removal and disposal as required by the specifications.

5. BACK CHARGES AND CLAIMS FOR EXTRAS

No claim for extra services rendered or materials furnished will be valid by either party unless written notice thereof is given during the first ten days of the calendar month following that in which the claim originated. CCR's claims for extras shall carry 30% for overhead and 10% for profit. Any mutually agreed upon deductive change order will provide only a credit for 10% profit but will not provide a credit for 30% overhead.

6. LIMIT ON INDIVIDUAL LIABILITY OF DESIGN PROFESSIONAL

LIMITATION ON INDIVIDUAL LIABILITY OF DESIGN PROFESSIONAL - TO THE EXTENT PERMITTED BY LAW, AN EMPLOYEE, AGENT, DESIGN PROFESSIONALS, OR ENGINEERS EMPLOYED BY CCR SHALL NOT BE INDIVIDUALLY LIABLE FOR NEGLIGENCE OCCURRING WITHIN THE COURSE AND SCOPE OF EMPLOYMENT WITH CCR UNDER THIS PROPOSAL TO AN OWNER, CONTRACTOR, SUBCONTRACTOR, OR TO ANY THIRD PARTY CLAIMING BY AND THROUGH THESE PARTIES.

7. RISK ALLOCATION

Client agrees that CCR's liability for any damage on account of any error, omission or other professional negligence will be limited to a sum not to exceed $50,000 or CCR's fee, whichever is greater. Client agrees that the foregoing limits of liability extend to all of CCR's employees and professionals who perform any services for Client. If Client prefers to have higher limits on general or professional liability, CCR agrees to increase the limits up to a maximum of $1,000,000.00 upon Clients' written request at the time of accepting our proposal, provided that Client agrees to pay an additional consideration of four percent of the total fee, or $400.00, whichever is greater. The additional charge for the higher liability limits is because of the greater risk assumed and is not strictly a charge for additional professional liability insurance.

8. ASSIGNMENT AND THIRD PARTIES

Neither the Client nor CCR may delegate, assign, sublet or transfer their duties or any interest in this Proposal without the written consent of the other party. Both parties agree there are no intended third-party beneficiaries to this Proposal, including other contractors or parties working on the project, or, if necessary, a surety of CCR.

9. LABOR

This proposal is predicated on open-shop labor conditions, using our own personnel. If we are required to employ persons of an affiliation desirable to the Client, or other contractor employed by him or the general contractor thereby resulting in increased costs to us, the contract price shall be adjusted accordingly. Such requirement shall not provide that CCR sign a contract with any labor organization. In the event of a labor stoppage, we shall not be in default or be deemed responsible for delay of the progress of this contract or damage to the Client or the contractor so long as CCR has sufficient qualified employees available to perform the work.

Our proposal is based on our crew performing our Scope of Work in accordance with our standard safety program. If any additional safety requirements are placed on us (not required by OSHA) such as: site training, additional safety equipment or permit required confined space, the cost for such additional requirements plus 30% for overhead shall be reimbursed to us.

10. SCHEDULE, COMMENCEMENT, AND DELAYS

This quotation is valid for **30 days**. Should this quotation expire, a new quotation will be required to reflect updated pricing due to market changes. Furthermore, a Commencement Date that is mutually agreeable to both parties will be incorporated into this Proposal (or other agreement between us) with sufficient time for Preparation of design drawings and other submittals. Delays to the mutually agreed upon Commencement Date shall be compensated by change order for actual cost damages for the delay(s) to CCR.

The above-mentioned mutually agreeable Commencement Date must reflect sufficient time for all milestones and construction durations required to reach final completion of the project. CCR will be prepared to start work and will undertake to furnish sufficient labor, materials, and equipment to complete construction of our scope of work within the Anticipated Construction Start Time noted below:

Tank 1: 8 Weeks

If the readiness of the project site or conditions do not allow efficient execution of our work on or before the Anticipated Construction Start Time or Commencement Date (whichever governs), our contract price will increase $55.00 per man hour of crew delay until other productive work can be scheduled for the assigned crew.

It is agreed that CCR shall be permitted to execute our work without interruption. If delayed at any time for a period of 24 hours or more by an act or neglect of the owner, his representative, or other contractor employed by him, or by the general contractor, or by reason of any changes ordered in the work, CCR shall be reimbursed for our actual additional expense caused by such delay, plus 30% for overhead.

In the event an agreement apart from this proposal is preferred, such agreement shall include this Proposal and all the conditions herein unless both parties agree in writing to specifically omit any condition.

11. QUOTATION

We are prepared to carry out this work in accordance with the foregoing for the lump sum:

Mobilization:		**$ 4,500.00**
Exterior Repairs and Coatings:		**$ 100,582.00**
Interior Repairs and Coatings:		**$ 208,288.00**
	Total:	**$ 313,370.00**

Periodic and final payment, including any retention, shall be made within **7 days** from the date our work is completed, or the billing is received, or in accordance with applicable state Prompt Payment law, whichever is earlier, and is to be received by us in our accounting office at 250 SW 36th Terrace, Gainesville, Florida 32607. All costs for third party contracts and billing management services, or use of any software, as may be required by the Client or Owner, will be added to the Contract Price by change order. Final payment shall not be held due to delays in testing. Payment not received by that date will be considered past due and will be subject to a late payment charge of 1½% per calendar month, or any fraction thereof until received in our office.

If CCR does not receive payment within 7 days after such payment is due as defined herein, CCR may give notice, without prejudice to and in addition to any other legal remedies, and may stop work until payment of the full amount owing has been received. The Proposal Amount and Time shall be adjusted by the amount of CCR's reasonable and verified cost of shutdown, delay, and startup, which shall be effected by an appropriate change order.

Any reasonable legal or other expense necessary for the enforcement of this Proposal or for the collection of monies due shall be borne by the party at fault. If sales tax is excluded from our price, or on materials contained in our price,

in accordance with project specifications, such exclusion is subject to receipt of adequate tax exemption documents from you or the project owner prior to commencement of Work to allow for our application of same. If proper tax exemption documentation is not received or is not adequate to provide exemption, we reserve the right to receive reimbursement of all sales tax CCR is obligated to pay due to the tardiness, lack of, or inadequate exemption documentation on behalf of you or the owner.

12. ARBITRATION/DISPUTE RESOLUTION AND VENUE

Any controversy or claim relating to the contract between us shall be settled by arbitration in accordance with the Construction Industry Arbitration Rules of the American Arbitration Association, and judgment by the arbitrator(s) may be entered in any court having jurisdiction. The claim will be brought and tried in judicial jurisdiction of the court of the state and county where CCR's principal place of business is located and Client waives the right to remove the action to any other county or judicial jurisdiction, and the prevailing party will be entitled to recovery of all reasonable costs incurred, including staff time, court costs, attorneys' fees and other claim related expenses the venue for any litigation under this Agreement shall be in Alachua County, Florida. If CCR engages an attorney for the collection of the amounts due from the Client, the Client shall pay CCR its reasonable attorney's fees and costs through any appeal. The laws of the State of Florida will govern the validity of these terms, their interpretation, and performance. If any of the provisions contained in this Agreement are held illegal, invalid, or unenforceable, the enforceability of the remaining provisions will not be impaired. Limitations of liability and indemnities will survive termination of this Agreement for any cause.

13. CHANGES IN SCOPE AND LIMITATIONS

If the Client wishes to have CCR perform any additional repairs or remediation of the tank or accessories, it shall authorize such work in writing and pay CCR its standard rates for such work.

It is agreed that CCR shall not be responsible for any consequential, special, or delay damages, or any force majeure events, including but not limited to acts of God and pandemic. CCR does not assume responsibility for differing, latent, or concealed conditions which differ materially from those indicated in the Subcontract/Contract documents or from those ordinarily found to exist and not inherent in the Work, including but not limited to weather or subsurface conditions, and not caused by CCR's fault or negligence.

14. TERMINATION

This agreement may be terminated by either party upon seven (7) days written notice in the event of substantial failure by the other party to perform in accordance with the terms hereof. Such termination shall be effective if that substantial failure has been redeemed before expiration of the period specified in the written notice. In the event of termination, CCR shall be paid for services performed to the termination notice date plus reasonable termination expenses.

In the event of termination, or suspension for more than three (3) months prior to completion of all work contemplated by the proposal, CCR may complete such analyses and records as necessary to complete their files and may also complete a report on the services performed to the date of notice of termination or suspension. The expense of termination or suspension shall include all direct costs of CCR in completing such analyses, records and reports if necessary.

15. GUARANTEE

CCR will guarantee its workmanship and materials on its work covered in this Proposal for a period of one year after completion of its work. Prior to leaving the location, CCR personnel will perform a walk through with the responsible party overseeing our work for the Client. In case any defects in CCR's workmanship or materials appear within the one-year period after completion and acceptance of CCR's work, CCR shall promptly make repairs at its own expense upon written notice by the Client that such defects have been found. CCR's guarantee is limited to defects in CCR's workmanship and materials, excluding inspections, cleaning, and disinfection services ("Services"). CCR shall endeavor to perform these Services with that degree of care and skill ordinarily exercised under similar

circumstances by contractors practicing in the same discipline at the same time and location. CCR shall not be responsible for, nor liable for, delamination of previous coatings application, any ordinary wear and tear, or for damage caused from negligent or inappropriate use or by any other entity beyond our control, including but not limited to modifications, work, or repairs by others.

If a bond is required for the Scope of Work included in this contract, CCR will furnish a one-year Performance and Payment Bond. The cost of this bond is **not included** in our price. Please add $9.00 per $1,000 of contract value.

16. ACCEPTANCE

This proposal is offered for your acceptance within **30 days** from the proposal date. We reserve the right after that period to amend our proposal to reflect our changing construction schedules and materials and labor rate changes. The return to this company of a copy of this proposal with your acceptance endorsed thereon within the time aforesaid will constitute a contract between us. This proposal shall be made a part of any subcontract agreement or purchase order.

Sincerely,

CROM Coatings and Restorations, a Division of CROM, LLC

Cliff Dykes
Business Development Manager

Joseph C. Swann, PE
Region Lead

/mkk

ACCEPTED BY CLIENT

_____

PRINT: T. Michael Stavres

TITLE: City Manager

DATE: 5/13/2024

April 18, 2024

PROPOSAL 20240131

REPAIRS BASED ON INSPECTION
500,000-GALLON GROUND STORAGE TANK
WINTER HAVEN, FLORIDA

CROM Coatings and Restorations, a Division of CROM, LLC ("CCR") proposes to provide labor and material for the repair/coating of the prestressed concrete tank for the **City of Winter Haven** ("Client"). All work will be completed in accordance with all applicable codes and standards including OSHA, AWWA, ACI and standard prestressed concrete tank design.

1. DRAWINGS, SPECIFICATIONS, AND OTHER REQUIRED DATA

The Client or a duly authorized representative, is responsible for providing CCR with a clear understanding of the project nature and scope as is reasonably known to the Client. The Client shall supply CCR with sufficient and adequate information, including, but not limited to, maps, site plans, reports, surveys, and designs, to allow CCR to properly complete the specified services. The Client shall also communicate changes in the nature and scope of the project as soon as possible during performance of the work so that the changes can be incorporated into the work product.

Prior to starting work, CCR will request from Client data reasonably required for submittal purposes for the repair/coating of the aforementioned storage tank, including any available computations, detailed drawings, and specifications. If, in the opinion of CCR, adequate data is not available or is incomplete, Client will be informed and arrangements made for creation of needed data. CCR will not perform engineering studies or perform work requiring professional engineering duties but will assist Client in obtaining such services.

2. INSURANCE

CCR represents and warrants that it and its agents, staff and Consultants employed by it is and are protected by worker's compensation insurance and that CCR has such coverage under public liability and property damage insured policies which CCR deems to be adequate. Certificates for all such policies of insurance shall be provided to Client upon request in writing. Within the limits and conditions of such insurance, CCR agrees to indemnify and save Client harmless from and against loss, damage, or liability arising from negligent acts by CCR, its agents, staff and consultants employed by it. CCR shall not be responsible for any loss, damage or liability beyond the amounts, limits, and conditions of such insurance or the limits described in Section 7, whichever is less. The Client agrees to defend, indemnify, and save CCR harmless for loss, damage or liability arising from acts by Client, Client's agent, staff, and other consultants employed by Client. Any bond requirement(s) by Client will carry an additional cost unless the parties agree otherwise.

3. SERVICES TO BE FURNISHED BY CCR

CCR proposes to furnish all supervision, labor, material, and equipment required to complete the work, except as noted in Paragraph 4. The services to be furnished by CCR are specifically:

This scope of work is to be performed on the following tank:

- 0.5 MG Ground Storage Tank
  55'-0" ID X 28'-3" SWD
  (CROM Job No. 2000-M-100)

a. Mobilization of crew, materials and equipment needed to complete the proposed scope.

Exterior Work:

b. Exterior Dome, Wall, and Emergency Overflow Openings:
   1) Pressure wash exterior concrete surfaces at a minimum of 3,500 psi to remove dirt, dust, and other contaminants from the substrate.
   2) Mechanically rout **up to 985 linear feet** of cracks larger than 1/8" located on the dome and wall removing any lose material from the substrate. Apply a surfacing epoxy to the prepared cracks bringing the repair flush with adjacent surfaces.
   3) Apply a stripe coat **up to 985 linear feet** to cracks smaller than 1/8" located on the dome and wall with a modified 154.
   4) Apply 2 coats of an Acrylic Emulsion at 2.0-3.0 mils DFT to the concrete surfaces of the tank wall, dome, and emergency overflows per manufacturer's recommendation.

c. Self-Closing Gate:
   1) Fabricate, supply, and install a new aluminum self-closing gate located at the top of the existing exterior ladder.

d. Liquid Level Indicator repair:
   1) Visually inspect LLI (target, board, cables and clamps).
   2) Mechanically evaluate the working components of the LLI.
   3) Make all necessary repairs to restore LLI.
   4) Evaluate the LLI to insure proper functionality.

e. Dome Access Hatch:
   1) Prepare and coat dome access hatch door with gelcoat.
   2) Replace corroded hardware with 316 SS hardware.

f. Dome Center Vent:
   1) Prepare surface and coat the dome center vent with gelcoat.
   2) Replace deteriorated dome center vent screens with 24/24 polyester mesh.

g. Exterior Pipe:
   1) Install link seal and spigot.

Interior Work:

h. Interior Dome
   1) Chip away loose and or damaged spalled concrete **up to 246** until firm / non-degraded concrete is reached.
   2) Abrasive blast the interior dome concrete surfaces removing rust and corrosion from exposed bolster feet, loosely adhered coatings, and degraded concrete while providing a surface profile equal to an ICRI CSP 5 or greater as per SSPC-13/NACE 6 standards.
   3) Pressure wash the interior dome concrete surfaces at a minimum 3500 psi to remove laitance, hardeners, and remaining sand and debris left over from abrasive blasting preparing the surfaces for new coatings.
   4) Apply a High-Strength Bonding Epoxy **up to 246 square feet** to the prepared surfaces of the exposed reinforcing steel and concrete.
   5) Resurface **up to 246 square feet** of the interior dome concrete surfaces with a cementitious repair mortar as needed filling voids and bug holes while achieving a monolithic smooth pinhole free surface, per the manufacturer's recommendation.
   6) Apply two coats of a Polyamidomine Epoxy, at 2.0 – 10.0 mils DFT per coat, to the interior dome concrete surfaces, per manufacturer recommendations.

i. Interior DIP Piping:
   1) Abrasive blast the interior piping **up to 165 square feet** to remove rust, corrosion, and other contaminants from the substrate.
   2) Pressure wash the interior piping **up to 165 square feet** at a minimum 3500 psi to remove laitance, hardeners, and remaining sand and debris left over from abrasive blasting preparing the surfaces for new coatings.
   3) Apply two coats to the interior piping **up to 165 square feet** of a Polyamidomine Epoxy, at 2.0 – 10.0 mils DFT per coat, per manufacturer recommendations.

j. Tank disinfection in accordance with AWWA C652.

4. MATERIALS AND SERVICES FURNISHED BY CLIENT OR OTHERS

It is understood that the following services shall be provided by others without expense to CCR:

a. Client will grant or obtain free and uninterrupted access to the structure(s) for all equipment and personnel necessary for CCR to perform the work set forth in this Proposal. It is imperative that hatch covers are not installed prior to the completion of CCR's scope of work to allow for maximum hatch opening. The Client will notify any and all processors of the project site that Client has granted CCR free and uninterrupted access to the site. CCR shall be responsible for site cleanup and repair of damages caused by CCR or its subcontractors.

b. The Client is responsible for the accuracy of locations for all subterranean structures and utilities. CCR will take responsible precautions to avoid known subterranean structures, and the Client waives any claim against CCR and agrees to defend, indemnify, and hold CCR harmless from any claim or liability for injury or loss, including costs to defend, arising from damage done to subterranean structures and utilities not identified or accurately located. In addition, Client agrees to compensate CCR for any time spent or expenses incurred by CCR in defense of any such claim, with compensation to be based upon CCR's prevailing fee schedule and expense reimbursement policy.

c. A continuous supply of potable water under 50 psi pressure at the rate of 60 gallons per minute for the use of the CCR crew within 100 feet of each tank site.

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f. A suitable container conveniently located on site for the use of the CCR crew to dispose of construction debris generated during the repairs/modifications.

g. Sanitary facilities for the CCR crew for the duration of the project.

h. Drainage and disposal of the tank's contents.

i. Refilling, bacteriological sampling, and testing of the tank's contents.

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l. All professional engineering design services.

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that CCR sign a contract with any labor organization. In the event of a labor stoppage, we shall not be in default or be deemed responsible for delay of the progress of this contract or damage to the Client or the contractor so long as CCR has sufficient qualified employees available to perform the work.

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Tank 1: 4 Weeks

If the readiness of the project site or conditions do not allow efficient execution of our work on or before the Anticipated Construction Start Time or Commencement Date (whichever governs), our contract price will increase $55.00 per man hour of crew delay until other productive work can be scheduled for the assigned crew.

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In the event an agreement apart from this proposal is preferred, such agreement shall include this Proposal and all the conditions herein unless both parties agree in writing to specifically omit any condition.

11. QUOTATION

We are prepared to carry out this work in accordance with the foregoing for the lump sum:

Mobilization:		**$ 4,500.00**
Exterior Repairs and Coatings:		**$ 55,898.00**
Interior Repairs and Coatings:		**$ 72,502.00**
	Total:	**$132,900.00**

Periodic and final payment, including any retention, shall be made within **7 days** from the date our work is completed, or the billing is received, or in accordance with applicable state Prompt Payment law, whichever is earlier, and is to be received by us in our accounting office at 250 SW 36th Terrace, Gainesville, Florida 32607. All costs for third party contracts and billing management services, or use of any software, as may be required by the Client or Owner, will be added to the Contract Price by change order. Final payment shall not be held due to delays in testing. Payment not received by that date will be considered past due and will be subject to a late payment charge of 1½% per calendar month, or any fraction thereof until received in our office.

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Any reasonable legal or other expense necessary for the enforcement of this Proposal or for the collection of monies due shall be borne by the party at fault. If sales tax is excluded from our price, or on materials contained in our price, in accordance with project specifications, such exclusion is subject to receipt of adequate tax exemption documents from you or the project owner prior to commencement of Work to allow for our application of same. If proper tax exemption documentation is not received or is not adequate to provide exemption, we reserve the right to receive reimbursement of all sales tax CCR is obligated to pay due to the tardiness, lack of, or inadequate exemption documentation on behalf of you or the owner.

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14. TERMINATION

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In the event of termination, or suspension for more than three (3) months prior to completion of all work contemplated by the proposal, CCR may complete such analyses and records as necessary to complete their files and may also complete a report on the services performed to the date of notice of termination or suspension. The expense of termination or suspension shall include all direct costs of CCR in completing such analyses, records and reports if necessary.

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CCR will guarantee its workmanship and materials on its work covered in this Proposal for a period of one year after completion of its work. Prior to leaving the location, CCR personnel will perform a walk through with the responsible party overseeing our work for the Client. In case any defects in CCR's workmanship or materials appear within the one-year period after completion and acceptance of CCR's work, CCR shall promptly make repairs at its own expense upon written notice by the Client that such defects have been found. CCR's guarantee is limited to defects in CCR's workmanship and materials, excluding inspections, cleaning, and disinfection services ("Services"). CCR shall endeavor to perform these Services with that degree of care and skill ordinarily exercised under similar circumstances by contractors practicing in the same discipline at the same time and location. CCR shall not be responsible for, nor liable for, delamination of previous coatings application, any ordinary wear and tear, or for damage caused from negligent or inappropriate use or by any other entity beyond our control, including but not limited to modifications, work, or repairs by others.

If a bond is required for the Scope of Work included in this contract, CCR will furnish a one-year Performance and Payment Bond. The cost of this bond is **not included** in our price. Please add $9.00 per $1,000 of contract value.

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Sincerely,

CROM Coatings and Restorations, a Division of CROM, LLC

Cliff Dykes
Business Development Manager

Joseph C. Swann, PE
Region Lead

/mkk

ACCEPTED BY CLIENT

_____

PRINT: T. Michael Stavres

TITLE: City Manager

DATE: 5/13/2024

April 18, 2024

PROPOSAL 20240142

REPAIRS BASED ON INSPECTION
100,000-GALLON GROUND STORAGE TANK
WINTER HAVEN, FLORIDA

CROM Coatings and Restorations, a Division of CROM, LLC ("CCR") proposes to provide labor and material for the repair/coating of the prestressed concrete tank for the **City of Winter Haven** ("Client"). All work will be completed in accordance with all applicable codes and standards including OSHA, AWWA, ACI and standard prestressed concrete tank design.

1. DRAWINGS, SPECIFICATIONS, AND OTHER REQUIRED DATA

The Client or a duly authorized representative, is responsible for providing CCR with a clear understanding of the project nature and scope as is reasonably known to the Client. The Client shall supply CCR with sufficient and adequate information, including, but not limited to, maps, site plans, reports, surveys, and designs, to allow CCR to properly complete the specified services. The Client shall also communicate changes in the nature and scope of the project as soon as possible during performance of the work so that the changes can be incorporated into the work product.

Prior to starting work, CCR will request from Client data reasonably required for submittal purposes for the repair/coating of the aforementioned storage tank, including any available computations, detailed drawings, and specifications. If, in the opinion of CCR, adequate data is not available or is incomplete, Client will be informed and arrangements made for creation of needed data. CCR will not perform engineering studies or perform work requiring professional engineering duties but will assist Client in obtaining such services.

2. INSURANCE

CCR represents and warrants that it and its agents, staff and Consultants employed by it is and are protected by worker's compensation insurance and that CCR has such coverage under public liability and property damage insured policies which CCR deems to be adequate. Certificates for all such policies of insurance shall be provided to Client upon request in writing. Within the limits and conditions of such insurance, CCR agrees to indemnify and save Client harmless from and against loss, damage, or liability arising from negligent acts by CCR, its agents, staff and consultants employed by it. CCR shall not be responsible for any loss, damage or liability beyond the amounts, limits, and conditions of such insurance or the limits described in Section 7, whichever is less. The Client agrees to defend, indemnify, and save CCR harmless for loss, damage or liability arising from acts by Client, Client's agent, staff, and other consultants employed by Client. Any bond requirement(s) by Client will carry an additional cost unless the parties agree otherwise.

3. SERVICES TO BE FURNISHED BY CCR

CCR proposes to furnish all supervision, labor, material, and equipment required to complete the work, except as noted in Paragraph 4. The services to be furnished by CCR are specifically:

This scope of work is to be performed on the following tank:

- 0.1 MG Ground Storage Tank
  41'-3" ID X 10'-0" SWD
  (CROM Job No. 1977-M-022)

a. Mobilization of crew, materials and equipment needed to complete the proposed scope.

Exterior Work:

b. Exterior Dome, Wall, Aerator, Center Vent, Emergency Overflow Openings and Dome Hatch:
   1) Pressure wash exterior concrete surfaces at a minimum of 3,500 psi to remove dirt, dust, and other contaminants from the substrate.
   2) Mechanically rout **up to 1,125 linear feet** of cracks larger than 1/8" located on the dome and wall removing any lose material from the substrate. Apply a surfacing epoxy to the prepared cracks bringing the repair flush with adjacent surfaces.
   3) Apply a stripe coat **up to 1,125 linear feet** to cracks smaller than 1/8" located on the dome and wall with a modified 154.
   4) Apply 2 coats of an Acrylic Emulsion at 2.0-3.0 mils DFT to the concrete surfaces of the tank wall, dome, and emergency overflows per manufacturer's recommendation.

c. Liquid Level Indicator repair:
   1) Visually inspect LLI (target, board, cables and clamps).
   2) Mechanically evaluate the working components of the LLI.
   3) Make all necessary repairs to restore LLI.
   4) Evaluate the LLI to insure proper functionality.

d. Dome Access Hatch:
   1) Prepare and coat dome access hatch door with gelcoat.
   2) Replace control arm and all corroded hardware with 316 SS hardware.
   3) Replace insect barrier around the dome access hatch door.

e. Dome Center Vent:
   1) Prepare surface and coat the dome center vent with gelcoat.
   2) Replace deteriorated dome center vent screens with 24/24 polyester mesh.

f. Emergency Overflow Openings:
   1) Replace deteriorated dome center vent screens with 24/24 polyester mesh.
   2) Replace corroded hardware with 316 SS hardware.

Interior Work:

g. Interior Dome
   1) Chip away loose and or damaged spalled concrete **up to 277 square feet** until firm / non-degraded concrete is reached.
   2) Abrasive blast the interior dome concrete surfaces removing rust and corrosion from exposed bolster feet, loosely adhered coatings, and degraded concrete while providing a surface profile equal to an ICRI CSP 5 or greater as per SSPC-13/NACE 6 standards.
   3) Pressure wash the interior dome concrete surfaces at a minimum 3500 psi to remove laitance, hardeners, and remaining sand and debris left over from abrasive blasting preparing the surfaces for new coatings.
   4) Apply a High-Strength Bonding Epoxy **up to 277 square feet** to the prepared surfaces of the exposed reinforcing steel and concrete.
   5) Resurface **up to 277 square feet** of the interior dome concrete surfaces with a cementitious repair mortar as needed filling voids and bug holes while achieving a monolithic smooth pinhole free surface, per the manufacturer's recommendation.
   6) Apply two coats of a Polyamidomine Epoxy, at 2.0 – 10.0 mils DFT per coat, to the interior dome concrete surfaces, per manufacturer recommendations.

h. Interior tank wall:

1) Abrasive blast the interior wall concrete surfaces removing loosely adhered coatings, and degraded concrete while providing a surface profile equal to an ICRI CSP 5 or greater as per SSPC-13/NACE 6 standards.
2) Pressure wash the interior wall concrete surfaces at a minimum 3500 psi to remove laitance, hardeners, and remaining sand and debris left over from abrasive blasting preparing the surfaces for new coatings.
3) Apply two coats of a Polyamidomine Epoxy, at 2.0 – 10.0 mils DFT per coat, to the interior wall concrete surfaces, per manufacturer recommendations.

i. Interior DIP Piping and Manhole Frame:
1) Abrasive blast the interior piping **up to 60 square feet** to remove rust, corrosion, and other contaminants from the substrate.
2) Pressure wash the interior piping **up to 60 square feet** at a minimum 3500 psi to remove laitance, hardeners, and remaining sand and debris left over from abrasive blasting preparing the surfaces for new coatings.
3) Apply two coats to the interior piping **up to 60 square feet** of a Polyamidomine Epoxy, at 2.0 – 10.0 mils DFT per coat, per manufacturer recommendations.

j. Tank disinfection in accordance with AWWA C652.

4. MATERIALS AND SERVICES FURNISHED BY CLIENT OR OTHERS

It is understood that the following services shall be provided by others without expense to CCR:

a. Client will grant or obtain free and uninterrupted access to the structure(s) for all equipment and personnel necessary for CCR to perform the work set forth in this Proposal. It is imperative that hatch covers are not installed prior to the completion of CCR's scope of work to allow for maximum hatch opening. The Client will notify any and all processors of the project site that Client has granted CCR free and uninterrupted access to the site. CCR shall be responsible for site cleanup and repair of damages caused by CCR or its subcontractors.

b. The Client is responsible for the accuracy of locations for all subterranean structures and utilities. CCR will take responsible precautions to avoid known subterranean structures, and the Client waives any claim against CCR and agrees to defend, indemnify, and hold CCR harmless from any claim or liability for injury or loss, including costs to defend, arising from damage done to subterranean structures and utilities not identified or accurately located. In addition, Client agrees to compensate CCR for any time spent or expenses incurred by CCR in defense of any such claim, with compensation to be based upon CCR's prevailing fee schedule and expense reimbursement policy.

c. A continuous supply of potable water under 50 psi pressure at the rate of 60 gallons per minute for the use of the CCR crew within 100 feet of each tank site.

d. A continuous supply of electricity during the period of work: one 100-AMP, 110/220-volt service for the operation of our power tools and accessories, located not more than 100 feet from each tank. Please be sure that all circuit breakers are ground-fault protected. If it is necessary for CCR to supply its own electric power, add $500.00 per week to the contract amount.

e. Any permit or other fees from any AHJ as may be required for the work including but not limited to all connect/disconnect, impact and building/construction fees.

f. A suitable container conveniently located on site for the use of the CCR crew to dispose of construction debris generated during the repairs/modifications.

g. Sanitary facilities for the CCR crew for the duration of the project.

h. Drainage and disposal of the tank's contents.

i. Refilling, disinfecting, bacteriological sampling, and testing of the tank's contents.

j. Cleaning the interior and exterior of the tank and accessories.

k. Complete lock-out and tag-out of the subject tank prior to personnel entering each tank. The Client will be required to provide all materials for this process. The Client will be responsible for demonstrating to CCR that the lock-out procedure is complete, and the tank is rendered "safe" before CCR will perform air quality testing to enter each tank.

l. All professional engineering design services.

m. Method A "X-Cut Tape Test", per ASTM D3359, shall be completed by a qualified coatings inspector or coatings manufacturer representative prior to application of new coating system. Results of this test must be 4A or greater. If the results of this test are less than a 4A, CCR and the Client will have to re-evaluate the proposed scope of work and pricing.

n. Adhesion testing as required by the specifications.

o. Hazardous material removal and disposal as required by the specifications.

5. BACK CHARGES AND CLAIMS FOR EXTRAS

No claim for extra services rendered or materials furnished will be valid by either party unless written notice thereof is given during the first ten days of the calendar month following that in which the claim originated. CCR's claims for extras shall carry 30% for overhead and 10% for profit. Any mutually agreed upon deductive change order will provide only a credit for 10% profit but will not provide a credit for 30% overhead.

6. LIMIT ON INDIVIDUAL LIABILITY OF DESIGN PROFESSIONAL

LIMITATION ON INDIVIDUAL LIABILITY OF DESIGN PROFESSIONAL - TO THE EXTENT PERMITTED BY LAW, AN EMPLOYEE, AGENT, DESIGN PROFESSIONALS, OR ENGINEERS EMPLOYED BY CCR SHALL NOT BE INDIVIDUALLY LIABLE FOR NEGLIGENCE OCCURRING WITHIN THE COURSE AND SCOPE OF EMPLOYMENT WITH CCR UNDER THIS PROPOSAL TO AN OWNER, CONTRACTOR, SUBCONTRACTOR, OR TO ANY THIRD PARTY CLAIMING BY AND THROUGH THESE PARTIES.

7. RISK ALLOCATION

Client agrees that CCR's liability for any damage on account of any error, omission or other professional negligence will be limited to a sum not to exceed $50,000 or CCR's fee, whichever is greater. Client agrees that the foregoing limits of liability extend to all of CCR's employees and professionals who perform any services for Client. If Client prefers to have higher limits on general or professional liability, CCR agrees to increase the limits up to a maximum of $1,000,000.00 upon Clients' written request at the time of accepting our proposal, provided that Client agrees to pay an additional consideration of four percent of the total fee, or $400.00, whichever is greater. The additional charge for the higher liability limits is because of the greater risk assumed and is not strictly a charge for additional professional liability insurance.

8. ASSIGNMENT AND THIRD PARTIES

Neither the Client nor CCR may delegate, assign, sublet or transfer their duties or any interest in this Proposal without the written consent of the other party. Both parties agree there are no intended third-party beneficiaries to this Proposal, including other contractors or parties working on the project, or, if necessary, a surety of CCR.

9. LABOR

This proposal is predicated on open-shop labor conditions, using our own personnel. If we are required to employ persons of an affiliation desirable to the Client, or other contractor employed by him or the general contractor thereby resulting in increased costs to us, the contract price shall be adjusted accordingly. Such requirement shall not provide that CCR sign a contract with any labor organization. In the event of a labor stoppage, we shall not be in default or be deemed responsible for delay of the progress of this contract or damage to the Client or the contractor so long as CCR has sufficient qualified employees available to perform the work.

Our proposal is based on our crew performing our Scope of Work in accordance with our standard safety program. If any additional safety requirements are placed on us (not required by OSHA) such as: site training, additional safety equipment or permit required confined space, the cost for such additional requirements plus 30% for overhead shall be reimbursed to us.

10. SCHEDULE, COMMENCEMENT, AND DELAYS

This quotation is valid for **30 days**. Should this quotation expire, a new quotation will be required to reflect updated pricing due to market changes. Furthermore, a Commencement Date that is mutually agreeable to both parties will be incorporated into this Proposal (or other agreement between us) with sufficient time for Preparation of design drawings and other submittals. Delays to the mutually agreed upon Commencement Date shall be compensated by change order for actual cost damages for the delay(s) to CCR.

The above-mentioned mutually agreeable Commencement Date must reflect sufficient time for all milestones and construction durations required to reach final completion of the project. CCR will be prepared to start work and will undertake to furnish sufficient labor, materials, and equipment to complete construction of our scope of work within the Anticipated Construction Start Time noted below:

Tank 1: 3 Weeks

If the readiness of the project site or conditions do not allow efficient execution of our work on or before the Anticipated Construction Start Time or Commencement Date (whichever governs), our contract price will increase $55.00 per man hour of crew delay until other productive work can be scheduled for the assigned crew.

It is agreed that CCR shall be permitted to execute our work without interruption. If delayed at any time for a period of 24 hours or more by an act or neglect of the owner, his representative, or other contractor employed by him, or by the general contractor, or by reason of any changes ordered in the work, CCR shall be reimbursed for our actual additional expense caused by such delay, plus 30% for overhead.

In the event an agreement apart from this proposal is preferred, such agreement shall include this Proposal and all the conditions herein unless both parties agree in writing to specifically omit any condition.

11. QUOTATION

We are prepared to carry out this work in accordance with the foregoing for the lump sum:

Mobilization:		**$ 4500 .00**
Exterior Repairs and Coatings:		**$ 39,231.00**
Interior Repairs and Coatings:		**$ 66,599.00**
	Total:	**$110,330.00**

Periodic and final payment, including any retention, shall be made within **7 days** from the date our work is completed, or the billing is received, or in accordance with applicable state Prompt Payment law, whichever is earlier, and is to be received by us in our accounting office at 250 SW 36th Terrace, Gainesville, Florida 32607. All costs for third party

contracts and billing management services, or use of any software, as may be required by the Client or Owner, will be added to the Contract Price by change order. Final payment shall not be held due to delays in testing. Payment not received by that date will be considered past due and will be subject to a late payment charge of 1½% per calendar month, or any fraction thereof until received in our office.

If CCR does not receive payment within 7 days after such payment is due as defined herein, CCR may give notice, without prejudice to and in addition to any other legal remedies, and may stop work until payment of the full amount owing has been received. The Proposal Amount and Time shall be adjusted by the amount of CCR's reasonable and verified cost of shutdown, delay, and startup, which shall be effected by an appropriate change order.

Any reasonable legal or other expense necessary for the enforcement of this Proposal or for the collection of monies due shall be borne by the party at fault. If sales tax is excluded from our price, or on materials contained in our price, in accordance with project specifications, such exclusion is subject to receipt of adequate tax exemption documents from you or the project owner prior to commencement of Work to allow for our application of same. If proper tax exemption documentation is not received or is not adequate to provide exemption, we reserve the right to receive reimbursement of all sales tax CCR is obligated to pay due to the tardiness, lack of, or inadequate exemption documentation on behalf of you or the owner.

12. ARBITRATION/DISPUTE RESOLUTION AND VENUE

Any controversy or claim relating to the contract between us shall be settled by arbitration in accordance with the Construction Industry Arbitration Rules of the American Arbitration Association, and judgment by the arbitrator(s) may be entered in any court having jurisdiction. The claim will be brought and tried in judicial jurisdiction of the court of the state and county where CCR's principal place of business is located and Client waives the right to remove the action to any other county or judicial jurisdiction, and the prevailing party will be entitled to recovery of all reasonable costs incurred, including staff time, court costs, attorneys' fees and other claim related expenses the venue for any litigation under this Agreement shall be in Alachua County, Florida. If CCR engages an attorney for the collection of the amounts due from the Client, the Client shall pay CCR its reasonable attorney's fees and costs through any appeal. The laws of the State of Florida will govern the validity of these terms, their interpretation, and performance. If any of the provisions contained in this Agreement are held illegal, invalid, or unenforceable, the enforceability of the remaining provisions will not be impaired. Limitations of liability and indemnities will survive termination of this Agreement for any cause.

13. CHANGES IN SCOPE AND LIMITATIONS

If the Client wishes to have CCR perform any additional repairs or remediation of the tank or accessories, it shall authorize such work in writing and pay CCR its standard rates for such work.

It is agreed that CCR shall not be responsible for any consequential, special, or delay damages, or any force majeure events, including but not limited to acts of God and pandemic. CCR does not assume responsibility for differing, latent, or concealed conditions which differ materially from those indicated in the Subcontract/Contract documents or from those ordinarily found to exist and not inherent in the Work, including but not limited to weather or subsurface conditions, and not caused by CCR's fault or negligence.

14. TERMINATION

This agreement may be terminated by either party upon seven (7) days written notice in the event of substantial failure by the other party to perform in accordance with the terms hereof. Such termination shall be effective if that substantial failure has been redeemed before expiration of the period specified in the written notice. In the event of termination, CCR shall be paid for services performed to the termination notice date plus reasonable termination expenses.

In the event of termination, or suspension for more than three (3) months prior to completion of all work contemplated by the proposal, CCR may complete such analyses and records as necessary to complete their files and may also complete a report on the services performed to the date of notice of termination or suspension. The expense of

termination or suspension shall include all direct costs of CCR in completing such analyses, records and reports if necessary.

15. GUARANTEE

CCR will guarantee its workmanship and materials on its work covered in this Proposal for a period of one year after completion of its work. Prior to leaving the location, CCR personnel will perform a walk through with the responsible party overseeing our work for the Client. In case any defects in CCR's workmanship or materials appear within the one-year period after completion and acceptance of CCR's work, CCR shall promptly make repairs at its own expense upon written notice by the Client that such defects have been found. CCR's guarantee is limited to defects in CCR's workmanship and materials, excluding inspections, cleaning, and disinfection services ("Services"). CCR shall endeavor to perform these Services with that degree of care and skill ordinarily exercised under similar circumstances by contractors practicing in the same discipline at the same time and location. CCR shall not be responsible for, nor liable for, delamination of previous coatings application, any ordinary wear and tear, or for damage caused from negligent or inappropriate use or by any other entity beyond our control, including but not limited to modifications, work, or repairs by others.

If a bond is required for the Scope of Work included in this contract, CCR will furnish a one-year Performance and Payment Bond. The cost of this bond is **not included** in our price. Please add $9.00 per $1,000 of contract value.

16. ACCEPTANCE

This proposal is offered for your acceptance within **30 days** from the proposal date. We reserve the right after that period to amend our proposal to reflect our changing construction schedules and materials and labor rate changes. The return to this company of a copy of this proposal with your acceptance endorsed thereon within the time aforesaid will constitute a contract between us. This proposal shall be made a part of any subcontract agreement or purchase order.

Sincerely,

CROM Coatings and Restorations, a Division of CROM, LLC

Cliff Dykes
Business Development Manager

Joseph C. Swann, PE
Region Lead

/mkk

ACCEPTED BY CLIENT

_____

PRINT: T. Michael Stavres

TITLE: City Manager

DATE: 5/13/2024

DATE: April 26, 2024

TO: Honorable Mayor and City Commissioners

VIA: T. Michael Stavres, City Manager
Michael Carnevale, Deputy City Manager

FROM: Julie Adams, Director of Parks, Recreation & Culture
Jane Martin, City Librarian

SUBJECT: Amendment No. 7 to the Agreement between the City of Winter Haven and RHL Corporation d/b/a Richard's Fine Coffees

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BACKGROUND

The City has had an Agreement with the Tuttle Corporation (Richard's Fine Coffees) for use of the Coffee Shop area within the Winter Haven Public Library since July 2003. On December 11, 2023, the City consented to Amendment No. 6 and January 22, 2024, the City consented to the Assignment by Tuttle and Assumption by RHL Corporation of the Agreement as amended with RHL as the new Tenant/User.

Amendment No. 7 to the Agreement between the City and RHL Corporation will extend the lease an additional five years to June 30, 2029 and provide two (2) additional five (5) year renewals at the City's option.

FINANCIAL IMPACT

The projected revenue to the City for FY 2024/2025 associated with the Coffee Shop is $25,500.00. Addtitional revenues are expected to be in line with historical growth experienced.

RECOMMENDATION

Staff recommends that the City Commission approve Amendment No. 7 to the Agreement between the City of Winter Haven and RHL Corporation d/b/a/ Richard's Fine Coffees and authorize the City Manager or his designeee to take all necessary actions related thereto.

ATTACHMENT

- Amendment No. 7 to the Agreement between the City of Winter Haven and RHL Corporation d/b/a/ Richard's Fine Coffees.

Amendment No. 7 to the
Agreement between the City of Winter Haven and
RHL CORP

THIS Amendment No. 7 to the Agreement ("Amendment No. 7"), made and entered into this _____ day of _____, 2024 by and between the **CITY OF WINTER HAVEN**, a Florida Municipal Corporation, hereinafter called the "**City**" and **RHL CORP**, a Florida corporation, d/b/a Richards Fine Coffee, hereinafter called "**RHL**".

WITNESSETH:

WHEREAS, in June 2002, the City issued a Request For Proposals from entities interested in utilizing specific space at the Winter Haven Public Library for the purpose of operating a coffee shop; and

WHEREAS, the City and Tuttle Corporation, d/b/a Richard's Fine Coffees ("Tuttle") entered into an Agreement on July 14, 2003 (hereinafter "Agreement") regarding the use of specific space at the Winter Haven Public Library for the purpose of operating a coffee shop; and

WHEREAS, pursuant to paragraph 21 of the Agreement, the City and Tuttle agreed to allow amendments so long as such amendments were in writing and executed by authorized representatives of the parties and approved by the governing body of the City; and

WHEREAS, the City and Tuttle entered into an Amendment No. 1 on May 14, 2007; an Amendment No. 2 on June 22, 2009; Amendment No. 3 on February 13, 2012; Amendment No. 4 on July 14, 2014; Amendment No. 5 on May 28, 2019; and an Amendment No. 6 on December 11, 2023, (sometimes collectively referred to herein as the "Amendments"); and

WHEREAS, on January 22, 2024 the City consented to the Assignment by Tuttle and Assumption by RHL of the Agreement as amended with RHL as the new Tenant/User operating a coffee shop at the space at the Winter Haven Public Library as more particularly set forth in the Agreement; and

WHEREAS, it is the desire of the City and RHL to extend the term of the Agreement for an additional five (5) years from June 30, 2024 to June 30, 2029 and provide two (2) additional five (5) year renewals at the City's option in accordance with the terms and conditions to be mutually agreed upon by the City and RHL; and

WHEREAS, the City believes that it is in the best interests of the citizens and residents of the City to amend the Agreement as more particularly set forth in this Amendment No. 7;

WHEREAS, the City and RHL desire to amend the Agreement pursuant to this Amendment No. 7 so as to extend the term of the Agreement and to update other provisions of the Agreement as more specifically set forth herein;

WHEREAS, the City and RHL desire to memorialize their understandings and agreements with respect to amending the Agreement.

NOW, THEREFORE, the City and RHL agree as follows:

1. Amendment to Term and Condition 1 of the original Agreement: "Term". The term of the original Agreement shall be renewed for a period of five years, commencing June 30, 2024, and continuing through the 30th day of June, 2029. The Agreement may be extended for an additional two (2) five (5) year renewals at the City's option in accordance with terms and conditions to be mutually agreed upon by the City and RHL.

2. This Amendment No. 7 shall be effective upon its execution by all parties hereto and its approval by the City's governing body.

3. All other provisions and terms of the Agreement, as amended, not expressly amended herein shall remain in full force and effect, and the parties hereto will be bound and perform in accordance with the terms of the Agreement and all Amendments thereto.

IN WITNESS WHEREOF, the parties have hereunto set their hands and seals on the date first written above.

CITY OF WINTER HAVEN, FLORIDA

BY:_____
MAYOR

ATTEST:

BY:_____
Vanessa Castillo, MMC, City Clerk

Approved as to Form and Legality:

BY: _____
Frederick J. Murphy, Jr., Esquire
City Attorney

RHL CORP, a Florida corporation,
d/b/a Richards Fine Coffee

BY: _____
KOREEN HOBBS, PRESIDENT

_____
WITNESS

_____
WITNESS

DATE: May 3, 2024

TO: Honorable Mayor and City Commissioners

VIA: T. Michael Stavres, City Manager
M.J. Carnevale, Deputy City Manager
Charlie Bird, Assistant City Manager – Public Safety

FROM: Hiep Nguyen, Smart City Officer

SUBJECT: Small Municipal and County Government Enterprise License Agreement Renewal with Environmental Systems Research Institute, Inc. (Redlands, CA)

BACKGROUND

ESRI's Small Municipal and County Government Enterprise License Agreement (ELA) is a three-year agreement that grants the City access to ESRI term license software on an unlimited basis, including maintenance on all software through the ELA for the term of the agreement.

An Enterprise License Agreement provides a number of benefits to City, including:

- A lower cost per unit for licensed software
- Reduced administrative and procurement expenses
- Maintenance on all ESRI software deployed under the agreement
- Flexibility to deploy software products when and where needed

The City standardizes on ESRI's desktop and server software for its GIS software needs. The software is utilized in many City departments and is a critical tool for efficient operations and effective decision-making.

FINANCIAL IMPACT:

The renewal of the ELA is maintained at the cost of $42,618.00 per year for a total of $127,854.00 over the three years of the agreement and is budgeted in the Internal Services Fund for Fiscal Year 2024.

The software purchase meets the City's procurement requirements.

RECOMMENDATION:

Staff recommends the City Commission renew the Small Municipal and County Governmental Enterprise License Agreement (ELA) with Environmental Systems Research Institute, Inc. (Redlands, CA) for a three-year term in the amount of $127,854.00 and authorize City Manager to execute same.

ATTACHMENT:

Small Enterprise Agreement County and Municipal Government

City of Winter Haven Contract Addendum

January 19, 2024

Mr. Hiep Nguyen
City of Winter Haven
551 3rd St Nw
Winter Haven, FL 33881-3404

Dear Hiep,

The Esri Small Municipal and County Government Enterprise Agreement (SGEA) is a three-year agreement that will grant your organization access to Esri term license software. The EA will be effective on the date executed and will require a firm, three-year commitment.

Based on Esri's work with several organizations similar to yours, we know there is significant potential to apply Geographic Information System (GIS) technology in many operational and technical areas within your organization. For this reason, we believe that your organization will greatly benefit from an Enterprise Agreement (EA).

An EA will provide your organization with numerous benefits including:

- A lower cost per unit for licensed software
- Substantially reduced administrative and procurement expenses
- Complete flexibility to deploy software products when and where needed

The following business terms and conditions will apply:

- All current departments, employees, and in-house contractors of the organization will be eligible to use the software and services included in the EA.

- If your organization wishes to acquire and/or maintain any Esri software during the term of the agreement that is not included in the EA, it may do so separately at the Esri pricing that is generally available for your organization for software and maintenance.

- The organization will establish a single point of contact for orders and deliveries and will be responsible for redistribution to eligible users.

- The organization will establish a Tier 1 support center to field calls from internal users of Esri software. The organization may designate individuals as specified in the EA who may directly contact Esri for Tier 2 technical support.

- The organization will provide an annual report of installed Esri software to Esri.

- Esri software and updates that the organization is licensed to use will be automatically available for downloading.

- The fee and benefits offered in this EA proposal are contingent upon your acceptance of Esri's Small Municipal and County Government EA terms and conditions.

- Licenses are valid for the term of the EA.

This program offer is valid for 90 days. To complete the agreement within this time frame, please contact me within the next seven days to work through any questions or concerns you may have.

To expedite your acceptance of this EA offer:

1. Sign and return the EA contract with a Purchase Order or issue a Purchase Order that references this EA Quotation and includes the following statement on the face of the Purchase Order:

   "THIS PURCHASE ORDER IS GOVERNED BY THE TERMS AND CONDITIONS OF THE ESRI SMALL MUNICIPAL AND COUNTY GOVERNMENT EA, AND ADDITIONAL TERMS AND CONDITIONS IN THIS PURCHASE ORDER WILL NOT APPLY."

   Have it signed by an authorized representative of the organization.

2. On the first page of the EA, identify the central point of contact/agreement administrator. The agreement administrator is the party that will be the contact for management of the software, administration issues, and general operations. Information should include name, title (if applicable), address, phone number, and e-mail address.

3. In the purchase order, identify the "Ship to" and "Bill to" information for your organization.

4. Send the purchase order and agreement to the address, email or fax noted below:

   Esri
   Attn: Customer Service SG-EA
   380 New York Street
   Redlands, CA 92373-8100

   e-mail: service@esri.com
   fax documents to: 909-307-3083

I appreciate the opportunity to present you with this proposal, and I believe it will bring great benefits to your organization.

Thank you very much for your consideration.

Best Regards,

Jessie White

Quotation # Q-507242

Date: January 19, 2024

Customer # 20671 **Contract #**

Environmental Systems Research Institute, Inc.
380 New York St
Redlands, CA 92373-8100
Phone: (909) 793-2853
DUNS Number: 06-313-4175 **CAGE Code: 0AMS3**

City of Winter Haven
Information Services & GIS
551 3rd St Nw
Winter Haven, FL 33881-3404

ATTENTION: Hiep Nguyen
PHONE: (863) 291-5679
EMAIL: hnguyen@mywinterhaven.com

To expedite your order, please attach a copy of this quotation to your purchase order.
Quote is valid from: 10/27/2023 To: 4/24/2024

Material	Qty	Term	Unit Price	Total
168178	1	Year 1	$42,618.00	$42,618.00
Populations of 25,001 to 50,000 Small Government Enterprise Agreement Annual Subscription				
168178	1	Year 2	$42,618.00	$42,618.00
Populations of 25,001 to 50,000 Small Government Enterprise Agreement Annual Subscription				
168178	1	Year 3	$42,618.00	$42,618.00
Populations of 25,001 to 50,000 Small Government Enterprise Agreement Annual Subscription				

Subtotal:	$127,854.00
Sales Tax:	$0.00
Estimated Shipping and Handling (2 Day Delivery):	$0.00
Contract Price Adjust:	$0.00
Total:	$127,854.00

Upon acceptance of the offer, City of Winter Haven agrees to commit to the three-year term. Esri will invoice City of Winter Haven for the annual fee in advance of each renewal year. Invoices are to be paid within thirty (30) days of receipt of the invoice.

Esri may charge a fee to cover expenses related to any customer requirement to use a proprietary vendor management, procurement, or invoice program.

For questions contact:	**Email:**	**Phone:**
Jessie White	jwhite@esri.com	(909) 793-2853 x7945

The items on this quotation are subject to and governed by the terms of this quotation, the most current product specific scope of use document found at https://assets.esri.com/content/dam/esrisites/media/legal/product-specific-terms-of-use/e300.pdf, and your applicable signed agreement with Esri. If no such agreement covers any item quoted, then Esri's standard terms and conditions found at https://go.esri.com/MAPS apply to your purchase of that item. If any item is quoted with a multi-year payment schedule, then unless otherwise stated in this quotation, Customer is required to make all payments without right of cancellation. Third-party data sets included in a quotation as separately licensed items will only be provided and invoiced if Esri is able to provide such data and will be subject to the applicable third-party's terms and conditions. If Esri is unable to provide any such data set, Customer will not be responsible for any further payments for the data set. US Federal government entities and US government prime contractors authorized under FAR 51.1 may purchase under the terms of Esri's GSA Federal Supply Schedule. Supplemental terms and conditions found at https://www.esri.com/en-us/legal/terms/state-supplemental apply to some US state and local government purchases. All terms of this quotation will be incorporated into and become part of any additional agreement regarding Esri's offerings. Acceptance of this quotation is limited to the terms of this quotation. Esri objects to and expressly rejects any different or additional terms contained in any purchase order, offer, or confirmation sent to or to be sent by buyer. Unless prohibited by law, the quotation information is confidential and may not be copied or released other than for the express purpose of system selection and purchase/license. The information may not be given to outside parties or used for any other purpose without consent from Esri. Delivery is FOB Origin for customers located in the USA.

Esri Use Only:
Cust. Name _____
Cust. # _____
PO # _____
Esri Agreement # _____

SMALL ENTERPRISE AGREEMENT
COUNTY AND MUNICIPALITY GOVERNMENT
(E214-2)

This Agreement is by and between the organization identified in the Quotation (**"Customer"**) and **Environmental Systems Research Institute, Inc.** (**"Esri"**).

This Agreement sets forth the terms for Customer's use of Products and incorporates by reference (i) the Quotation and (ii) the Master Agreement. Should there be any conflict between the terms and conditions of the documents that comprise this Agreement, the order of precedence for the documents shall be as follows: (i) the Quotation, (ii) this Agreement, and (iii) the Master Agreement. This Agreement shall be governed by and construed in accordance with the laws of the state in which Customer is located without reference to conflict of laws principles, and the United States of America federal law shall govern in matters of intellectual property. The modifications and additional rights granted in this Agreement apply only to the Products listed in Table A.

Table A
List of Products

Uncapped Quantities

Desktop Software and Extensions (Single Use)
ArcGIS Desktop Advanced
ArcGIS Desktop Standard
ArcGIS Desktop Basic
ArcGIS Desktop Extensions: ArcGIS 3D Analyst, ArcGIS Spatial Analyst, ArcGIS Geostatistical Analyst, ArcGIS Publisher, ArcGIS Network Analyst, ArcGIS Schematics, ArcGIS Workflow Manager, ArcGIS Data Reviewer

Enterprise Software and Extensions
ArcGIS Enterprise (Advanced and Standard)
ArcGIS Monitor
ArcGIS Enterprise Extensions: ArcGIS 3D Analyst, ArcGIS Spatial Analyst, ArcGIS Geostatistical Analyst, ArcGIS Network Analyst, ArcGIS Schematics, ArcGIS Workflow Manager, ArcGIS Data Reviewer

Enterprise Additional Capability Servers
ArcGIS Image Server

Developer Tools
ArcGIS Runtime Standard
ArcGIS Runtime Analysis Extension

Limited Quantities
One (1) Professional subscription to ArcGIS Developer
Two (2) ArcGIS CityEngine Single Use Licenses
100 ArcGIS Online Viewers
100 ArcGIS Online Creators
17,500 ArcGIS Online Service Credits
100 ArcGIS Enterprise Creators
3 ArcGIS Insights in ArcGIS Enterprise
3 ArcGIS Insights in ArcGIS Online
10 ArcGIS Location Sharing User Type Extension (Enterprise)
10 ArcGIS Location Sharing User Type Extension (Online)
9 ArcGIS Advanced Editing User Type Extension (Enterprise)

OTHER BENEFITS

Number of Esri User Conference registrations provided annually	**3**
Number of Tier 1 Help Desk individuals authorized to call Esri	**3**
Maximum number of sets of backup media, if requested*	**2**
Five percent (5%) discount on all individual commercially available instructor-led training classes at Esri facilities purchased outside this Agreement	

*Additional sets of backup media may be purchased for a fee

Customer may accept this Agreement by signing and returning the whole Agreement with (i) the Quotation attached, (ii) a purchase order, or (iii) another document that matches the Quotation and references this Agreement ("**Ordering Document**"). **ADDITIONAL OR CONFLICTING TERMS IN CUSTOMER'S PURCHASE ORDER OR OTHER DOCUMENT WILL NOT APPLY, AND THE TERMS OF THIS AGREEMENT WILL GOVERN.** This Agreement is effective as of the date of Esri's receipt of an Ordering Document, unless otherwise agreed to by the parties ("**Effective Date**").

Term of Agreement: Three (3) years

This Agreement supersedes any previous agreements, proposals, presentations, understandings, and arrangements between the parties relating to the licensing of the Products. Except as provided in Article 4—Product Updates, no modifications can be made to this Agreement.

Accepted and Agreed:

_____
(Customer)

By: _____
Authorized Signature

Printed Name: _____

Title: _____

Date: _____

CUSTOMER CONTACT INFORMATION

Contact: _____

Address: _____

City, State, Postal Code: _____

Country: _____

Quotation Number (if applicable): _____

Telephone: _____

Fax: _____

E-mail: _____

1.0—Additional Definitions

In addition to the definitions provided in the Master Agreement, the following definitions apply to this Agreement:

"Case" means a failure of the Software or Online Services to operate according to the Documentation where such failure substantially impacts operational or functional performance.

"Deploy", "Deployed" and "Deployment" mean to redistribute and install the Products and related Authorization Codes within Customer's organization(s).

"Fee" means the fee set forth in the Quotation.

"Maintenance" means Tier 2 Support, Product updates, and Product patches provided to Customer during the Term of Agreement.

"Master Agreement" means the applicable master agreement for Esri Products incorporated by this reference that is (i) found at https://www.esri.com/en-us/legal/terms/full-master-agreement and available in the installation process requiring acceptance by electronic acknowledgment or (ii) a signed Esri master agreement or license agreement that supersedes such electronically acknowledged master agreement.

"Product(s)" means the products identified in Table A—List of Products and any updates to the list Esri provides in writing.

"Quotation" means the offer letter and quotation provided separately to Customer.

"Technical Support" means the technical assistance for attempting resolution of a reported Case through error correction, patches, hot fixes, workarounds, replacement deliveries, or any other type of Product corrections or modifications.

"Tier 1 Help Desk" means Customer's point of contact(s) to provide all Tier 1 Support within Customer's organization(s).

"Tier 1 Support" means the Technical Support provided by the Tier 1 Help Desk.

"Tier 2 Support" means the Esri Technical Support provided to the Tier 1 Help Desk when a Case cannot be resolved through Tier 1 Support.

2.0—Additional Grant of License

2.1 Grant of License. Subject to the terms and conditions of this Agreement, Esri grants to Customer a personal, nonexclusive, nontransferable license solely to use, copy, and Deploy quantities of the Products listed in Table A—List of Products for the Term of Agreement (i) for the applicable Fee and (ii) in accordance with the Master Agreement.

2.2 Consultant Access. Esri grants Customer the right to permit Customer's consultants or contractors to use the Products exclusively for Customer's benefit. Customer will be solely responsible for compliance by consultants and contractors with this Agreement and will ensure that the consultant or contractor discontinues use of Products upon completion of work for Customer. Access to or use of Products by consultants or contractors not exclusively for Customer's benefit is prohibited. Customer may not permit its consultants or contractors to install Software or Data on consultant, contractor, or third-party computers or remove Software or Data from Customer locations, except for the purpose of hosting the Software or Data on Contractor servers for the benefit of Customer.

3.0—Term, Termination, and Expiration

3.1 Term. This Agreement and all licenses hereunder will commence on the Effective Date and continue for the duration identified in the Term of Agreement, unless this Agreement is terminated earlier as provided herein. Customer is only authorized to use Products during the Term of Agreement. For an Agreement with a limited term, Esri does not grant Customer an indefinite or a perpetual license to Products.

3.2 No Use upon Agreement Expiration or Termination. All Product licenses, all Maintenance, and Esri User Conference registrations terminate upon expiration or termination of this Agreement.

3.3 Termination for a Material Breach. Either party may terminate this Agreement for a material breach by the other party. The breaching party will have thirty (30) days from the date of written notice to cure any material breach.

3.4 Termination for Lack of Funds. For an Agreement with government or government-

owned entities, either party may terminate this Agreement before any subsequent year if Customer is unable to secure funding through the legislative or governing body's approval process.

3.5 Follow-on Term. If the parties enter into another agreement substantially similar to this Agreement for an additional term, the effective date of the follow-on agreement will be the day after the expiration date of this Agreement.

4.0—Product Updates

4.1 Future Updates. Esri reserves the right to update the list of Products in Table A—List of Products by providing written notice to Customer. Customer may continue to use all Products that have been Deployed, but support and upgrades for deleted items may not be available. As new Products are incorporated into the standard program, they will be offered to Customer via written notice for incorporation into the Products schedule at no additional charge. Customer's use of new or updated Products requires Customer to adhere to applicable additional or revised terms and conditions in the Master Agreement.

4.2 Product Life Cycle. During the Term of Agreement, some Products may be retired or may no longer be available to Deploy in the identified quantities. Maintenance will be subject to the individual Product Life Cycle Support Status and Product Life Cycle Support Policy, which can be found at https://support.esri.com/en/other-resources/product-life-cycle. Updates for Products in the mature and retired phases may not be available. Customer may continue to use Products already Deployed, but Customer will not be able to Deploy retired Products.

5.0—Maintenance

The Fee includes standard maintenance benefits during the Term of Agreement as specified in the most current applicable Esri Maintenance and Support Program document (found at https://www.esri.com/en-us/legal/terms/maintenance). At Esri's sole discretion, Esri may make patches, hot fixes, or updates available for download. No Software other than the defined Products will receive Maintenance. Customer may acquire maintenance for other Software outside this Agreement.

a. Tier 1 Support

1. Customer will provide Tier 1 Support through the Tier 1 Help Desk to all Customer's authorized users.
2. The Tier 1 Help Desk will be fully trained in the Products.
3. At a minimum, Tier 1 Support will include those activities that assist the user in resolving how-to and operational questions as well as questions on installation and troubleshooting procedures.
4. The Tier 1 Help Desk will be the initial point of contact for all questions and reporting of a Case. The Tier 1 Help Desk will obtain a full description of each reported Case and the system configuration from the user. This may include obtaining any customizations, code samples, or data involved in the Case.
5. If the Tier 1 Help Desk cannot resolve the Case, an authorized Tier 1 Help Desk individual may contact Tier 2 Support. The Tier 1 Help Desk will provide support in such a way as to minimize repeat calls and make solutions to problems available to Customer’s organization.
6. Tier 1 Help Desk individuals are the only individuals authorized to contact Tier 2 Support. Customer may change the Tier 1 Help Desk individuals by written notice to Esri.

b. Tier 2 Support

1. Tier 2 Support will log the calls received from Tier 1 Help Desk.
2. Tier 2 Support will review all information collected by and received from the Tier 1 Help Desk including preliminary documented troubleshooting provided by the Tier 1 Help Desk when Tier 2 Support is required.
3. Tier 2 Support may request that Tier 1 Help Desk individuals provide verification of information, additional information, or answers to additional questions to

supplement any preliminary information gathering or troubleshooting performed by Tier 1 Help Desk.

4. Tier 2 Support will attempt to resolve the Case submitted by Tier 1 Help Desk.

5. When the Case is resolved, Tier 2 Support will communicate the information to Tier 1 Help Desk, and Tier 1 Help Desk will disseminate the resolution to the user(s).

6.0—Endorsement and Publicity

This Agreement will not be construed or interpreted as an exclusive dealings agreement or Customer's endorsement of Products. Either party may publicize the existence of this Agreement.

7.0—Administrative Requirements

7.1 OEM Licenses. Under Esri's OEM or Solution OEM programs, OEM partners are authorized to embed or bundle portions of Esri products and services with their application or service. OEM partners' business model, licensing terms and conditions, and pricing are independent of this Agreement. Customer will not seek any discount from the OEM partner or Esri based on the availability of Products under this Agreement. Customer will not decouple Esri products or services from the OEM partners' application or service.

7.2 Annual Report of Deployments. At each anniversary date and ninety (90) calendar days prior to the expiration of this Agreement, Customer will provide Esri with a written report detailing all Deployments. Upon request, Customer will provide records sufficient to verify the accuracy of the annual report.

8.0—Ordering, Administrative Procedures, Delivery, and Deployment

8.1 Orders, Delivery, and Deployment

a. Upon the Effective Date, Esri will invoice Customer and provide Authorization Codes to activate the nondestructive copy protection program that enables Customer to download, operate, or allow access to the Products. If this is a multi-year Agreement, Esri may invoice the Fee up to thirty (30) calendar days before the annual anniversary date for each year.

b. Undisputed invoices will be due and payable within thirty (30) calendar days from the date of invoice. Esri reserves the right to suspend Customer's access to and use of Products if Customer fails to pay any undisputed amount owed on or before its due date. Esri may charge Customer interest at a monthly rate equal to the lesser of one percent (1.0%) per month or the maximum rate permitted by applicable law on any overdue fees plus all expenses of collection for any overdue balance that remains unpaid ten (10) days after Esri has notified Customer of the past-due balance.

c. Esri's federal ID number is 95-2775-732.

d. If requested, Esri will ship backup media to the ship-to address identified on the Ordering Document, FOB Destination, with shipping charges prepaid. Customer acknowledges that should sales or use taxes become due as a result of any shipments of tangible media, Esri has a right to invoice and Customer will pay any such sales or use tax associated with the receipt of tangible media.

8.2 Order Requirements. Esri does not require Customer to issue a purchase order. Customer may submit a purchase order in accordance with its own process requirements, provided that if Customer issues a purchase order, Customer will submit its initial purchase order on the Effective Date. If this is a multi-year Agreement, Customer will submit subsequent purchase orders to Esri at least thirty (30) calendar days before the annual anniversary date for each year.

a. All orders pertaining to this Agreement will be processed through Customer's centralized point of contact.

b. The following information will be included in each Ordering Document:

(1) Customer name; Esri customer number, if known; and bill-to and ship-to addresses
(2) Order number
(3) Applicable annual payment due

9.0—Mergers, Acquisitions, or Divestitures

If Customer is a commercial entity, Customer will notify Esri in writing in the event of (i) a consolidation, merger, or reorganization of Customer with or into another corporation or entity; (ii) Customer's acquisition of another entity; or (iii) a transfer or sale of all or part of Customer's organization (subsections i, ii, and iii, collectively referred to as "**Ownership Change**"). There will be no decrease in Fee as a result of any Ownership Change.

9.1 If an Ownership Change increases the cumulative program count beyond the maximum level for this Agreement, Esri reserves the right to increase the Fee or terminate this Agreement and the parties will negotiate a new agreement.

9.2 If an Ownership Change results in transfer or sale of a portion of Customer's organization, that portion of Customer's organization will transfer the Products to Customer or uninstall, remove, and destroy all copies of the Products.

9.3 This Agreement may not be assigned to a successor entity as a result of an Ownership Change unless approved by Esri in writing in advance. If the assignment to the new entity is not approved, Customer will require any successor entity to uninstall, remove, and destroy the Products. This Agreement will terminate upon such Ownership Change.

CITY OF WINTER HAVEN CONTRACT ADDENDUM

This *City of Winter Haven Contract Addendum* ("Addendum") is agreed upon by the parties and appended to the agreement(s), purchase(s), order(s), form(s), service(s), package(s), term(s), and contract(s) identified below by reference by title (together collectively the "Contract Documents"), between the City of Winter Haven, Florida, a Florida municipal corporation (the "City") and the following Vendor (collectively, the "Parties"):

Name of Vendor: Environmental Systems Research Institute, Inc. ("ESRI")
380 New York Street
Redlands, CA 92373-8100

Name of Contract: ESRI Quotation #Q-507242 (the "Quote"), ESRI Master Agreement Product and Services and any Task Order (collectively, the "Contract")

§ 1. Initial Provisions and Fact Findings.

The Parties agree upon the following initial provisions and factual findings:

(a) The City is authorized to enter into the Contract and this Addendum as a matter of home rule under Section 2(b) of Article VIII of the Florida Constitution and Chapter 166 of the Florida Statutes. The resulting contract, articulated by the Contract Documents as a whole, is subject to all budgeting and legal requirements of the *Code of Ordinances of the City of Winter Haven, Florida*, the *Charter of the City of Winter Haven, Florida* and the Florida Statutes.

(b) Copies of the *ESRI Order Form*, the *Quote*, and the *ESRI Master Agreement Product and Services* are attached to this Addendum as **Composite Exhibit "A"** and made a part hereof by reference.

(c) Notwithstanding anything in the Quote or the Contract Documents to the contrary, Vendor and the City acknowledge and agree that the Effective Date of the Contract and this Addendum is the date that the governing body of the City approves and enters into the Contract and this Addendum at a duly called open public meeting.

(d) Vendor represents that it is authorized to transact business in the State of Florida.

(e) Vendor and the City acknowledge and represent that certain amendments to the Contract are desirable and necessary in order to comply with applicable Florida law.

(f) Vendor acknowledges and agrees that the Contract and this Addendum are governed by Florida law.

(g) Vendor and the City acknowledge that the City's entry into the Contract, remission of payments, and performance thereunder, is contingent upon the terms and conditions set forth in this Addendum.

(h) Vendor acknowledges and represents that, in consideration for the City's entry into the Contract and this Addendum, and the City's performance thereunder, Vendor has agreed to provide and perform its obligations and services in strict accordance with Florida law, including by way of explanation, but not limitation, Chapters 119, 267, and 668 of the Florida Statutes.

(i) Vendor represents that, prior to executing this Addendum, it has reviewed this Addendum with its legal counsel and fairly negotiated this Addendum at arm's length.

(j) The City acknowledges that the Contract and this Addendum are in the best interest of the City of Winter Haven and its citizens and residents, and execution of the Contract and this Addendum will promote the health, safety and welfare of the citizens and residents of the City of Winter Haven, Florida.

(k) Vendor and the City acknowledge, represent, and agree that mutual consideration has been given, receipt of which is duly acknowledged, in consideration and exchange for entry into this Addendum.

§ 2. Definitions.

Words used in the Contract and Addendum, as well as any and all attachments and exhibits incorporated therein and made a part of the Contract Documents, shall possess their everyday and ordinary meanings, *provided however*, that where one of the following listed terms is used, such term shall possess its corresponding meaning, as follows:

Day(s) means calendar day(s) unless specifically stated otherwise.

Calendar Day(s) means any day(s) in a 365-day calendar year.

Business Day(s) means that (or those) calendar day(s) which is (or are) not a Saturday, a Sunday, or a holiday where the City's City Hall is closed for the transaction of ordinary business (a "City Holiday").

§ 3. Primacy of Addendum.

This Addendum contains specific terms and conditions that are applicable to purchases of goods and services made by the City of Winter Haven, Florida, a Florida municipal corporation. Notwithstanding anything in the Contract Documents to the contrary, whether expressly made or determined to exist by implication, the terms of this Addendum shall be primary and shall control over any conflicting term, condition, duty, and implication found in the Contract Documents.

§ 4. Calculation of Time.

Unless expressly specified otherwise in the Contract Documents, the calculation of any time period expressed in days or the determination of the number of days that have passed between events or occurrences shall be based on calendar days and every calendar day of the period shall be counted including intermediate Saturdays, Sundays and City Holidays. Unless expressly specified otherwise specified in the Contract Documents, any time period expressed in days that is prescribed in or by the Contract Documents shall commence on the day immediately following the event triggering such time period and shall expire at midnight on the last day of the same, provided that if the last day of the period is a Saturday, Sunday, or City Holiday, the period continues to run until the next day that is not a Saturday, Sunday, or City Holiday. Time periods expressed in the Contract Documents that are not contingent upon an action or event shall commence on the day immediately following the Effective Date.

§ 5. Governing Law; Home Venue Privilege.

The Contract and this Addendum are made in the City of Winter Haven, County of Polk, State of Florida, and shall be governed solely by the internal laws of the State of Florida. The Parties agree that venue for any litigation, suit, action, counterclaim, or proceeding, whether at law or in equity, which arises out of, concerns, or relates to the Contract, the Addendum, the Contract Documents, any and all transactions contemplated thereunder, the performance thereof, or the relationship created hereby, whether sounding in contract, tort, strict liability, or otherwise, shall lie exclusively in courts with geographic jurisdiction over Polk County, Florida, which, as of the Effective Date, are the County Court in and for Polk County, Florida, the Circuit Court of the Tenth Judicial Circuit in and for Polk County, Florida and the United States District Court for the Middle District of Florida, Tampa Division. The Parties waive any objection to jurisdiction and venue in such courts.

§ 6. Financial Matters; City Performance Subject to Appropriation; Invoices; Applicability of the Florida Local Government Prompt Payment Act

(a) The City's obligation to perform under the Contract Documents and furnish payment to Vendor is expressly subject to appropriation of sufficient public funds by the City Commission of the City of Winter Haven, Florida. In the event the City Commission of the City of Winter Haven, Florida, fails to appropriate sufficient funds to satisfy the City's payment obligations to Vendor of any kind or type, the City or the Vendor may immediately terminate the Contract and this Addendum and be released from any future responsibility or liability thereunder.

(b) Invoices for services shall be sent to: City of Winter Haven – Finance Dept., P.O. Box 2277, Winter Haven, Florida 33883-227, or preferably, emailed to finance-AP@mywinterhaven.com, or at such other address as may be directed by the City to the

Vendor in writing from time to time.

(c) The provisions of the *Local Government Prompt Payment Act*, §§ 218.70, *et seq.*, Florida Statutes (2023), are incorporated herein as if set forth in full, and shall control all payments made by the City to the Vendor required by the Contract Documents. To the extent there is conflict between the text of the Contract Documents and the text of the *Local Government Prompt Payment Act*, the text of the *Local Government Prompt Payment Act* shall control.

§ 7. Public Records Compliance.

Pursuant to Section 119.0701(1)(a) of the Florida Statutes, Vendor agrees to:

(a) Keep and maintain Public Records required by the City to perform the Services specified herein.

(b) Upon request from the City's custodian of Public Records, provide the City with a copy of the requested Public Records or allow the Public Records to be inspected or copies within a reasonable time at a cost that does not exceed the cost provided in this chapter or as otherwise provided by law.

(c) Ensure that Public Records that are exempt or confidential and exempt from Public Records disclosure requirements are not disclosed except as authorized by law for the duration of the term and following completion of the contracted work or service if Vendor does not transfer the Public Records to the City.

(d) Upon completion of the contracted work or service, transfer, at no cost, to the City all Public Records in possession of Vendor or keep and maintain Public Records required by the City to perform the service. If Vendor transfers all Public Records to the City upon completion of the contracted work or service, Vendor shall destroy any duplicate Public Records that are exempt or confidential and exempt from Public Records disclosure requirements. If Vendor keeps and maintains Public Records upon completion of the contracted work or service, Vendor shall meet all applicable requirements for retaining Public Records. All Public Records stored electronically must be provided to the City upon request from the City's custodian of Public Records, in a format that is compatible with the City's information technology systems.

IF VENDOR HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO VENDOR'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS CONTRACT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT 863-291-5600, RECORDS@MYWINTERHAVEN.COM, 451 THIRD STREET NW, WINTER

HAVEN, FL 33881.

If Vendor does not comply with a public records request, the City shall enforce this contract provision, which may include immediate termination.

§ 8. Sovereign Immunity; Limitations of City's Liability.

(a) City is a sovereign Florida municipal government. The Parties agree that nothing contained in the Contract Documents shall be construed to waive the City's sovereign immunity. With respect to the matter of compensation for work performed, or the price of goods sold, the Parties agree that the total potential liability of the City to the Vendor shall not exceed the agreed-upon price established in the Contract Documents, or any related purchase order, subject to annual appropriation performance contingencies. For all other matters, the Parties agree that the total potential liability of the City to the Vendor shall not exceed the limits of the City's potential liability as determined by the State of Florida's waiver of sovereign immunity set forth in the version of § 768.28(5) of the Florida Statutes in effect as of the Effective Date, regardless of whether any such obligations are based in tort, contract, statute, strict liability, or negligence, product liability or otherwise.

(b) The Parties agree that the maximum value and monetary limits of any individual express City indemnification and all collective express City indemnifications found in the Contract Documents, if any exist, shall not exceed the limits of the City's potential liability as determined by the State of Florida's waiver of sovereign immunity set forth in the version of § 768.28(5) of the Florida Statutes in effect as of the Effective Date, regardless of whether any such obligation to indemnify or the underlying cause for indemnity is based in tort, contract, statute, strict liability, or negligence, product liability or otherwise. Notwithstanding anything in the Contract Documents to the contrary, to the extent that the City has agreed to an express indemnification, the Parties agree that no City indemnity shall require the City to defend Vendor and no City indemnity shall indemnify Vendor from and against attorneys' fees and costs, fees and costs for experts and witnesses, costs of suit, or any indirect, incidental, consequential, special, exemplary, or punitive damages of any kind or nature or interest for the period before judgment. This limitation provision shall not be construed to create a duty for the City to indemnify the Vendor in the absence of an independent express indemnification clause.

(c) This Section shall survive termination of the Contract and this Addendum.

§ 9. Required Clauses.

Pursuant to Florida Statutes, the following provisions are added to the Contract Documents:

(a) *Convicted Vendor List.* A person or affiliate who has been placed on the State of Florida Convicted Vendor List, following a conviction for a public entity crime, may not submit a bid on a contract to provide any goods or services to a public entity;

may not submit a bid on a contract with a public entity for the construction or repair of a public building or public work; may not submit bids on leases of real property to a public entity; may not be awarded or perform work as a contractor, supplier, subcontractor, or consultant under a contract with any public entity; and may not transact business with any public entity, in excess of $35,000.00, for a period of thirty-six (36) months from the date of being placed on the Convicted Vendor List. Vendor acknowledges that it is not on the State of Florida Convicted Vendor List and that it is eligible to enter into the Contract, this Addendum, the Contract Documents, and the resulting contract with the City.

(b) *Scrutinized Companies.* Section 287.135, Florida Statutes, prohibits the City from contracting with companies for goods or services in any amount if at the time of bidding on, submitting a proposal for, or entering into or renewing a contract if the company is on the Scrutinized Companies that Boycott Israel List, created pursuant to Section 215.4725, F.S. or is engaged in a boycott of Israel; and contracting with companies for goods or services over $1,000,000.00 that are on either the Scrutinized Companies with activities in the Iran Petroleum Energy Sector List, created pursuant to s. 215.473, or are engaged in business operations in Cuba or Syria. Vendor acknowledges that it is not on the State of Florida Scrutinized Companies that Boycott Israel list, is not presently engaged in a boycott of Israel, is not on the State of Florida Scrutinized Companies with activities in the Iran Petroleum Energy Sector List, and is not engaged in business operations in Cuba or Syria.

(c) *E-Verify.* By contracting with the City, the Vendor becomes obligated under Florida law to comply with the provisions of Section 448.095(5)(a), Florida Statutes, to register with and use the E-Verify system to verify the work authorization status of all new employees of the Vendor and any subcontractor hired by the Vendor. If the Vendor enters into a contract with a subcontractor, the subcontractor must provide the Vendor with 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 the Contract, this Addendum, the Contract Documents, and all purchase orders 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 Agreement is terminated for a violation of the statute by the Vendor, the Vendor may not be awarded a public contract for a period of one (1) year after the date of termination.

(d) *No Consideration of Social, Political, and Ideological Interests.* The provisions of Section 287.05701 of the Florida Statutes prohibit local governments from giving preference to a prospective contractor based on the prospective contractor's social, political or ideological interests or requesting documentation from, or considering, a prospective contractor's social, political, or ideological interests when determining if the prospective contractor is a responsible vendor.

(e) *Contracting with Foreign Entities.* By executing this Contract, Vendor certifies that it is not owned by the government of the People's Republic of China, the Russian Federation, the Islamic Republic of Iran, the Democratic People's Republic of

Korea, the Republic of Cuba, the Venezuelan regime of Nicolás Maduro, or the Syrian Arab Republic (collectively "Foreign Countries of Concern"), nor is it owned by any agency of or any other entity of significant control of any such government. Further, Vendor certifies that no government of a Foreign Country of Concern has a "controlling interest" in Vendor as the term is defined in Section 287.138(1)(a) of the Florida Statutes, nor is the Vendor organized under the laws of a Foreign Country of Concern, nor does the Vendor have its principal place of business located in a Foreign Country of Concern. If this Contract permits the Vendor to access the personal identifying information of any individual, Vendor agrees to notify the City in advance of any contemplated transaction that would cause Vendor to be disqualified from such access under Section 287.138 of the Florida Statutes. Vendor agrees to furnish the City with an affidavit signed by an officer or representative of the Vendor under penalty of perjury at any time and upon request that the statements in this paragraph are true and correct.

§ 10. Force Majeure.

Delays in performance due to fire; flood; hurricane; tornado; earthquake; windstorm; unavailability of materials or equipment; war; declaration of hostilities; terrorist act; civil strife; strike; labor dispute; epidemic; or act of God, shall be deemed events of "Force Majeure" and such delays shall be excused in the manner herein provided. If a Party is delayed in any work or performance pursuant to the Agreement due to the occurrence of an event of Force Majeure, the date for action required or contemplated by the Agreement shall be extended by the number of days equal to the number of days such party is delayed. The party seeking to be excused based on an event of Force Majeure shall give written notice of the delay indicating its anticipated duration. Each party shall use its best efforts to rectify any conditions causing the delay and will cooperate with the other party, except for the incurrence of unreasonable additional costs and expenses, to overcome any loss of time that has resulted.

§ 11. Notices.

All notices under the Contract, this Addendum, and the Contract Documents shall be in writing and may be given by any of the following methods: (1) personal delivery, (2) certified mail, postage prepaid, or (3) overnight delivery service, prepaid, when sent to the following:

THE CITY:

T. Michael Stavres, City Manager
City of Winter Haven, Florida
Physical Address: 451 Third Street NW, Winter Haven, Florida 33831

WITH COPY TO: (*which **shall not** constitute notice*)

Frederick J. Murphy, Jr., City Attorney
Boswell & Dunlap, LLP
Post Office Drawer 30, Bartow, Florida 33831
Physical Address: 245 South Central Avenue, Bartow, Florida 33830

VENDOR:

Vendor's address for notices is specified above on Page 1.

For purposes of the Contract, this Addendum, and the Contract Documents, notice shall be deemed to have been received when either deposited in a United States Postal Service mailbox or personally delivered with signed proof of delivery, whichever is later in time.

§ 12. Compliance with Laws.

Vendor agrees to comply with any and all applicable statutes, laws, rules, regulations, charter provisions, ordinances and resolutions of general applicability of the United States of America, of the State of Florida, of Polk County, of City of Winter Haven, and of any and all other public authority which may be applicable.

§ 13. Assignment by Vendor.

The contract expressed by the Contract, this Addendum, and the Contract Documents shall not be assigned by the Vendor, or any successor thereto, in whole or in part without the prior written consent of the City, which shall not be unreasonably withheld.

§ 14. Specific Modifications.

Without limiting the effectiveness of any of the foregoing provisions in this Addendum, the following specific modifications are made to the text of the Contract Documents:

(a) The provisions regarding Arbitration set forth in Article B.9.13(d) under Dispute Resolution are deleted in their entirety.

(b) The following provision is added to the Contract Documents:

"The *ESRI Contract Documents*, and the *City of Winter Haven Contract Addendum* may be executed in several counterparts, each constituting a duplicate original, but all such counterparts constitute one agreement."

IN WITNESS WHEREOF, the parties have set their hands hereto on the date indicated:

[*Signatures Follow on Pages 10 and 11*]

City of Winter Haven Contract Addendum
to:
ESRI Order Form, and ESRI Master Agreement Product and Services

Signature Page for Vendor

Vendor:

Executed this ____ day of _____, 2024

By: _____

Name:_____

Title: _____

STATE OF _____
COUNTY OF _____

The foregoing instrument was acknowledged before me, by means of □ physical presence or □ online notarization, this _____ day of _____, 2024, by _____, as __ _____, on its behalf, □ who is personally known to me or □ who has produced _____ as identification.

_____
Notary Public, State of _____
Printed Name:_____
My commission expires:_____

City of Winter Haven Contract Addendum
to:
ESRI Order Form, and ESRI Master Agreement Product and Services

Signature Page for City of Winter Haven, Florida

City of Winter Haven, Florida:

Executed this ____ day of _____, 2024

By: _____
City Manager

Attest:

_____
City Clerk

Approved as to Form and Legal Sufficiency:

_____
City Attorney

City of Winter Haven Contract Addendum
to:
ESRI Order Form, and ESRI Master Agreement Product and Services

COMPOSITE EXHIBIT "A"

January 19, 2024

Mr. Hiep Nguyen
City of Winter Haven
551 3rd St Nw
Winter Haven, FL 33881-3404

Dear Hiep,

The Esri Small Municipal and County Government Enterprise Agreement (SGEA) is a three-year agreement that will grant your organization access to Esri term license software. The EA will be effective on the date executed and will require a firm, three-year commitment.

Based on Esri's work with several organizations similar to yours, we know there is significant potential to apply Geographic Information System (GIS) technology in many operational and technical areas within your organization. For this reason, we believe that your organization will greatly benefit from an Enterprise Agreement (EA).

An EA will provide your organization with numerous benefits including:

- A lower cost per unit for licensed software
- Substantially reduced administrative and procurement expenses
- Complete flexibility to deploy software products when and where needed

The following business terms and conditions will apply:

- All current departments, employees, and in-house contractors of the organization will be eligible to use the software and services included in the EA.

- If your organization wishes to acquire and/or maintain any Esri software during the term of the agreement that is not included in the EA, it may do so separately at the Esri pricing that is generally available for your organization for software and maintenance.

- The organization will establish a single point of contact for orders and deliveries and will be responsible for redistribution to eligible users.

- The organization will establish a Tier 1 support center to field calls from internal users of Esri software. The organization may designate individuals as specified in the EA who may directly contact Esri for Tier 2 technical support.

- The organization will provide an annual report of installed Esri software to Esri.

- Esri software and updates that the organization is licensed to use will be automatically available for downloading.

- The fee and benefits offered in this EA proposal are contingent upon your acceptance of Esri's Small Municipal and County Government EA terms and conditions.

- Licenses are valid for the term of the EA.

This program offer is valid for 90 days. To complete the agreement within this time frame, please contact me within the next seven days to work through any questions or concerns you may have.

To expedite your acceptance of this EA offer:

1. Sign and return the EA contract with a Purchase Order or issue a Purchase Order that references this EA Quotation and includes the following statement on the face of the Purchase Order:

   "THIS PURCHASE ORDER IS GOVERNED BY THE TERMS AND CONDITIONS OF THE ESRI SMALL MUNICIPAL AND COUNTY GOVERNMENT EA, AND ADDITIONAL TERMS AND CONDITIONS IN THIS PURCHASE ORDER WILL NOT APPLY."

   Have it signed by an authorized representative of the organization.

2. On the first page of the EA, identify the central point of contact/agreement administrator. The agreement administrator is the party that will be the contact for management of the software, administration issues, and general operations. Information should include name, title (if applicable), address, phone number, and e-mail address.

3. In the purchase order, identify the "Ship to" and "Bill to" information for your organization.

4. Send the purchase order and agreement to the address, email or fax noted below:

   Esri
   Attn: Customer Service SG-EA
   380 New York Street
   Redlands, CA 92373-8100

   e-mail: service@esri.com
   fax documents to: 909-307-3083

I appreciate the opportunity to present you with this proposal, and I believe it will bring great benefits to your organization.

Thank you very much for your consideration.

Best Regards,

Jessie White

Quotation # Q-507242

Date: January 19, 2024

Customer # 20671 **Contract #**

Environmental Systems Research Institute, Inc.
380 New York St
Redlands, CA 92373-8100
Phone: (909) 793-2853
DUNS Number: 06-313-4175 **CAGE Code: 0AMS3**

City of Winter Haven
Information Services & GIS
551 3rd St Nw
Winter Haven, FL 33881-3404

ATTENTION: Hiep Nguyen
PHONE: (863) 291-5679
EMAIL: hnguyen@mywinterhaven.com

To expedite your order, please attach a copy of this quotation to your purchase order.
Quote is valid from: 10/27/2023 To: 4/24/2024

Material	Qty	Term	Unit Price	Total
168178	1	Year 1	$42,618.00	$42,618.00
Populations of 25,001 to 50,000 Small Government Enterprise Agreement Annual Subscription				
168178	1	Year 2	$42,618.00	$42,618.00
Populations of 25,001 to 50,000 Small Government Enterprise Agreement Annual Subscription				
168178	1	Year 3	$42,618.00	$42,618.00
Populations of 25,001 to 50,000 Small Government Enterprise Agreement Annual Subscription				

Subtotal:	$127,854.00
Sales Tax:	$0.00
Estimated Shipping and Handling (2 Day Delivery):	$0.00
Contract Price Adjust:	$0.00
Total:	$127,854.00

Upon acceptance of the offer, City of Winter Haven agrees to commit to the three-year term. Esri will invoice City of Winter Haven for the annual fee in advance of each renewal year. Invoices are to be paid within thirty (30) days of receipt of the invoice.

Esri may charge a fee to cover expenses related to any customer requirement to use a proprietary vendor management, procurement, or invoice program.

For questions contact:	**Email:**	**Phone:**
Jessie White	jwhite@esri.com	(909) 793-2853 x7945

The items on this quotation are subject to and governed by the terms of this quotation, the most current product specific scope of use document found at https://assets.esri.com/content/dam/esrisites/media/legal/product-specific-terms-of-use/e300.pdf, and your applicable signed agreement with Esri. If no such agreement covers any item quoted, then Esri's standard terms and conditions found at https://go.esri.com/MAPS apply to your purchase of that item. If any item is quoted with a multi-year payment schedule, then unless otherwise stated in this quotation, Customer is required to make all payments without right of cancellation. Third-party data sets included in a quotation as separately licensed items will only be provided and invoiced if Esri is able to provide such data and will be subject to the applicable third-party's terms and conditions. If Esri is unable to provide any such data set, Customer will not be responsible for any further payments for the data set. US Federal government entities and US government prime contractors authorized under FAR 51.1 may purchase under the terms of Esri's GSA Federal Supply Schedule. Supplemental terms and conditions found at https://www.esri.com/en-us/legal/terms/state-supplemental apply to some US state and local government purchases. All terms of this quotation will be incorporated into and become part of any additional agreement regarding Esri's offerings. Acceptance of this quotation is limited to the terms of this quotation. Esri objects to and expressly rejects any different or additional terms contained in any purchase order, offer, or confirmation sent to or to be sent by buyer. Unless prohibited by law, the quotation information is confidential and may not be copied or released other than for the express purpose of system selection and purchase/license. The information may not be given to outside parties or used for any other purpose without consent from Esri. Delivery is FOB Origin for customers located in the USA.

Esri Use Only:
Cust. Name _____
Cust. # _____
PO # _____
Esri Agreement # _____

SMALL ENTERPRISE AGREEMENT
COUNTY AND MUNICIPALITY GOVERNMENT
(E214-2)

This Agreement is by and between the organization identified in the Quotation (**"Customer"**) and **Environmental Systems Research Institute, Inc.** (**"Esri"**).

This Agreement sets forth the terms for Customer's use of Products and incorporates by reference (i) the Quotation and (ii) the Master Agreement. Should there be any conflict between the terms and conditions of the documents that comprise this Agreement, the order of precedence for the documents shall be as follows: (i) the Quotation, (ii) this Agreement, and (iii) the Master Agreement. This Agreement shall be governed by and construed in accordance with the laws of the state in which Customer is located without reference to conflict of laws principles, and the United States of America federal law shall govern in matters of intellectual property. The modifications and additional rights granted in this Agreement apply only to the Products listed in Table A.

Table A
List of Products

Uncapped Quantities

Desktop Software and Extensions (Single Use)
ArcGIS Desktop Advanced
ArcGIS Desktop Standard
ArcGIS Desktop Basic
ArcGIS Desktop Extensions: ArcGIS 3D Analyst, ArcGIS Spatial Analyst, ArcGIS Geostatistical Analyst, ArcGIS Publisher, ArcGIS Network Analyst, ArcGIS Schematics, ArcGIS Workflow Manager, ArcGIS Data Reviewer

Enterprise Software and Extensions
ArcGIS Enterprise (Advanced and Standard)
ArcGIS Monitor
ArcGIS Enterprise Extensions: ArcGIS 3D Analyst, ArcGIS Spatial Analyst, ArcGIS Geostatistical Analyst, ArcGIS Network Analyst, ArcGIS Schematics, ArcGIS Workflow Manager, ArcGIS Data Reviewer

Enterprise Additional Capability Servers
ArcGIS Image Server

Developer Tools
ArcGIS Runtime Standard
ArcGIS Runtime Analysis Extension

Limited Quantities
One (1) Professional subscription to ArcGIS Developer
Two (2) ArcGIS CityEngine Single Use Licenses
100 ArcGIS Online Viewers
100 ArcGIS Online Creators
17,500 ArcGIS Online Service Credits
100 ArcGIS Enterprise Creators
3 ArcGIS Insights in ArcGIS Enterprise
3 ArcGIS Insights in ArcGIS Online
10 ArcGIS Location Sharing User Type Extension (Enterprise)
10 ArcGIS Location Sharing User Type Extension (Online)
9 ArcGIS Advanced Editing User Type Extension (Enterprise)

OTHER BENEFITS

Number of Esri User Conference registrations provided annually	**3**
Number of Tier 1 Help Desk individuals authorized to call Esri	**3**
Maximum number of sets of backup media, if requested*	**2**
Five percent (5%) discount on all individual commercially available instructor-led training classes at Esri facilities purchased outside this Agreement	

*Additional sets of backup media may be purchased for a fee

Customer may accept this Agreement by signing and returning the whole Agreement with (i) the Quotation attached, (ii) a purchase order, or (iii) another document that matches the Quotation and references this Agreement ("**Ordering Document**"). **ADDITIONAL OR CONFLICTING TERMS IN CUSTOMER'S PURCHASE ORDER OR OTHER DOCUMENT WILL NOT APPLY, AND THE TERMS OF THIS AGREEMENT WILL GOVERN.** This Agreement is effective as of the date of Esri's receipt of an Ordering Document, unless otherwise agreed to by the parties ("**Effective Date**").

Term of Agreement: Three (3) years

This Agreement supersedes any previous agreements, proposals, presentations, understandings, and arrangements between the parties relating to the licensing of the Products. Except as provided in Article 4—Product Updates, no modifications can be made to this Agreement.

Accepted and Agreed:

_____
(Customer)

By: _____
Authorized Signature

Printed Name: _____

Title: _____

Date: _____

CUSTOMER CONTACT INFORMATION

Contact: _____

Address: _____

City, State, Postal Code: _____

Country: _____

Quotation Number (if applicable): _____

Telephone: _____

Fax: _____

E-mail: _____

1.0—Additional Definitions

In addition to the definitions provided in the Master Agreement, the following definitions apply to this Agreement:

"Case" means a failure of the Software or Online Services to operate according to the Documentation where such failure substantially impacts operational or functional performance.

"Deploy", "Deployed" and "Deployment" mean to redistribute and install the Products and related Authorization Codes within Customer's organization(s).

"Fee" means the fee set forth in the Quotation.

"Maintenance" means Tier 2 Support, Product updates, and Product patches provided to Customer during the Term of Agreement.

"Master Agreement" means the applicable master agreement for Esri Products incorporated by this reference that is (i) found at https://www.esri.com/en-us/legal/terms/full-master-agreement and available in the installation process requiring acceptance by electronic acknowledgment or (ii) a signed Esri master agreement or license agreement that supersedes such electronically acknowledged master agreement.

"Product(s)" means the products identified in Table A—List of Products and any updates to the list Esri provides in writing.

"Quotation" means the offer letter and quotation provided separately to Customer.

"Technical Support" means the technical assistance for attempting resolution of a reported Case through error correction, patches, hot fixes, workarounds, replacement deliveries, or any other type of Product corrections or modifications.

"Tier 1 Help Desk" means Customer's point of contact(s) to provide all Tier 1 Support within Customer's organization(s).

"Tier 1 Support" means the Technical Support provided by the Tier 1 Help Desk.

"Tier 2 Support" means the Esri Technical Support provided to the Tier 1 Help Desk when a Case cannot be resolved through Tier 1 Support.

2.0—Additional Grant of License

2.1 Grant of License. Subject to the terms and conditions of this Agreement, Esri grants to Customer a personal, nonexclusive, nontransferable license solely to use, copy, and Deploy quantities of the Products listed in Table A—List of Products for the Term of Agreement (i) for the applicable Fee and (ii) in accordance with the Master Agreement.

2.2 Consultant Access. Esri grants Customer the right to permit Customer's consultants or contractors to use the Products exclusively for Customer's benefit. Customer will be solely responsible for compliance by consultants and contractors with this Agreement and will ensure that the consultant or contractor discontinues use of Products upon completion of work for Customer. Access to or use of Products by consultants or contractors not exclusively for Customer's benefit is prohibited. Customer may not permit its consultants or contractors to install Software or Data on consultant, contractor, or third-party computers or remove Software or Data from Customer locations, except for the purpose of hosting the Software or Data on Contractor servers for the benefit of Customer.

3.0—Term, Termination, and Expiration

3.1 Term. This Agreement and all licenses hereunder will commence on the Effective Date and continue for the duration identified in the Term of Agreement, unless this Agreement is terminated earlier as provided herein. Customer is only authorized to use Products during the Term of Agreement. For an Agreement with a limited term, Esri does not grant Customer an indefinite or a perpetual license to Products.

3.2 No Use upon Agreement Expiration or Termination. All Product licenses, all Maintenance, and Esri User Conference registrations terminate upon expiration or termination of this Agreement.

3.3 Termination for a Material Breach. Either party may terminate this Agreement for a material breach by the other party. The breaching party will have thirty (30) days from the date of written notice to cure any material breach.

3.4 Termination for Lack of Funds. For an Agreement with government or government-

owned entities, either party may terminate this Agreement before any subsequent year if Customer is unable to secure funding through the legislative or governing body's approval process.

3.5 Follow-on Term. If the parties enter into another agreement substantially similar to this Agreement for an additional term, the effective date of the follow-on agreement will be the day after the expiration date of this Agreement.

4.0—Product Updates

4.1 Future Updates. Esri reserves the right to update the list of Products in Table A—List of Products by providing written notice to Customer. Customer may continue to use all Products that have been Deployed, but support and upgrades for deleted items may not be available. As new Products are incorporated into the standard program, they will be offered to Customer via written notice for incorporation into the Products schedule at no additional charge. Customer's use of new or updated Products requires Customer to adhere to applicable additional or revised terms and conditions in the Master Agreement.

4.2 Product Life Cycle. During the Term of Agreement, some Products may be retired or may no longer be available to Deploy in the identified quantities. Maintenance will be subject to the individual Product Life Cycle Support Status and Product Life Cycle Support Policy, which can be found at https://support.esri.com/en/other-resources/product-life-cycle. Updates for Products in the mature and retired phases may not be available. Customer may continue to use Products already Deployed, but Customer will not be able to Deploy retired Products.

5.0—Maintenance

The Fee includes standard maintenance benefits during the Term of Agreement as specified in the most current applicable Esri Maintenance and Support Program document (found at https://www.esri.com/en-us/legal/terms/maintenance). At Esri's sole discretion, Esri may make patches, hot fixes, or updates available for download. No Software other than the defined Products will receive Maintenance. Customer may acquire maintenance for other Software outside this Agreement.

a. Tier 1 Support

1. Customer will provide Tier 1 Support through the Tier 1 Help Desk to all Customer's authorized users.

2. The Tier 1 Help Desk will be fully trained in the Products.

3. At a minimum, Tier 1 Support will include those activities that assist the user in resolving how-to and operational questions as well as questions on installation and troubleshooting procedures.

4. The Tier 1 Help Desk will be the initial point of contact for all questions and reporting of a Case. The Tier 1 Help Desk will obtain a full description of each reported Case and the system configuration from the user. This may include obtaining any customizations, code samples, or data involved in the Case.

5. If the Tier 1 Help Desk cannot resolve the Case, an authorized Tier 1 Help Desk individual may contact Tier 2 Support. The Tier 1 Help Desk will provide support in such a way as to minimize repeat calls and make solutions to problems available to Customer’s organization.

6. Tier 1 Help Desk individuals are the only individuals authorized to contact Tier 2 Support. Customer may change the Tier 1 Help Desk individuals by written notice to Esri.

b. Tier 2 Support

1. Tier 2 Support will log the calls received from Tier 1 Help Desk.

2. Tier 2 Support will review all information collected by and received from the Tier 1 Help Desk including preliminary documented troubleshooting provided by the Tier 1 Help Desk when Tier 2 Support is required.

3. Tier 2 Support may request that Tier 1 Help Desk individuals provide verification of information, additional information, or answers to additional questions to

supplement any preliminary information gathering or troubleshooting performed by Tier 1 Help Desk.

4. Tier 2 Support will attempt to resolve the Case submitted by Tier 1 Help Desk.

5. When the Case is resolved, Tier 2 Support will communicate the information to Tier 1 Help Desk, and Tier 1 Help Desk will disseminate the resolution to the user(s).

6.0—Endorsement and Publicity

This Agreement will not be construed or interpreted as an exclusive dealings agreement or Customer's endorsement of Products. Either party may publicize the existence of this Agreement.

7.0—Administrative Requirements

7.1 OEM Licenses. Under Esri's OEM or Solution OEM programs, OEM partners are authorized to embed or bundle portions of Esri products and services with their application or service. OEM partners' business model, licensing terms and conditions, and pricing are independent of this Agreement. Customer will not seek any discount from the OEM partner or Esri based on the availability of Products under this Agreement. Customer will not decouple Esri products or services from the OEM partners' application or service.

7.2 Annual Report of Deployments. At each anniversary date and ninety (90) calendar days prior to the expiration of this Agreement, Customer will provide Esri with a written report detailing all Deployments. Upon request, Customer will provide records sufficient to verify the accuracy of the annual report.

8.0—Ordering, Administrative Procedures, Delivery, and Deployment

8.1 Orders, Delivery, and Deployment

a. Upon the Effective Date, Esri will invoice Customer and provide Authorization Codes to activate the nondestructive copy protection program that enables Customer to download, operate, or allow access to the Products. If this is a multi-year Agreement, Esri may invoice the Fee up to thirty (30) calendar days before the annual anniversary date for each year.

b. Undisputed invoices will be due and payable within thirty (30) calendar days from the date of invoice. Esri reserves the right to suspend Customer's access to and use of Products if Customer fails to pay any undisputed amount owed on or before its due date. Esri may charge Customer interest at a monthly rate equal to the lesser of one percent (1.0%) per month or the maximum rate permitted by applicable law on any overdue fees plus all expenses of collection for any overdue balance that remains unpaid ten (10) days after Esri has notified Customer of the past-due balance.

c. Esri's federal ID number is 95-2775-732.

d. If requested, Esri will ship backup media to the ship-to address identified on the Ordering Document, FOB Destination, with shipping charges prepaid. Customer acknowledges that should sales or use taxes become due as a result of any shipments of tangible media, Esri has a right to invoice and Customer will pay any such sales or use tax associated with the receipt of tangible media.

8.2 Order Requirements. Esri does not require Customer to issue a purchase order. Customer may submit a purchase order in accordance with its own process requirements, provided that if Customer issues a purchase order, Customer will submit its initial purchase order on the Effective Date. If this is a multi-year Agreement, Customer will submit subsequent purchase orders to Esri at least thirty (30) calendar days before the annual anniversary date for each year.

a. All orders pertaining to this Agreement will be processed through Customer's centralized point of contact.

b. The following information will be included in each Ordering Document:

(1) Customer name; Esri customer number, if known; and bill-to and ship-to addresses
(2) Order number
(3) Applicable annual payment due

9.0—Mergers, Acquisitions, or Divestitures

If Customer is a commercial entity, Customer will notify Esri in writing in the event of (i) a consolidation, merger, or reorganization of Customer with or into another corporation or entity; (ii) Customer's acquisition of another entity; or (iii) a transfer or sale of all or part of Customer's organization (subsections i, ii, and iii, collectively referred to as "**Ownership Change**"). There will be no decrease in Fee as a result of any Ownership Change.

9.1 If an Ownership Change increases the cumulative program count beyond the maximum level for this Agreement, Esri reserves the right to increase the Fee or terminate this Agreement and the parties will negotiate a new agreement.

9.2 If an Ownership Change results in transfer or sale of a portion of Customer's organization, that portion of Customer's organization will transfer the Products to Customer or uninstall, remove, and destroy all copies of the Products.

9.3 This Agreement may not be assigned to a successor entity as a result of an Ownership Change unless approved by Esri in writing in advance. If the assignment to the new entity is not approved, Customer will require any successor entity to uninstall, remove, and destroy the Products. This Agreement will terminate upon such Ownership Change.

Master Agreement
Product and Services

Revised February 9, 2024
IMPORTANT—READ CAREFULLY

Unless superseded by a signed license agreement between you and Esri, Esri is willing to provide Esri Offerings and Services to you only if you accept all terms and conditions contained in this Agreement as the sole and final agreement of the parties regarding your acquisition of these Esri Offerings and Services. Please read the terms and conditions carefully. You may not use the Esri Offerings unless you agree to the terms and conditions of the Agreement. Your access and use of Esri Offerings, or Services, constitutes your acceptance of the terms and conditions of this Agreement. If you do not agree, contact your local sales representative prior to making your purchase.

This Master Agreement (**"Agreement"**) is between you (**"Customer"**) and **Environmental Systems Research Institute, Inc.** (**"Esri"**), a California corporation with a place of business at 380 New York Street, Redlands, California 92373-8100 USA.

Attachment A contains definitions of capitalized terms used throughout this Agreement. Each section of this Agreement may include additional definitions that are used exclusively within that section.

1.0 GENERAL GRANT OF RIGHTS AND RESTRICTIONS

1.1 Grant of Rights. In consideration of Customer's payment of all applicable fees and in accordance with this Agreement, Esri

a. Provides Services as set forth in this Agreement;
b. Grants to Customer a nonexclusive, nontransferable right and license or subscription to access and use Esri Offerings as set forth in the Specifications and applicable Ordering Documents; and
c. Authorizes Customer to copy and make derivative works of the Documentation for Customer's own internal use in conjunction with Customer's authorized use of Esri Offerings. Customer will include the following copyright attribution notice acknowledging the proprietary rights of Esri and its licensors in any derivative work:

   "Portions of this document include intellectual property of Esri and its licensors and are used under license. Copyright © [*Customer will insert the actual copyright date(s) from the source materials.*] Esri and its licensors. All rights reserved."

The grants of rights in this section (i) continue for the duration of the subscription or applicable Term or perpetually if no Term is applicable or identified in the Ordering Documents and (ii) are subject to additional rights and restrictions in this Agreement including Attachment B.

1.2 Consultant or Contractor Access. Customer may authorize its consultants or contractors to (i) host Esri Offerings for Customer's benefit and (ii) use Esri Offerings exclusively for Customer's benefit. Customer will be solely responsible for its consultants' and contractors' compliance with this Agreement and will ensure that each consultant or contractor discontinues use of Esri Offerings upon completion of work for Customer. Access to or use of Esri Offerings by consultants or contractors that is not exclusively for Customer's benefit is prohibited.

1.3 Reservation of Rights. All Esri Offerings are the copyrighted works of Esri or its licensors; all rights not specifically granted in this Agreement are reserved.

1.4 Customer Content. Esri does not acquire any rights in Customer Content under this Agreement other than as needed to provide Esri Offerings and Services to Customer.

2.0 SOFTWARE AND ONLINE SERVICES

2.1 Definitions. The following definitions supplement the definitions provided in Attachment A:

a. **"Anonymous Users"** means all who have public access (i.e., without having to provide a Named User Credential) to any part of Customer Content or Customer's Value-Added Applications.
b. **"App Login Credential(s)"** means a system-generated application login and associated password, provided when registering a Value-Added Application with Online Services, which when embedded in a Value-Added Application allows the Value-Added Application to access and use Online Services.
c. **"Commercial App Deployment License"** means a license to distribute Value-Added Applications to third parties for a fee.
d. **"Concurrent Use License"** means a license to install and use Software on computer(s) on a network, provided that the number of simultaneous users may not exceed the number of licenses acquired. A Concurrent Use License includes the right to run passive failover instances of Concurrent Use License management software in a separate operating system environment for temporary failover support.
e. **"Deployment License"** means a license to incorporate ArcGIS Runtime components in Value-Added Applications and distribute Value-Added Applications to Customer's end users.
f. **"Deployment Server License"** means a license to use Software under a Server License for all uses permitted in this Agreement and as described in the Documentation.
g. **"Development Server License"** means a license to use Software under a Server License only to build and test Value-Added Applications as described in the Documentation.
h. **"Development Use"** means the right to install and use Products to build and test Value-Added Applications as described in the Documentation.
i. **"Failover License"** means a license to install Software on redundant systems for failover operations, but the redundantly installed Software may be operational only during the period the primary site is nonoperational. Except for system maintenance and updating of databases, the redundant Software installation(s) will remain dormant while the primary site (or any other redundant site) is operational.
j. **"Named User(s)"** is Customer's employee, agent, consultant, or contractor to whom Customer has assigned a unique, secure login credential (identity) enabling access to a Product that requires such identity in order to access identity-managed capabilities within a Product for Customer's exclusive benefit. For educational use, Named Users may include registered students.
k. **"Named User Credential(s)"** means an individual person's login and associated password enabling that person to access and use Products.
l. **"Named User License"** means the right for a single Named User to use a specific Esri Offering.
m. **"Online Services Subscription"** means a limited-term subscription conveying the right for one or more Named Users to access and use Online Services.
n. **"Redistribution License"** means a license to reproduce and distribute Software provided that

    1. Customer reproduces and distributes the Software in its entirety;
    2. A license agreement that protects the Software to the same extent as this Agreement accompanies each copy of the Software, and the recipient agrees to the terms and conditions of the license agreement;
    3. Customer reproduces all copyright and trademark attributions and notices; and
    4. Customer does not charge a fee to others for the use of the Software.

o. **"Server License"** means a license to install and use Software on any computer being used as a server. Server Licenses may be subject to a limited number of server cores or distributed deployment on multiple servers as described in the Ordering Documents or Documentation. If the Software description includes failover use rights, each Server License includes a Failover License.
p. **"Sharing Tools"** means publishing capabilities included with Customer's authorized use of Online Services or ArcGIS Enterprise that allow Customer to make Customer Content and Value-Added Applications available to third parties or Anonymous Users.
q. **"Single Use License"** means a license for a single authorized end user to install and use Software on a single computer. The single authorized end user may also install a second copy for the end user's exclusive use on a second computer as long as only 1 copy of Software is in use at any time. No other end user may use Software under the same license at the same time for any other purpose.

r. **"Staging Server License"** means a license to use Software under a Server License to build and test Value-Added Applications and map caches; conduct user acceptance, performance, and load testing of other third-party software; stage new commercial data updates; and conduct training activities as described in the Documentation. Customer may use Value-Added Applications and map caches with Development and Deployment Server Licenses.

2.2 License and Subscription Types. Esri provides Products under one or more of the license or subscription types identified in the definitions above. The Documentation and Ordering Documents identify which license or subscription type(s) applies to the ordered Products.

2.3 Software Terms of Use.

a. Customer may

1. Install, access, or store Software and Data on electronic storage device(s);
2. Make archival copies and routine computer backups;
3. Install and use a newer version of Software concurrently with the version to be replaced during a reasonable transition period not to exceed 6 months, provided that the deployment of either version does not exceed Customer's licensed quantity; thereafter, Customer will not use more Software in the aggregate than Customer's total licensed quantity. This concurrent use right does not apply to Software licensed for Development Use;
4. Move Software in the licensed configuration to a replacement computer;
5. Distribute Software and any associated Authorization Codes required for use of a Deployment License to third parties; and
6. Governmental or not-for-profit organizations that operate a website or offer Internet services may use server Software for revenue-generating purposes on a cost-recovery basis and not for profit.

b. Customer may customize Software using any macro or scripting language, APIs, or source or object code libraries but only to the extent that such customization is described in the Documentation.
c. Customer may use all fonts provided with Software for any authorized use of the Software. Customer may also use Esri fonts separately to print any output created by the Software. Any use restrictions for third-party fonts included with the Software are set forth in the font file itself.
d. Esri publishes Product-specific Software terms of use at https://www.esri.com/legal/scope-of-use.

2.4 Online Services Terms of Use.

a. **Online Services Descriptions.** Esri publishes Online Services Subscription-specific terms of use at https://www.esri.com/legal/scope-of-use. Use of Online Services is also subject to the Cloud Services terms found in Attachment B.
b. **Modifications of Online Services.** Esri may change Online Services and associated APIs at any time, subject to 30 days' notice of material changes and 90 days' notice for deprecations. If any modification, discontinuation, or deprecation of Online Services causes a material, adverse impact to Customer's operations, Esri may, at its discretion, attempt to repair, correct, or provide a workaround for Online Services. If a viable solution is not commercially reasonable, Customer may cancel its subscription to Online Services, and when applicable, Esri will issue a prorated refund.
c. **Sharing Customer Content.** Sharing Customer Content using Sharing Tools enables third parties to use, store, cache, copy, reproduce, (re)distribute, and (re)transmit Customer Content through Online Services. Esri is not responsible for any loss, deletion, modification, or disclosure of Customer Content resulting from use or misuse of Sharing Tools. Customer's use of Sharing Tools is at Customer's sole risk.

2.5 Named User Licenses. Except as expressly set forth in this Agreement, the following terms apply to Software and Online Services for which Customer acquires Named User Licenses.

a. **Named Users.**

1. Named User login credentials are for designated users only and may not be shared with other individuals.

2. Customer may reassign a Named User License to another user if the former user no longer requires access to the Software or Online Services.
3. Customer may not add third parties as Named Users, other than third parties included within the definition of Named Users.

b. **Anonymous Users.** Anonymous Users may only access Software or Online Services through Value-Added Applications that provide access to services or Content, that has been published for shared access through the use of Sharing Tools.

2.6 Value-Added Applications.

1. Customer is responsible for the development, operation, and technical support of Customer Content and Value-Added Applications.
2. Customer may not embed a Named User Credential into Value-Added Applications. Value-Added Applications that enable access to Customer Content that is not publicly shared through the use of Sharing Tools must require individual users to log in to the application(s) with their unique Named User login credentials.
3. Customer may embed an App Login Credential into Value-Added Applications that provide access by Anonymous Users to services or Content, that has been published for shared access by Anonymous Users through the use of Sharing Tools.
4. Customer may not embed an App Login Credential into Value-Added Applications that enables access to Customer Content that is not publicly shared through the use of Sharing Tools. Value-Added Applications that enable access to Customer Content that is not publicly shared through the use of Sharing Tools must require individual users to log in to the application(s) with their unique Named User login credentials.
5. Customer may not provide a third party, other than third parties included within the definition of Named Users, with access to Software or Online Services, other than through Customer's Value-Added Application(s).
6. Customer may transfer Value-Added Applications to any third party for use in conjunction with the third party's own Software license or Online Services Subscription.

2.7 Limited-Use Programs.

a. **Trial, Evaluation, and Beta Programs.** Products acquired under a trial, evaluation, or Beta program are licensed for evaluation and testing purposes only and not for commercial use. Any such use is at Customer's own risk, and the Products do not qualify for Maintenance. If Customer does not convert to a purchased license or subscription prior to the expiration of the trial, evaluation, or Beta license, Customer may lose any Customer Content and customizations made during the license term. If Customer does not wish to purchase a license or subscription, Customer should export such Customer Content before the license expires.
b. **Educational Programs.** Customer agrees to use Products provided under an educational program solely for educational purposes during the educational use Term. Customer shall not use Products for any Administrative Use unless Customer has acquired an Administrative Use license. "Administrative Use" means administrative activities that are not directly related to instruction or education, such as asset mapping, facilities management, demographic analysis, routing, campus safety, and accessibility analysis. Customer shall not use Products for revenue-generating or for-profit purposes.
c. **Grant Programs.** Customer may use Products provided under a grant program for noncommercial purposes only. Except for cost recovery of using and operating the Products, Customer shall not use Products for revenue-generating or for-profit purposes.
d. **Other Esri Limited-Use Programs.** If Customer acquires Products under any limited-use program not listed above, Customer's use of the Products may be subject to the terms set forth in the applicable launching page or enrollment form or as described on Esri's website in addition to the nonconflicting terms of this Agreement.

3.0 DATA

3.1 Definitions. The following definitions supplement the definitions provided in Attachment A:

a. **"Business Listing Data"** means any dataset that includes a list of businesses and may include other associated business attributes.

b. **"Esri Content Package(s)"** means a digital file containing Online Services basemap Data extracted from the Online Services.
c. **"Street Data"** means Data that includes or depicts information about roads, streets, and related features.

3.2 Permitted Uses.

a. Unless otherwise authorized in writing, Customer may only use Data with the Products for which Esri has provided the Data.
b. Subject to the restrictions set forth in this Agreement and provided that Customer affixes an attribution statement to the Data representations acknowledging Esri or its applicable licensor(s) as the source of the portion(s) of the Data used for the Data representation, Customer may:

    1. Create representations of Data in hard-copy or static, electronic format (e.g., PDF, GIF, JPEG, HTML); in ArcGIS Web Maps; or in Esri Story Maps apps for the purposes of visualizing Data (including basic interactions such as panning, zooming, and identifying map features with simple pop-ups); and
    2. Use and include such representations of Data in presentation packages, marketing studies, or other reports or documents containing map images or data summaries derived from the use of Esri Products to third parties.

c. Customer may take Online Services basemaps offline through Esri Content Packages and subsequently deliver (transfer) them to any device for use with licensed ArcGIS Runtime applications and ArcGIS Desktop. Customer may not otherwise scrape, download, or store Data.
d. Customer may make any internal use of geocoded results that are obtained and stored in compliance with this Agreement. Customer may not redistribute geocoded results except to (i) use and/or display on a map in connection with Customer's public, non-revenue generating website(s), (ii) permit access to third-parties for the purposes of Customer's business, or (iii) deliver to third parties, on a noncommercial/non-revenue generating basis, static results, static output or static base map renderings.

3.3 Use Restrictions.

a. Customer may not act directly or authorize its customers to cobrand Data, use Data in any unauthorized service or product, or offer Data through or on behalf of any third party.
b. Customer may not use or allow third parties to use Data, for the purpose of compiling, enhancing, verifying, supplementing, adding to, or deleting from compilation of information that is sold, rented, published, furnished, or in any manner provided to a third party.
c. *Business Listing Data.* Unless authorized in writing, Customer may not use Business Listing Data for any direct marketing purposes, resale publication, or distribution to any third party as part of any mailing list, directory, classified advertising, or other compilation of information.
d. *Street Data.* Customer may use Street Data for mapping, geocoding, routing, and transportation network analysis purposes. Unless otherwise authorized in writing, Customer may not use Street Data for

    1. Real-time navigational guidance, including alerting a user about upcoming maneuvers, such as warning of an upcoming turn or calculating an alternate route if a turn is missed;
    2. Synchronized multivehicle routing; or
    3. Synchronized route optimization.

e. *Business Analyst Data.* Customer may cache Data provided with ArcGIS Business Analyst Mobile App on a mobile device for use in conjunction with its use of ArcGIS Business Analyst Server. Customer may not otherwise cache or download such Data.
f. *Partial Dataset Licenses:* If Customer orders a subset of a dataset (e.g., a country, region, state, or local portion of a global database), Customer may use only the licensed subset, not any other portion of the full dataset.
g. *Michael Bauer Research International Boundaries Data ("MBR Data").* Customer's right to use data downloaded to Customer's premises (e.g., MBR Data stored in ArcGIS Enterprise, ArcGIS Desktop) terminates 2 years after download.

3.4 Supplemental Terms and Conditions for Data. Certain Data licensors require Esri to flow down additional attribution requirements and terms of use to Customer. These terms supplement and amend the terms of this Agreement and are available at www.esri.com/legal/third-party-data.

4.0 MAINTENANCE

4.1 US Customers. Esri will provide Maintenance for Software and Online Services in accordance with the Esri Maintenance and Support Program and this Agreement if Customer is in the United States.

4.2 Customers outside the United States. Customer may obtain maintenance services from their local Esri authorized distributor under the authorized distributor's own standard support policy and in accordance with the Esri Product Life Cycle Support Policy.

5.0 PROFESSIONAL SERVICES

5.1 Definitions. The following definitions supplement the definitions provided in Attachment A:

a. **"Invention(s)"** means a patentable invention, discovery, innovation, or improvement, excluding Deliverables, relating to the subject matter of a Task Order.
b. **"Inventor(s)"** means a party's principal, employee, consultant, or independent contractor that solely or jointly develops Inventions during Esri's performance under a Task Order.
c. **"Professional Service Package(s)"** means a predefined unit of Professional Services, provided at a firm fixed price.

5.2 Permitted Uses. Customer may use, copy, and modify Deliverables solely in conjunction with Customer's authorized use of Products.

5.3 Task Orders and Project Schedule.

a. Esri will provide Professional Services and Deliverables as specified in the Task Order.
b. Each Task Order will reference this Agreement and specify the commencement date and, if known, the period of performance.
c. Task Orders may have the format shown in Attachment C or any other agreed-upon format.
d. Each party will identify, in writing, the project manager who is responsible for Professional Services and Deliverables described in Task Orders. By written notice to the other party's technical administrator, either party may replace the project manager at any time with a similarly qualified person.
e. Other than pricing and descriptions of Professional Services to be performed, terms and conditions in a Task Order are not binding unless both parties have signed the Task Order. The terms of a signed Task Order take precedence over conflicting terms in this Agreement.

5.4 Ownership of Deliverables and Inventions.

a. Esri or its licensors own and retain ownership of Deliverables.
b. Each party will retain all rights, title and ownership to any Inventions made or conceived solely by the respective Party's Inventors during the term of this Agreement, including, but not limited to, such Inventions that Esri's Inventors solely make or conceive while providing technical assistance pursuant to this Agreement.
c. The parties will jointly own any Inventions made or conceived jointly by Inventors from both Parties. The Parties will negotiate in good faith and cooperate reasonably in (i) deciding whether or not to seek or maintain, or to continue to seek or maintain, patent protection in any country on any joint Invention and the extent and scope of such protection and (ii) protecting and enforcing any patents issued on such joint Invention.

5.5 Acceptance.

a. **For Firm Fixed Price Task Orders.** Unless otherwise agreed to in the applicable Task Order, Customer will complete its acceptance review within 10 working days of receiving each Deliverable and classify the Deliverables as follows:

   1. "DELIVERABLE ACCEPTED" means a Deliverable conforming to the applicable Task Order with no more than minor nonconformities.
   2. "DELIVERABLE ACCEPTED WITH REWORK" means a Deliverable substantially conforming to the applicable Task Order but having a significant number of identified nonconformities and accepted subject to rework by Esri. Esri will rework the Deliverable for the identified nonconformities and resubmit it within 30 days. Customer will rerun its acceptance review for the nonconformities detected in the initial review within 10 working days of such resubmission and will reclassify the Deliverable as either DELIVERABLE ACCEPTED or DELIVERABLE REJECTED.
   3. "DELIVERABLE REJECTED" means a Deliverable that fails to substantially conform to applicable Task Order(s). Esri will rework the Deliverable and resubmit it to Customer within 30 days, at which time Customer will have 10 working days to rerun its acceptance review and reclassify the deliverable as either DELIVERABLE ACCEPTED or DELIVERABLE REJECTED.

   Customer may not use any Deliverable in its business operations before acceptance as described in a.1 or a.2. If Customer does not notify Esri in writing within 10 working days after delivery that it has classified the Deliverable as ACCEPTED WITH REWORK or REJECTED in accordance with a.2 or a.3, or if Customer uses the Deliverable in its business operations, the Deliverable will be deemed, as of the first of either of these events to occur, to have been accepted.

b. **For Task Orders with Professional Service Packages.** Professional Services that Esri performs under Professional Service Packages will be deemed accepted unless Customer notifies Esri within 10 days after performance. Customer may purchase additional Professional Service Packages as needed to complete Customer's work requirements.

c. **For Time and Materials Task Orders.** Professional Services are provided strictly on a time and materials basis subject to the Task Order not-to-exceed funding limit. The Professional Services provided will be deemed accepted and in compliance with the professional and technical standards of the software industry unless Customer notifies Esri within 10 days after performance. Deliverables produced under a time and materials Task Order will not be subject to acceptance testing.

5.6 Warranty for Deliverables. Esri warrants to Customer that firm fixed price Deliverables materially comply with Specifications for a period of 90 days from acceptance, subject to the limitations and disclaimers of liability set forth in the "Limited Warranties and Disclaimers" section of Attachment B.

5.7 Changes. The parties may make changes within the general scope of a Task Order by mutual agreement. To document any agreed-to scope changes within the general scope of the Task Order that affects the cost or time required to provide a Deliverable, the parties will jointly sign a written amendment to the Task Order that includes an equitable adjustment in the price, schedule, or both.

5.8 Customer Termination for Convenience. Customer may terminate any Task Order at any time upon 30 days' written notice to Esri and upon payment to Esri of all amounts due to date pursuant to this Agreement, including reasonable expenses incurred as a direct result of the termination and the pro rata contract price for the Task Orders affected.

5.9 Payment; Invoices.

a. **For Firm Fixed Price Task Orders.** Unless otherwise specified in a Task Order, Esri will prepare and submit monthly invoices based on the percentage of completion for each Deliverable as of the end of the preceding month. Upon acceptance of all Deliverables under a Task Order, the unpaid balance of the total Task Order value is due.

b. **For Professional Service Packages.** Esri will submit an invoice for Professional Service Packages on receipt of an agreed-upon Task Order. Esri may, at its sole discretion, stop work to avoid exceeding the total

labor hours or number of days allotted in the applicable Professional Service Package description set forth in the applicable scope of work. Professional Service Packages expire if not used within 12 months of the Esri invoice date.

c. **For Time and Materials Task Orders.**

1. Esri will submit to Customer written monthly invoices to the Customer address provided in the Task Order. The invoices will include the payment due for work performed, including travel time, and any other direct costs (ODCs) incurred as authorized under a Task Order. The amount invoiced for labor will be equal to the number of hours expended during the previous month, multiplied by the applicable labor rates. Esri will invoice meals on a per diem basis in accordance with the full daily limits specified on the government Defense Travel website at https://www.defensetravel.dod.mil/site/perdiemCalc.cfm. Esri and Customer may include hourly labor rates in this Agreement; if the parties elect to do so, Attachment D will identify the hourly labor rates for each labor category. Esri may change hourly labor rates for Services; any increase in the first 5 years will not exceed 5 percent per year. Esri will invoice ODCs, including travel-related expenses incurred, plus a 15 percent burden.
2. Esri may reallocate the budget between activities, labor categories, and ODCs as necessary to facilitate the work effort, provided the overall price is not exceeded. If Esri reaches the funded not-to-exceed Task Order value and the activities are not completed, Customer may increase the order funding to allow additional work to be performed, or Esri may stop work without further obligation or liability.

5.10 System and Data Access. Each Task Order will specify any requirement for Customer to give Esri personnel access to Customer's systems or data.

6.0 ESRI MANAGED CLOUD SERVICES

6.1 Definitions. The following definitions supplement the definitions provided in Attachment A:

a. **"Esri Managed Cloud Services Environment"** means the hardware, Software, Data, and network platform that Esri or its third-party supplier provides as part of Esri Managed Cloud Services.
b. **"Hosting"** means the business of housing and making accessible Customer Content via the Internet.

6.2 Provision of Esri Managed Cloud Services.

a. **General Terms.** Use of Esri Managed Cloud Services is subject to the Cloud Services terms found in Attachment B of this Agreement.
b. **Requirements Planning.** It is Customer's responsibility to plan for and address with Esri changes to Customer's requirements, such as the need for additional capacity, the update of an application or dataset, or increased level of system availability.
c. **Compensation and Expenses.** Esri will invoice Customer for the one-time setup fee upon Task Order execution. Thereafter, Esri will invoice Customer monthly for the Esri Managed Cloud Services to be provided the following month. Customer will pay invoices within 30 days of receipt. Customer is responsible for any shipping or temporary storage costs incurred during the delivery of Customer Content to Esri or removal of Customer Content from the Esri Managed Cloud Services Environment. This paragraph does not apply to Esri Managed Cloud Services provided under the Advantage Program (see the section entitled "Advantage Program" in this Agreement).
d. **Risk of Loss.** Risk of loss for all Customer Content shall at all times remain with Customer, and it is Customer's sole responsibility to maintain regular backups of Customer Content. Risk of loss for the Esri Managed Cloud Services Environment shall at all times remain with Esri.
e. **Personally Identifiable Information.** Prior to providing any Customer Content under this Agreement, Customer shall notify Esri if Customer Content includes personally identifiable information.
f. **Public Software.** Customer may not use, and may not authorize its end users or contractors to combine or use any Esri Offerings with any software (including any underlying dependencies), documentation, or other material distributed under an open source or other similar licensing or distribution model that requires as a condition of such model that any component of the Esri Offering to be (1) disclosed or distributed in source code form, (2) made available free of charge to third parties, or (3) modifiable without restriction by third parties.

g. **Monitoring.** Customer will provide information and other materials related to its Customer Content as reasonably requested by Esri or its Hosting partner to verify Esri's or Customer's compliance with this Agreement. Esri or its Hosting partner, as applicable, may browse, index, or otherwise monitor the external interfaces of any Customer Content solely for the purpose of verifying compliance with this Agreement.

7.0 TRAINING

7.1 Definitions. The following definitions supplement the definitions provided in Attachment A:

a. **"Customer-Supplied Training Data"** means any digital dataset(s) including, but not limited to, geographic vector data, coordinates, raster data reports, or associated tabular attributes supplied by Customer for use in training.
b. **"Esri Academy LMS Integration Subscription"** means an optional term-limited subscription to Esri Academy enabling a specific number of unique Customer student(s) access to Self-Paced E-Learning through the customer's Learning Management System.
c. **"Esri E-Learning Content (SCORM Format) License"** means an optional term-limited license that provides Esri customers with Esri's e-learning content in SCORM (Shareable Content Object Reference Model) format to import into their Learning Management System.
d. **"Esri Mobile Lab"** means a service in which Esri will deliver and set up a training environment at the Customer's site for use in conjunction with scheduled Esri Training Events only. The Esri Mobile Lab will include certain hardware, software, power cords, and network switches necessary for the instructor to set up the environment.
e. **"Esri Training Event(s)"** means an Esri site class, Esri instructor-led online class, a Customer site/private class, workshop, or coaching services.
f. **"Esri Training Representative"** means Customer's primary Esri liaison in organizing private Esri Training Events.
g. **"Student(s)"** means a Customer employee or agent who is a registered participant in a specific Esri Training Event or Training-related services. If Customer is an individual, then Student means Customer.
h. **"Training Pass"** means a nonrefundable, nontransferable block of prepaid training days with a fixed price per day throughout the Term of the Training Pass.
i. **"Esri Mobile Router"** means a service in which Esri will deliver and setup a mobile router at the Customer's site for use in conjunction with a scheduled Esri Training Event only. The mobile router provides high-speed wireless internet access needed to run the Esri Training Event.
j. **"Learning Management System"** or **"LMS"** shall mean third-party software acquired separately by Customer that allows Customer to consume E-Learning Content (SCORM Format) for the purpose of re-serving it to the Customer's internal employees.

7.2 Permitted and Prohibited Uses.

a. Esri provides Training Materials for Training purposes only and for the exclusive use of the Student who attends the Training course for which the Training Materials are provided.
b. Customer may reproduce copies of Training Materials for registered Students.
c. Customer may not and may not permit any Student to (i) separate the component parts of Training Materials for any use or (ii) use audio or video recording equipment during an Esri Training Event.
d. Esri may issue temporary Product authorizations if Customer has an insufficient number of Products available for Training. Customer may use such Products as Training Materials under the terms of this Agreement. Customer will uninstall all deployed Products and return any media provided by Esri upon conclusion of the Esri Training Event.
e. Customer will retain ownership of any Customer-Supplied Training Data.

7.3 Esri's Responsibilities.

Esri will

a. Provide an instructor qualified to conduct Training;
b. Provide all necessary Training Materials for Student; and

c. Confirm Esri Training Events approximately 10 business days prior to the scheduled start date. Esri will only confirm Student registrations that include a payment method. Registrations without a confirmed payment method are placed on the reservation waiting list. All reservations on the waiting list are subject to availability. Customer site/Private class and coaching services confirmation is also dependent on receipt of the completed Customer site training request form.

7.4 Customer's Responsibilities.

Customer will

a. Ensure that all Students have received confirmation from Esri to participate in an Esri Training Event. Esri reserves the right to disconnect any Student who permits unregistered student access to an online classroom Esri Training Event. In such case, the full Esri Training Event fee will be invoiced and payable;
b. Ensure that all Students meet the minimum prerequisites for the applicable Esri Training Event as listed on Esri's training website;
c. Submit Student registrations with payment method information at least 15 business days before the scheduled start date;
d. Provide the Esri Training Representative with a list of names and email addresses of any Students who are to attend an Esri Training Event at least 3 business days before the scheduled start date, for compliance with the US embargoed country lists and the various US Government Lists of Parties of Concern or Specially Designated Nationals lists;
e. For classes held at the Customer-designated facility, complete a client-site training request form; consult with Esri personnel to determine classroom, computer, and network requirements; and provide all such required classrooms, computers, and network access;
f. Ensure that Student use of Training Materials provided by Esri complies with the terms of this Agreement; and
g. Assume full liability and responsibility for Student attending Training course(s) under this Agreement.
h. If the Esri Mobile Lab or Mobile Router is used, Customer will

    1. Take delivery of the Esri Mobile Lab or Mobile Router from the shipping agent, and keep it in a secure, locked area at all times;
    2. Immediately report any previously damaged Esri Mobile Lab or Mobile Router equipment to the Esri Training Representative upon receipt of the shipment; and
    3. Be financially responsible for loss of, damage to, or theft of Esri Mobile Lab or Mobile Router equipment while in Customer's possession.

7.5 Student Registration and Training Event Change Policy.

a. Customer will provide advance written notice to Esri Customer Service at service@esri.com to reschedule or cancel any Esri Training Event or to substitute a student in a scheduled Esri Training Event.
b. A replacement Student must be from the same Customer organization as the Student being replaced.
c. If Customer reschedules an Esri Training Event three or fewer days before the scheduled start date, Esri will charge Customer 50 percent of the fee plus the cost of the rescheduled Esri Training Event.
d. If Customer (i) cancels an Esri Training Event 3 or fewer days before the scheduled start date without concurrently rescheduling or (ii) is absent without notice from the Esri Training Event, Customer will be liable for the full Esri Training Event fee.
e. If cancellation of an Esri Training Event is necessary due to causes beyond the party's reasonable control, the affected party may reschedule or cancel the Esri Training Event without incurring any liability.
f. *Termination of Agreement.* Students who are currently registered for an Esri Training Event as of the date of termination of this Agreement may attend the scheduled Esri Training Event, subject to the terms and conditions of this Agreement.

7.6 Invoicing; Prepaid Fees.

a. Esri will invoice Customer upon completion of the Esri Training Event or on purchase of a Training Pass. On Customer request, Esri will invoice in advance for an Esri Training Event.

b. If Customer is invoiced and pays that invoice prior to the scheduled Esri Training Event, then Customer has 1 year from the date of the invoice to consume training days. For a multiyear order, training days must be consumed by the end date specified on the Esri quotation. Thereafter, all prepaid fees are forfeited.
c. Training Pass policies and redemption rates are described at https://www.esri.com/training/training-for-organizations/.

This section 7.6 does not apply to Training provided under the Advantage Program.

7.7 Availability and General Provision of Wireless Service

a. Esri will not be liable for any failure of or delay in the performance of this Agreement for the period that such failure or delay is due to wireless service interruptions or unavailability.

7.8 Esri E-Learning in the Customer's Learning Management System

a. Esri E-Learning Content (SCORM format) License, specific terms of use incorporated by reference are found at https://www.esri.com/content/dam/esrisites/en-us/media/legal/scorm-lms/scorm-terms-and-conditions.pdf
b. Esri Academy LMS Integration Subscription, specific terms of use incorporated by reference are found at https://www.esri.com/content/dam/esrisites/en-us/media/legal/scorm-lms/lms-terms-and-conditions.pdf

8.0 ADVANTAGE PROGRAM

8.1 Definitions. The following definitions supplement the definitions provided in Attachment A:

a. **"Activity Description"** means a mutually agreed upon written statement that confirms the number of Learning and Services Credits that Esri estimates is required to perform an activity and authorizes Esri to begin work based on such estimate. The Activity Description serves as the Task Order for Services provided under the Advantage Program.
b. **"Advantage Program"** means either Advantage Program, as described at www.esri.com/services/eeap/components, or the Advantage Program for Partners, as described at www.esri.com/partners/bpap/components.
c. **"Authorized Contact"** means Customer's point of contact for the Advantage Program identified below.
d. **"Learning and Services Credits"** means a contracted unit of exchange that Customer may use to acquire Professional Services, Training, PSS, Esri Managed Cloud Services, or related travel expenses as described below.
e. **"Premium Support Services"** or **"PSS"** means a prioritized incident management and technical support program further described at https://support.esri.com/en/support/premium.
f. **"Advisor"** means an Esri consultant assigned to work with Customer to provide Professional Services such as advising Customer on GIS strategies, facilitating annual planning, and developing and coordinating a collaborative work plan under the Advantage Program.

8.2 Advantage Program Description. The Advantage Program is provided on an order-by-order, annual subscription basis and provides strategy and planning support in addition to a menu of items including Professional Services, Training, PSS, and Esri Managed Cloud Services that Customer can select to best meet its needs with guidance from Advisor. The Advantage Program may change from time to time. The Advantage Program includes the following:

a. **Advisor.** Customer will receive up to the number of Advisor hours ordered. Customer may elect to retain additional Advisor hours for a supplemental price.
b. **Annual Planning Meeting.** A 1-day annual planning meeting is included.
c. **Work Plan.** A collaboratively developed document is designed to drive the program's implementation through definition of Customer's GIS vision, goals, and objectives.
d. **Learning and Services Credits.** Customer will receive the number of Learning and Services Credits ordered. Customer may use the credits toward any combination of Professional Services, Training, PSS, Esri Managed Cloud Services, or related travel expenses. Customer may order, for an additional price, additional Learning and Services Credits. Learning and Services Credits may be exchanged as described at the applicable

Advantage Program website. Esri will provide a monthly report outlining usage of Learning and Services Credits to date to the Authorized Contact.

e. **Technology Webcasts.** Esri will provide an email invitation to the Authorized Contact for webcasts presenting business and technical information related to enterprise GIS.
f. **No Project Services.** The Advantage Program is not designed for Esri to provide project-specific Professional Services such as custom application or database development for solutions or applications. Esri will not provide these types of Professional Services under the Advantage Program and does not warrant that Deliverables provided under an Advantage Program will comply with Specifications.

8.3 Authorized Contact Information. Customer identifies the following person as its initial Authorized Contact.

(to be completed by Customer):

Contact Name: _____
Address: _____
City, State, ZIP: _____
_____
Email: _____
Telephone: _____
Fax: _____

8.4 Current on Maintenance. Customer must remain current on standard Software Maintenance during the Advantage Program term.

8.5 Authorization of Learning and Services Credits Use. Customer will contact its account manager or Advisor to consume Learning and Services Credits for a particular request. Esri will submit an Activity Description by email to Customer for confirmation and authorization to use Learning and Services Credits. Customer may authorize the consumption of Learning and Services Credits by submitting an email. Esri will begin work and deduct the estimated credit amount stated in the Activity Description from the unused Learning and Services Credits available.

8.6 Activity Descriptions for Esri Managed Cloud Services. The Activity Description for Esri Managed Cloud Services orders must include the following:

a. **The Esri Managed Cloud Services Term.** The time period in which Esri provides the Esri Managed Cloud Services to Customer. The Esri Managed Cloud Services term does not begin until setup and deployment of the data and application are complete.
b. **Targeted System Availability.** The minimum percentage of time that Customer has external access to the application and associated Customer Content through the Internet. Examples of supported levels of system availability are 95 percent, 99 percent, and 99.9 percent. Not all Esri Managed Cloud Services offerings include a Targeted System Availability.
c. **Number of Anticipated Requests.** A The number of requests made by an end user through a client (e.g., desktop computer, web application, mobile device) and sent to a server(s) that is set up in the Esri Managed Cloud Services Environment by Esri and performs computational tasks on behalf of the end user. An example of a common request used in a GIS is a map request. A map request is made every time a user pans, zooms, or queries a map service.
d. **Amount of Data Storage.** The storage capacity required to retain digital data, which is to be used and consumed in Customer GIS applications or Cloud Services.
e. **Learning and Services Credits Consumption.** The price for the Esri Managed Cloud Services in Learning and Services Credits.

The Data storage location may be defined in the Activity Description.

8.7 Travel and Per Diem Expenses. Any Esri travel and per diem expenses will be quoted separately. Travel expenses will include a 15 percent burden, and per diem will be determined in accordance with the full daily limits specified on the government Defense Travel website at https://www.defensetravel.dod.mil/site/perdiemCalc.cfm. Customer will use Learning and Services Credits for travel and per diem expenses.

8.8 Notification of Consumed Credits. Esri will notify Customer if the authorized Learning and Services Credits are consumed prior to completion of the requested work. Customer may elect to direct the use of additional Learning and Services Credits, if available; procure additional Learning and Services Credits; or notify Esri to stop work on such requested work. Esri reserves the right to stop work if Customer has consumed all its Learning and Services Credits.

8.9 Review of Proposed Activities. Any activities proposed to be completed under the Advantage Program will be subject to Esri's review and approval to ensure alignment with the intent of the program.

8.10 Invoicing.

a. Esri shall invoice Customer as quoted for the Advantage Program subscription, additional Learning and Services Credits, or Advisor services upon receipt of Customer's order. Subsequently, Esri will invoice annually at least 30 days in advance of the Advantage Program subscription expiration date. Esri will extend the Advantage Program subscription for a subsequent annual term upon receipt of Customer's payment of the renewal invoice. Esri will invoice fees for additional Learning and Services Credits or Advisor services upon receipt of Customer's order.
b. Pricing for program renewals and new or additional Services will be in accordance with Esri's standard pricing at the time of purchase or renewal.

8.11 Termination and Expiration. Upon termination or expiration of an Advantage Program subscription:

a. Services will end as of the expiration or termination date stated; and
b. Unless either party terminates the Advantage Program subscription for cause, Customer may apply any unused Learning and Services Credits toward any Professional Services, Training, PSS, or related travel expenses that are scheduled as of the termination or expiration date, provided that the Learning and Services Credits are used within 3 months after the termination or expiration date. Any other unused Learning and Services Credits will expire 30 days after the expiration or termination date; if Customer renews the Advantage Program subscription within this time period, any unused Learning and Services Credits will remain valid for up to 2 years from the purchase date or termination of this Agreement, whichever comes first.

ATTACHMENT A
GLOSSARY OF TERMS

The following glossary of terms applies to all Esri Offerings and Services that Esri may provide to its customers. Certain Esri Offerings or Services may not be within the scope of this Agreement. Please disregard any terms that are not applicable to Esri Offerings or Services offered under this Agreement.

"Affiliate" means any entity that directly or indirectly (i) Controls; (ii) is Controlled by; or (iii) is under common Control with a party, where "Control" means having more than 50 percent of the voting stock or other voting interest in the Controlled entity.

"API" means application programming interface.

"ArcGIS Website" means www.arcgis.com and any related or successor websites.

"Authorization Code(s)" means any key, authorization number, enablement code, login credential, activation code, token, user name and password, or other mechanism required for use of Esri Offerings.

"Beta" means any alpha, beta, or other prerelease version of a Product.

"Cloud Services" means Online Services and Esri Managed Cloud Services.

"Content" means data, images, photographs, animations, video, audio, text, maps, databases, data models, spreadsheets, user interfaces, graphics components, icons, software, and other resources used in connection with Esri Offerings and Services.

"Control" means having more than 50 percent of the voting stock or other voting interest in the Controlled entity.

"Customer Content" means any Content that Customer provides, uses, or develops in connection with Customer's use of Esri Offerings or Services, including Value-Added Applications. Customer Content excludes any feedback, suggestions, or requests for improvements that Customer provides to Esri.

"Data" means any commercially available digital dataset(s) including, but not limited to, geographic vector data, raster data reports, or associated tabular attributes that Esri bundles with other Esri Offerings or delivers independently.

"Deliverables" means anything that Esri delivers to Customer as a result of performance of Professional Services.

"Documentation" means all user reference documentation that Esri provides with a Deliverable or an Esri Offering.

"Esri Managed Cloud Services" means a Customer-specific cloud infrastructure, Software, Data, and network platform that Esri hosts, manages, and makes available to Customer or Customer's end users via the Internet.

"Esri Offering(s)" means any Product or Documentation. If Esri provides Training or Professional Services directly to Customer, then Esri Offerings also include Deliverables and Training Materials. Esri Offerings exclude Services and Third-Party Content.

"GIS" means geographic information system.

"Maintenance" means a subscription program that Esri provides and that entitles Customer to Product updates and other benefits such as access to technical support and self-paced, web-based learning resources.

"Malicious Code" means software viruses; worms; time bombs; Trojan horses; or any other computer code, files, denial of service, or programs designed to interrupt, destroy, or limit the functionality of any computer software, hardware, or telecommunications equipment.

"Online Services" means any commercially available, Internet-based geospatial system that Esri provides, including applications and associated APIs for storing, managing, publishing, and using maps, data, and other information. Online Services exclude Data and Content.

"Ordering Document(s)" means a sales quotation, Maintenance renewal quote, purchase order, proposal, Task Order, or other document identifying Esri Offerings, updates, or Services that Customer orders.

"Perpetual License" means a license to use a version of the Esri Offering for which applicable license fees have been paid, indefinitely, unless terminated by Esri or Customer as authorized under this Agreement.

"Product(s)" means Software, Data, and Online Services.

"Professional Services" means any development or consulting services that Esri provides to Customer.

"Sample(s)" means sample code, sample applications, add-ons, or sample extensions of Products.

"Service(s)" means Maintenance. If Esri provides Esri Managed Cloud Services, Training, or Professional Services directly to Customer, then Services also include Esri Managed Cloud Services, Training, and Professional Services.

"Software" means any proprietary commercial off-the-shelf software, excluding Data, accessed or downloaded from an Esri-authorized website or that Esri delivers on any media in any format including backups, updates, service packs, patches, hot fixes, or permitted merged copies.

"Specification(s)" means (i) the Documentation for Software and Online Services, (ii) the scope of work set forth in any Task Order, or (iii) Esri's published course descriptions for Training.

"Subscription" means a license for use of an Esri Offering for a limited time period or a right to receive Services for a limited time period.

"Task Order(s)" means an Ordering Document for Services.

"Term License" means a license for use of an Esri Offering for a limited time period (**"Term"**).

"Third-Party Content" means any Content that Customer may obtain from a third-party website or that persons other than Esri employees, suppliers, or contractors may directly contribute to Esri's website.

"Training" means (i) Product training or (ii) related training that Esri provides under this Agreement.

"Training Materials" means digital or printed Content required to complete Training, which may include, but is not limited to, workbooks, data, concepts, exercises, assessments, and exams.

"Value-Added Application(s)" means an application developed by Customer for use in conjunction with the authorized use of any Software, Data, or Online Services.

ATTACHMENT B
GENERAL TERMS AND CONDITIONS

The following general terms and conditions apply to all Esri Offerings and Services that Esri may offer to its customers. Certain Esri Offerings or Services may not be available under this Agreement. Please disregard any terms that are not applicable to Esri Offerings or Services offered under this Agreement.

ARTICLE B.1—GENERAL USE RESTRICTIONS

Except as expressly permitted in this Agreement, Customer will not

a. Sell, rent, lease, sublicense, distribute, lend, time-share, or assign Services or Esri Offerings;
b. Distribute or provide direct access to Services or Esri Offerings to third parties, in whole or in part, including, but not limited to, extensions, components, or Dynamic Link Libraries;
c. Distribute Authorization Codes to third parties;
d. Reverse engineer, decompile, or disassemble any Product or Deliverable delivered in compiled form;
e. Make any attempt to circumvent the technological measure(s) that controls access to or use of Esri Offerings;
f. Store, cache, use, upload, distribute, or sublicense Content or otherwise use Esri Offerings in violation of Esri's or a third-party's rights, including intellectual property rights, privacy rights, nondiscrimination laws, export laws, or any other applicable law or regulation;
g. Remove or obscure any Esri or its licensors' patent, copyright, trademark, proprietary rights notices, or legends contained in or affixed to any Esri Offerings, output, metadata file, or online or hard-copy attribution page of any Data or Documentation;
h. Unbundle or independently use individual or component parts of Esri Offerings;
i. Incorporate any portion of Esri Offerings into a product or service for third-party use that competes with the Esri Offerings;
j. Publish or in any other way communicate the results of benchmark tests run on Beta Products without the prior written permission of Esri and its licensors; or
k. Use, incorporate, modify, distribute, provide access to, or combine any Esri Offerings in a manner that would subject any Esri Offering to open-source or open-database license terms (e.g. GPL) that require any part of the Esri Offering to be subject to additional terms, for example

    1. Disclosed in source code form to third parties;
    2. Licensed to third parties for the purpose of making derivative works; or
    3. Redistributable to third parties at no charge; or

l. Generate revenue by providing access to Software or Online Services through a Value-Added Application.

These restrictions will not apply to the extent that they conflict with applicable law or regulation.

ARTICLE B.2—TERM AND TERMINATION

B.2.1 Customer may terminate this Agreement or any Esri Offerings license or subscription at any time upon written notice to Esri. Termination without cause does not entitle Customer to receive any refund of fees paid. Any right to terminate pending Services engagements for convenience is set forth in the applicable section in the body of this Agreement. Either party may terminate this Agreement or any license or subscription for a material breach that is not cured within 30 days of written notice to the breaching party. Upon any termination of this Agreement for breach, Esri will stop providing Services. Any licenses in Esri Offerings that survive termination of this Agreement continue under the terms of this Agreement.

B.2.2 If Esri terminates this Agreement following Customer's breach, then Esri may also, at its election, terminate Customer's licenses or subscriptions to Esri Offerings. If Customer terminates this Agreement for cause or convenience, then Customer may, at its election, also terminate Customer's licenses or subscriptions to Esri Offerings.

B.2.3 Upon any termination or expiration of a license or subscription, Customer will

a. Stop accessing and using the terminated or expired Esri Offerings;
b. Clear any client-side data cache derived from the terminated or expired Cloud Services; and
c. Stop using and uninstall, remove, and destroy all copies of the terminated or expired Esri Offerings in Customer's possession or control, including any modified or merged portions thereof, in any form, and execute and deliver evidence of such actions to Esri or its authorized distributor.

Esri may stop performing Services immediately upon written notice to Customer if a bankruptcy or insolvency proceeding is commenced by or against Customer until the trustee cures any existing defaults and provides adequate assurance of future performance under this Agreement. This Agreement terminates upon the insolvency, liquidation, or dissolution of either party.

ARTICLE B.3—LIMITED WARRANTIES AND DISCLAIMERS

B.3.1 Limited Warranties. Except as disclaimed below, Esri warrants to Customer that (i) Products and Training will substantially comply with the applicable Specifications and (ii) Services will substantially conform to the professional and technical standards of the industry. The warranty period for Esri Offerings offered under a Perpetual License and for Services runs for 90 days from the date of delivery or from the date of acceptance if this Agreement provides an acceptance period. The warranty period for Esri Offerings offered under a subscription or Term License basis runs for the lesser of (i) the duration of the subscription or term or (ii) 90 days from delivery or acceptance if this Agreement provides an acceptance period.

B.3.2 Special Disclaimer. Third-Party Content; Data; Samples; hot fixes; patches; updates; Online Services provided at no charge; and trial, evaluation, and Beta Products are delivered "as is" and without warranty of any kind.

B.3.3 General Disclaimer. Except for the express limited warranties set forth in this Agreement, Esri disclaims all other warranties or conditions of any kind, whether express or implied, including, but not limited to, warranties or conditions of merchantability, fitness for a particular purpose, and noninfringement of intellectual property rights. Esri is not responsible for any nonconformities with Specifications or loss, deletion, modification, or disclosure of Customer Content caused by Customer's modification of any Esri Offering other than as specified in the Documentation. Esri does not warrant that Esri Offerings, or Customer's operation of the same, will be uninterrupted, error free, fault tolerant, or fail-safe or that all nonconformities can or will be corrected, or will result in Customer's compliance with any applicable law. Esri Offerings are not designed, manufactured, or intended for use in environments or applications that may lead to death, personal injury, or physical property or environmental damage. Customer should not follow any navigational route suggestions that appear to be hazardous, unsafe, or illegal. Any such uses will be at Customer's own risk and cost.

B.3.4 Disclaimers.

a. **Internet Disclaimer. Neither party will be liable for damages under any theory of law related to the performance or discontinuance of operation of the Internet or to regulation of the Internet that might restrict or prohibit the operation of Cloud Services.**
b. **Third-Party Websites; Third-Party Content. Esri is not responsible for any third-party website or Third-Party Content that appears in or is referenced by Esri Offerings or Esri websites, including www.esri.com, developers.arcgis.com, livingatlas.arcgis.com and www.arcgis.com. Providing links to third-party websites and resources does not imply an endorsement, affiliation, or sponsorship of any kind.**
c. **Artificial Intelligence (AI)/Machine Learning (ML) Disclaimer. As specified in the Documentation, certain Esri Offerings may integrate third-party AI/ML software libraries and third-party or Esri created pre-trained AI/ML models for various tasks including, but not limited to, object detection, image obfuscation, image classification, or text or speech recognition. Customer may use these capabilities at its option and such AI/ML capabilities are delivered "as is" and without warranty of any kind. In certain cases, the Esri Offering may provide Customers the ability to configure their own custom**

AI/ML models to meet Customer's unique requirements, which except for the express warranties contained in this Agreement, shall be at Customer's own risk.

B.3.5 Exclusive Remedy. Customer's exclusive remedy and Esri's entire liability for breach of the limited warranties in this section will be to replace any defective media and to (i) repair, correct, or provide a workaround for the applicable Esri Offering or Services or (ii) at Esri's election, terminate Customer's right to use and refund the fees paid for Esri Offerings or Services that do not meet Esri's limited warranties.

ARTICLE B.4—LIMITATION OF LIABILITY

B.4.1 Disclaimer of Liability. (a) Neither Customer, Esri, nor any Esri authorized distributor or third-party licensor will be liable for any indirect, special, incidental, or consequential damages; lost profits; lost sales; loss of goodwill; or costs of procurement of substitute goods or services (b) Neither Customer, Esri nor any Esri authorized distributor or third-party licensor will be liable for any direct damages exceeding the applicable license fees, or current subscription fees, or Services fees paid or owed to Esri during the twelve (12) month period prior to the date upon which the related claim arose.

B.4.2 The limitations and exclusions of liability in the preceding paragraph do not apply to Customer's infringement, misuse, or misappropriation of Esri's or Esri's licensors' intellectual property rights, either party's indemnification obligations, gross negligence, willful misconduct, or violations of the Export Compliance clause of this Agreement.

B.4.3 Applicability of Disclaimers and Limitations. Esri or its authorized distributor has set its fees and entered into this Agreement in reliance on the disclaimers and limitations in this Agreement; the fees reflect an allocation of risk that is an essential basis of the bargain between the parties. **These limitations will apply whether or not a party is aware of the possibility of any damage and notwithstanding any failure of essential purpose of any exclusive, limited remedy.**

B.4.4 The foregoing disclaimers, limitations, and exclusions may be invalid in some jurisdictions and apply only to the extent permitted by applicable law or regulation in Customer's jurisdiction. Customer may have additional rights that may not be waived or disclaimed. Esri does not seek to limit Customer's warranty or remedies to any extent not permitted by law.

ARTICLE B.5—INDEMNIFICATIONS

B.5.1 Definitions. The following definitions supplement the definitions provided in Attachment A:

a. **"Claim"** means any claim, action, or demand by a third party.
b. **"Indemnitees"** means Customer and its directors, officers, and employees.
c. **"Infringement Claim(s)"** means any Claim alleging that Customer's use of or access to any Esri Offering or Service infringes a patent, copyright, trademark, or trade secret.
d. **"Loss(es)"** means expenditure, damage award, settlement amount, cost, or expense, including awarded attorneys' fees.

B.5.2 Infringement Indemnity.

a. Esri will defend, hold all Indemnitees harmless from, and indemnify any Loss arising out of an Infringement Claim.
b. If Esri determines that an Infringement Claim is valid, Esri may, at its expense, either (i) obtain rights for Customer to continue using the Esri Offerings or Services or (ii) modify the Esri Offerings or Services while maintaining substantially similar functionality. If neither alternative is commercially reasonable, Esri may terminate Customer's right to use the Esri Offerings or Services and will refund any (a) license fees that Customer paid for the infringing Esri Offerings or Services acquired under a Perpetual License, prorated on a 5-year, straight-line depreciation basis beginning from the initial date of delivery or (b) unused portion of fees paid for Term Licenses, subscriptions, and Maintenance.
c. Esri has no obligation to defend an Infringement Claim or to indemnify Customer to the extent the Infringement Claim arises out of (i) the combination or integration of Esri Offerings or Services with a product, process, system, or element that Esri has not supplied or specified in the Specification; (ii) alteration of Esri

Offerings or Services by anyone other than Esri or its subcontractors; (iii) compliance with Customer's specifications; or (iv) use of Esri Offerings or Services after Esri either provides a modified version to avoid infringement or terminates Customer's right to use the Esri Offerings or Services.

B.5.3 General Indemnity. Esri will defend and hold all Indemnitees harmless from, and indemnify any Loss arising out of, any Claim for bodily injury, death, or tangible or real property damage brought against any of the Indemnitees to the extent arising from any negligent act or omission or willful misconduct by Esri or its directors, officers, employees, or agents performing Services while on Customer's site.

B.5.4 Conditions for Indemnification. As conditions for indemnification, Indemnitee will (i) promptly notify Esri in writing of the Claim, (ii) provide all available documents describing the Claim, (iii) give Esri sole control of the defense of any action and negotiation related to the defense or settlement of any Claim, and (iv) reasonably cooperate in the defense of the Claim at Esri's request and expense.

B.5.5 This section sets forth the entire obligation of Esri, its authorized distributor, and its third party licensors regarding any Claim for which Esri must indemnify Customer.

ARTICLE B.6—INSURANCE

If Esri is providing Services, Esri will carry, at a minimum, the following coverage:

a. Comprehensive general liability or commercial general liability with a minimum coverage of $1,000,000.00 (US dollars) combined single limit per occurrence for bodily injury, including death, and property damage liability to include the following:

    1. Premises and operations;
    2. Blanket contractual liability;
    3. Broad form property damage;
    4. Independent contractors;
    5. Personal injury, with employee exclusion deleted; and
    6. Completed operations.

b. Workers' compensation insurance, with waiver of subrogation, in an amount that complies with statutory limits.

ARTICLE B.7—SECURITY AND COMPLIANCE

B.7.1 Security. Esri publishes its security capabilities at https://trust.arcgis.com. Customer may give Esri personnel access to Customer systems or to Customer or third-party personal information, controlled information, or sensitive data if access is essential for Esri's performance of Services and if Esri expressly agrees to such access. Esri will use reasonable administrative, technical, and physical safeguards to protect such data and guard against unauthorized access. Customer bears responsibility to (i) confirm that Esri's published security and privacy controls meet all applicable legal requirements for protection of Customer Content and (ii) upload or share Customer Content through Cloud Services only when it is legal to do so. Esri is not responsible to review Customer Content to ensure compliance with applicable laws and regulations. Customer must contact Esri at securesupport@esri.com for further instruction before providing any Customer Content that requires security measures other than Esri's published security capabilities.

B.7.2 Malicious Code. Esri will use commercially reasonable efforts to ensure that Esri Offerings will not transmit any Malicious Code to Customer. Esri is not responsible for Malicious Code that Customer introduces to Esri Offerings or that is introduced through Third-Party Content.

B.7.3 Export Compliance. Each party will comply with all applicable export and trade sanctions laws and regulations, including the US Department of Commerce's Export Administration Regulations (EAR), the US Department of State's International Traffic in Arms Regulations (ITAR), the US Department of Treasury, Office of Foreign Assets Control (OFAC) Regulations, and other applicable export laws. Customer will not export, reexport, transfer, release, or otherwise dispose of, in whole or in part, or permit access to or transfer or use of Services or Esri Offerings to any United States embargoed countries currently including Iran, Syria, North Korea, Cuba, Crimea region of Ukraine, the Donetsk People's Republic (DNR) and Luhansk People's Republic (LNR), or denied

entities or persons except in accordance with all then-current applicable US government export laws and regulations. Customer will not export, reexport, transfer, or use Services or Esri Offerings for certain missile, nuclear, chemical, or biological activities or end uses without proper authorization from the US government. Customer shall immediately notify Esri in writing if any US government entity or agency denies, suspends, or revokes Customer's export privileges. Customer will not upload, store, or process in Cloud Services any Customer Content that (i) has an Export Control Classification Number (ECCN) other than EAR99 or (ii) is controlled for export from the United States under ITAR. Customer will notify Esri in advance if Esri's performance of any Services or provision of any Esri Offerings is related to any defense article, defense service, or technical data, as defined under the ITAR Sections 120.31, 120.32, and 120.33, respectively; Esri will not perform any such Services or provide any such Esri Offerings until Esri obtains any necessary export license from the US government. Customer will reasonably assist Esri in applying for and obtaining an export license if needed.

B.7.4 Privacy. Esri will process personal data according to the terms of the Data Processing Addendum available at https://www.esri.com/en-us/privacy/overview.

ARTICLE B.8—CLOUD SERVICES

B.8.1 Prohibited Uses. Customer shall not provide Customer Content or otherwise access or use Cloud Services in a manner that

a. Creates or transmits spam, spoofings, or phishing email or offensive, hate-related or defamatory material; or stalks or makes threats of physical harm;
b. Stores or transmits any Malicious Code;
c. Violates any law or regulation;
d. Infringes or misappropriates the rights of any third party;
e. Probes, scans, or tests the vulnerability of Cloud Services or breach any security or authentication measures used by Cloud Services without written approval from Esri's Product Security Officer; or
f. Benchmarks the availability, performance, or functionality of Cloud Services.

B.8.2 Service Interruption. System failures or other events beyond Esri's reasonable control may interrupt Customer's access to Cloud Services. Esri may not be able to provide advance notice of such interruptions.

B.8.3 Customer Content.

a. Customer grants Esri and its subcontractors a nonexclusive, nontransferable, worldwide right to host, run, modify, and reproduce Customer Content as needed to provide Cloud Services to Customer. Esri will not access, use, or disclose Customer Content without Customer's written permission except as reasonably necessary to support Customer's use of Cloud Services. Except for the limited rights granted to Esri under this Agreement, Customer retains all its rights, title, and interest in the Customer Content.
b. If Customer accesses Cloud Services with an application provided by a third party, Esri may disclose Customer Content to such third party as necessary to enable interoperation between the application, Cloud Services, and Customer Content.
c. Esri may disclose Customer Content if required to do so by law or regulation or by order of a court or other government body, in which case Esri will reasonably attempt to limit the scope of disclosure.
d. When Customer's use of Cloud Services ends, Esri will either

    1. Make Customer Content available to Customer for download for a period of 30 days unless Customer requests a shorter window of availability or Esri is legally prohibited from doing so; or
    2. Download all Customer Content in Esri's possession to a medium of Customer's choosing and deliver such Customer Content to Customer.

    Esri will have no further obligations to store or return Customer Content at the conclusion of the Cloud Services.

B.8.4 Removal of Customer Content. Esri may remove or delete Customer Content if there is reason to believe that uploading Customer Content to or using it with Cloud Services materially violates this Agreement. If reasonable under these circumstances, Esri will notify Customer before removing Customer Content. Esri will

respond to any Digital Millennium Copyright Act takedown notices in accordance with Esri's copyright policy, available at www.esri.com/legal/dmca_policy.

B.8.5 Service Suspension. Esri may suspend access to Cloud Services (i) if Customer materially breaches this Agreement and fails to timely cure the breach; (ii) if Esri reasonably believes that Customer's use of Cloud Services will subject Esri to immediate liability or adversely affect the integrity, functionality, or usability of the Cloud Services; (iii) for scheduled maintenance; (iv) to enjoin a threat or attack on Cloud Services; or (v) if Cloud Services become prohibited by law or regulated to a degree that continuing to provide them would impose a commercial hardship. When feasible, Esri will notify Customer of any Cloud Services suspension beforehand and give Customer reasonable opportunity to take remedial action.

Esri is not responsible for any damages, liabilities, or losses that may result from any interruption or suspension of Cloud Services or removal of Customer Content as described above.

B.8.6 Notice to Esri. Customer will promptly notify Esri if Customer becomes aware of any unauthorized use of Customer's subscription or any other breach of security regarding Cloud Services.

ARTICLE B.9—GENERAL PROVISIONS

B.9.1 Payment. Customer will pay each correct invoice no later than 30 days after receipt and will remit payment to the address stated on the invoice. Customers outside the United States will pay the authorized distributor's invoices in accordance with the authorized distributor's payment terms.

B.9.2 Feedback. Esri may freely use any feedback, suggestions, or requests for Product improvement that Customer provides to Esri.

B.9.3 Patents. Customer may not seek, and may not permit any other user to seek, a patent or similar right worldwide that is based on or incorporates any Products. This express prohibition on patenting will not apply to Customer's software and technology except to the extent that Products, or any portion thereof, are part of any claim or preferred embodiment in a patent application or a similar application.

B.9.4 Reserved.

B.9.5 Taxes and Fees; Shipping Charges. Pricing of Esri Offerings and Services that Esri quotes to Customer is exclusive of any and all applicable taxes or fees including, but not limited to, sales tax, use tax, or value-added tax (VAT); customs, duties, or tariffs; shipping and handling charges; and vendor enrollment fees. Esri will add any fees that it is required to pay to the total amount of its invoice to Customer. Esri may include estimated taxes and shipping and handling charges in its quotations but may adjust these fees on invoicing. For Customers outside the United States, the authorized distributor may quote taxes or fees in accordance with its own policies.

B.9.6 Compliance Review. Customer will keep accurate and complete records and accounts pertaining to its compliance with its obligations under this Agreement. Esri or its authorized distributor may conduct a compliance review of these records and accounts with no less than 14 business days' written notice or may appoint an independent third party to conduct such a compliance review on its behalf. Customer will promptly correct any noncompliance identified during the compliance review. Neither Esri nor Esri's authorized distributor may conduct a compliance review of Customer within 12 months after the conclusion of any prior compliance review that does not reveal any material Customer noncompliance.

B.9.7 No Implied Waivers. The failure of either party to enforce any provision of this Agreement is not a waiver of the provisions or of the right of such party thereafter to enforce that or any other provision.

B.9.8 Severability. If any provision of this Agreement is held to be unenforceable for any reason, (i) such provision will be reformed only to the extent necessary to make the intent of the language enforceable, and (ii) all other provisions of this Agreement will remain in effect.

B.9.9 Successor and Assigns. Customer will not assign, sublicense, or transfer Customer's rights or delegate Customer's obligations under this Agreement without Esri's and its authorized distributor's prior written consent, and any attempt to do so without consent will be void. This Agreement will be binding on the respective successors and assigns of the parties to this Agreement. Notwithstanding, a contractor under contract to the government to deliver Products may assign this Agreement and Products acquired for delivery to its government customer upon written notice to Esri, provided the government customer assents to the terms of this Agreement. Upon mutual agreement, Esri's Affiliates may provide Services under the terms of this Agreement; in such cases, the Ordering Documents will identify the Affiliate as the party that provides the Services. Esri's authorized distributors are not Affiliates of Esri.

B.9.10 Survival of Terms. The Glossary of Terms and provisions of the following Articles of these General Terms and Conditions will survive the expiration or termination of this Agreement: "Limited Warranties and Disclaimers," "Limitation of Liability," "Indemnifications," and "General Provisions."

B.9.11 US Government Customer. The Products are commercial items, developed at private expense, provided to Customer under this Agreement. If Customer is a US government entity or US government contractor, Esri licenses or provides subscriptions to Customer in accordance with this Agreement under FAR Subparts 12.211/12.212 or DFARS Subpart 227.7202. Esri Data and Online Services are licensed or subscribed under the same DFARS Subpart 227.7202 policy as commercial computer software for acquisitions made under DFARS. Products are subject to restrictions, and this Agreement strictly governs Customer's use, modification, performance, reproduction, release, display, or disclosure of Products. Agreement provisions that are inconsistent with federal law regulation will not apply. A US government Customer may transfer Software to any of its facilities to which it transfers the computer(s) on which it has installed such Software. If any court, arbitrator, or board holds that a US government Customer has greater rights to any portion of Products under applicable public procurement law, such rights will extend only to the portions affected.

B.9.12 Governing Law. This Agreement is not subject to the United Nations Convention on Contracts for the International Sale of Goods.

a. **Government Entities.** If Customer is a government entity, the applicable laws of Customer's jurisdiction govern this Agreement.
b. **Nongovernment Entities.** US federal law and the law of the State of California exclusively govern this Agreement, excluding their respective choice of law principles.

B.9.13 Dispute Resolution. The parties will use the following dispute resolution processes:

a. **Equitable Relief.** Either party will have the right to seek an injunction, specific performance, or other equitable relief in any court of competent jurisdiction without the requirement of posting a bond or proving injury as a condition for relief.
b. **US Government Agencies.** This Agreement is subject to the Contract Disputes Act of 1978, as amended (41 USC 601–613).
c. **Other Government Entities.** Esri will comply with mandatory dispute resolutions under applicable law.
d. **Arbitration.** Except as noted above, the parties will submit to binding arbitration to resolve any dispute arising out of or relating to this Agreement that cannot be settled through negotiation. If Customer is in the United States or one of its territories or outlying areas, the Commercial Arbitration Rules of the American Arbitration Association will govern the arbitration proceedings. If Customer is outside the United States, the Rules of Arbitration of the International Chamber of Commerce will govern the proceedings. The parties will select a single arbitrator in accordance with the applicable arbitration rules. The language of the arbitration will be English. Arbitration will be at an agreed-upon location. Either party will, at the request of the other, make available documents or witnesses relevant to the major aspects of the dispute.

B.9.14 Force Majeure. A party will not be liable for any failure of or delay in the performance of this Agreement for the period that such failure or delay is due to causes beyond the party's reasonable control. Such causes may include, but are not limited to, acts of God, war, strikes, labor disputes, cyber attacks, laws, regulations, government orders, or any other force majeure event.

B.9.15 Independent Contractor. Esri is and at all times will be an independent contractor. Nothing in this Agreement creates an employer/employee, principal/agent, or joint venture relationship between Esri or its authorized distributor and Customer. No party has any authority to enter into contracts on behalf of another party or otherwise act on behalf of another party.

B.9.16 Notice. Customer may send notices required under this Agreement to Esri at the following address:

Environmental Systems Research Institute, Inc.
Attn.: Contracts and Legal Department
380 New York Street
Redlands, CA 92373-8100
USA
Tel.: 909-793-2853
Email: LegalNotices@esri.com

ATTACHMENT C
SAMPLE TASK ORDER
Esri Agreement No. _____
Task Order No. _____

In accordance with the terms and conditions of the above-referenced Agreement between Environmental Systems Research Institute, Inc. (**"Esri"**), and _____ (**"Customer"**), _____ ("Customer Address"), this Task Order authorizes preparation and provision of the Deliverables described and in accordance with the terms, schedule, and start/end date(s) specified below.

1. Scope of Work: [*As applicable, specifically identify and describe Deliverables including custom code, map data, technical data (including technical assistance), and the resources to be provided by Customer (including Customer-supplied personnel, software, hardware, and digital or hard-copy data) and place of delivery and location where technical assistance will be provided.]*

   In addition to the foregoing, Customer agrees that its employees, representatives, and subcontractors will cooperate and communicate with Esri during performance of this Task Order. Without cost to Esri, Customer shall provide, allow access to, or assist Esri in obtaining all data Esri requests for performance of this Task Order, including, but not limited to, (1) copies of previously prepared reports, maps, plans, surveys, records, and other documents in the control or possession of Customer and (2) copies of ordinances, codes, regulations, or other governmental documents.

2. Contract Type: *[Firm Fixed Price (FFP) or Time and Materials (T&M)]*:

3. Total Task Order Value (if FFP) or Not-to-Exceed Value (if T&M):

4. Customer Address for the Receipt of Esri Invoices:

5. Delivery Schedule or Start/End Date(s) for Each Deliverable:

6. Special Considerations:

7. Esri Project Manager: [*insert name, telephone, fax, and email address*]
   Esri Senior Contract Administrator: [*insert name, telephone, fax, and email address*]
   Customer Project Manager: [*insert name, telephone, fax, and email address*]
   Customer Senior Contract Administrator: [*insert name, telephone, fax, and email address*]
   Customer Accounts Payable Contact: [*insert name, telephone, fax, and email address*]

ACCEPTED AND AGREED:

[sample only—do not sign] _____ (Customer)	ENVIRONMENTAL SYSTEMS RESEARCH INSTITUTE, INC. (Esri)
Signature: *[sample only—do not sign]* _____	Signature: *[sample only—do not sign]* _____
Printed Name: _____	Printed Name: _____
Title: _____	Title: _____
Date: _____	Date: _____

ATTACHMENT D
TIME AND MATERIALS RATE SCHEDULE

See Quotation for Pricing.

DATE: May 6, 2024

TO: Honorable Mayor and City Commissioners

VIA: T. Michael Stavres, City Manager
M.J. Carnevale, Deputy City Manager

FROM: Charlie Bird, Assistant City Manager of Public Safety
Brittany Hart, Public Works Department Director

SUBJECT: Approval of an Easement in favor of Tampa Electric Company (TECO) in order to operate and maintain existing and new above-ground and underground electrical lines at 1245 Fairfax Avenue NE

BACKGROUND

Tampa Electric Company (TECO) is requesting an easement over, under, and across the City of Winter Haven's property located at 1245 Fairfax Avenue NE in order to operate and maintain existing and new above-ground and underground lines of wires, cables, data transmission, and communication facilities, supporting structures and necessary appurtenances together with ingress, egress in, upon and through the property located at 1245 Fairfax Avenue NE. This property is the site of the future Fire Station # 4, and the recreation facility which are currently under construction.

FINANCIAL IMPACT

There is no financial impact regarding the approval of this easement.

RECOMMENDATION

Staff recommends the City Commission approve the Easement and authorize the City Manager or his designee to execute the Easement and take all other necessary actions related thereto.

ATTACHMENT

- Tampa Electric Company (TECO) Easement

SEC. 26 TWP. 28 S. RGE. 21 E.
FOLIO/PARCEL ID NO. 26-28-21-000000-014010
W.O. NO. 2533393

PREPARED BY
AND RETURN TO:
Joseph H. Williams
Real Estate Department
Tampa Electric Company
P.O. Box 111
Tampa, FL 33601

EASEMENT

KNOW ALL MEN BY THESE PRESENTS, that **CITY OF WINTER HAVEN,** a Florida municipal corporation, whose address is PO Box 2277 Winter Haven, FL 33883 ("Grantor"), in consideration of One Dollar and other valuable considerations paid to Grantor by **TAMPA ELECTRIC COMPANY**, a Florida corporation, P.O. Box 111, Tampa, Florida 33601 ("Company"), receipt whereof is hereby acknowledged, has given and granted unto the Company, its successors and assigns, a perpetual easement over and the right to enter upon the land in Polk County, Florida, described as follows:

The West 580 feet of the North 935 feet of the SW ¼ of the NE ¼ of Section 21, Township 28 South, Range 26 East, Polk County, Florida

together with the right of ingress and egress to and from the same, and all rights therein and all privileges thereon which are or may be necessary or convenient for the full use and enjoyment of such easement, which is for the purposes of placing, constructing, operating, maintaining, repairing, replacing on and removing from said land, installations described as follows:

Aboveground and underground lines of wires, cables, data transmission and communication facilities, supporting structures, and necessary appurtenances ("Facilities").

The width of the Easement (the "Easement Area") shall be fifteen (15) feet lying seven and a half (7.5) feet on each side of the centerline of the Facilities as installed or to be constructed.

The aforesaid rights and privileges granted shall include the right and privilege to trim or remove any and all trees or shrubs upon said land, and the Company shall also have the right and privilege to trim or remove any and all trees or shrubs upon the Grantor's lands adjacent to said land, wherever the Company may deem it necessary or desirable to do so for the protection of said installations.

The Grantor may use the Easement Area for any purpose which will not interfere or conflict in any manner with the use of the same by the Company for the purposes enumerated above and which will not endanger any person or property, except that in no event shall any improvement or structure be installed or constructed thereon, grade changed, or water impounded thereon.

With respect to underground Facilities, Grantor acknowledges that under the "Underground Facility Damage Prevention and Safety Act" (ch. 556 Fla. Stat.), that Grantor is obligated to notify "Sunshine State One-Call of Florida, Inc." of its intent to engage in excavation or demolition prior to commencing any work, and Grantor may be held responsible for costs and expenses incurred due to damage of Company's Facilities in the event Grantor fails to so notify.

The Company agrees, at the sole expense of Grantor, to relocate its Facilities, over, under and upon subject parcel upon the request of Grantor, and the vacated portion of this easement being released and conveyed back to Grantor and the site of the relocated Facilities being conveyed and included in this easement grant as though it had been included ab initio.

The Company agrees to amend the Easement Area at such time as Grantor provides to Company a survey of the electrical facilities contemplated herein and a specific legal description of the revised easement area acceptable to the Company.

The terms "Grantor" and "Company" herein employed shall be construed to include the words "heirs, executors, administrators and assigns" and "successors and assigns" of the respective parties hereto, wherever the context so admits or requires. This Grant of Easement constitutes the entire agreement and understanding between the parties with respect to the subject matter hereof. This Grant of Easement may not be changed, altered or modified except by an instrument in writing signed by the party against whom enforcement of such change would be sought. This Grant of Easement shall be binding upon the parties hereto and their respective successors and assigns.

Grantor warrants to Company that it is duly formed, validly existing and in good standing under the laws of its state of formation, and Grantor has all requisite right, power, and authority to enter into this Easement, Grantor owns the Easement Parcel, and no consent of any other person is required to render this Easement a valid and binding instrument.

IN WITNESS WHEREOF, the Grantor has executed this Grant of Easement this ___day of_____, 2024.

SIGNED, SEALED AND DELIVERED IN THE PRESENCE OF WITNESSES TO EXECUTION BY GRANTOR:

GRANTOR:
CITY OF WINTER HAVEN
a Florida municipal corporation

_____
Signature of First Witness

Print Name: _____

Address: _____

By: _____

T. Michael Stavres

_____
Signature of Second Witness

Its: City Manager

Print Name: _____

Address: _____

STATE OF _____

COUNTY OF _____

The foregoing instrument was acknowledged before me this _____ day of _____, 2024 by T. Michael Stavres as City Manager of City of Winter Haven, a Florida municipal corporation, on behalf of said corporation by means of □ physical presence or □ online notarization who is □ personally known to me or has produced _____ as identification.

Witness my hand and official seal the date aforesaid.

_____
Notary Public, State of _____ at Large

_____
Notary: Print or Type Name

My Commission Expires: _____

DATE: May 6, 2024

TO: Honorable Mayor and City Commissioners

VIA: T. Michael Stavres, City Manager
M.J. Carnevale, Deputy City Manager

FROM: Brittany Hart, Public Works Director
Tyler Williams, Capital Projects and Strategic Initiatives Manager

SUBJECT: Safe Streets for All and Community Planning Technical Assistance Grants

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BACKGROUND

Winter Haven strives to ensure safe transportation networks for all users. Currently, the Florida Department of Transportation (FDOT) is developing a Vision Zero plan in collaboration with the City of Winter Haven and various community stakeholders, however this plan focuses solely on state-owned roads. It is staffs' goal to create a similar plan that looks primarily at City-owned roads, which will complement the FDOT plan. Developing a plan that clearly and holistically identifies critical areas for improvement enables a strategic approach to achieving a safer transportation network and better positions the City to apprise itself of funding opportunities.

Staff has explored various grants in order to fund this effort and is currently looking to pursue two different grants: The Safe Streets for All (SS4A) Grant and the Community Planning Technical Assistance Grant (CPTAG).

The SS4A Grant program supports the development of a safety action plan that identifies the most significant roadway safety concerns within a community and the implementation of projects and strategies to address those roadway issues. The SS4A Grant has funds available for the development of a safety action plan, as well as the implementation of the plan after its creation. The SS4A Grant seeks to allocate funds to cities for the creation and implementation of plans to prevent roadway injuries and deaths. The expected award of the SS4A Grant is $100,000 with a 20% match required. This Grant also requires approval from the City Commission in order for staff to submit an application. The deadline for submission is May 16, 2024.

The CPTAG is another opportunity through Florida Commerce and is distributed in an effort to assist cities with creating innovative development strategies in regards to planning, development and infrastructure. The CPTAG may award up to $75,000 and the deadline to submit is May 10, 2024.

If awarded, staff would use the funds from these grants to develop a Safe Streets plan to identify areas for improvement within our transportation network in an approach to prevent deaths and serious injuries on the City's roadways.

FINANCIAL IMPACT

There is no financial impact with applying for either grant. If awarded, the SS4A Grant requires a 20% match from non-federal sources: however, a subscription the City pays annually would qualify as matching funds. The CPTAG does not require a match. Both are cost reimbursement grants, and therefore, should an award be received, the City would be reimbursed after milestones within the projects are reached.

RECOMMENDATION

Staff recommends the City Commission authorize the City Manager or his designee to execute the SS4A Grant application and take any actions necessary to complete the SS4A Grant application and CPTAG Grant application and seek funding support to create a plan that focuses primarily on City roads to further enhance both vehicle and pedestrian safety.

DATE: APRIL 26, 2024

TO: Honorable Mayor and City Commissioners

VIA: T. Michael Stavres, City Manager
M.J. Carnevale, Deputy City Manager
Eric Labbe, Economic Opportunity and Community Investment Director

FROM: Sean Byers, Planning Manager

SUBJECT: Resolution R-24-24: Amendment to the 2014 Interlocal Agreement creating the Polk Transportation Planning Organization (TPO) relating to voting member reapportionment.

BACKGROUND

The Polk Transportation Planning Organization (TPO) was originally established in 1977, and serves as the Metropolitan Planning Organization for the Lakeland and Winter Haven urbanized areas. The Polk TPO is charged with ensuring federal and state transportation dollars are spent on projects based on a Continuing, Cooperative, and Comprehensive transportation planning process. Membership on the Polk TPO is established by an interlocal agreement between the County and 15 municipalities, and was last adopted in 2014.

With the population growth in Polk County, as reflected by the 2020 US Census, the need to reapportion TPO voting membership is required. In October 2023, the Polk TPO prepared and adopted the *Membership Apportionment Plan*, which studied the distribution of population within Polk County. The *Plan* was submitted to the Florida Department of Transportation (FDOT) and the Florida Governor's Office for approval as required.

Based on the *Plan*, the total number of voting members on the Polk TPO Board will be increased from 19 to 23. Winter Haven's voting representation will increase from two to three permanent members. The City's new voting member will be seated following adoption of the amended Polk TPO Interlocal Agreement by Polk County and all 15 municipalities.

FINANCIAL IMPACT

There will be no financial impact as a result of this request.

RECOMMENDATION

Staff recommends the City Commission approve Resolution R-24-24 and authorize the Mayor, other appropriate City Officials, and the City Manager or his desginee to take all necessary actions related thereto.

ATTACHMENTS

- 2024 Amendment to Polk TPO Interlocal Agreement
- 2014 Polk TPO Interlocal Agreement
- October 12, 2023 Membership Apportionment Plan
- Resolution R-24-24

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AMENDMENT TO THE INTERLOCAL AGREEMENT CREATING THE POLK TRANSPORTATION PLANNING ORGANIZATION

THIS AMENDMENT (hereinafter "Amendment") is made and entered into by and between the State of Florida, Department of Transportation; Polk County; the City of Auburndale, City of Bartow, City of Davenport, Town of Dundee, City of Eagle Lake, City of Fort Meade, City of Frostproof, City of Haines City, City of Lake Alfred, Town of Lake Hamilton, City of Lakeland, City of Lake Wales, City of Mulberry, City of Polk City, and the City of Winter Haven, collectively known as "the parties."

RECITALS

WHEREAS, the parties reaffirm the Interlocal Agreement dated July 10, 2014;

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

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

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

WHEREAS, the Polk Transportation Planning Organization (TPO) serves as the MPO for the Lakeland and Winter Haven TMAs and is the agency designated to conduct a continuing, coordinated, and comprehensive transportation planning process;

WHEREAS, on October 12, 2023, the governing board of the Polk TPO met to review its voting composition and approved a Resolution Supporting the Adoption of the TPO Membership Apportionment Plan ("Apportionment Resolution");

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

WHEREAS, the governing body of the Polk TPO has determined it is appropriate that the City of Davenport, City of Haines City, City of Lake Alfred, and City of Winter Haven be granted additional representatives as voting members to the Interlocal Agreement creating the Polk TPO.

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

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

II. Interlocal Agreement. Article 4, Sections 4.01(a) and 4.01(c) of the Interlocal Agreement dated July 10, 2014, are amended to read as follows:

Section 4.01. Composition and membership of governing board.

(a) The membership of the TPO shall consist of twenty-three (23) voting members and six (6) non-voting advisors. The names of the member local government entities and the voting apportionment of the governing board as approved by the Governor shall be as follows:

JURISDICTION	VOTING MEMBERS
Polk County Board of County Commissioners	Five (5)
City of Lakeland	Six (6)
City of Winter Haven	Three (3)
City of Haines City	Two (2)
City of Bartow	One (1)
City of Lake Wales	One (1)
City of Auburndale	One (1)
City of Davenport	One (1)
City of Lake Alfred	One (1)
City of Fort Meade	One (1)*
City of Mulberry	One (1)*
City of Frostproof	One (1)*
Town of Dundee	One (1)**
City of Eagle Lake	One (1)**
City of Polk City	One (1)**
Town of Lake Hamilton	One (1)**

* Alternate Voting Membership – South County Bloc
** Alternate Voting Membership – Central County and Ridge Bloc

The Florida Department of Transportation shall have one (1) non-voting advisor on the TPO.

(c) Pursuant to section 339.175(3), F.S., the voting membership of an M.P.O. shall consist of not fewer than 5 or more than 25 apportioned members, the exact

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number to be determined on an equitable geographic-population ratio basis by the Governor, based on an agreement among the affected units of general-purpose local government as required by federal rules and regulations. The TPO's voting membership as set forth in Section 4.01(a) complies with section 339.175(3), F.S.

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

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

V. Effective Date. Pursuant to Section 163.01(11), F.S., this Amendment shall become effective upon the filing of the fully executed Amendment with the Clerk of the Circuit Court for Polk County, Florida.

VI. Except as hereby modified, amended or changed, all of the terms and conditions of the Interlocal Agreement dated July 10, 2014 and any amendments thereto will remain in full force and effect.

IN WITNESS WHEREOF, the undersigned parties have caused this Amendment to the Interlocal Agreement dated July 10, 2014, to be duly executed on their behalf.

BOARD OF COUNTY COMMISSIONERS OF POLK COUNTY, FLORIDA

BY:_____

ATTEST:_____

CITY OF LAKELAND

BY:_____

ATTEST:_____

CITY OF WINTER HAVEN

BY:_____

CITY OF AUBURNDALE

BY:_____

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ATTEST:_____

CITY OF BARTOW

BY:_____

ATTEST:_____

CITY OF LAKE WALES

BY:_____

ATTEST:_____

CITY OF MULBERRY

BY:_____

ATTEST:_____

CITY OF LAKE ALFRED

BY:_____

ATTEST:_____

CITY OF EAGLE LAKE

BY:_____

ATTEST:_____

CITY OF POLK CITY

BY:_____

ATTEST:_____

ATTEST:_____

CITY OF HAINES CITY

BY:_____

ATTEST:_____

CITY OF FORT MEADE

BY:_____

ATTEST:_____

CITY OF FROSTPROOF

BY:_____

ATTEST:_____

TOWN OF DUNDEE

BY:_____

ATTEST:_____

CITY OF DAVENPORT

BY:_____

ATTEST:_____

TOWN OF LAKE HAMILTON

BY:_____

ATTEST:_____

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FLORIDA DEPARTMENT OF TRANSPORTATION

BY:_____

ATTEST:_____

LEGAL REVIEW:

DS

_____

DISTRICT GENERAL COUNSEL

STATE OF FLORIDA DEPARTMENT OF TRANSPORTATION

INTERLOCAL AGREEMENT FOR CREATION OF THE POLK TRANSPORTATION PLANNING ORGANIZATION

THIS INTERLOCAL AGREEMENT for the formation of a Metropolitan Planning Organization is made and entered into on this 10th day of July 2014, by and between the FLORIDA DEPARTMENT OF TRANSPORTATION; POLK COUNTY; CITY OF AUBURNDALE, CITY OF BARTOW, CITY OF DAVENPORT, TOWN OF DUNDEE, CITY OF EAGLE LAKE, CITY OF FORT MEADE, CITY OF FROSTPROOF, CITY OF HAINES CITY, CITY OF LAKE ALFRED, TOWN OF LAKE HAMILTON, CITY OF LAKELAND, CITY OF LAKE WALES, CITY OF MULBERRY, TOWN OF POLK CITY, and the CITY OF WINTER HAVEN, collectively known as "the parties."

RECITALS

WHEREAS, the federal government, under the authority of Title 23 United States Code (USC) §134 and Title 49 USC §5303, requires each metropolitan area, as a condition for the receipt of federal capital or operating assistance, to have a continuing, cooperative, and comprehensive transportation planning process that results in plans and programs consistent with the comprehensively planned development of the metropolitan area;

WHEREAS, the parties to this Interlocal Agreement desire to participate cooperatively in the performance, on a continuing basis, of a coordinated, comprehensive transportation planning process to assure that highway facilities, mass transit systems, bicycle and pedestrian facilities, rail systems, air transportation and other facilities will be properly located and developed in relation to the overall plan of community development;

WHEREAS, Title 23 USC §134 and Title 49 USC §§5303-5305, as amended by the Moving Ahead for Progress in the 21st Century Act (MAP-21) and Section 339.175, Florida Statutes (F.S.), provide for the creation of Metropolitan Planning Organizations to develop transportation plans and programs for urbanized areas;

WHEREAS, pursuant to Titles 23 USC §134(d), 49 USC §5303, 23 CFR §450.310(b), and Section 339.175(2), F.S., a determination has been made by the Governor and units of general purpose local government representing at least 75 percent of the affected population (including the largest incorporated city, based on population as named by the Bureau of Census) in the urbanized area to designate a Metropolitan Planning Organization;

WHEREAS, pursuant to this Interlocal Agreement, the parties wish to collectively participate in the metropolitan planning process as the Polk Transportation Planning Organization serving as the metropolitan planning organization for the Lakeland and Winter Haven Urbanized Areas, herein after referred to as "the Transportation Planning Organization" or "the TPO". Further, the parties approved by unanimous vote an apportionment and boundary plan for presentation to the Governor on the 12th day of December 2013;

WHEREAS, pursuant to Section 339.175(4), F.S., the Governor, by letter dated the 23rd day of April, approved the apportionment and boundary plan submitted by the TPO;

WHEREAS, pursuant to Title 23 CFR §450.314(a), and Section 339.175(10), F.S., an agreement must be entered into by the Department, the TPO, and the governmental entities and public transportation operators to identify the responsibility of each party for cooperatively carrying out a comprehensive transportation planning process;

WHEREAS, this Interlocal Agreement is required to create the Polk Transportation Planning Organization and delineate the provisions for operation of the TPO;

WHEREAS, the undersigned parties have determined that this Interlocal Agreement is consistent with Section 339.175(10), F.S.;

WHEREAS, the undersigned parties have determined that this Interlocal Agreement is consistent with statutory requirements set forth in Section 163.01, F.S., relating to Interlocal Agreements; and

NOW, THEREFORE, in consideration of the mutual covenants, promises, and representation herein, the parties desiring to be legally bound, do agree as follows:

ARTICLE 1
RECITALS; DEFINITIONS

Section 1.01. Recitals. Each and all of the foregoing recitals are incorporated herein and acknowledged to be true and correct to the best of the parties' knowledge. Failure of any of the foregoing recitals to be true and correct shall not operate to invalidate this Interlocal Agreement.

Section 1.02. Definitions. The following words when used in this Interlocal Agreement (unless the context shall clearly indicate the contrary) shall have the following meanings:

Interlocal Agreement means and refers to this instrument, as may be amended from time to time.

Department means and refers to the Florida Department of Transportation, an agency of the State of Florida created pursuant to Section 20.23, F.S.

FHWA means and refers to the Federal Highway Administration.

FTA means and refers to the Federal Transit Administration.

Long Range Transportation Plan (LRTP) is the 20-year transportation planning horizon which includes transportation facilities; identifies a financial plan that demonstrates how the plan can be implemented and assesses capital improvements necessary to preserve the existing metropolitan transportation system and make efficient use of existing transportation facilities; indicates proposed transportation activities; and in ozone/carbon monoxide nonattainment areas is coordinated with the State Implementation Plan, all as required by Title 23 USC §134(c), Title 49 USC §5303, Title 23 CFR §450.322, and Section 339.175(7), F.S.

Metropolitan Planning Area means and refers to the planning area determined by agreement between the MPO and the Governor for the urbanized area containing at least a population of 50,000 as described in Title 23 USC §134(b)(1), Title 49 USC §5303, and Section 339.175(2)(c) and (d), F.S., and including the existing urbanized area and the contiguous area expected to become urbanized within a 20-year forecast period, which shall be subject to the Metropolitan Planning Organization's planning authority.

TPO means and refers to the Polk Transportation Planning Organization formed pursuant to this Interlocal Agreement as described in 23 USC §134(b)(2), 49 USC §5303, and Section 339.175(1), F.S.

Transportation Improvement Program (TIP) is the staged multi-year program of transportation improvement projects developed by a Metropolitan Planning Organization consistent with the Long Range Transportation Plan, developed pursuant to 23 USC §134(j), 49 USC §5303, 23 CFR §450.324 and Section 339.175(8), F.S.

Unified Planning Work Program (UPWP) is the biennial program developed in cooperation with the Department and public transportation providers, that identifies the planning priorities and activities to be carried out within a metropolitan planning area to be undertaken during a 2-year period, together with a complete description thereof and an estimated budget, all as required by 23 CFR §450.308, and Section 339.175(9), F.S.

ARTICLE 2
PURPOSE

Section 2.01. General Purpose. The purpose of this Interlocal Agreement is to establish the TPO and recognize the boundary and apportionment approved by the Governor. This Interlocal Agreement shall serve:

(a) To assist in the development of transportation systems embracing various modes of transportation in a manner that will maximize the mobility of people and goods within and through this metropolitan planning area and minimize, to the maximum extent feasible for transportation-related fuel consumption and air pollution;

(b) To develop transportation plans and programs, in cooperation with the Department, which plans and programs provide for the development of transportation facilities that will function as a multi-modal and intermodal transportation system for the metropolitan planning area;

(c) To implement and ensure a continuing, cooperative, and comprehensive transportation planning process that results in coordinated plans and programs consistent with the comprehensively planned development of this affected metropolitan planning area in cooperation with the Department;

(d) To assure eligibility for the receipt of federal capital and operating assistance pursuant to Title 23 USC §134 and Title 49 USC §§5303, 5304, 5305, 5307, 5309, 5310, 5311, 5314, 5326, 5337and 5339, 5340; and

(e) To carry out the metropolitan transportation planning process, in cooperation with the Department, as required by federal, state and local laws.

Section 2.02. Major TPO Responsibilities. The TPO is intended to be a forum for cooperative decision making by officials of the governmental entities which are parties to this Interlocal Agreement in the development of transportation-related plans and programs, including but not limited to:

(a) The LRTP;

(b) The TIP;

(c) The UPWP;

(d) Incorporating performance goals, measures, and targets into the process of identifying and selecting needed transportation improvements and projects;

(e) A congestion management process for the metropolitan area and coordinated development of all other transportation management systems required by state or federal law;

(f) Assisting the Department in mapping transportation planning boundaries required by state or federal law;

(g) Supporting the Department in performing its duties relating to access management, functional classification of roads, and data collection; and

(h) Performing such other tasks required by state or federal law.

Section 2.03. Coordination with the Department and Consistency with Comprehensive Plans. Chapter 334, F.S., grants broad authority for the Department's role in transportation. Section 334.044, F.S., includes the legislative intent declaring that the Department shall be responsible for coordinating the planning of a safe, viable, and balanced state transportation system serving all regions of the State. Section 339.155, F.S., requires the Department to develop a statewide transportation plan, which considers, to the maximum extent feasible, strategic regional policy plans, TPO plans, and approved local government comprehensive plans. Section 339.175(5), F.S., specifies the authority and responsibility of the TPO and the Department to manage a continuing, cooperative, and comprehensive transportation planning process for the metropolitan area.

In fulfillment of this purpose and in the exercise of the various powers granted by Chapters 334 and 339, F.S., the parties to this Interlocal Agreement acknowledge that decisions made by the TPO will be coordinated with the Department. All parties to this Interlocal Agreement acknowledge that actions taken pursuant to this Interlocal Agreement will be consistent with local government comprehensive plans.

ARTICLE 3
TPO ORGANIZATION AND CREATION

Section 3.01. Establishment of TPO. The TPO for the metropolitan planning area as described in the membership apportionment plan approved by the Governor is hereby created and established pursuant to this Interlocal Agreement to carry out the purposes and functions set forth in Articles 2 and 5. The legal name of this Metropolitan Planning Organization shall be the Polk Transportation Planning Organization.

Section 3.02. TPO to operate pursuant to law. In the event that any election, referendum, approval, permit, notice, other proceeding or authorization is required under applicable law to undertake any power, duty, or responsibility hereunder, or to observe, assume, or carry out any of the provisions of this Interlocal Agreement, the TPO will, to the extent of its legal capacity, comply with all applicable laws and requirements.

Section 3.03. Governing board to act as policy-making body of TPO. The governing board established pursuant to Section 4.01 of this Interlocal Agreement shall act as the policy-making body for the TPO, and will be responsible for coordinating the cooperative decision-making process of the TPO's actions, and will take required actions as the TPO.

Section 3.04. Data, reports, records, and other documents. Subject to the right to claim an exemption from the Florida Public Records Law, Chapter 119, F.S., the parties shall provide to each other such data, reports, records, contracts, and other documents in its possession relating to the TPO as is requested. Charges are to be in accordance with Chapter 119, F.S.

Section 3.05. Rights of review. All parties to this Interlocal Agreement and the affected federal funding agencies (e.g., FHWA, FTA, and FAA) shall have the rights of technical review and comment on MPO's projects.

ARTICLE 4
COMPOSITION; MEMBERSHIP; TERMS OF OFFICE

Section 4.01. Composition and membership of governing board.

(a) The membership of the TPO shall consist of nineteen (19) voting members and eight (8) non-voting advisors. The names of the member local governmental entities and the voting apportionment of the governing board as approved by the Governor shall be as follows:

JURISDICTION	VOTING MEMBERS
Polk County Board of County Commissioners	Five (5)
City of Lakeland	Six (6)
City of Winter Haven	Two (2)
City of Auburndale	One (1)
City of Bartow	One (1)
City of Haines City	One (1)
City of Lake Wales	One (1)
City of Fort Meade	One (1)*
City of Mulberry	One (1)*
City of Frostproof	One (1)*
City of Lake Alfred	One (1)**
Town of Dundee	One (1)**
City of Eagle Lake	One (1)**
City of Davenport	One (1)**
Town of Polk City	One (1)**
Town of Lake Hamilton	One (1)**

* Alternate Voting Membership – South County Bloc

** Alternate Voting Membership – East County Bloc

The Florida Department of Transportation shall have one (1) non-voting advisor on the TPO.

(b) All voting representatives shall be elected officials of general purpose local governments, except to the extent that the TPO includes, as part of its apportioned voting membership, a member of a statutorily authorized planning board or an official of an agency that operates or administers a

major mode of transportation. All individuals acting as a representative of the governing board of the county, the city, or authority shall first be selected by said governing board.

(c) The voting membership of an TPO shall consist of not fewer than 5 or more than 19 apportioned members, the exact number to be determined on an equitable geographic-population ratio basis by the Governor, based on an agreement among the affected units of general-purpose local government as required by federal rules and regulations and shall be in compliance with 339.175(3) F.S.

(d) In the event that a governmental entity that is a member of the TPO fails to fill an assigned appointment to the TPO within sixty days after notification by the Governor of its duty to appoint a representative, the appointment shall then be made by the Governor from the eligible individuals of that governmental entity.

Section 4.02. Terms. The term of office of members of the TPO shall be four years. The membership of a member who is a public official automatically terminates upon said official leaving the elective or appointive office for any reason, or may be terminated by a majority vote of the total membership of the governmental entity represented by the member. A vacancy shall be filled by the original appointing entity. A member may be appointed for one or more additional four year terms.

ARTICLE 5
AUTHORITIES, POWERS, DUTIES AND RESPONSIBILITIES

Section 5.01. General authority. The TPO shall have all authorities, powers and duties, enjoy all rights, privileges, and immunities, exercise all responsibilities and perform all obligations necessary or appropriate to managing a continuing, cooperative, and comprehensive transportation planning process as specified in Section 339.175(5) and (6), F.S.

Section 5.02. Specific authority and powers. The TPO shall have the following powers and authority:

(a) As provided in Section 339.175(6)(g), F.S., the TPO may employ personnel and/or may enter into contracts with local or state agencies and private planning or engineering firms to utilize the staff resources of local and/or state agencies;

(b) As provided in Section 163.01(14), F.S., the TPO may enter into contracts for the performance of service functions of public agencies;

(c) As provided in Section 163.01(5)(j), F.S., the TPO may acquire, own, operate, maintain, sell, or lease real and personal property;

(d) As provided in Section 163.01(5)(m), F.S., the TPO may accept funds, grants, assistance, gifts or bequests from local, state, and federal resources;

(e) The TPO may promulgate rules to effectuate its powers, responsibilities, and obligations enumerated herein; provided, that said rules do not supersede or conflict with applicable local and state laws, rules and regulations; and

(f) The TPO shall have such powers and authority as specifically provided in Section 163.01 and Section 339.175(5) and (6), F.S., and as may otherwise be provided by federal or state law.

Section 5.03. Duties and responsibilities. In addition to those duties and responsibilities set forth in Article 2, the TPO shall have the following duties and responsibilities:

(a) As provided in Section 339.175(6)(d), F.S., the TPO shall create and appoint a technical advisory committee;

(b) As provided in Section 339.175(6)(e), F.S., the TPO shall create and appoint a citizens' advisory committee;

(c) As provided in Section 163.01(5)(o), F.S., the TPO membership shall be jointly and severally liable for liabilities, and the TPO may respond to such liabilities through the purchase of insurance or bonds, the retention of legal counsel, and, as appropriate, the approval of settlements of claims by its governing board;

(d) As provided in Section 339.175(9), F.S., the TPO shall establish an estimated budget which shall operate on a fiscal year basis consistent with any requirements of the UPWP;

(e) The TPO, in cooperation with the Department, shall carry out the metropolitan transportation planning process as required by Title 23 CFR Parts 420 and 450, and Title 49 CFR Part 613, Subpart A, and consistent with Chapter 339, F.S., and other applicable state and local laws;

(f) As provided in Section 339.175(10)(a), F.S., the TPO shall enter into agreements with the Department, operators of public transportation systems and the metropolitan and regional intergovernmental coordination and review agencies serving the metropolitan area. These agreements will prescribe the cooperative manner in which the transportation planning process will be coordinated and included in the comprehensively planned development of the area;

(g) Perform such other tasks presently or hereafter required by state or federal law;

(h) Execute certifications and agreements necessary to comply with state or federal law; and

(i) Adopt operating rules and procedures.

ARTICLE 6
FUNDING; INVENTORY REPORT; RECORD-KEEPING

Section 6.01. Funding. The Department shall allocate to the TPO for performance of its transportation planning and programming duties, an appropriate amount of federal transportation planning funds consistent with the approved planning funds formula.

Section 6.02. Inventory report. The TPO agrees to inventory, to maintain records of and to insure proper use, control, and disposal of all nonexpendable tangible property acquired pursuant to funding under this Interlocal Agreement. This shall be done in accordance with the requirements of Title 23 CFR Part 420, Subpart A, Title 49 CFR Part 18, Subpart C, and all other applicable federal regulations.

Section 6.03. Record-keeping and document retention. The Department and the TPO shall prepare and retain all records in accordance with federal and state requirements, including but not limited to 23 CFR Part 420, Subpart A, 49 CFR Part 18, Subpart C, 49 CFR §18.42, and Chapter 119, F.S.

Section 6.04 Compliance with laws. All parties shall allow public access to all documents, papers, letters, or other material subject to the provisions of Chapter 119, Florida Statutes, and made or received by the parties in conjunction with this Agreement. Specifically, if a party is acting on behalf of a public agency the party shall:

(a) Keep and maintain public records that ordinarily and necessarily would be required by the Department in order to perform the services being performed by the party.

(b) Provide the public with access to public records on the same terms and conditions that the Department would provide the records and at a cost that does not exceed the cost provided in Chapter 119, Florida Statutes, or as otherwise provided by law.

(c) Ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law.

(d) Meet all requirements for retaining public records and transfer, at no cost, to the Department all public records in possession of the party upon termination of the contract and destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. All records stored electronically must be provided to the Department in a format that is compatible with the information technology systems of the Department.

ARTICLE 7
MISCELLANEOUS PROVISIONS

Section 7.01. Constitutional or statutory duties and responsibilities of parties. This Interlocal Agreement shall not be construed to authorize the delegation of the constitutional or statutory duties of any of the parties. In addition, this Interlocal Agreement does not relieve any of the parties of an obligation or responsibility imposed upon them by law, except to the extent of actual and timely performance thereof by one or more of the parties to this Interlocal Agreement or any legal or administrative entity created or authorized by this Interlocal Agreement, in which case this performance may be offered in satisfaction of the obligation or responsibility.

Section 7.02. Amendment of Interlocal Agreement. Amendments or modifications of this Interlocal Agreement may only be made by written agreement signed by all parties here to with the same formalities as the original Interlocal Agreement. No amendment may alter the apportionment or jurisdictional boundaries of the TPO without approval by the Governor.

Section 7.03. Duration; withdrawal procedure.

(a) Duration. This Interlocal Agreement shall remain in effect until terminated by the parties to this Interlocal Agreement. The Interlocal Agreement shall be reviewed by the parties at least every five years, concurrent with the decennial census, and/or concurrent with a new Federal Reauthorization bill, and updated as necessary.

(b) Withdrawal procedure. Any party, except Polk County and the United States Bureau of the Census designated largest incorporated city, may withdraw from this Interlocal Agreement after presenting in written form a notice of intent to withdraw to the other parties to this Interlocal Agreement and the MPO, at least 90 days prior to the intended date of withdrawal. Upon receipt of the intended notice of withdrawal:

(1) The withdrawing member and the TPO shall execute a memorandum reflecting the withdrawal of the member and alteration of the list of member governments that are signatories to this Interlocal Agreement. The memorandum shall be filed in the Office of the Clerk of the Circuit Court of each county in which a party hereto is located; and

(2) The TPO shall contact The Office of the Governor and the Governor, with the agreement of the remaining members of the TPO, shall determine whether any reapportionment of the membership is appropriate. The Governor and the TPO shall review the previous TPO designation, applicable federal, state and local law, and TPO rules for appropriate revision. In the event that another entity is to afforded membership in the place of the member withdrawing from the TPO, the parties acknowledge that pursuant to Title 23 CFR §450.310(l)(2), adding membership to the TPO does not automatically require redesignation of the TPO. In the event that a party who is not a signatory to this Interlocal Agreement is afforded membership in the TPO, membership shall not become effective until this Interlocal Agreement is amended to reflect that the new member has joined the TPO.

Section 7.04. Notices. All notices, demands and correspondence required or provided for under this Interlocal Agreement shall be in writing and delivered in person or dispatched by certified mail, postage prepaid, return receipt requested. Notice required to be given shall be addressed as set forth in Exhibit "A" attached hereto and made a part thereof.

A party may unilaterally change its address or addressee by giving notice in writing to the other parties as provided in this section. Thereafter, notices, demands and other pertinent correspondence shall be addressed and transmitted to the new address.

Section 7.05. Interpretation.

(a) Drafters of the Interlocal Agreement. The Department and the members of the TPO were each represented by or afforded the opportunity for representation by legal counsel and participated in the drafting of this Interlocal Agreement and in choice of wording. Consequently, no provision should be more strongly construed against any party as drafter of this Interlocal Agreement.

(b) Severability. Invalidation of any one of the provisions of this Interlocal Agreement or any part, clause or word, or the application thereof in specific circumstances, by judgment, court order, or administrative hearing or order shall not affect any other provisions or applications in other circumstances, all of which shall remain in full force and effect; provided, that such remainder would then continue to conform to the terms and requirements of applicable law.

(c) Rules of construction. In interpreting this Interlocal Agreement, the following rules of construction shall apply unless the context indicates otherwise:

(1) The singular of any word or term includes the plural;

(2) The masculine gender includes the feminine gender; and

(3) The word "shall" is mandatory, and "may" is permissive.

Section 7.06. Enforcement by parties hereto. In the event of any judicial or administrative action to enforce or interpret this Interlocal Agreement by any party hereto, each party shall bear its own costs and attorney's fees in connection with such proceeding.

Section 7.07. Interlocal Agreement execution; Use of counterpart signature pages. This Interlocal Agreement, and any amendments hereto, may be simultaneously executed in several counterparts, each of which so executed shall be deemed to be an original, and such counterparts together shall constitute one and the same instrument.

Section 7.08. Effective date; Cost of recordation.

(a) Effective date. This Interlocal Agreement shall become effective upon its filing in the Office of the Clerk of the Circuit Court of each county in which a party hereto is located. Any amendment hereto shall become effective only upon its filing in the Office of the Clerk of the Circuit Court for each county in which a party hereto is located.

(b) Recordation. The TPO hereby agrees to pay for any costs of recordation or filing of this Interlocal Agreement in the Office of the Circuit Court for each county in which a party is hereto located. The recorded or filed original, or any amendment, shall be returned to the TPO for filing in its records.

IN WITNESS WHEREOF, the undersigned parties have executed this Interlocal Agreement on behalf of the referenced legal entities and hereby establish the above designated TPO.

Signed, Sealed and Delivered in the presence of:

BOARD OF COUNTY COMMISSIONERS OF POLK COUNTY, FLORIDA

BY:_____

ATTEST: Cheree L Simmons

CITY OF LAKELAND

BY: R. Hurd Williams

ATTEST: Cheree L Simmons

ATTEST:_____

CITY OF WINTER HAVEN

BY: Nathaniel J. DiDonato, Jr.

ATTEST:_____

CITY OF AUBURNDALE

BY:_____

ATTEST: Cheree L Simmons

CITY OF BARTOW

BY: W. Patrick Huff

ATTEST: Cherie L Simmons

CITY OF LAKE WALES

BY: Eugene L Fultz

ATTEST: Cherie L Simmons

CITY OF MULBERRY

BY: Virgil H Hatch

ATTEST: Sharon Faulkner

CITY OF LAKE ALFRED

BY: Ray J Daley

ATTEST: Cherie L Simmons

CITY OF EAGLE LAKE

BY: J R Sullivan

ATTEST: Cherie L Simmons

TOWN OF POLK CITY

BY: Jack Cason

ATTEST: Cherie L Simmons

FLORIDA DEPARTMENT OF TRANSPORTATION

BY:

ATTEST: Robert D Fellers

LEGAL REVIEW:

Anthony T Stevens

DISTRICT GENERAL COUNSEL

CITY OF HAINES CITY

BY: Roy Tyler

ATTEST: Cherie L Simmons

CITY OF FORT MEADE

BY:

ATTEST: Cherie L Simmons

CITY OF FROSTPROOF

BY: Annie W Dickinson

ATTEST: Cherie L Simmons

TOWN OF DUNDEE

BY:

ATTEST: Cherie L Simmons

CITY OF DAVENPORT

BY: Marlene Bennett

ATTEST: Cherie L Simmons

TOWN OF LAKE HAMILTON

BY: Marlene M Wagner

ATTEST:

EXHIBIT "A"
NOTICES

This exhibit forms an integral part of that certain Interlocal Agreement between the State of Florida, Department of Transportation and:

Polk County Board of
County Commissioners
Drawer BC01, P.O. Box 9005
Bartow, FL 33831-9005

City of Lakeland
228 South Massachusetts Avenue
Lakeland, FL 33801-5086

City of Winter Haven
P.O. Box 2277
Winter Haven, FL 33883-2277

City of Auburndale
P.O. Box 186
Auburndale, FL 33823

City of Bartow
P.O. Box 1069
Bartow, FL 33831-1069

City of Haines City
P.O. Box 1507
Haines City, FL 33845

City of Lake Wales
P.O. Box 1320
Lake Wales, FL 33859

City of Fort Meade
P.O. Box 856
Fort Meade, FL 33841

City of Mulberry
P.O. Box 707
Mulberry, FL 33860-0707

Polk Transportation Planning Organization
Drawer TS05
P.O. Box 9005
Bartow, FL 33831-9005

City of Frostproof
P.O. Box 308
Frostproof, FL 33843

City of Lake Alfred
120 East Pomelo Street
Lake Alfred, FL 33850

Town of Dundee
P.O. Box 1000
Dundee, FL 33838

City of Eagle Lake
P.O. Box 129
Eagle Lake, FL 33839

City of Davenport
P.O. Box 125
Davenport, FL 33836

Town of Polk City
P.O. Box 1139
Polk City, FL 33868-1139

Town of Lake Hamilton
P.O. Box 126
Lake Hamilton, FL 33851

MEMBERSHIP APPORTIONMENT PLAN

Polk Transportation Planning Organization

Adopted
October 12 , 2023

Polk Transportation
Planning Organization

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Introduction

Federal laws and regulations require metropolitan planning organizations (MPOs) to be designated for each urban area with a population greater than 50,000 people [23 CFR 450.310(a), 23 USC 134(d)]. This designation is accomplished by agreement between the Governor and the affected units of local government. The federal rules allow the states and units of local government to largely determine the specific composition of the MPOs. In Florida, Section 339.175, Florida Statutes, provides the requirements for MPO membership composition and apportionment of the voting membership. Pursuant to these state and federal rules, the Polk Transportation Planning Organization was created in 1977.

After each decennial census, MPOs must review the composition of their membership and metropolitan planning area (MPA) boundaries and submit an Apportionment Plan to the Florida Department of Transportation (FDOT) and Florida Governor's Office that meets state and federal requirements. Apportionment Plans must include population data (total MPO area population and the urban area population within all Census designated urban areas with more than 50,000 people), current and proposed membership, and an MPA boundary map. In addition, when preparing an apportionment plan, MPOs must ensure there is an equitable geographic-population ratio basis for allocating membership to the board.

On May 16, 2023, the FDOT announced the start of the MPO Apportionment Process and have given MPOs 180 days to submit their apportionment plans to FDOT. Based on this requirement, all MPOs must submit their apportionment plans by November 14, 2023. The Polk TPO has prepared this Apportionment Plan in response to these requirements.

Urbanized Area Population

According to the 2020 Census, the total population of Polk County as of April 1, 2020, was 725,046, with nearly 90% of its residents now living in an urban area. The majority of these residents (73%) reside in Polk County's largest urbanized areas - the Lakeland and Winter Haven Urbanized Areas. Another 10% live in the Four Corners and Poinciana Urbanized Areas. Portions of Four Corners and Poinciana extend into Osceola and Lake counties. The populations reported for these areas include Polk County residents only. There are four (4) smaller urban areas in Polk County under 50,000 in population which include Poinciana Southwest, Bartow, Frostproof and Fort Meade. There are 78,919 (10.9%) people in Polk County that do not reside in an urban area. See Table 1 and the Polk County Urbanized Areas Map shown in Figure 1 and included in the Appendix for more information.

In terms of the distribution of population across Polk County, eastern Polk County now exceeds western Polk County in urbanized area population. This has been an ongoing trend since the 2000 Census with nearly 350,00 people now residing in the eastern portion of the county, and nearly 300,000 residents in the western part of the county. Also, another change since the 2010 Census includes the removal of Bartow from the Lakeland Urbanized Area. The Census now classifies Bartow as a stand-alone urban area.

Looking beyond Polk County, there are three (3) large urban areas in Kissimmee, Orlando, and the Tampa/St. Petersburg Urbanized Areas with a combined population of more than 5 million residents. In several locations, these urbanized areas meet Polk County's boundary. Likewise, a very small portion of the Lakeland Urbanized Area extends into Hillsborough County.

Table 1. Polk County Urban Areas

Urbanized Area	2020 Population	Percent
Lakeland	277,568	38%
Winter Haven	253,251	35%
Four Corners	49,162	7%
Poinciana	19,266	3%
Poinciana SW	16,966	2.3%
Bartow	16,948	2.3%
Frostproof	8,092	1.1%
Fort Meade	4,874	0.6%
Subtotal	646,127	89.1%
Polk County – Non-Urbanized Area	78,919	10.9%
Total	725,046	100%

Metropolitan Planning Area and TPO Population

As part of the Membership Apportionment Process, MPOs must define their Metropolitan Planning Area (MPA) and Planning Area Population. The boundaries of the MPA are determined by agreement between the MPO and the Governor and, at minimum, encompass the entire existing urban area (as defined by the Census Bureau) plus the contiguous area expected to become urban within a 20-year forecast period (23 CFR 450.312).

Figure 1. depicts the Urbanized Areas for Polk County as published by the US Bureau of the Census. A more detailed map can be found in the appendix of this report. As part of the 2020 Census, two (2) new urbanized areas over 50,000 in population were created in Polk County consisting of Four Corners and Poinciana. Portions of these urbanized areas extend into neighboring Lake and Osceola Counties. The two (2) largest urbanized areas in Polk County consist of the Lakeland and Winter Haven Urban Areas. The corresponding Metropolitan Statistical Area (MSA) includes all of Polk County. Therefore, the Polk TPO has defined its Metropolitan Planning Area to include the entirety of Polk County, the MSA.

- **Metropolitan Planning Area Description:**

  Considered the "crossroads of central Florida", Polk County is bounded by ten counties. It is the fourth largest county in Florida at 2,011 square miles. There are seventeen municipalities and Polk County is the ninth most populous county with 725,046 residents. Polk County serves as an important freight and logistics center for the region and the state and is home to Florida's only Intermodal Logistics Center. Polk County is one of five counties (Pinellas, Hillsborough, Polk, Osceola and Orange) in the emerging central Florida "megaregion" along the Interstate 4 corridor.

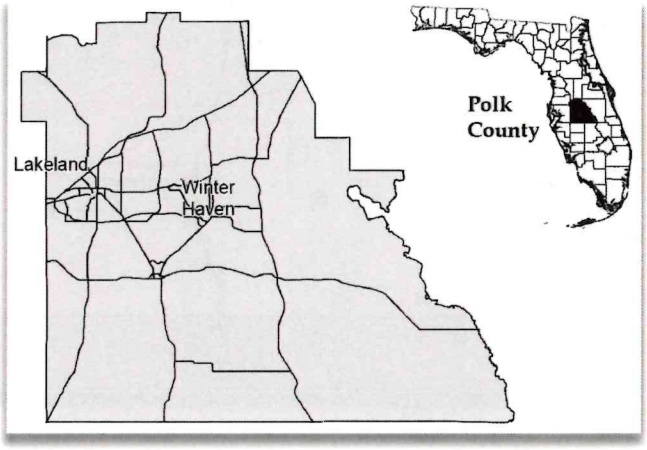
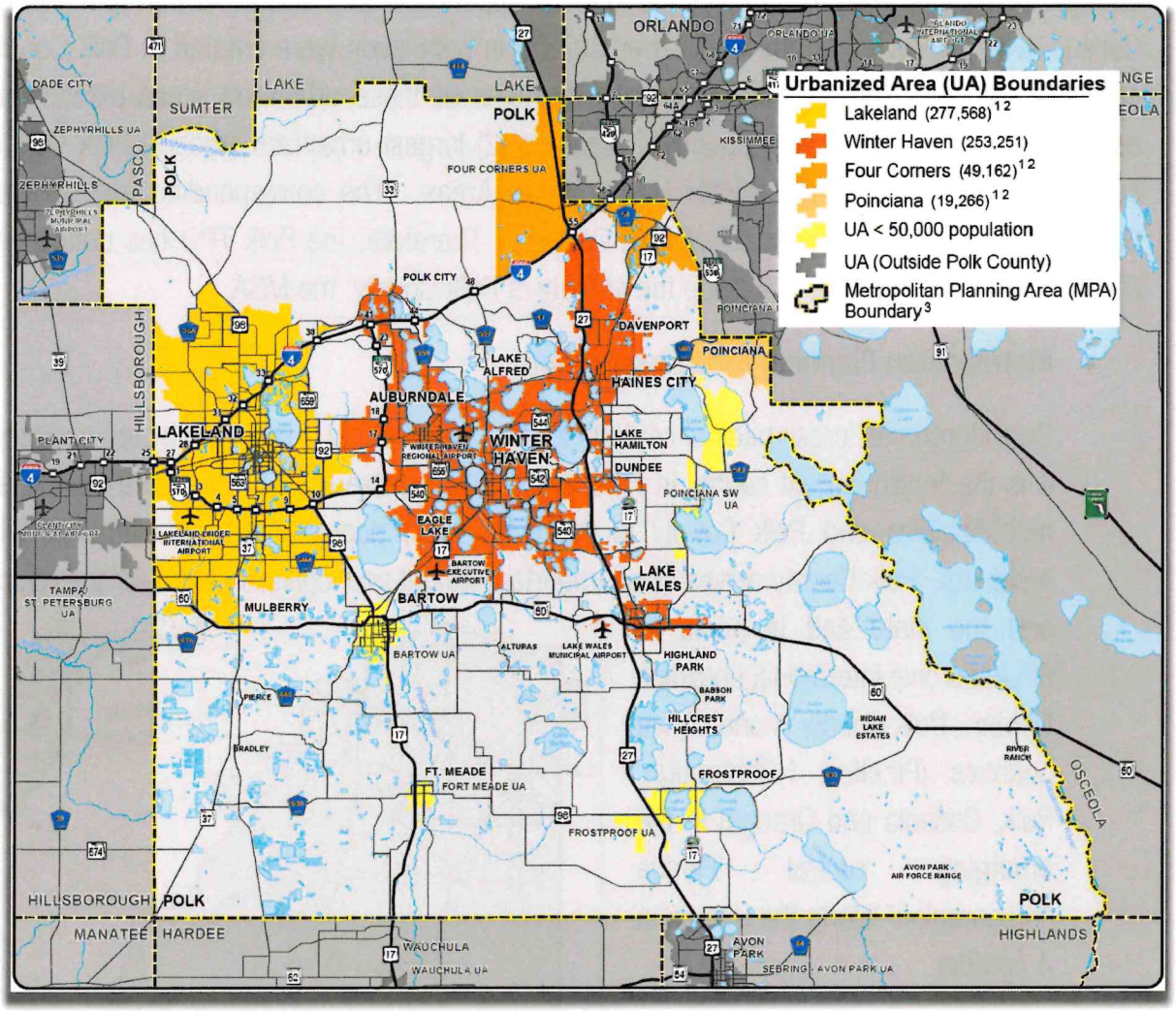


Table 2. MPO Population

Polk TPO Area Population		
MPA Area	2010 Population	2020 Population
Polk County	602,095	725,046

Between 2010 and 2020 Polk County's population increased by 122,951 (20.4%).

Figure 1. Polk County 2020 Urbanized Areas & Metropolitan Planning Area



Current Voting Membership

The Polk TPO's current Membership Apportionment Plan was adopted by the Polk TPO Board on December 12, 2013. The TPO currently has 19 voting members representing 16 jurisdictions. These members are apportioned as follows:

Table 3. Current Voting Membership

Local Government	Voting Members
Polk County Board of County Commissioners	5
Lakeland	6
Winter Haven	2

Local Government	Voting Members
Haines City	1
Bartow	1
Lake Wales	1
Auburndale	1
South County Bloc	
Fort Meade	1
Mulberry	
Frostproof	
East County Bloc	
Lake Alfred	1
Dundee	
Davenport	
Eagle Lake	
Polk City	
Lake Hamilton	
Total	19

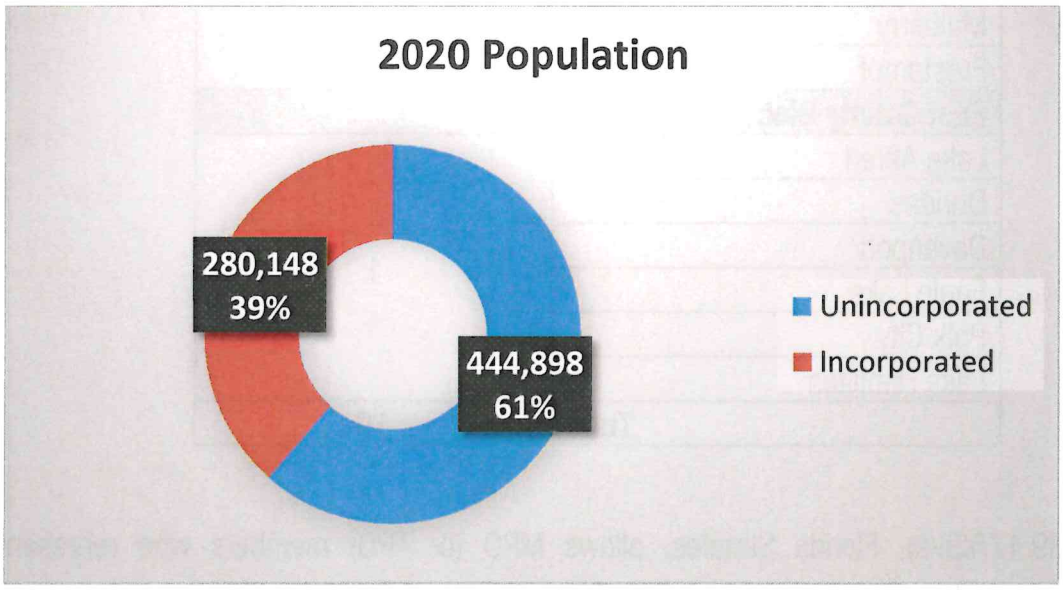
Section 339.175(3)(a), Florida Statutes, allows MPO (or TPO) members who represent municipalities to alternate with representatives from other municipalities within the metropolitan planning area that do not have members on the MPO. Going back to the 2000 Apportionment Plan, a goal of the TPO has been to maximize the local government participation in the TPO planning process. As a result, and to provide more direct representation for smaller municipalities, the current voting membership includes alternate voting memberships for a South County Bloc and an East County Bloc consisting of nine (9) municipalities. The cities that comprise these voting blocs share a voting membership on the TPO Board.

This shared voting membership is rotated among the respective cities on an annual basis. In the year that a city has not been assigned the voting membership, its representative may serve as an alternate voting member. Alternate voting members may vote at a TPO Board Meeting when the voting member for the same bloc is not present. Additionally, city representatives serve as non-voting members when their city has not been assigned a voting membership for a particular year. The city representatives within a voting bloc are invited to participate in all TPO Board Meetings as voting, alternate or non-voting members.

Incorporated/Unincorporated Population

As reported by the Census, Polk County's total population was 725,046. This total includes 444,898 residents in unincorporated Polk County (61%) and 280,148 persons residing in municipalities (39%). See Figure 2.

Figure 2. 2020 Population by Incorporated Area



The Polk County Board of County Commissioners are elected at-large within Polk County, and County Commissioners, therefore, are considered to be representatives of the entire county as they serve on the TPO Board. It is appropriate for all five (5) County Commissioners to serve as voting members since almost two-thirds of the county's residents live in unincorporated areas. Moreover, Florida Statutes do not allow county commission members to comprise less than one-third of the MPO membership unless there are more than 15 members (and all county commissioners are members).

Municipal Population and Representation

There are 17 municipalities in Polk County. Table 4 identifies the year 2020 Census population for these municipalities and identifies those cities currently represented on the TPO Board. The cities shaded in blue are a part of the Lakeland Urbanized Area, while those shaded in red are in the Winter Haven Urbanized Area. As mentioned earlier, there are two (2) new urbanized areas in Polk County created in 2020 consisting of Four Corners and Poinciana. Portions of these urbanized areas extend into neighboring Lake and Osceola counties. However, these new

urbanized areas do not contain any municipalities in Polk County. Therefore, the elected at-large County commissioners represent these areas.

Table 4. 2020 Municipal Population and Representation

Municipality	2020 Population	Percent of Municipal Population	TPO Member
Lakeland	112,641	40.2%	Yes
Winter Haven	49,219	17.5%	Yes
Haines City	26,669	9.5%	Yes
Bartow	19,309	6.9%	Yes
Lake Wales	16,361	5.8%	Yes
Auburndale	15,616	5.6%	Yes
Davenport	9,043	3.2%	Yes
Lake Alfred	6,374	2.3%	Yes
Dundee	5,235	1.9%	Yes
Fort Meade	5,100	1.8%	Yes
Mulberry	3,952	1.4%	Yes
Eagle Lake	3,008	1.1%	Yes
Frostproof	2,877	1.0%	Yes
Polk City	2,713	0.9%	Yes
Lake Hamilton	1,537	0.5%	Yes
Subtotal	279,654	99.8%	
Highland Park	251	0.1%	No
Hillcrest Heights	243	0.1%	No
Subtotal	494	0.2%	
Total	280,148	100%	-

With the exception of Hillcrest Heights and Highland Park, the Polk TPO's current composition includes all of the municipalities as member jurisdictions. These cities represent nearly 100% of the total municipal population in Polk County.

According to the Census nearly all of Polk County's municipalities increased in population since 2010, with the exception of Fort Meade and Frostproof. Cities with the most significant increases in population for 2020 include Winter Haven and Haines City. In addition, the combined population of the municipalities comprising the East County Bloc grew substantially with the City of Davenport contributing to most of this increase. Table 5 illustrates these

changes when applying the 2020 population per TPO member to the current membership structure. In particular, the cities of Winter Haven and Haines City, along with the East County Bloc, demonstrate a much higher population per member than the other cities. For example, Auburndale has a population per member of 15,616, while Haines City is 26,669 per member. This is a difference of over 11,053. As a result, the 2020 Census populations as applied to the Polk TPO's current membership structure demonstrate an imbalance in terms of the population per TPO Board member for several municipalities.

Table 5. 2020 Municipal Population and Population per TPO Member

Municipality	2020 Population	Number of TPO Members	Population per TPO Member
Polk County	444,898	5	NA
Lakeland	112,641	6	18,774
Winter Haven	49,219	2	24,610
Haines City	26,669	1	26,669
Bartow	19,309	1	19,309
Lake Wales	16,361	1	16,361
Auburndale	15,616	1	15,616
South County Bloc			
Fort Meade	11,929	1	11,929
Mulberry			
Frostproof			
East County Bloc			
Davenport	27,910	1	27,910
Lake Alfred			
Dundee			
Eagle Lake			
Polk City			
Lake Hamilton			

Proposed Voting Membership

In preparing the apportionment plan, MPOs must ensure there is an equitable population distribution in allocating membership to the board. As discussed earlier, Haines City, Winter Haven and the East County Bloc experienced significant growth since the 2010 Census and now have a much higher number of residents per TPO Board member in comparison to the other municipalities. This has created an imbalance in terms of the population per TPO Board member for these municipalities within the current membership structure.

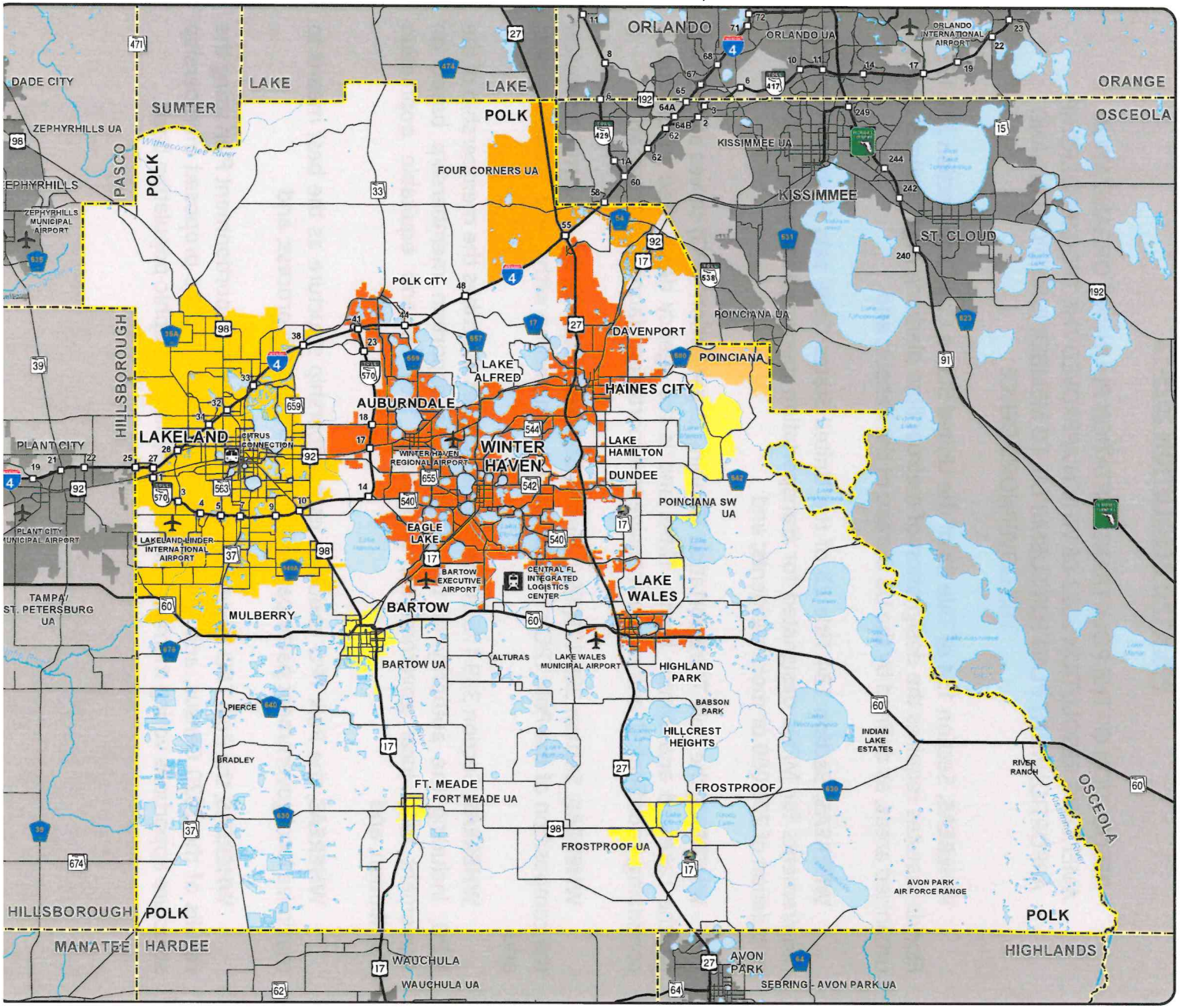
Another important point to consider in the apportionment discussion is the change in Section 339.175 (3)(a), Florida Statutes, that now allows MPO boards a maximum number of 25 members. This is a significant change since the Polk TPO's last apportionment plan was approved in 2013. Prior to this change, MPO boards, were limited to 19 members serving on an MPO board, which was the case for the Polk TPO. Therefore, the Polk TPO now has the ability to add additional members to the Board if it desires.

Proposed Voting Membership The Polk TPO proposes to raise the total voting membership of the TPO from 19 to 23 members. These four (4) additional members would be apportioned as follows: the City of Winter Haven receiving one (1) additional member, along with the City of Haines City also receiving one (1) additional member. Additionally, the cities of Davenport and Lake Alfred would each receive one (1) member. These two cities have the highest populations among the nine (9) cities that represent the TPO's shared voting blocs. By moving Davenport and Lake Alfred out of the East County Bloc it will reduce the population per member of this bloc from 27,910 to 12,493 which is more consistent with the average population per member of the other municipalities. This change will also increase the frequency of the shared voting membership rotated among the respective municipalities in the East County Bloc, which under the current membership plan is once every six (6) years based on there being six (6) municipalities in the voting bloc. Lastly, and as part of this move, the TPO proposes renaming the East County Bloc to the Central County and Ridge Bloc to better describe the cities comprising this voting bloc. The South County Bloc remains unchanged.

Table 6. Proposed Voting Membership

Local Government	2020 Population	Number of Members	Population per Member
Polk County	444,898	5	NA
Lakeland	112,641	6	18,774
Winter Haven	49,219	3	16,406
Haines City	26,669	2	13,334
Bartow	19,309	1	19,309
Lake Wales	16,361	1	16,361
Auburndale	15,616	1	15,616
Davenport	9,043	1	9,043
Lake Alfred	6,374	1	6,374
Alternate Voting Membership			
South County Bloc			
Fort Meade	11,929	1	11,929
Mulberry			
Frostproof			
Central County and Ridge Bloc			
Dundee	12,493	1	12,493
Eagle Lake			
Polk City			
Lake Hamilton			
Total Number of TPO Board Members			23
Average Population per Member			13,963

Table 6 demonstrates that the proposed membership structure apportions members on an equitable geographic-population ratio basis with the average population per member for the municipalities on the TPO being 13,963.



Polk Transportation Planning Organization

Polk County 2020 Urbanized Areas

Urbanized Area (UA) Boundaries

- Lakeland (277,568) [1,2]
- Winter Haven (253,251)
- Four Corners (49,162) [1,2]
- Poinciana (19,266) [1,2]
- UA < 50,000 population
- UA (Outside Polk County)
- Metropolitan Planning Area (MPA) Boundary [3]

Urbanized Area (UA) Population

UA	2020	2010
Lakeland	277,915	262,596
Winter Haven	253,251	201,289
Avon Park - Sebring	63,297	61,625
Kissimmee	418,404	314,071
Orlando	1,853,896	1,510,516
Tampa/St. Pete	2,783,045	2,441,770
Zephyrhills	55,133	66,609
Poinciana [1]	53,267	41,922
Four Corners [1]	92,396	35,549
Frostproof	8,092	7,626
Fort Meade	4,874	6,234
Poinciana SW	16,966	5,501
Bartow	16,948	NA
Wauchula	9,790	14,621

1. Portion of the UA is outside of Polk County.
2. Population listed consists of the portion of the Urban Area in Polk County only.
3. The Metropolitan Planning Area (MPA) Boundary for the Polk TPO includes the Lakeland and Winter Haven Transportation Management Areas (TMA), as well as all of Polk County.

N

0 2.5 5 10 15 Miles

June 20, 2023

Polk Transportation Planning Organization

POLK TPO RESOLUTION 2023-12

RESOLUTION OF THE POLK TRANSPORTATION PLANNING ORGANIZATION AMENDING RESOLUTION 2023-08 WHICH APPROVED THE TPO MEMBERSHIP APPORTIONMENT PLAN FOR SUBMITTAL TO MEMBER JURISDICTIONS AND THE GOVERNOR'S OFFICE

WHEREAS, Section 134 of Title 23 of the United States Code and Section 339.175 of Florida Statutes requires the designation of metropolitan planning organizations (MPO) in urbanized areas, as defined by the US Bureau of the Census; and

WHEREAS, Section 134 Title 23 of the United States Code sets forth membership requirements for MPOs designated for transportation management areas (TMA) with a population of 200,000 or more residents; and

WHEREAS, the Polk Transportation Planning Organization (TPO) serves as the MPO for the Lakeland and Winter Haven TMAs and is the agency designated to conduct a continuing, coordinated, and comprehensive transportation planning process; and

WHEREAS, Section 339.175(4)(a), Florida Statutes, requires the Governor to review the composition of the Polk TPO's membership in conjunction with the decennial census; and

WHEREAS, Section 339.175 of the Florida Statutes describes the membership of the MPO, including the authority of the Governor to apportion membership based on agreement with local governments, geographic location and equitable population distribution; and

WHEREAS, the Polk TPO endorses its membership structure as the best means to maximize local government participation in the TPO planning process; and

WHEREAS, the Polk TPO has prepared a Membership Apportionment Plan using the results of the 2020 Census, and this Plan demonstrates that the proposed membership structure apportions voting members on an equitable geographic-population basis.

NOW, THEREFORE, BE IT RESOLVED by the Polk Transportation Planning Organization at its regular meeting convened on October 12, 2023:

1. That the TPO Membership Apportionment Plan, to be based on the membership structure listed below, is approved for submittal to member jurisdictions and to the Governor's Office.

Jurisdiction	Voting Members
Polk County	5
City of Lakeland	6
City of Winter Haven	3
City of Haines City	2
City of Bartow	1
City of Lake Wales	1
City of Auburndale	1
City of Davenport	1
City of Lake Alfred	1
Alternate Voting Membership	
South County Bloc	
City of Fort Meade	1
City of Mulberry	
City of Frostproof	
Central County and Ridge Bloc	
Town of Dundee	1
City of Eagle Lake	
City of Polk City	
Town of Lake Hamilton	
Total Number of TPO Board Members	23

2. That the TPO Executive Director is authorized to submit the required supporting documentation for the TPO Membership Apportionment Plan.

Signed:

Jack R Myers
Jack R Myers (Oct 12, 2023 16:39 EDT)

Commissioner Jack Myers, Chairman
Polk Transportation Planning Organization (TPO)

Date: October 12, 2023

ATTEST:

Parag Agrawal
Parag Agrawal (Oct 12, 2023 15:03 EDT)

Parag Agrawal, AICP, TPO Executive Director

Approved by the TPO Attorney as to
form and legal sufficiency:

Elizabeth W. Voss
Elizabeth W.Voss (Oct 12, 2023 15:42 EDT)

Elizabeth Voss, TPO Attorney

RESOLUTION R-24-24

A RESOLUTION OF THE CITY COMMISSION OF THE CITY OF WINTER HAVEN, FLORIDA ENDORSING THE MEMBERSHIP APPORTIONMENT PLAN FOR THE POLK TRANSPORTATION PLANNING ORGANIZATION AND AUTHORIZING THE MAYOR TO EXECUTE AN AMENDED INTERLOCAL AGREEMENT AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, Section 134 of Title 23 of the United States Code and Section 339.175 of Florida Statutes requires the designation of metropolitan planning organizations (MPO} in urbanized areas, as defined by the US Bureau of the Census; and

WHEREAS, the Polk Transportation Planning Organization serves as the MPO for the Lakeland and Winter Haven Urbanized Areas and is the agency designated to conduct a continuing, coordinated, and comprehensive transportation planning process; and

WHEREAS, the Governor has requested the Polk Transportation Planning Organization (TPO) to submit a Membership Reapportionment Plan that is based on the 2020 Census and consistent with federal and state requirements; and

WHEREAS, Section 339.175 of the Florida Statutes describes the membership of the MPO, including the authority of the Governor to apportion membership based on agreement with local governments, geographic location and equitable population distribution; and

WHEREAS, the Polk TPO endorsed its current membership structure as the best means to maximize local government participation in the TPO planning process; and

WHEREAS, the Polk TPO has prepared a Membership Apportionment Plan using the results of the 2020 Census, and this Plan demonstrates that the proposed membership structure apportions voting members on an equitable geographic-population basis; and

WHEREAS, under the MPO designation procedure, member local governments are required to adopt a resolution accepting or rejecting the proposed reapportionment; and

WHEREAS, federal and state laws require the member local governments to enter into an interlocal agreement with the Florida Department of Transportation to create a MPO and delineate provisions for its operation; and

WHEREAS, the current Interlocal Agreement for Creation of the Polk Transportation Planning Organization was executed July 10, 2014; and

WHEREAS, there will be a need to update this Interlocal Agreement to reflect the new Membership Apportionment Plan based on the 2020 Census and new federal provisions for the MPO planning process.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COMMISSION OF THE CITY OF WINTER HAVEN, FLORIDA AS FOLLOWS:

1. That the City Commission of the City of Winter Haven, Florida, hereby endorses the TPO Membership Apportionment Plan approved by the TPO Board October 12, 2023, and as listed below:

Jurisdiction	Voting Members
Polk County Board of County Commissioners	Five (5)
City of Lakeland	Six (6)
City of Winter Haven	Three (3)
City of Auburndale	One (1)
City of Bartow	One (2)
City of Haines City	Two (2)
City of Lake Wales	One (1)
City of Lake Alfred	One (1)
City of Davenport	One (1)
City of Fort Meade	One (1)*
City of Mulberry	One (1)*
City of Frostproof	One (1)*
Town of Dundee	One (1)**
City of Eagle Lake	One (1)**
City of Polk City	One (1)**
Town of Lake Hamilton	One (1)**

* Alternate Voting Membership- South County Bloc
** Alternate Voting Membership- Central County and Ridge Bloc

2. That the City Commission of the City of Winter Haven, Florida, authorizes the Mayor to execute the Amended Interlocal Agreement for the Creation of the Polk Transportation Planning Organization pending the Governor's approval of the Membership Apportionment Plan.

3. This Resolution shall be effective immediately upon passage by the City Commission.

INTRODUCED AND PASSED by the City Commission of the City of Winter Haven, Florida, in Regular Session, on this 13th day of May, 2024.

CITY OF WINTER HAVEN, FLORIDA

BY: _____

MAYOR–COMMISSIONER
Nathaniel J. Birdsong, Jr.

ATTEST:

_____
CITY CLERK
Vanessa Castillo, MMC

Approved as to form:

_____
CITY ATTORNEY
Frederick J. Murphy, Jr.

DATE: April 17, 2024

TO: Honorable Mayor and City Commissioners

VIA: T. Michael Stavres, City Manager
M.J. Carnevale, Deputy City Manager
Eric Labbe, Economic Opportunity and Community Investment Director

FROM: Sean Byers, Planning Manager

SUBJECT: Resolution R-24-25: Acceptance of Easement from Prose Winter Haven Ventures, LP for installation, operation, and maintenance of fire protection and water infrastructure at the Prose Cypress Point Apartments.

BACKGROUND

Prose Winter Haven Venture, LP, is developing a 324-unit multi-family project known as Prose Cypress Point Apartments on a parcel located along the south side of Cypress Gardens Boulevard, approximately 1,350 feet east of Winterset Boulevard. As part of the project, certain water infrastructure related to fire protection was required. To allow for City installation, operation, and maintenance of this infrastructure on private property, an approximate 228 square-foot easement is required.

On March 18, 2024, the Developer submitted the executed easement document to the City for review and acceptance. On April 3, 2024, City staff recorded the easement into the Official Records of Polk County, Florida. Prior to recording, the easement was reviewed by the City's Engineering Services Division, and was found to be adequate for acceptance by the City Commission.

FINANCIAL IMPACT

There is no direct financial impact to the City with this request.

RECOMMENDATION

Staff recommends the City Commission approve Resolution R-24-25.

ATTACHMENT

- Resolution R-24-25

RESOLUTION R-24-25

A RESOLUTION OF THE CITY COMMISSION OF THE CITY OF WINTER HAVEN, FLORIDA; AFFIRMATIVELY ACCEPTING THE CONVEYANCE OF THOSE UTILITY EASEMENTS FROM PROSE WINTER HAVEN VENTURE, LP, A DELAWARE LIMITED PARTNERSHIP TO THE CITY OF WINTER HAVEN, FLORIDA, AS MORE PARTICULARLY DESCRIBED IN THAT EASEMENT EXECUTED BY PROSE WINTER HAVEN VENTURE, LP, A DELAWARE LIMITED PARTNERSHIP TO THE CITY OF WINTER HAVEN, FLORIDA AND RECORDED ON APRIL 3, 2024, IN OFFICIAL RECORDS BOOK 13062, PAGES 738 THROUGH 742, PUBLIC RECORDS OF POLK COUNTY, FLORIDA; AND FOR AN EFFECTIVE DATE.

WHEREAS, Winter Haven Prose Venture, LP (hereinafter "Developer") is the owner of a parcel of land located at 3110 Gowan Drive, Winter Haven, Florida (Parcel Identification Number 262912 000000 031050), which is within the City's municipal limits and was formerly an undeveloped parcel. The Developer has constructed a 324-unit multi-family residential project known as Prose Cypress Point Apartments; and

WHEREAS, March 18, 2024, Developer conveyed and delivered to the City of Winter Haven a perpetual Easement containing 228± square feet to install, operate, and maintain fire and water utility infrastructure; and access in upon, through, under and over the lands described in said Easement. Said Easement was recorded April 3, 2024, in Official Records Book 13062, Pages 738 through 742, public records of Polk County, Florida.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COMMISSION OF THE CITY OF WINTER HAVEN, FLORIDA:

1. The City Commission of the City of Winter Haven, Florida hereby affirmatively accepts from Prose Winter Haven Venture, LP (hereinafter "Developer") the conveyance of that Easement delivered March 18, 2024, over the lands described therein and recorded April 3, 2024, in Official Records Book 13062, Pages 738 through 742, public records of Polk County, Florida, a copy of which is attached hereto as Exhibit "A" and incorporated herein by reference.

2. This Resolution shall take effect immediately upon passage.

INTRODUCED AND PASSED by the City Commission of the City of Winter Haven, Florida, in regular session, this 13th day of May, 2024.

CITY OF WINTER HAVEN

_____
MAYOR-COMMISSIONER
Nathaniel J. Birdsong, Jr.

ATTEST:

_____
CITY CLERK
Vanessa Castillo, MMC

Approved as to form:

_____
CITY ATTORNEY
Frederick J. Murphy, Jr.

Exhibit "A"
Page 1 of 5

Prepared by:
Timothy F. Campbell, Esquire
Clark Campbell Law Firm
500 S. Florida Ave, Suite 800
Lakeland, Florida 33801
tcampbell@clarkcampbell-law.com

Return to:
City Clerk's Office
City of Winter Haven
P.O. Box 2277
451 Third Street, Northwest
Winter Haven, FL 33881

INSTR # 2024075287
BK 13062 Pgs 738-742 PG(s)5
RECORDED 04/03/2024 10:55:53 AM
STACY M. BUTTERFIELD,
CLERK OF COURT POLK COUNTY
RECORDING FEES $44.00
RECORDED BY madiashl

Portion of Parcel # 262912000000031050

EASEMENT

THIS EASEMENT made this 11th day of March, 2024, by and between Prose Winter Haven Venture, LP, a Delaware limited partnership, whose address is 7135 East Camelback Road, Suite 360, Scottsdale, Arizona 85251 ("**Grantor**") and the CITY OF WINTER HAVEN, a municipal corporation organized under the laws of the State of Florida, its post office address being P.O. Box 2277, 451 Third Street Northwest, Winter Haven, Florida 33881 ("**Grantee**").

WITNESSETH: That the Grantor, in consideration of the sum of Ten Dollars; and other valuable considerations paid, the receipt of which is hereby acknowledged, hereby grants unto the Grantee, its successors and assigns, a non-exclusive, perpetual easement (the "**Easement**") over, under, through, and across together with appurtenance and the right to install, operate, and maintain fire and water utility infrastructure and access in, over, upon, under, and through the real property in Polk County, Florida, described in Exhibit "A," attached hereto and incorporated herein by reference (the "**Easement Area**").

Grantor shall not place any landscaping, fences, structures or other obstructions within the Easement Area that would in any way hinder the access or operation and maintenance of the utilities within the Easement.

The Grantor covenants with the Grantee that it is lawfully seized and/or is a duly authorized representative of said lands and that it has good, right, and lawful authority to grant this Easement.

(Signatures appear on following pages)

1

Exhibit "A"
Page 2 of 5

IN WITNESS WHEREOF, the Grantor has caused this agreement to be executed in its name as of the day and year first written above.

ATTEST:

Print Name: Elliott Summonds
Print Address: 200 S. Orange Ave, #1575
Orlando, FL 32801

Print Name: Sarah Ermer
Print Address: 200 S. Orange Ave, #1575
Orlando, FL 32801

GRANTOR:

PROSE WINTER HAVEN VENTURE, LP
a Delaware limited partnership

By: Prose Winter Haven Alliance GP, LLC,
a Delaware limited liability company,
its general partner

By: Prose Winter Haven Alliance, LLC,
a Delaware limited liability company,
its sole member

By:
Name: Robert C. Anderson
Title: Member

STATE OF Florida
COUNTY OF Orange

The foregoing instrument was executed by means of ☑ physical presence or ☐ online notarization, this 12th day of March, 2024, by Robert C. Anderson, as member of Prose Winter Haven Alliance, LLC, a Delaware limited liability company, as sole member of Prose Winter Haven Alliance GP, LLC, a Delaware limited liability company, as general partner of Prose Winter Haven Venture, LP, a Delaware limited partnership and ☒ who is personally known to me, or ☐ who has produced _____ as identification.

Typed or Printed Name Susan M. Maret
Notary Public, State of Florida
Commission Number HH 176068
My commission expires: 9/19/2025

SUSAN M. MARET
Commission # HH 176068
Expires September 19, 2025
Bonded Thru Budget Notary Services

2

Exhibit "A"
Page 3 of 5

Attachment "A"

EASEMENT BOUNDARY DESCRIPTION

Parcel # 262912000000031050

SKETCH & DESCRIPTION – NOT A BOUNDARY SURVEY
EXHIBIT "A"

LEGAL DESCRIPTION– UTILITY EASEMENT:

BEING A PARCEL OF LAND LYING IN SECTION 12, TOWNSHIP 29 SOUTH, RANGE 26 EAST, POLK COUNTY, FLORIDA, DESCRIBED AS FOLLOWS:

COMMENCING AT THE NORTHEAST CORNER OF LOT 20, MORNINGSIDE, AS RECORDED IN PLAT BOOK 102, PAGE 1, OF THE PUBLIC RECORDS OF POLK COUNTY, FLORIDA., FOR A POINT OF COMMENCEMENT; THENCE SOUTH 71°24'35" EAST ALONG THE SOUTH RIGHT OF WAY FOR CYPRESS GARDENS BOULEVARD, A DISTANCE OF 36.38 FEET; TO THE POINT OF BEGINNING; THENCE CONTINNE SOUTH 71°24'35" EAST ALONG SAID RIGHT OF WAY, A DISTANCE OF 14.00 FEET; THENCE SOUTH 18°35'25" WEST, A DISTANCE OF 16.25 FEET; THENCE NORTH 71°24'35" WEST, A DISTANCE OF 14.00 FEET; THENCE NORTH 18°35'25" EAST, A DISTANCE OF 16.25 FEET; TO THE POINT OF BEGINNING.

CONTAINING 227.83± SQUARE FEET OR 0.005 ACRES, MORE OR LESS.

Legend:

CDD	COMMUNITY DEVELOPMENT DISTRICT
INC.	INCORPORATED
LB	LICENSED BUSINESS
LLC	LIMITED LIABILITY COMPANY
NAD	NORTH AMERICAN DATUM
No.	NUMBER
ORB	OFFICIAL RECORD BOOK
PB	PLAT BOOK
PG	PAGE
POB	POINT OF BEGINNING
POC	POINT OF COMMENCEMENT
PSM	PROFESSIONAL SURVEYOR AND MAPPER
R/W	RIGHT OF WAY

THE SIDELINES OF SAID EASEMENT ARE TO BE EXTENDED OR TRIMMED TO MEET THE BOUNDARY LINES AND SHALL NOT ENCROACH INTO ANY BUILDING OR STRUCTURES.

Harry B Rogers III
2024.02.15
'00'05- 10:29:48

HARRY B. ROGERS License Number 6418 STATE OF FLORIDA Professional Surveyor and Mapper

Harry B. Rogers III 02/15/2024
Harry B. Rogers III, PSM Date
Florida Professional Surveyor & Mapper No. 6418
for Hamilton Engineering and Surveying, LLC.
Certificate of Authorization No. LB. 8405

BASIS OF BEARINGS

BEARINGS SHOWN HEREON ARE GRID BASED ON THE FLORIDA WEST TRANSVERSE MERCATOR STATE PLANE COORDINATE SYSTEM NAD83 DATUM (2011 ADJUSTMENT). THE SOUTHERLY RIGHT OF WAY OF CYPRESS GARDENS BOULEVARD, HAVING A GRID BEARING OF S 71°24'35" E.

INFORMATION NOT COMPLETE WITHOUT ALL SHEETS

Not valid without the signature and the original raised seal or the unique signature and the digital seal of a Florida Licensed Surveyor and Mapper.

HAMILTON
ENGINEERING & SURVEYING, LLC
www.HamiltonEngineering.US LB 8405 CA 8424

3409 W LEMON ST TAMPA, FL 33609 813.250.3535 | 2400 N. FORSYTH 106 ORLANDO, FL 32807 407.262.0629 | 8348 CONSUMER CIRCLE SARASOTA, FL 32807 941.377.9178

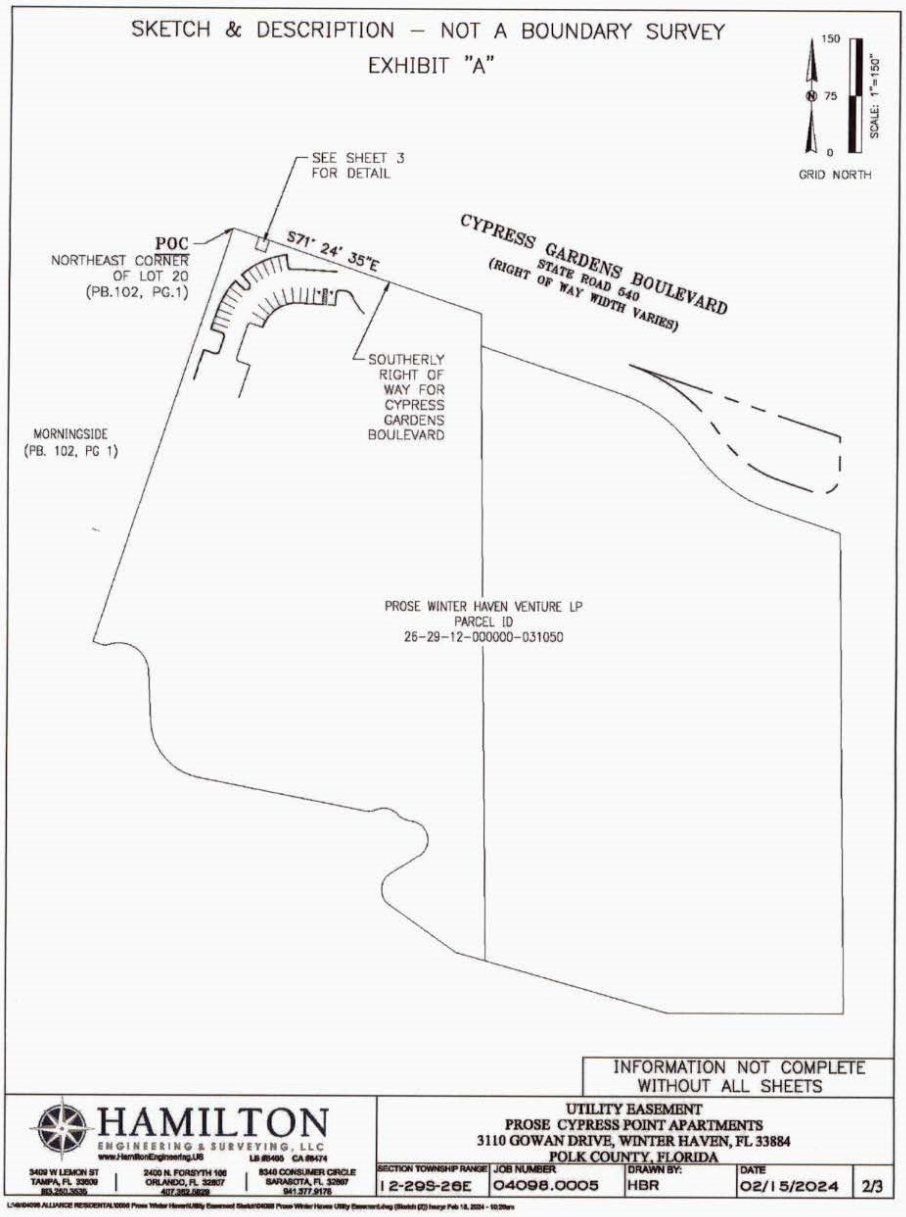
UTILITY EASEMENT
PROSE CYPRESS POINT APARTMENTS
3110 GOWAN DRIVE, WINTER HAVEN, FL 33884
POLK COUNTY, FLORIDA

SECTION TOWNSHIP RANGE	JOB NUMBER	DRAWN BY:	DATE	
12-29S-26E	04098.0005	HBR	02/15/2024	1/3

L:\04098 ALLIANCE RESIDENTIAL\0005 Prose Winter Haven\Utility Easement Sketch\04098 Prose Winter Haven Utility Easement.dwg [Sketch] harryr Feb 15, 2024 - 10:28am

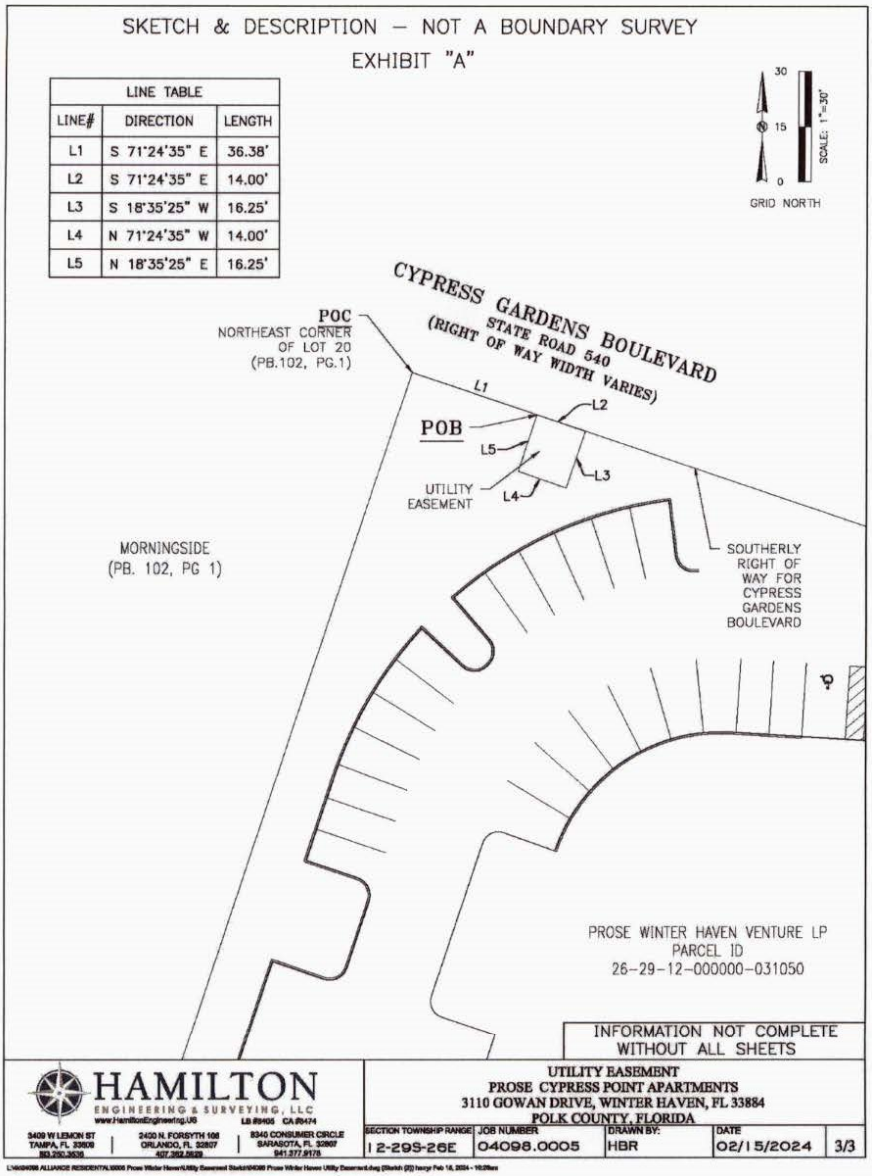
4

Exhibit "A"
Page 4 of 5



5

Exhibit "A"
Page 5 of 5



6

DATE: April 17, 2024

TO: Honorable Mayor and City Commissioners

VIA: T. Michael Stavres, City Manager
M.J. Carnevale, Deputy City Manager
Eric Labbe, Economic Opportunity and Community Investment Director
Sean Byers, Planning Manager

FROM: Heather Reuter, Senior Planner

SUBJECT: Ordinance O-24-25: Voluntary annexation of a parcel generally located north of Highway 540 West, east of King Road, and south of Crosstower Drive. The area covered by this request is 1.19± acres.

BACKGROUND

Cypress Southeast, LLC, petitioner, requests the City Commission annex one (1) parcel, totaling 1.19± acres, generally located north of Highway 540 West, east of King Road, and south of Crosstower Drive. The petitioner is seeking annexation for the purpose of developing the subject property. The parcel is contiguous to the City to the north, and the annexation of this parcel will not create an enclave.

FINANCIAL IMPACT

Current taxable value of the subject parcel is approximately $21,629. Based on the City's current tax millage rate of 6.59 mills, expected annual tax revenue will be approximately $143. Additional revenue is expected upon the development of the property.

The Voluntary Petition for Annexation which is the basis for this Ordinance is being processed and considered in order to comply with the requirements of Section 171.044 of the Florida Statutes. Accordingly, the exemption set forth in Section 166.041(c)1 of the Florida Statutes applies and a business impact estimate is not required as a result of this Ordinance.

RECOMMENDATION

Staff recommends the City Commission approve Ordinance O-24-25.

ATTACHMENT

- Ordinance O-24-25

ORDINANCE NO. O-24-25

AN ORDINANCE EXTENDING THE CORPORATE LIMITS OF THE CITY OF WINTER HAVEN, FLORIDA, SO AS TO INCLUDE THEREIN ADDITIONAL TERRITORY LYING CONTIGUOUS AND ADJACENT TO THE PRESENT BOUNDARIES OF THE CITY OF WINTER HAVEN, FLORIDA; DESCRIBING SAID ADDITIONAL TERRITORY; REPEALING ALL ORDINANCES IN CONFLICT HEREWITH; PROVIDING FOR THE ADMINISTRATIVE CORRECTION OF SCRIVENER'S ERRORS; AND PROVIDING AN EFFECTIVE DATE. (General Location: A parcel generally located north of Highway 540 West, east of King Road, and south of Crosstower Drive. The area covered by this request is 1.19± acres.)

WHEREAS, a petition to integrate territory into the City of Winter Haven, Florida, has been filed requesting the City of Winter Haven extend its corporate limits to include certain property herein described; and

WHEREAS, the City of Winter Haven deems it expedient and practical to incorporate said territory as the same is in conformity with overall plans for extending the boundaries of the City of Winter Haven into the Greater Winter Haven area; and

WHEREAS, the property herein described is contiguous and adjacent to the corporate limits of the City of Winter Haven, and the property will become a part of the unified corporate area with respect to municipal services and benefits; and

WHEREAS, the Voluntary Petition for Annexation which is the basis for this Ordinance is being processed and considered in order to comply with the requirements of Section 171.044 of the Florida Statutes. Accordingly, the exemption set forth in Section 166.041(c)1 of the Florida Statutes applies and a business impact estimate is not required as a result of this Ordinance.

NOW THEREFORE, BE IT ENACTED BY THE PEOPLE OF THE CITY OF WINTER HAVEN, FLORIDA, AS FOLLOWS:

1. A petition has been filed to integrate territory into the City of Winter Haven, Florida, as attached herein as Exhibit "A."

2. That the City Commission of the City of Winter Haven does hereby annex into the corporate limits of the City of Winter Haven, Florida, the following described property:

See Composite Exhibit "B" attached hereto and made a part hereof consisting of two (2) pages, the first being a legal description, and the second being a location map.

3. All ordinances in conflict herewith are hereby repealed to the extent necessary to give this Ordinance full force and effect.

4. The correction of typographical and/or scrivener's errors which do not affect the intent may be authorized by the City Manager or designee, without need of public hearing, by filing a corrected or recodified copy of same with the City Clerk

5. This Ordinance shall become effective immediately upon passage on second reading.

INTRODUCED on first reading this 13th day of May, 2024.

PASSED on second reading this 28th day of May, 2024.

CITY OF WINTER HAVEN, FLORIDA

_____
MAYOR-COMMISSIONER
Nathaniel J. Birdsong, Jr.

ATTEST:

_____
CITY CLERK
Vanessa Castillo, MMC

Approved as to form:

_____
CITY ATTORNEY
Frederick J. Murphy, Jr.

Exhibit "A"
Page 1 of 6

WINTER HAVEN
THE CHAIN OF LAKES CITY

SPACE FOR RECORDING

PETITION/CONSENT FOR ANNEXATION

The following information is required for submission of an application to annex into the city limits of Winter Haven. **Please print or type the required information below.**

Property Owner(s) Details

Name(s) of Property Owner(s): Cypress Southeast, LLC
Mailing Address: 123 1st St. N. W.H. FL 33881
Phone: 863-604-2348 Email: Steve@brookslawgroup.com
Name of Representative (if applicable): Steve Brooks
Mailing Address: 123 1st St. N. W.H. FL 33881
Phone: 863-604-2348 Email: Steve@brookslawgroup.com

Property Details

Property Address or General Location: 0 Hwy 540 W
Parcel Identification Number(s): 26283I-000000-043180
Legal Description of the Property (Preferably Metes & Bounds): W 290 Ft of NW¼ of SW¼ Lying N of R/W SR 655 as Rec in OR 3759-0316 & Lying S of SR 540
Proof of Property Ownership (copy attached): Deed Attached
Reason for Request: to Change to Commercial
Present Use of the Property: Vacant
Existing Structures Located on the Site: Vacant

FOR OFFICE USE ONLY

Total Acreage: 1.19
Assessed Property Value: $21,629 Taxable Value: $21,629
Subdivision: N/A
Present County Future Land Use Designation: RS

Exhibit "A"
Page 2 of 6

OWNER/AGENT SIGNATURE PAGE

I / We, Steve Brooks Manager Cypress Southeast, LLC. being duly sworn, depose and say that I / we own the properties involved in this petition/consent and that I / we authorize the City of Winter Haven, in accordance with adopted City policy, rules and regulations (Resolution No. R-87-07), and in conformance with State law, to process this petition/consent and annex said property into the corporate limits of the City of Winter Haven. This Petition and Consent shall be irrevocable. No further consent of Owner shall be required for the City to annex said property immediately, or at some time in the future.

Further I / we or any agent or lessee of the subject property authorized by me / us (see attached proof of authorization) to file this petition/consent, deposes and say that the statements and answers contained in the petition/consent for annexation, and any information attached thereto, present the arguments in behalf of this petition/consent to the best of my / our ability; and that the statements and information referred to above are in all respects true and correct to the best of my / our knowledge and belief.

OWNER(S)/AGENT(S)

Signature of Owner/Agent	Signature of Owner/Agent
Printed Name of Owner/Agent	Stephen Brooks Printed Name of Owner/Agent
Signature of Owner/Agent	Signature of Owner/Agent
Printed Name of Owner/Agent	Printed Name of Owner/Agent

STATE OF Florida
COUNTY OF Polk

The foregoing instrument was acknowledged before me by means of ☑ physical presence or ☐ online notarization this 11 day of April, 2024, by _____, who is ☐ personally known to me or ☑ has produced Driver's License as identification and who (did) (did not) take an oath.

_____
SIGNATURE OF NOTARY PUBLIC

Benjamin Torres
TYPED, PRINTED or STAMPED NAME OF NOTARY PUBLIC

Notary Public State of Florida
Benjamin Colon Torres
My Commission HH 463998
Expires 11/13/2027

Exhibit "A"
Page 3 of 6

Sunbiz.org DIVISION of CORPORATIONS an official State of Florida website

Detail by Entity Name

Florida Limited Liability Company
CYPRESS SOUTHEAST, LLC

Filing Information

Document Number	L10000041705
FEI/EIN Number	27-2647621
Date Filed	04/19/2010
Effective Date	04/19/2010
State	FL
Status	ACTIVE

Principal Address

123 FIRST STREET N
WINTER HAVEN, FL 33881

Changed: 01/30/2013

Mailing Address

123 FIRST STREET N
WINTER HAVEN, FL 33881

Changed: 01/30/2013

Registered Agent Name & Address

BROOKS, STEPHEN K
123 FIRST STREET N
WINTER HAVEN, FL 33881

Address Changed: 01/30/2013

Authorized Person(s) Detail

Name & Address

Title MGRM

BROOKS, STEPHEN K
123 FIRST STREET NW
WINTER HAVEN, FL 33881

Annual Reports

Report Year	Filed Date
2022	01/31/2022
2023	02/21/2023
2024	01/27/2024

Document Images

01/27/2024 -- ANNUAL REPORT	View image in PDF format
02/21/2023 -- ANNUAL REPORT	View image in PDF format

Exhibit "A"
Page 4 of 6

INSTR # 2018129473
BK 10520 Pgs 0457-0459 PG(s)3
06/18/2018 09:38:13 AM
STACY M. BUTTERFIELD,
CLERK OF COURT POLK COUNTY
RECORDING FEES 27.00
DEED DOC 175.00

Prepared by and Return to:
Brokers Title of Central Florida, LLC
Rebecca S. Hinshaw
100 E. Sybelia Ave. Suite 301
Maitland, Florida 32751
Our File Number: 18-0323

For official use by Clerk's office only

STATE OF Florida)
COUNTY OF Orange)
)

TRUSTEE'S DEED

THIS INDENTURE, made this 6th day of June, 2018, between SunTrust Bank, as Trustee of the Mabel L. Allen Revocable Trust dated March 7, 1991, as amended whose mailing address is: 200 S. Orange Ave., SOAB Bldg-9th Floor, Orlando, FL 32801, party of the first part, and Cypress Southeast, LLC, a Florida Limited Liability Company, whose mailing address is: 123 1st Street North, Winter Haven, FL 33880, party/parties of the second part,

WITNESSETH:

First party, for and in consideration of the sum of TEN AND NO/100 DOLLARS ($10.00) and other valuable considerations, receipt whereof is hereby acknowledged, does hereby grant, bargain, sell, aliens, remises, releases, conveys and confirms unto second party/parties, his/her/their heirs and assigns, the following described property, to wit:

Parcel 1:

Beginning at the Northeast corner of the NE 1/4 of SE 1/4 of Section 36, Township 28 South, Range 25 East, Polk County, Florida, run thence West 79 feet, thence South 655 feet, thence South 24°30' West 365 feet, thence Eastwardly along shore line of Eagle Lake to Township line, thence North to Point of Beginning; and

Beginning at the Northwest corner of the NW 1/4 of SW 1/4 of Section 31, Township 28 South, Range 26 East, Polk County, Florida, run thence East 290 feet, thence South 705 feet, thence South 30° West 485 feet to Eagle Lake, thence Westwardly along shore line of Eagle Lake to Township line, thence North to Point of Beginning.

Parcel 2:

Beginning at the Northeast corner of U.S Government Lot 1 in Section 36, Township 28 South, Range 25 East, Polk County, Florida, run thence S 89°09' West, along the North boundary of said U.S. Government Lot 1 a distance of 79 feet, thence South a distance of 630.67 feet to a concrete marker, thence S 24°34' W through a concrete marker located at 408.87 feet for a distance of 424 feet, more or less, to the waters of Eagle Lake, thence Southeasterly along the waters of Eagle Lake to their intersection with the East boundary of said U.S. Government Lot 1, thence North along the East boundary of said U.S. Government Lot 1 to the Point of Beginning.

LESS AND EXCEPT:

A portion of the NE 1/4 of the SE 1/4 of Section 36, Township 28 South, Range 25 East, Polk County, Florida, being more particularly described as follows:

Commence at the Northeast corner of the Northeast 1/4 of the Southeast 1/4 of Section 36, Township 28 South, Range 25 East (said point being a railroad spike in pavement); thence South 89°34'49" West, along the Baseline of Survey of State Road 540 (Existing) as shown on the Florida Department of Transportation (F.D.O.T.) State Road 655 Right

thence Southeasterly, along the waters of Eagle Lake to their intersection with the Easterly line of aforesaid Southeast 1/4; thence North 00°26'18" East, along said Easterly line, to a point of intersection with the aforesaid Southerly Right of Way line of SR540 (Realign), same being a point on the arc of a curve concave to the Southwest , having a radius of 2225.83 feet; thence Northwesterly, along the arc of said curve and along said Southerly Right of Way line of SR 540 (Realign), through a central angle of 02°16'20", a distance of 88.28 feet (said arc having a Chord Bearing of North 64°00'21" West and a Chord Distance of 88.27 feet to the Point of Beginning.

And,

A portion of the NW 1/4 of the SW 1/4 of Section 31, Township 28 South, Range 26 East, Polk County, Florida, being more particularly described as follows:

Commence at the Northwest corner of the Northwest 1/4 of the Southwest 1/4 of Section 31, Township 28 South, Range 26 East, (said point being a railroad spike in pavement); thence North 89°49'32" East, along the Baseline of Survey of State Road 540 (Existing) as shown on the Florida Department of Transportation (F.D.O.T.) State Road 655 Right of Way Map, Section 16120-2504, W P I No. 1118364, Sheet 3, a distance of 27.12 feet; thence South 00°10'28" East, perpendicular to said line, 50.00 feet to a point of intersection with the Southerly Right of Way line of aforesaid SR 540 (Existing); thence North 89°49'32" East, along said Southerly Existing Right of Way line, a distance of 262.37 feet; thence South 00°26'18" West, along a line parallel with the Westerly line of aforesaid Southwest 1/4, a distance of 437.51 feet to a point of intersection with the Southerly Right of Way line of State Road 540 (Realign) as shown on aforesaid F.D.O.T. Right of Way Map and to the Point of Beginning; thence continue South 00°26'18" West, along said parallel line, a distance of 225.67 feet (per F.D.O.T. Right of Way Map) ; thence South 30°26'18" West, a distance of 485 feet, more or less, to the waters of Eagle Lake; thence Westwardly, along the shore line of Eagle Lake to the Westerly line of aforesaid Southwest 1/4; thence North 00°26'18" East, along said Westerly line to a point of intersection with the Southerly Right of Way line of aforesaid State Road 540 (Realign), same being a point on the arc of a curve concave to the Southwest having a radius of 2225.83 feet; thence Easterly along the arc of said curve and said Southerly Right-of Way line, through a central angle of 08°44'08" a distance of 339.35 feet (said curve having a chord bearing of South 58°30'07" East and a chord distance of 339.03 feet) to the Point of Beginning.

Subject, however, to all covenants, conditions, restrictions, reservations, limitations, easements and to all applicable zoning ordinances and/and restrictions and prohibitions imposed by governmental authorities, if any.
TOGETHER with all the tenements, hereditaments and appurtenances thereto belonging or in anywise appertaining.
TO HAVE AND TO HOLD the same in fee simple forever.
AND the grantor hereby covenants with said grantee that the grantor is lawfully seized of said land in fee simple; that the grantor has good, right and lawful authority to sell and convey said land; that the grantor hereby specially warrants the title to said land by, through and under said grantor and no others and will defend the same against the lawful claims of all persons, arising by, through or under the grantor and no others.

IN WITNESS WHEREOF, first party has signed and sealed these present the date set forth on this 6th day of June, 2018.

Signed, sealed and delivered
in the presence of:

Witness signature

TRAVIS GREENE
Print witness name

SunTrust Bank, as Trustee of the Mabel L. Allen
Revocable Trust dated March 7, 1991, as amended

By:
Jean C. Mathis, Vice President

Exhibit "A"
Page 6 of 6

State of Florida
County of Orange

THE FOREGOING INSTRUMENT was acknowledged before me this 6th day of June, 2018 by Jean C. Mathis as Vice President of SunTrust Bank, as Trustee of the Mabel L. Allen Revocable Trust dated March 7, 1991, as amended X who is personally known to me or ____who has produced _____ as identification.

Gary O Heupel
Notary Public

GARY O HEUPEL
Print Notary Name

My Commission Expires: 3/30/2022

Notary Seal

GARY O. HEUPEL
Notary Public – State of Florida
Commission # GG 177146
My Comm. Expires Mar 30, 2022
Bonded through National Notary Assn

Exhibit "B"
Page 1 of 2

Ordinance No. O-24-25
Annexation Boundary Description

R. T. S. Sub. Parcel
262831-000000-043180

Described As:
Beginning at the Northwest corner of the Northwest 1/4 of Southwest 1/4 of Section 31, Township 28 South, Range 26 East, Polk County, Florida, run thence East 290 feet, thence South 705 feet, thence South 30° West 485 feet to Eagle Lake, thence Westwardly along shore line of Eagle Lake to Township line, thence North to Point of Beginning, lying north of the realignment of SR 540 as shown in FDOT section map 16120-2504, lying east of King road as shown in FDOT section map 16120-2504, and lying south of Crosstower dr. as shown in FDOT section map 16120-2504; said Crosstower dr. being shown as transferred to Polk County by said section map.

Also Described As:
A portion of the NW 1/4 of the SW 1/4 of Section 31, Township 28 South, Range 26 East, Polk County, Florida, being more particularly described as follows:

Commence at the Northwest corner of the Northwest 1/4 of the Southwest 1/4 of Section 31, Township 28 South, Range 26 East, (said point being a railroad spike in pavement); thence North 89°49'32" East, along the Baseline of Survey of State Road 540 (Existing) as shown on the Florida Department of Transportation (F.D.O.T.) State Road 655 Right of Way Map, Section 16120-2504, WP I No. 1118364, Sheet 3, a distance of 27.12 feet; thence South 00°10'28" East, perpendicular to said line, 50.00 feet to a point of intersection with the Southerly Right of Way line of aforesaid SR 540 (Existing) for the Point of Beginning; thence North 89°49'32" East, along said Southerly Existing Right of Way line, a distance of 262.37 feet; thence South 00°26'18" West, along a line parallel with the Westerly line of aforesaid Southwest 1/4, a distance of 277.35 feet to a point of intersection with the Northerly Right of Way line of State Road 540 (Realign) as shown on aforesaid F.D.O.T. Right of Way Map being a curve concave to the northeast and having delta angle 07°07'32" to the left, a radius of 2357.83 feet, and cord bearing of N 59°44'46" W, thence along said curve an arc length of 293.23 feet, thence N 15°36'03" W a distance of 23.43 feet, thence N 00°26'29" W 106.33 feet to the Point of Beginning.

An Area Containing: 1.19 acres more or less.

Based on information obtained from the deed and FDOT right of way maps.
Prepared and reviewed by the Engineering Division of the City of Winter Haven, (JL)

Exhibit “B”
Page 2 of 2



DATE: April 26, 2024

TO: Honorable Mayor and City Commissioners

VIA: T. Michael Stavres, City Manager
M.J. Carnevale, Deputy City Manager

FROM: C.J. Scott, Chief Financial Officer

SUBJECT: Ordinance No. O-24-26 an Ordinance Amending Ordinance O-24-21 appropriating surplus funds for Construction Projects

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BACKGROUND

On April 8, 2024 the City Commission approved Ordinance No. O-24-21 transferring $5,386,019 of the General Fund's FY2023 surplus to the 2021 Construction Fund with $1,600,642 dedicated to fund the Lake Conine project and the remaining balance of $3,785,377 to fund other capital projects to be determined at a later date.

The Winter Haven Recreation & Cultural Center (WHRCC) has been a priority project dating back to 2017. The original concept provided improvements to the fitness center and addressed ADA needs. However, in 2021, during the initial design and master plan efforts, the breadth of the project warranted a complete rebuild rather than a limited renovation. The proposed new building will feature a multi-use gymnasium, a zero-grade entry swimming pool, a splash pad, new playground, outdoor sport court, and all the amenities of an upgraded fitness center, community meeting space, library/technology area with WiFi, business support area, kitchen (caterer), offices, restrooms and additional storage.

The City continues to experience construction costs exceeding the appropriated funds allocated to the cost of a project. In the case of the WHRCC, the increase in cost can be attributed to three major categories; site work factors which were finalized towards the final plan development/bidding, continued inflation for the cost of materials and services, and certain finishes and specifications placed within the bid by the design team prior to the Guaranteed Maximum Price (GMP) development.

The City contracted with Collage Design and Construction Group (Collage) to provide Construction Manager at Risk Services (CMAR) for the WHRCC modernization and renovation project. Collage proposed a GMP of $19,995,749. Taking into account the required interior costs such as furniture, fixture, equipment and contingencies, provides a total cost of $21,342,303. Current appropriated funds for the WHRCC reflect a balance of $18,072,033; providing a delta of $3,270,270.

Staff recommends funding from the Library Impact Fee Fund in the amount of $150,000 to support library services and funding transferred from the 2021 Construction Fund to the 2015 Construction Fund in the amount of $3,120,270 to support the final costs.

Funding from the Library Impact Fee Fund will be reflected in the FY2025 budget.

The transfer of funds from the 2021 Construction Fund to the 2015 Construction Fund provides a remaining available surplus balance in the 2021 Construction Fund of $1,962,703 for other projects, as needed, to include the potential acquisition of The Historic Ritz Theatre. This surplus balance includes the remaining surplus transferred from the General Fund ($3,785,377-$3,120,270) $665,107 and the Fiscal Year 2023 year-end available balance of $1,297,596.

RECOMMENDATION

Staff recommends the City Commission approve Ordinance NO. O-24-26 approving a transfer of $3,120,270 from the 2021 Construction Fund balance to the 2015 Capital Projects Fund and authorizing the City Manager or his designee to take all other necessary actions related thereto.

ATTACHMENT

Ordinance No. O-24-26

ORDINANCE NO. O-24-26

AN ORDINANCE OF THE CITY OF WINTER HAVEN, FLORIDA, AMENDING ORDINANCE NO. O-24-21, REGARDING APPROPRIATION OF FUNDS FOR DEFRAYING EXPENSES OF THE MUNICIPAL GOVERNMENT OF THE CITY OF WINTER HAVEN FOR THE FISCAL YEAR COMMENCING OCTOBER 1, 2023; PROVIDING FOR SEVERABILITY; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, on April 8, 2024, the City Commission passed Ordinance O-24-21 making appropriations of funds for defraying the expenses of the municipal government of the City of Winter Haven for Fiscal Year 2023-2024; and

WHEREAS, the City's fiscal policy prescribes any Unassigned Fund Balance in excess of 30% may be transferred to the Construction Fund to defray costs and cover contingencies as recommended by the City Manager and approved by the City Commission; and

WHEREAS, Ordinance O-24-21 provided a transfer of the General Fund's surplus available fund balance, in the amount of $5,386,019, to the 2021 Construction Fund; and

WHEREAS, revenue and expenditure estimates are made prior to the beginning of each fiscal year, and

WHEREAS, events occur during each fiscal year which were not anticipated by the beginning estimates; and

WHEREAS, departmental budgets shall not exceed their appropriations; and

WHEREAS, the City Commission of the City of Winter Haven, does hereby find that it is in the best interest of the City and its citizens to amend Ordinance No. O-24-21, regarding appropriation of funds for defraying expenses of the municipal government of the City of Winter Haven for the fiscal year commencing October 1, 2023, as provided herein,

NOW THEREFORE, BE IT ENACTED BY THE PEOPLE OF THE CITY OF WINTER HAVEN, FLORIDA, AS FOLLOWS:

1. The following revenue line in the 2015 Construction Fund is hereby amended as follows:

Transfer from the 2021 Construction Fund Increase from $0 to $3,120,270
306-381000-305

2. The following expenditure line in the 2021 Construction Fund is hereby amended as follows:

Transfer to the 2015 Construction Fund Increase from $0 to $3,120,270
305-80-412-9196

3. All ordinances or parts of ordinances in conflict herewith are hereby repealed to the extent necessary to give this Ordinance full force and effect.

4. If any word, sentence, clause, phrase or provision of this ordinance, for any reason, is held to be unconstitutional, void, or invalid, the validity of the remainder of this ordinance shall not be affected thereby.

5. That sections of this Ordinance may be renumbered or relettered and the correction of typographical and/or scrivener's errors which do not affect the intent may be authorized by the City Manager or his designee, without need of public hearing, by filing a corrected or recodified copy of same with the City Clerk.

6. This Ordinance shall take effect immediately upon its passage.

INTRODUCED on first reading this 13th day of May, 2024.

PASSED on second reading this 28th day of May, 2024.

CITY OF WINTER HAVEN, FLORIDA

_____
MAYOR-COMMISSIONER
Nathanial J. Birdsong, Jr.

ATTEST:

_____
CITY CLERK
Vanessa Castillo, MMC

Approved as to form:

_____

CITY ATTORNEY
Frederick J. Murphy, Jr.

DATE: May 10, 2024

TO: Honorable Mayor and City Commissioners

VIA: T. Michael Stavres, City Manager
M.J. Carnevale, Deputy City Manager
Charlie Bird, Assistant City Manager – Public Safety
Sonny Emery, Fire Chief

FROM: Michael T. Waters, Fire Operations Chief

SUBJECT: Ordinance O-24-28: Authorizing the City Manager or his designee to opt in or out of any declared Polk County Fire Department Burn Bans within the municipal limits of the City Of Winter Haven

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BACKGROUND

Polk County and the City of Winter Haven, frequently face extended periods of dry weather due to limited rainfall and other atmospheric factors. During these periods, the likelihood of brush fires and uncontrolled fires increases, with little indication of an imminent reduction in fire risk. Additionally, changing weather conditions can further amplify the threat of fires.

The risk of uncontrolled fires poses significant concerns for the health, safety, and overall welfare of the residents of Winter Haven and the surrounding areas. This risk may continue for an indefinite period.

Under Polk County Ordinance 08-015, as amended, the Polk County Fire Chief or their designee has the authority to declare a Fire Department Burn Ban when there is an increased risk of fires conditions exist due to drought conditions as indicated by the Keech-Byram Drought Index (KBDI). The KBDI is a continuous reference scale ranging from 1 to an extreme drought level of 800 and is based on the capacity of soil required to hold 8 inches of moisture. Municipalities can be included in the issuance of a County Burn Ban. In order to do so, the respective City Commission must assign to the City Manager or other administrative member the authority to opt in or opt out when a County Burn Ban is issued.

FINANCIAL IMPACT

There is no financial impact associated with Ordinance O-24-28.

RECOMMENDATION

Staff recommends the City Commission approve Ordinance O-24-28 – assigning to the City Manager or his designee the authority to opt in or out of a Polk County Fire Department Burn Ban within Winter Haven's city limits, in accordance with the terms outlined in Polk County Ordinance 08-015, as amended.

ATTACHMENTS

- Ordinance O-24-28
- Polk County Ordinance 08-015 (amended)

ORDINANCE NO. O-24-28

AN ORDINANCE OF THE CITY COMMISSION OF THE CITY OF WINTER HAVEN, FLORIDA AUTHORIZING THE CITY MANAGER OR HIS DESIGNEE TO OPT IN OR OUT OF ANY DECLARED POLK COUNTY FIRE DEPARTMENT BURN BANS WITHIN THE MUNICIPAL LIMITS OF THE CITY OF WINTER HAVEN, FLORIDA, AND AS MORE PARTICULARLY SET FORTH IN THIS ORDINANCE; REPEALING ALL ORDINANCES AND RESOLUTIONS IN CONFLICT HEREWITH; PROVIDING FOR SEVERABILITY, THE ADMINISTRATIVE CORRECTION OF SCRIVENER'S ERRORS; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, Polk County and the City of Winter Haven, Florida at times experience dry weather conditions for an extensive period of time because of the lack of rainfall and other atmospheric conditions; and

WHEREAS, during these periods there are no signs of abatement of these dangerous fire conditions in the near future; and

WHEREAS, the atmospheric conditions or local circumstances may rapidly change to increase risk of brush fires and uncontrolled fires; and

WHEREAS, the threat of uncontrolled fires presents a risk to public health, safety and the general welfare of the residents and citizens of the City of Winter Haven, Florida and the general public and may continue to exist for an undetermined length of time; and

WHEREAS, Polk County Ordinance 08-015 as amended authorizes the Polk County Fire Chief or the Fire Chief's Designee to declare a Fire Department Burn Ban during periods in which the atmospheric conditions increase the risk of brush fires and uncontrolled fires which Burn Ban may be effective within the municipal limits of the City of Winter Haven, Florida if the City Commission by Ordinance authorizes the City Manager or his designee to opt in or out of such a Polk County declared Burn Ban; and

WHEREAS, the City of Winter Haven City Commission desires to authorize the City Manager or his designee to opt in or out of a declared Polk County Fire Department Burn Ban within the municipal limits of the City of Winter Haven as the City Manager or his designee may deem necessary and appropriate in accordance with the provisions established in Polk County Ordinance 08-015 as amended.

NOW THEREFORE, BE IT ENACTED BY THE PEOPLE OF THE CITY OF WINTER HAVEN, FLORIDA, AS FOLLOWS:

Section 1. The above recitals are incorporated herein and form a factual basis for the passage of this Ordinance.

Section 2. The Commission hereby authorizes the City Manager or his designee to opt in or out of a Polk County Fire Department Burn Ban in accordance with the provisions in Polk County Ordinance 08-015 as amended.

Section 3. The correction of typographical and/or scrivener's errors which do not affect the intent may be authorized by the City Manager or his or her designee, without need of a public hearing, by filing a corrected or re-codified copy of same with the City Clerk.

Section 4. All ordinances and/or resolutions in conflict herewith are hereby repealed but only to the extent necessary to give this Ordinance full force and effect.

Section 5. If any provision or portion of this Ordinance is declared by any court of competent jurisdiction to be void, unconstitutional, or unenforceable, then all remaining provisions and portions of this Ordinance not declared to be void, unconstitutional, or unenforceable shall remain in full force and effect.

Section 6. This Ordinance shall take effect immediately after passage at second reading.

INTRODUCED on first reading this 13th day of May, 2024.

PASSED on second reading this 28th day of May, 2024.

CITY OF WINTER HAVEN, FLORIDA

_____
MAYOR-COMMISSIONER

ATTEST:

_____
CITY CLERK

APPROVED AS TO FORM:

_____
CITY ATTORNEY

ORDINANCE NO. 08- 015

AN ORDINANCE OF THE POLK COUNTY BOARD Of COUNTY **COMMISSIONERS** TO BE ENTITLED THE "POLK COUNTY FIRE DEPARTMENT BURN . BAN ORDINANCE"; PROVIDING FOR LEGISLATIVE INTENT; PROVIDING DEFINITIONS; PROVIDING FOR A PROCEDURE FOR THE POLK COUNTY FIRE CHIEF OR THE FIRE CHIEF'S DESIGNEE TO DECLARE· **A BURN BAN;** PROVIDING FOR **APPLICABILITY; PROVIDING· A PENAL**TY; **PROVIDING FOR PROCEDURES** TO **REPEAL A [11]FIRE DEPARTMENT BURN BAN"; PROVIDING FOR SEVERABILIY; PROVIDING AN EFFECTIVE DATE.**

WHE EAS, Polk County, by and through its Board of County Commissioners, wishes to promote, protect, and improve the health, safety and welfare of the citizens of unincorporated Polk County; and

WHEREAS, Polk County at times experiences dry weather conditions for an extensive period of time because of the lack of rainfall and other atmospheric conditions; and

WHEREAS, during these periods there are no signs of abatement of these dangerous fire conditions in the near future; and

WHEREAS, Polk County during these period$ of dry weather experiences an increase in brush fires and uncontrolled fires; and

WHEREAS, Polk County at times has over fifty pe nt ofthe County with an average of 500 on the Keetch-Byram Drought Index; and

WHEREAS, the atmospheric condition or local circumstances may rapidly change to increase risk of brush fires and uncontrolled fires; and

WHEREAS, the Board of County Commissioners .wishes to create a procedure to allow for Polk County to promptly and prudently read to these changes to prevent uncontrolled fires; and

WHEREAS, it is in the interest of public health, safety and welfare for Polk County to enhance regulation of open burning during these times of dangerous fire conditions; and

WHEREAS, Chapter 62-256, Florida Administrative Code, codifying the Department of Environmental Protection's regulatory authority in the area of open burning, allows a County, by ordinance, to further regulate open burning; and

WHEREAS, Chapter 69A-60, Florida Administrative Code, codifying The Florida Fire Prevention Code, adopted the NFPA 1, the Uniform Fire Code, Florida 2003 Edition; and

WHEREAS, Section 10.11.4 of the NFPA 1, authorizes a County to prohibit any or all open fires when atmospheric conditions or local circumstances make such fires hazardous; and

WHEREAS, Florida Statutes Section 633.025, requires Polk County to enforce the Florida Fire Prevention Code within unincorporated Polk County; and

WHEREAS, Florida Statutes Section 633.121 authorizes the Polk County Fire Chief or the Fire Chiefs designee to enforce the Fire Prevention Code.

NOW, THEREFORE, BE IT **ORDAINED BY** THE BOARD OF **COUNTY COMMISSIONERS OF POLK COUNTY, FLORIDA, THAT:**

Section 1. **Legislative** In-.nt

The Polk County Board of County Commissioners intends to create a procedure to allow for Polk County to promptly and prudently react to atmospheric changes arid local circumstances to prevent harm to the public safety, health and general welfare during penods of •Fire Hazard Conditions.• Nothing herein is intended to be the exclusive means of the County enacting a "Bum Ban.•

Section 2. Short title

This Ordinance shall be known and may be cited as the "Polk County Fire Deparbnent Bum Ban Ordinance.•

Section 3. Definitions.

(A). rd of County Commissioners: shall mean the Polk County Board of County Commissioners.

(B). Bum Ban: the prohibition of any and all QPen and recreational fires except for those expressly exempted by such Bum Ban.

(C). Fire Chief: individual designated by the County Manager as the Polk County Fire Chief and who is authorized to enforce the Florida Fire Prevention Code.

(D). Fire Chief's **Designee:** individual designated by the Fire Chief to declare bum bans and who is authorized to enforce the Florida Fire Prevention Code.

(E). **Fire Hazard Conditions:** atmospheric conditions on the basis of applicable data and indicators including without limitations of over fifty percent of Polk County having an average of 500 on the Keetch-Byram Drought Index and local circumstances which increase the likelihood of uncontrolled fires and brush fires.

(F). **Fire Department Bum Ban:** a "Bum Ban• declared by the Polk County Fire Chief or the Fire Chiefs designee pursuant to this Ordinance.

(G). **Open Fires:** includes without limitation campfires, bonfires, unpennitted controlled bums, buming of yard and household trash, burning of construction debris, burning of organic debris .and igniting of fireworks unless expressly exempted from the "Bum Ban.•

(H). **Recreational Fire:** noncommercial buming of material other than for religious or ceremonial purposes which is not contained in a barbecue grill or a barbecue pit and the total fuel area is not exceeding 3ft in diameter and 2 ft in height

Section 4. Procedure Requirements for **the Fire** Chief or **Fire Chiera deslgnee** to **declare a "Bum Ban."**

(A). Declaration of a "Bum Ban" by the Polk County Fire Department.
During times of "Fire Hazard Conditions• the Fire Chief or the Fire Chiefs designee may prohibit any and all open and recreational fires in Polk·County, except for any burning that is conducted pursuant to a state-issued pennit by declaring a "Bum Ban.•

(B). Required Publication of a "Fire Department Bum Ban."
The Fire Chief or the Fire Chiefs designee shall immediately publish the "Bum Ban• in a newspaper of general circulation in Polk County once during each week for two **consecutive weeks** and a copy of such •sum Ban• shall be kept available for public inspec;oon during the regular business hours of the office of the Clerk of the Board of County Commissioners.

(C). **Effltctive Date** of **a "Fire Department Bum Ban."**
The ·eum Ban" shall be effective on the date of the first publication of such ·eum Ban.▪

(D). Requirvment of a "Bum Ban" to be approved by RNolutlon by the Board of County Commissioners.
Such •eum Ban" shall be placed on the next Board of County Commissioner's regular **agenda** to be approved by Resolution of the Board. Failure of the Board to approve the "Bum Ban" by Resolution at its next regular meeting shall act as an immediate repeal of such "Bum Ban." Repeal of such "Bum Ban• pursuant to this section shall meet the Notice requirements of Section 7(8) of this Ordinance.

Section 5. Applicability

A •Fire Department Bum Ban• shall apply in all unincorporated areas of Polk County and within the corporate limits of each Polk County municipality where Polk County Fire Department is the provider of fire services and the governing body certifies to the Board of County Commissioners that the municipality adopted the •eum ean· through the goveming body and desires to be subject to the provisions of a •Fire Department Bum Ban.•

Section 8. Penalty

Any person who refuse$ to comply with or violates a •Fire Department Bum Ban• shall be in violation of this Ordinance and shall be punished according to law and, upon conviction for such offense, shall be punished by a fine not to exceed five hundred dollars ($500.00) or by imprisonment by a term not to exceed sixty (60) days in the County jaH or both.

Section 7. **Procedure to Repeal a "fire Department Bum Ban."**

(A). Repeal of a "fire Deparbnent Bum Ban" by the Polk County Fire Chief or the FIN Chiefs deslgnee.
The Fire Chief or the Fire Chiefs designee upon abatement of the •Fire Hazard Conditions• may repeal a "Fire Department Bum Ban.•

(B). Required Publlcatlon of a Notice of a Repeal of a "Fire Department Bum Ban."
The Fire Chief or the Fire Chiefs designee shall immediately publish a Notice Repealing such •eum Ban• in a newspaper of general circulation in Polk County once during each week for two consecutive weeks and a copy of such Notice shall be kept available for public inspection during the regular business hours of the office of the Clerk of the Board of County Commissioners.

(C). **fffactlye Date of the Repeal.**
The Repeal of the •eom Ban" shall be effective on the date of the first publication of such Notice.

(D). Requlrament of a Repeal of a "Flra Department Bum Ban" to be approved by Resolution by the Board of County Commluionera.
Such Repeal shall **be placed** on the next Board of County Commissioner's next regular agenda to be approved by Resolution of the Board. Failure of the Board to approve the Repeal of a •eum Ban• by Resolution at its regular meeting shall act as immediately reinstituting such "Bum Ban." Reinstitution of a •eum Ban" pursuant to this section shall meet the Notice requirements of Section 4(8) of this Ordinance.

(E). **Repeal** of **a "fire Department Bum Ban" by the Board** of County **Commluloners.**
Notwithstanding Section 7(A) of this Ordinance, the Board of County Commissioners may on is own initiative repeal a •Fire Department Bum Ban• by resolution..Such Repeal shall be effective immediately and meet the notice requirements of Section 7(8) of this Ordinance.

Section 8. Severability

If-any provision or application of this Ordinance is for any reason held invalid, such invalidity shall not affect the remaining provisions of this Ordinance which can be given effect without the invalid provision or application and, to this end the provisions of this Ordinance are declared severable.

Section 9. Effective Date

This ordinance shall become effective upon filing of a certified copy with the Department of State.

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fLORIDA DEPARTMENT *of* STAni

CIIAIU,IS CRIST
Governor

STATE **I.JBRARY AND** ARCHIVES OF FLORIDA

lt1JRT 8. BROWJQlfO
Secretary of State

May30,2008

CLERK & AUDITOR

JUN O 3 -2008

.RECEIVED

Mr. Ric M. Weiss
Clerk of the Board
Post Office Box 988
Bartow, Florida 33831-0988

Attn: Ms. Kathryn Courtney, Deputy Clerk

Dear Ms. Weiss:

Pursuant to the provisions of Section 12S.66, Florida Statutes, this will acknowle(ige receipt of your letter May 28, 2008 and certified copies of Polle County Ordinance Nos. 08-014 through 08-16, which were filed in this office on May 30, 2008.

Sincerely,

Liz Cloud
Program Administrator

LC/mi

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ORDINANCE NO. 14-

AN ORDINANCE AMENDING POLK COUNTY ORDINANCE 08-015, BY AMENDING SECTION 4 TO PROVIDE FOR METHODS TO TEMPORARILY SUSPEND A DECLARED FIRE DEPARTMENT BURN BAN; AMENDING SECTION 5 TO PROVIDE FOR APPLICABILITY IN UNINCORPORATED POLK COUNTY, EACH MUNICIPALITY THAT IS SUBJECT TO THE POLK COUNTY FIRE ASSESSMENT AND THOSE MUNICIPALITIES THAT ADOPT AN ORDINANCE AUTHORIZING THE HEAD ADMINISTRATOR OR OTHER DESIGNEE OF THE MUNICIPALITY TO OPT IN OR OUT OF A DECLARED FIRE **DEPARTMENT BURN BAN; PROVIDING FOR REPEAL OF POLK COUNTY ORDINANCE 09-002; PROVIDING FOR SEVERABILITY; PROVIDING FOR AN EFFECTIVE DATE.**

WHEREAS, Polk County Ordinance 08-015 authorizes the Fire Chief or the Fire Chiefs Designee to declare a Fire Department Burn Ban during periods in which the atmospheric conditions increase the risk of brush fires and uncontrolled fires; and

WHEREAS, Polk County Ordinance 08-15, as amended does not allow for municipalities to opt in or out of a Fire Department Burn Ban ; and

WHEREAS, certain municipalities may desire to opt in or out of a Fire Department Burn Ban.

NOW, THEREFORE, BE IT ORDAINED BY THE BOARD OF COUNTY COMMISSIONERS OF POLK COUNTY, FLORIDA, THAT:

Section 1. Section 4 of Polk County Ordinance 08-015 is hereby amended and supplemented with the addition of the following new subsection (E) to read as follows:

(E) TEMPORARY SUSPENSION OF DECLARED FIRE DEPARTMENT BURN BAN

The Fire Chief or the Fire Chiefs Designee is authorized to suspend a declared Fire Department Burn Ban from time to time without the need for further action by the Board of County Commissioners as long as any one suspension does not exceed seven (7) days. The Board of County Commissioners by resolution may suspend a declared Fire Department Burn Ban to a date certain.

Section 2. Section 5 of Polk County Ordinance 08-015 is hereby amended to read as follows:

Section 5. Applicability

A Fire Department Burn Ban shall apply in all unincorporated areas of Polk County, within the corporate limits of all municipalities subject to the

Polk County Fire Assessment and within the corporate limits of each municipality in which the governing body:

A. Certifies that the municipality has no charter prov1s1ons or ordinance which is in conflict with this Ordinance, and

B. Adopts an Ordinance authorizing the head administrator or other designee to opt in or out of a Fire Department Burn Ban.

Twenty-four (24) hours prior to declaring a Fire Department Burn Ban, the Fire Chief or Fire Chief's designee shall notify the head administrator or designee of those municipalities which have adopted an ordinance in accordance with this section of the intent to declare a Fire Department Burn Ban. Within twenty-four (24) hours of receiving notification from the Fire Chief or the Fire Chiefs designee, the head administrator or designee of the municipality shall inform the Fire Chief or Fire Chiefs designee whether the municipality desires to opt in or out of the proposed Fire Department Burn Ban. Only the unincorporated areas of Polk County, the municipalities subject to the Polk County Fire Assessment, and those municipalities in which the head administrator or designee has informed the Fire Chief or Fire Chief's designee of the municipality's desire to opt in shall be subject to a declared Fire Department Burn Ban and shall be included in the required publication of a Fire Department Burn Ban.

A municipality that either fails to inform the Fire Chief or Fire Chief designee of its desire to opt in a Fire Department Burn Ban or previously informs the Fire Chief or Fire Chiefs designee of its desire to opt out of a Fire Department Burn Ban may opt in prior to the repeal of the Fire Department Burn Ban by the head administrator or designee of the municipality informing the Fire Chief or Fire Chiefs designee of the municipality's desire to be included in a declared Fire Department Burn Ban and the municipality being included in one of the two required notices published by the Fire Chief or Fire Chiefs designee pursuant to this Ordinance or by the municipality publishing one notice of opting in the declared Fire Department Burn Ban in a newspaper of general circulation in Polk County. The Fire Department Burn Ban shall be effective in the corporate limits of the municipality on the date of publication of the notice.

Section 3. Repeal of Ordinances

Polk County Ordinance 09-002 is hereby repealed.

Section 4. Severability

If any provision or application of this Ordinance is for any reason held invalid, such invalidity shall not affect the remaining provisions of this Ordinance which can be given

effect without the invalid provision or application and, to this end the provisions of this Ordinance are declared severable.

Section 5. Effective Date

This Ordinance shall become effective upon filing of a certified copy with the Department of State.

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STATE OF FLORIDA)
)
COUNTY OF POLK)

I Stacy M. Butterfield, County Clerk and Comptroller for Polk County, Florida, hereby certify that the foregoing is a true and correct copy of Ordinance No. 14-041 adopted by the Board on July 22, 2014.

WITNESS my hand and official seal on this 25th day of July 2014.

Stacy M. Butterfield, Clerk

By: _____
Erin Valle
Deputy Clerk

FLORIDA DEPARTMENT of STATE

RICK SCOTT
Governor

KENDETZNER
Secretary of State

July 25, 2014

Ms. Alison Prevatt
Deputy Clerk
Finance and Accounting
Post Office Box 988
Bartow, Florida 33831-0988

Dear Ms. Prevatt:

Pursuant to the provisions of Section 125.66, Florida Statutes, this will acknowledge receipt of your electronic copy of Polk County Ordinance No. 14-041, which was filed in this office on July 25, 2014.

Sincerely,

Liz Cloud
Program Administrator

LC/elr

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By . VaJl-t

R. A. Gray Building • 500 South Bronough Street • Tallahassee, Florida 32399-0250
Telephone: (8501 245-6270 • Facsimile: (850) 488-9879
www.dos.state.f1.us

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AMENDMENT TO THE INTERLOCAL AGREEMENT CREATING THE POLK TRANSPORTATION PLANNING ORGANIZATION

THIS AMENDMENT (hereinafter "Amendment") is made and entered into by and between the State of Florida, Department of Transportation; Polk County; the City of Auburndale, City of Bartow, City of Davenport, Town of Dundee, City of Eagle Lake, City of Fort Meade, City of Frostproof, City of Haines City, City of Lake Alfred, Town of Lake Hamilton, City of Lakeland, City of Lake Wales, City of Mulberry, City of Polk City, and the City of Winter Haven, collectively known as "the parties."

RECITALS

WHEREAS, the parties reaffirm the Interlocal Agreement dated July 10, 2014;

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

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

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

WHEREAS, the Polk Transportation Planning Organization (TPO) serves as the MPO for the Lakeland and Winter Haven TMAs and is the agency designated to conduct a continuing, coordinated, and comprehensive transportation planning process;

WHEREAS, on October 12, 2023, the governing board of the Polk TPO met to review its voting composition and approved a Resolution Supporting the Adoption of the TPO Membership Apportionment Plan ("Apportionment Resolution");

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

WHEREAS, the governing body of the Polk TPO has determined it is appropriate that the City of Davenport, City of Haines City, City of Lake Alfred, and City of Winter Haven be granted additional representatives as voting members to the Interlocal Agreement creating the Polk TPO.

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

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

II. Interlocal Agreement. Article 4, Sections 4.01(a) and 4.01(c) of the Interlocal Agreement dated July 10, 2014, are amended to read as follows:

Section 4.01. Composition and membership of governing board.

(a) The membership of the TPO shall consist of twenty-three (23) voting members and six (6) non-voting advisors. The names of the member local government entities and the voting apportionment of the governing board as approved by the Governor shall be as follows:

JURISDICTION	VOTING MEMBERS
Polk County Board of County Commissioners	Five (5)
City of Lakeland	Six (6)
City of Winter Haven	Three (3)
City of Haines City	Two (2)
City of Bartow	One (1)
City of Lake Wales	One (1)
City of Auburndale	One (1)
City of Davenport	One (1)
City of Lake Alfred	One (1)
City of Fort Meade	One (1)*
City of Mulberry	One (1)*
City of Frostproof	One (1)*
Town of Dundee	One (1)**
City of Eagle Lake	One (1)**
City of Polk City	One (1)**
Town of Lake Hamilton	One (1)**

* Alternate Voting Membership – South County Bloc
** Alternate Voting Membership – Central County and Ridge Bloc

The Florida Department of Transportation shall have one (1) non-voting advisor on the TPO.

(c) Pursuant to section 339.175(3), F.S., the voting membership of an M.P.O. shall consist of not fewer than 5 or more than 25 apportioned members, the exact

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number to be determined on an equitable geographic-population ratio basis by the Governor, based on an agreement among the affected units of general-purpose local government as required by federal rules and regulations. The TPO's voting membership as set forth in Section 4.01(a) complies with section 339.175(3), F.S.

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

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

V. Effective Date. Pursuant to Section 163.01(11), F.S., this Amendment shall become effective upon the filing of the fully executed Amendment with the Clerk of the Circuit Court for Polk County, Florida.

VI. Except as hereby modified, amended or changed, all of the terms and conditions of the Interlocal Agreement dated July 10, 2014 and any amendments thereto will remain in full force and effect.

IN WITNESS WHEREOF, the undersigned parties have caused this Amendment to the Interlocal Agreement dated July 10, 2014, to be duly executed on their behalf.

BOARD OF COUNTY COMMISSIONERS OF POLK COUNTY, FLORIDA

BY:_____

ATTEST:_____

CITY OF LAKELAND

BY:_____

ATTEST:_____

CITY OF WINTER HAVEN

BY:_____

CITY OF AUBURNDALE

BY:_____

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ATTEST:_____

CITY OF BARTOW

BY:_____

ATTEST:_____

CITY OF LAKE WALES

BY:_____

ATTEST:_____

CITY OF MULBERRY

BY:_____

ATTEST:_____

CITY OF LAKE ALFRED

BY:_____

ATTEST:_____

CITY OF EAGLE LAKE

BY:_____

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CITY OF POLK CITY

BY:_____

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CITY OF HAINES CITY

BY:_____

ATTEST:_____

CITY OF FORT MEADE

BY:_____

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CITY OF FROSTPROOF

BY:_____

ATTEST:_____

TOWN OF DUNDEE

BY:_____

ATTEST:_____

CITY OF DAVENPORT

BY:_____

ATTEST:_____

TOWN OF LAKE HAMILTON

BY:_____

ATTEST:_____

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FLORIDA DEPARTMENT OF TRANSPORTATION

BY:_____

ATTEST:_____

LEGAL REVIEW:

DS

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DISTRICT GENERAL COUNSEL