

**FRUITLAND PARK CITY COMMISSION
REGULAR MEETING AGENDA**

July 23, 2020

City Hall Commission Chambers
506 W. Berckman Street
Fruitland Park, Florida 34731

6:00 p.m.

1. CALL TO ORDER, INVOCATION AND PLEDGE OF ALLEGIANCE

Pastor Seth Mulford, Grace Bible Baptist Church

Pledge of Allegiance – Police Chief Erik Luce

2. ROLL CALL

3. SPECIAL PRESENTATIONS (city clerk)

(a) Bessie Hoffman – Proclamation

(b) City Clerk Designation

4. COMMUNITY REDEVELOPMENT AGENCY

As soon as practical at 6:15 p.m., recess to the Community Redevelopment Agency meeting.

5. CONSENT AGENDA

Routine items and items not anticipated to be controversial are placed on the Consent Agenda to expedite the meeting. If a Commissioner, staff member or member of the public wish to discuss any item, the procedure is as follows: (1) Pull the item(s) from the Consent Agenda; (2) Vote on remaining item(s); and (3) Discuss each pulled item separately and vote.

(a) Approval of Minutes (city clerk)

July 9, 2020 regular

(b) Resolution 2020-033 – Board of Trustees’ Appointment – C. Themm (city clerk)

A RESOLUTION OF THE CITY COMMISSION OF THE CITY OF FRUITLAND PARK, FLORIDA, APPOINTING A MEMBER TO THE BOARD OF TRUSTEES OF THE MUNICIPAL FIRE FIGHTERS PENSION TRUST FUND OF THE CITY OF FRUITLAND PARK; AND PROVIDING FOR AN EFFECTIVE DATE.

6. REGULAR AGENDA

(a) Request for Qualifications (city manager)

i. RFQ 2020-01 Professional Architectural Services Design Architect Proposals - Presentations

Consider, approve the selection committee's recommendation and hold presentations on the best qualified firm's Request for Qualifications 2020-01 Professional Architectural Services Design Architect proposal:

- Architects Design Group, Winter Park
- Blaise, Fiebach and Associates PA, Leesburg, and
- GatorSketch Corporation, Architects and Planners, Clermont

ii. RFQ 2020-02 Grant Writing Services Update Status Report

RFQ 2020-02 Grant Writing Services update status report.

(b) Gardenia Park Phase III FRDAP Grant (Skate Park) Update Status Report (city manager/parks and recreation director)

Status update report on the Gardenia Park Phase III Florida Recreation Development Assistance Program Grant (Skate Park).

(c) Resolution 2020-035 – CardKnox CentralSquare Contract (city attorney/city manager/community development director)

A RESOLUTION OF THE CITY COMMISSION OF THE CITY OF FRUITLAND PARK, FLORIDA, APPROVING CONFIRMATION PAGE, PROGRAM GUIDE AND ASSOCIATED DOCUMENTS FROM CARDKNOX TO ALLOW FOR THE CITY TO ACCEPT CREDIT CARD PAYMENTS ASSOCIATED WITH CENTRALSQUARE TECHNOLOGIES SOFTWARE UTILIZED BY THE BUILDING DEPARTMENT; AUTHORIZING THE MAYOR TO EXECUTE THE CONFIRMATION PAGE; PROVIDING FOR AN EFFECTIVE DATE.

(d) Resolution 2020-034 Document Redaction Software Services - Veritone (city attorney/city clerk/city manager/police chief)

A RESOLUTION OF THE CITY COMMISSION OF THE CITY OF FRUITLAND PARK, FLORIDA, APPROVING LICENSE AGREEMENT BETWEEN THE CITY OF FRUITLAND PARK AND VERITONE, INC. FOR DOCUMENT REDACTION SOFTWARE RELATING TO PUBLIC RECORDS; AUTHORIZING THE MAYOR TO EXECUTE THE LICENSE AGREEMENT; PROVIDING FOR AN EFFECTIVE DATE.

- (e) **Resolution 2020-028 - LPG Urban Planners Inc. Contract** (city manager/city attorney)

A RESOLUTION OF THE CITY COMMISSION OF THE CITY OF FRUITLAND PARK, FLORIDA, APPROVING THE PLANNING SERVICES AGREEMENT BETWEEN THE CITY OF FRUITLAND PARK AND LPG URBAN & REGIONAL PLANNERS, INC. FOR PROFESSIONAL PLANNING SERVICES; PROVIDING FOR AN EFFECTIVE DATE.

- (f) **Resolution 2020-036 Development Review Applications - Engineering Services Review Fee Schedule** (city attorney/city manager/community development director)

A RESOLUTION OF THE CITY COMMISSION OF THE CITY OF FRUITLAND PARK, FLORIDA, APPROVING AND ADOPTING A REVIEW FEE SCHEDULE FOR ENGINEERING SERVICES RELATING TO DEVELOPMENT REVIEW APPLICATIONS; REPEALING ALL FEES IN CONFLICT HEREWITH; AND PROVIDING FOR AN EFFECTIVE DATE.

- (g) **Resolution 2020-032 Proposed Millage Rate - FY 2020-21** (city treasurer/city manager)

A RESOLUTION OF THE CITY COMMISSION OF THE CITY OF FRUITLAND PARK, LAKE COUNTY, FLORIDA, ADOPTING A NOT TO EXCEED MILLAGE RATE OF 3.9134 LEVYING OF AD VALOREM TAXES FOR FISCAL YEAR 2020-2021 AND SETTING THE DATE, TIME AND PLACE OF PUBLIC HEARING ON THE BUDGET FOR FISCAL YEAR 2020-2021; PROVIDING FOR AN EFFECTIVE DATE.

PUBLIC HEARING

- (h) **Ordinance 2020-004 Professional and Consultant Fees** (city attorney/city manager/community development director)

AN ORDINANCE OF THE CITY COMMISSION OF THE CITY OF FRUITLAND PARK, FLORIDA, AMENDING PROVISIONS IN CHAPTER 102 OF THE CODE OF ORDINANCES TO REQUIRE REIMBURSEMENT OF PROFESSIONAL AND CONSULTANT FEES FOR DEVELOPMENT PRE-APPLICATION MEETINGS; IMPOSING JOINT AND SEVERAL LIABILITY FOR PAYMENT OF SUCH FEES BETWEEN THE PROPERTY OWNER AND PRE-APPLICANT AND BETWEEN THE

PROPERTY OWNER AND ANY DEVELOPMENT APPLICANT; IMPOSING PENALTY FOR FAILURE TO PAY; PROVIDING FOR CODIFICATION, SEVERABILITY AND CONFLICTS, AND PROVIDING FOR AN EFFECTIVE DATE. (The second reading will be held on August 13, 2020.)

7. OFFICERS' REPORTS

(a) City Manager

i. Economic Development Status Update

ii. COVID-19 Status Update

iii. Fruitland Park Library Café

(b) City Attorney

i. City of Fruitland Park v. T. D. Burke

ii. City of Fruitland Park v. State of Florida Department of Management Services

iii. Michael and Laurie Fewless v. City of Fruitland Park

iv. Norman C. Cummins v. Stephen P. Angelillo and City of Fruitland Park, Lake County Case No. 2020-CA-1026

8. PUBLIC COMMENTS

This section is reserved for members of the public to bring up matters of concern or opportunities for praise. Action may not be taken by the City Commission at this meeting; however, questions may be answered by staff or issues may be referred for appropriate staff action.

Note: Pursuant to F.S. 286.0114 and the City of Fruitland Park's Public Participation Policy adopted by Resolution 2013-023, members of the public shall be given a reasonable opportunity to be heard on propositions before the City Commission. Accordingly, comments, questions, and concerns regarding items listed on this agenda shall be received at the time the City Commission addresses such items during this meeting. Pursuant to Resolution 2013-023, public comments are limited to three minutes.

9. UNFINISHED BUSINESS

10. COMMISSIONERS' COMENTS

(a) Commissioner Mobilian

(b) Commissioner DeGrave

(c) Commissioner Bell

(d) Vice Mayor Gunter, Jr.

11. MAYOR'S COMMENTS

12. ADJOURNMENT

DATES TO REMEMBER

- August 3, 2020 City Commission Workshop at 6:00 p.m.;
- August 4, 2020 City Commission Workshop at 6:00 p.m.;
- August 10, 2020 Lake County Tourist Development Council at 3:00 p.m.;
- August 10, 2020 Lake County Parks Recreation Trails Advisory Board at 3:30 p.m.
- August 13, 2020 City Commission Meeting regular at 6:00 p.m.;
- August 26, MPO Governing Board Virtual
- August 27, 2020 City Commission Meeting regular at 6:00 p.m.
- September 7, 2020 City Hall Closed, Labor Day;
- September 10, 2020 City Commission Meeting regular at 6:00 p.m.;
- September 17, 2020 City Commission/P&Z Board Joint Workshop Meeting at 6:00 p.m.
- September 24, 2020 City Commission Meeting regular at 6:00 p.m.

Please note that in addition to the city commission meetings, more than one city commissioner may be present at the above-mentioned events.

Any person requiring a special accommodation at this meeting because of disability or physical impairment should contact the City Clerk's Office at City Hall (352) 360-6727 at least forty-eight (48) hours prior to the meeting. (§286.26 F.S.)

If a person decides to appeal any decision made by the City of Fruitland Park with respect to any matter considered at such meeting or hearing, he or she will need a record of the proceedings and ensure that a verbatim record of the proceedings is made, which record includes the testimony and evidence upon which the appeal is to be based. The city does not provide verbatim records. (§286.0105, F.S.)

PLEASE TURN OFF ELECTRONIC DEVICES OR PLACE IN VIBRATE MODE

**CITY OF FRUITLAND PARK
AGENDA ITEM SUMMARY SHEET
Item Number: 3a&b**

ITEM TITLE:	Special Presentations
For the Meeting of:	July 23, 2020
Submitted by:	City Clerk
Date Submitted:	July 17, 2020
Funds Required:	No
Account Number:	N/A
Amount Required:	N/A
Balance Remaining:	N/A
Attachments:	Proclamation

Item Description: **Special Presentations**

- (a) Proclamation – Memory of Bessie Pantheia Hoffman**
- (b) City Clerk Designation**

Action to be Taken: **None**

Staff's Recommendation: N/A

Additional Comments: None

City Manager Review: Yes

Mayor Authorization: Yes



Proclamation

WHEREAS, Bessie Pantheia Hoffman was born on November 19, 1916 at home Inverness, Florida where there were no hospitals and before Fruitland Park, an evolving community at that time, was incorporated nine years later; and

WHEREAS, Bessie's earlier years was on a vegetable farm with orange groves and she was the last living survivor and third eldest of eight children (six boys and two girls); and

WHEREAS, in 1934, Bessie graduated Inverness High School; moved to the City of Leesburg to live with her brother and sister-in-law, and worked as an office manager for Dr. Hunter who was one of the founders, a pioneer and Sunday school superintendent of the former First Baptist Church of Fruitland Park which met at the then Casino Community Center; and

WHEREAS, Bessie married Carl Hoffman of Leesburg who managed the oldest filling gas station in Leesburg and had three children: Marie, Diane, and Carl Jr. (who preceded her); and

WHEREAS, Mrs. Bessie Hoffman, as a 77-year resident, held many garden parties for the children of the Town of Fruitland Park, was involved in the parent teacher association and enjoyed frequently attending church; and

WHEREAS, since the early 1950's, Ms. Hoffman, most times with her late husband, was a regular community advocate before the Fruitland Park Town Council campaigning to make the community a better place to live, work and play and she actively supported the former volunteer fire department before it was restructured in the late 90's, and

WHEREAS, on September 13, 2018 the City of Fruitland Park City Commission was privileged to have honored Ms. Hoffman in joining the community to recognize September 22, 2018 as *National Centenarian Day* in Fruitland Park celebrating her achievements as she reached the age of over 101 years; and

WHEREAS, Ms. Hoffman passed away at home on June 26, 2020 leaving a lifetime of legacy and will be remembered by those who knew her.

NOW, THEREFORE I, Chris Cheshire, Mayor of the City of Fruitland Park on behalf of the City of Fruitland Park Commission, do hereby proclaim Thursday, July 14, 2020 as "*BESSIE PANTHEIA HOFFMAN DAY*" in the City of Fruitland Park; recognized her numerous years of tireless endurance that she represented in the community and expressed sincere condolences to her family and loved ones.

PROCLAIMED this 17th day of July 2020.

Chris Cheshire, Mayor
Attest:

Esther Coulson, City Clerk

**CITY OF FRUITLAND PARK
AGENDA ITEM SUMMARY SHEET
Item Number: 4**

ITEM TITLE: Community Redevelopment Agency (CRA)
Meeting

For the Meeting of: July 23, 2020

Submitted by: City Clerk

Date Submitted: July 17, 2020

Funds Required: No

Attachments: Yes, CRA Establishment

Item Description: CRA Establishment Ordinance 95-001,
Resolution 2019-050, §163.362, §163.386, §163.387 and Chapter 189,
Florida Statutes

Action to be Taken: As soon as practical, recess to the
Community Redevelopment Agency
meeting.

Staff's Recommendation: N/A

Additional Comments: None

City Manager Review: Yes

Mayor Authorization: Yes

ORDINANCE NO. 95-001

AN ORDINANCE OF THE CITY OF FRUITLAND PARK, FLORIDA, PERTAINING TO THE ESTABLISHMENT OF A COMMUNITY REDEVELOPMENT TRUST FUND; PROVIDING FOR FINDINGS OF FACT; PROVIDING FOR THE ESTABLISHMENT AND ADMINISTRATION OF A COMMUNITY REDEVELOPMENT TRUST FUND; PROVIDING FOR THE DESIGNATION OF THE COMMUNITY REDEVELOPMENT TRUST FUND AS THE RECIPIENT OF FUNDS PURSUANT TO SECTION 163.387, FLORIDA STATUTES; PROVIDING FOR ENFORCEMENT; PROVIDING FOR SEVERABILITY; PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the City Commission of the City of Fruitland Park has, by resolution, established a finding of blight; and,

WHEREAS, the City Commission desires to provide for the removal of such blighted areas and redevelop such areas, pursuant to the Community Redevelopment Act of 1969, hereafter referred to as the "CRA", as contained in Florida Statutes, Chapter 163, Part III; and,

WHEREAS, the City Commission has, by resolution, approved a Community Redevelopment Plan for the City.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COMMISSION OF THE CITY OF FRUITLAND PARK, FLORIDA, as follows:

SECTION 1. There is hereby established and created, in accordance with the provisions of Section 163.387, Florida Statutes, a Community Redevelopment Trust Fund, hereafter referred to as "the Fund".

SECTION 2. The monies allocated to and deposited into the Fund are hereby appropriated to the City of Fruitland Park Community Redevelopment Agency, hereafter referred to as "the Agency", to finance projects within the Community Redevelopment Project Area, hereafter referred to as "the Project". The Agency shall utilize the monies and the revenue paid into and earned by the Fund for all and every community development purpose delegated to it by the established Community Redevelopment Plan, hereafter referred to as "the Plan", and as further provided by law. The Fund is to exist for the duration of the Project programs or until legally terminated by ordinance. The monies shall be held by the City for and on behalf of the Agency and distributed to the Agency in accordance with a subsequent agreement to be established between the City and the Agency.

SECTION 3. There shall be paid into the Fund each year by all taxing authorities within the Project Area, except those authorities excluded by state law, the incremental increase in ad valorem taxes levied each year by the above-referenced taxing authorities over the amount of ad valorem taxes levied each year by the above-referenced taxing authorities over the amount of ad valorem taxes levied by the referenced taxing authorities in the base year, as established in Section 5 below.

SECTION 4. The tax roll used in connection with the taxation of such property for the base year shall be the Tax Roll of 1994 in Lake County. All deposits into the Fund shall begin with the incremental increases in ad valorem tax revenues received subsequent to November 1, 1995.

SECTION 5. The tax increment shall be determined and appropriated annually in an amount equal to the difference between:

a. the amount of ad valorem taxes levied each year by each taxing authority, exclusive of any amount from any debt service millage, on taxable real property contained within the geographic boundaries of the Community Redevelopment Area; and

b. the amount of ad valorem taxes which would have been produced by the rate upon which the tax is levied each year by or for each taxing authority, exclusive of any amount from any debt service millage, upon the total of the assessed value of the taxable real property in the Community Redevelopment Area, as shown upon the 1994 assessment roll used in connection with the taxation of such property by each taxing authority. If any conflict occurs between the provisions of this Ordinance and the provisions of Chapter 163, Part III, Florida Statutes, concerning tax increment financing, the statutory provisions shall control and apply to this Ordinance.

SECTION 6. Each taxing authority will annually appropriate to the Fund the aforestated sum at the beginning of their fiscal year. Payment of the sum shall be in accordance with state law.

SECTION 7. The Agency, with the approval of the City Commission, is directed to establish the Fund and to develop and promulgate rules, regulations and criteria whereby the Fund may be promptly and effectively administered, including the establishment and the maintenance of books and records and adoption of procedures whereby the Agency may, expeditiously and without undue delay, utilize the monies received for their allocated statutory purpose.

SECTION 8. The Agency shall accept full responsibility for the receipt, custody, disbursement, accountability, management and proper application of all monies paid into the fund subject to the provisions of Section 2 of this Ordinance.

SECTION 9. Any and all ordinances or parts of ordinances that are in conflict herewith are hereby repealed.

SECTION 10. If any part of this Ordinance is held to be invalid or unenforceable for any reason, such holding shall not affect the validity or enforceability of the remainder, which shall remain in full force and effect.

SECTION 11. This ordinance shall take effect immediately upon its final adoption.

PASSED AND ORDAINED this 16th day of March, 1995, by the City Commission of the City of Fruitland Park, Florida.

William R. White
William R. White, Mayor
City of Fruitland Park

Attest:

Linda S. Rodrick
Linda S. Rodrick, City Clerk
City of Fruitland Park

First Reading: March 2, 1995

Second Reading: March 16, 1995

Approved as to form:

Gary J. Cooney
Gary J. Cooney
City Attorney

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Select Year:

The 2018 Florida Statutes

[Title XI](#)
COUNTY ORGANIZATION AND
INTERGOVERNMENTAL RELATIONS

[Chapter 163](#)
INTERGOVERNMENTAL
PROGRAMS

[View Entire
Chapter](#)

163.340 Definitions.—The following terms, wherever used or referred to in this part, have the following meanings:

(1) “Agency” or “community redevelopment agency” means a public agency created by, or designated pursuant to, s. [163.356](#) or s. [163.357](#).

(2) “Public body” means the state or any county, municipality, authority, special district as defined in s. [165.031\(7\)](#), or other public body of the state, except a school district.

(3) “Governing body” means the council, commission, or other legislative body charged with governing the county or municipality.

(4) “Mayor” means the mayor of a municipality or, for a county, the chair of the board of county commissioners or such other officer as may be constituted by law to act as the executive head of such municipality or county.

(5) “Clerk” means the clerk or other official of the county or municipality who is the custodian of the official records of such county or municipality.

(6) “Federal Government” includes the United States or any agency or instrumentality, corporate or otherwise, of the United States.

(7) “Slum area” means an area having physical or economic conditions conducive to disease, infant mortality, juvenile delinquency, poverty, or crime because there is a predominance of buildings or improvements, whether residential or nonresidential, which are impaired by reason of dilapidation, deterioration, age, or obsolescence, and exhibiting one or more of the following factors:

(a) Inadequate provision for ventilation, light, air, sanitation, or open spaces;

(b) High density of population, compared to the population density of adjacent areas within the county or municipality; and overcrowding, as indicated by government-maintained statistics or other studies and the requirements of the Florida Building Code; or

(c) The existence of conditions that endanger life or property by fire or other causes.

(8) “Blighted area” means an area in which there are a substantial number of deteriorated or deteriorating structures; in which conditions, as indicated by government-maintained statistics or other studies, endanger life or property or are leading to economic distress; and in which two or more of the following factors are present:

(a) Predominance of defective or inadequate street layout, parking facilities, roadways, bridges, or public transportation facilities.

(b) Aggregate assessed values of real property in the area for ad valorem tax purposes have failed to show any appreciable increase over the 5 years prior to the finding of such conditions.

(c) Faulty lot layout in relation to size, adequacy, accessibility, or usefulness.

(d) Unsanitary or unsafe conditions.

- (e) Deterioration of site or other improvements.
- (f) Inadequate and outdated building density patterns.
- (g) Falling lease rates per square foot of office, commercial, or industrial space compared to the remainder of the county or municipality.
- (h) Tax or special assessment delinquency exceeding the fair value of the land.
- (i) Residential and commercial vacancy rates higher in the area than in the remainder of the county or municipality.
- (j) Incidence of crime in the area higher than in the remainder of the county or municipality.
- (k) Fire and emergency medical service calls to the area proportionately higher than in the remainder of the county or municipality.
- (l) A greater number of violations of the Florida Building Code in the area than the number of violations recorded in the remainder of the county or municipality.
- (m) Diversity of ownership or defective or unusual conditions of title which prevent the free alienability of land within the deteriorated or hazardous area.
- (n) Governmentally owned property with adverse environmental conditions caused by a public or private entity.
- (o) A substantial number or percentage of properties damaged by sinkhole activity which have not been adequately repaired or stabilized.

However, the term “blighted area” also means any area in which at least one of the factors identified in paragraphs (a) through (o) is present and all taxing authorities subject to s. 163.387(2)(a) agree, either by interlocal agreement with the agency or by resolution, that the area is blighted. Such agreement or resolution must be limited to a determination that the area is blighted. For purposes of qualifying for the tax credits authorized in chapter 220, “blighted area” means an area as defined in this subsection.

(9) “Community redevelopment” or “redevelopment” means undertakings, activities, or projects of a county, municipality, or community redevelopment agency in a community redevelopment area for the elimination and prevention of the development or spread of slums and blight, or for the reduction or prevention of crime, or for the provision of affordable housing, whether for rent or for sale, to residents of low or moderate income, including the elderly, and may include slum clearance and redevelopment in a community redevelopment area or rehabilitation and revitalization of coastal resort and tourist areas that are deteriorating and economically distressed, or rehabilitation or conservation in a community redevelopment area, or any combination or part thereof, in accordance with a community redevelopment plan and may include the preparation of such a plan.

(10) “Community redevelopment area” means a slum area, a blighted area, or an area in which there is a shortage of housing that is affordable to residents of low or moderate income, including the elderly, or a coastal and tourist area that is deteriorating and economically distressed due to outdated building density patterns, inadequate transportation and parking facilities, faulty lot layout or inadequate street layout, or a combination thereof which the governing body designates as appropriate for community redevelopment. For community redevelopment agencies created after July 1, 2006, a community redevelopment area may not consist of more than 80 percent of a municipality.

(11) “Community redevelopment plan” means a plan, as it exists from time to time, for a community redevelopment area.

(12) “Related activities” means:

(a) Planning work for the preparation of a general neighborhood redevelopment plan or for the preparation or completion of a communitywide plan or program pursuant to s. 163.365.

- (b) The functions related to the acquisition and disposal of real property pursuant to s. [163.370\(4\)](#).
 - (c) The development of affordable housing for residents of the area.
 - (d) The development of community policing innovations.
- (13) “Real property” means all lands, including improvements and fixtures thereon, and property of any nature appurtenant thereto or used in connection therewith and every estate, interest, right, and use, legal or equitable, therein, including but not limited to terms for years and liens by way of judgment, mortgage, or otherwise.
- (14) “Bonds” means any bonds (including refunding bonds), notes, interim certificates, certificates of indebtedness, debentures, or other obligations.
- (15) “Obligee” means and includes any bondholder, agents or trustees for any bondholders, or lessor demising to the county or municipality property used in connection with community redevelopment, or any assignee or assignees of such lessor’s interest or any part thereof, and the Federal Government when it is a party to any contract with the county or municipality.
- (16) “Person” means any individual, firm, partnership, corporation, company, association, joint stock association, or body politic and includes any trustee, receiver, assignee, or other person acting in a similar representative capacity.
- (17) “Area of operation” means, for a county, the area within the boundaries of the county, and for a municipality, the area within the corporate limits of the municipality.
- (18) “Housing authority” means a housing authority created by and established pursuant to chapter 421.
- (19) “Board” or “commission” means a board, commission, department, division, office, body or other unit of the county or municipality.
- (20) “Public officer” means any officer who is in charge of any department or branch of the government of the county or municipality relating to health, fire, building regulations, or other activities concerning dwellings in the county or municipality.
- (21) “Debt service millage” means any millage levied pursuant to s. 12, Art. VII of the State Constitution.
- (22) “Increment revenue” means the amount calculated pursuant to s. [163.387\(1\)](#).
- (23) “Community policing innovation” means a policing technique or strategy designed to reduce crime by reducing opportunities for, and increasing the perceived risks of engaging in, criminal activity through visible presence of police in the community, including, but not limited to, community mobilization, neighborhood block watch, citizen patrol, citizen contact patrol, foot patrol, neighborhood storefront police stations, field interrogation, or intensified motorized patrol.
- (24) “Taxing authority” means a public body that levies or is authorized to levy an ad valorem tax on real property located in a community redevelopment area.

History.—s. 3, ch. 69-305; s. 1, ch. 77-391; s. 1, ch. 81-44; s. 3, ch. 83-231; ss. 2, 22, ch. 84-356; s. 83, ch. 85-180; s. 72, ch. 87-243; s. 33, ch. 91-45; s. 1, ch. 93-286; s. 1, ch. 94-236; s. 1447, ch. 95-147; s. 2, ch. 98-201; s. 1, ch. 98-314; s. 2, ch. 2002-294; s. 7, ch. 2006-11; s. 1, ch. 2006-307; s. 20, ch. 2013-15; s. 7, ch. 2015-30.

Select Year:

The 2017 Florida Statutes

[Title XI](#)
COUNTY ORGANIZATION AND INTERGOVERNMENTAL
RELATIONS

[Chapter 163](#)
INTERGOVERNMENTAL
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163.356 **Creation of community redevelopment agency.—**

(1) Upon a finding of necessity as set forth in s. [163.355](#), and upon a further finding that there is a need for a community redevelopment agency to function in the county or municipality to carry out the community redevelopment purposes of this part, any county or municipality may create a public body corporate and politic to be known as a “community redevelopment agency.” A charter county having a population less than or equal to 1.6 million may create, by a vote of at least a majority plus one of the entire governing body of the charter county, more than one community redevelopment agency. Each such agency shall be constituted as a public instrumentality, and the exercise by a community redevelopment agency of the powers conferred by this part shall be deemed and held to be the performance of an essential public function. Community redevelopment agencies of a county have the power to function within the corporate limits of a municipality only as, if, and when the governing body of the municipality has by resolution concurred in the community redevelopment plan or plans proposed by the governing body of the county.

(2) When the governing body adopts a resolution declaring the need for a community redevelopment agency, that body shall, by ordinance, appoint a board of commissioners of the community redevelopment agency, which shall consist of not fewer than five or more than nine commissioners. The terms of office of the commissioners shall be for 4 years, except that three of the members first appointed shall be designated to serve terms of 1, 2, and 3 years, respectively, from the date of their appointments, and all other members shall be designated to serve for terms of 4 years from the date of their appointments. A vacancy occurring during a term shall be filled for the unexpired term. As provided in an interlocal agreement between the governing body that created the agency and one or more taxing authorities, one or more members of the board of commissioners of the agency may be representatives of a taxing authority, including members of that taxing authority’s governing body, whose membership on the board of commissioners of the agency would be considered an additional duty of office as a member of the taxing authority governing body.

(3)(a) A commissioner shall receive no compensation for services, but is entitled to the necessary expenses, including travel expenses, incurred in the discharge of duties. Each commissioner shall hold office until his or her successor has been appointed and has qualified. A certificate of the appointment or reappointment of any commissioner shall be filed with the clerk of the county or municipality, and such certificate is conclusive evidence of the due and proper appointment of such commissioner.

(b) The powers of a community redevelopment agency shall be exercised by the commissioners thereof. A majority of the commissioners constitutes a quorum for the purpose of conducting business and exercising the powers of the agency and for all other purposes. Action may be taken by the agency upon a vote of a majority of the commissioners present, unless in any case the bylaws require a larger number. Any person may be appointed as commissioner if he or she resides or is engaged in business, which means owning a business, practicing a profession, or performing a service for compensation, or serving as an officer or director of a corporation or other business entity so engaged, within the area of operation of the agency, which shall be coterminous with the area of operation of the county or municipality, and is otherwise eligible for such appointment under this part.

(c) The governing body of the county or municipality shall designate a chair and vice chair from among the commissioners. An agency may employ an executive director, technical experts, and such other agents and

employees, permanent and temporary, as it requires, and determine their qualifications, duties, and compensation. For such legal service as it requires, an agency may employ or retain its own counsel and legal staff. An agency authorized to transact business and exercise powers under this part shall file with the governing body, on or before March 31 of each year, a report of its activities for the preceding fiscal year, which report shall include a complete financial statement setting forth its assets, liabilities, income, and operating expenses as of the end of such fiscal year. At the time of filing the report, the agency shall publish in a newspaper of general circulation in the community a notice to the effect that such report has been filed with the county or municipality and that the report is available for inspection during business hours in the office of the clerk of the city or county commission and in the office of the agency.

(d) At any time after the creation of a community redevelopment agency, the governing body of the county or municipality may appropriate to the agency such amounts as the governing body deems necessary for the administrative expenses and overhead of the agency, including the development and implementation of community policing innovations.

(4) The governing body may remove a commissioner for inefficiency, neglect of duty, or misconduct in office only after a hearing and only if he or she has been given a copy of the charges at least 10 days prior to such hearing and has had an opportunity to be heard in person or by counsel.

History.—s. 2, ch. 77-391; s. 1, ch. 83-231; s. 6, ch. 84-356; s. 903, ch. 95-147; s. 4, ch. 98-314; s. 41, ch. 2001-266; s. 4, ch. 2002-294; s. 2, ch. 2006-307.

RESOLUTION 2019-050

A RESOLUTION OF THE CITY COMMISSION OF THE CITY OF FRUITLAND PARK, FLORIDA, APPROVING THE CONTINUED EXISTENCE OF THE COMMUNITY REDEVELOPMENT AGENCY AND TRUST FUND; PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the Community Redevelopment Agency was established and the initial CRA plan was adopted by the City Commission of the City of Fruitland Park on March 16, 1995; and

WHEREAS, consistent with s. 163.362, Florida Statutes, the initial CRA plan provides a 30 year term to complete all redevelopment financed by increment revenues; therefore, completion of all redevelopment must occur by the end of the fiscal year 2025, unless the continued existence is approved by a majority vote of the members of the governing body; and

WHEREAS, because the CRA was created before July 1, 2002, the City Commission may extend the CRA for an additional 30 years, for a total of 60 years; and

WHEREAS, the City Commission, at a duly noticed public hearing, in accordance with Sec. 163.361, Florida Statutes, has considered the purpose of the Community Redevelopment Agency, its accomplishments and finds that it is in the best interests of the City of Fruitland Park and its residents and businesses to provide for its continued existence for an additional 30 year period.

NOW, THEREFORE, BE IT RESOLVED AS FOLLOWS:

Section 1. The Community Redevelopment Agency and Trust Fund established March 16, 1995, shall continue in existence for a total of 60 years, thereby having a termination date of September 30, 2055.

Section 2. This resolution shall take effect immediately upon its adoption by the city Commission of the City of Fruitland Park, Florida.

PASSED AND RESOLVED this 19th day of September 2019, by the City Commission of the City of Fruitland Park, Florida.

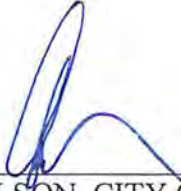
SEAL

**CITY COMMISSION OF THE CITY OF
FRUITLAND PARK, FLORIDA**



CHRIS CHESHIRE, MAYOR

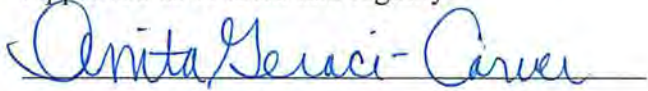
ATTEST:



ESTHER COULSON, CITY CLERK

Mayor Cheshire	<input checked="" type="checkbox"/>	(Yes),	<input type="checkbox"/>	(No),	<input type="checkbox"/>	(Abstained),	<input type="checkbox"/>	(Absent)
Vice Mayor Gunter	<input checked="" type="checkbox"/>	(Yes),	<input type="checkbox"/>	(No),	<input type="checkbox"/>	(Abstained),	<input type="checkbox"/>	(Absent)
Commissioner Bell	<input checked="" type="checkbox"/>	(Yes),	<input type="checkbox"/>	(No),	<input type="checkbox"/>	(Abstained),	<input type="checkbox"/>	(Absent)
Commissioner DeGrave	<input checked="" type="checkbox"/>	(Yes),	<input type="checkbox"/>	(No),	<input type="checkbox"/>	(Abstained),	<input type="checkbox"/>	(Absent)
Commissioner Mobilian	<input type="checkbox"/>	(Yes),	<input type="checkbox"/>	(No),	<input type="checkbox"/>	(Abstained),	<input checked="" type="checkbox"/>	(Absent)

Approved as to form and legality:



Anita Geraci-Carver, City Attorney

Select Year:

The 2019 Florida Statutes

[Title XI](#)
COUNTY ORGANIZATION AND INTERGOVERNMENTAL
RELATIONS

[Chapter 163](#)
INTERGOVERNMENTAL
PROGRAMS

[View Entire
Chapter](#)

163.387 **Redevelopment trust fund.—**

(1)(a) After approval of a community redevelopment plan, there may be established for each community redevelopment agency created under s. [163.356](#) a redevelopment trust fund. Funds allocated to and deposited into this fund shall be used by the agency to finance or refinance any community redevelopment it undertakes pursuant to the approved community redevelopment plan. No community redevelopment agency may receive or spend any increment revenues pursuant to this section unless and until the governing body has, by ordinance, created the trust fund and provided for the funding of the redevelopment trust fund until the time certain set forth in the community redevelopment plan as required by s. [163.362](#)(10). Such ordinance may be adopted only after the governing body has approved a community redevelopment plan. The annual funding of the redevelopment trust fund shall be in an amount not less than that increment in the income, proceeds, revenues, and funds of each taxing authority derived from or held in connection with the undertaking and carrying out of community redevelopment under this part. Such increment shall be determined annually and shall be that amount equal to 95 percent of the difference between:

1. The amount of ad valorem taxes levied each year by each taxing authority, exclusive of any amount from any debt service millage, on taxable real property contained within the geographic boundaries of a community redevelopment area; and
2. The amount of ad valorem taxes which would have been produced by the rate upon which the tax is levied each year by or for each taxing authority, exclusive of any debt service millage, upon the total of the assessed value of the taxable real property in the community redevelopment area as shown upon the most recent assessment roll used in connection with the taxation of such property by each taxing authority prior to the effective date of the ordinance providing for the funding of the trust fund.

However, the governing body may, in the ordinance providing for the funding of a trust fund established with respect to any community redevelopment area, determine that the amount to be funded by each taxing authority annually shall be less than 95 percent of the difference between subparagraphs 1. and 2., but in no event shall such amount be less than 50 percent of such difference.

(b)1. For any governing body that has not authorized by June 5, 2006, a study to consider whether a finding of necessity resolution pursuant to s. [163.355](#) should be adopted, has not adopted a finding of necessity resolution pursuant to s. [163.355](#) by March 31, 2007, has not adopted a community redevelopment plan by June 7, 2007, and was not authorized to exercise community redevelopment powers pursuant to a delegation of authority under s. [163.410](#) by a county that has adopted a home rule charter, the amount of tax increment to be contributed by any taxing authority shall be limited as follows:

- a. If a taxing authority imposes a millage rate that exceeds the millage rate imposed by the governing body that created the trust fund, the amount of tax increment to be contributed by the taxing authority imposing the higher millage rate shall be calculated using the millage rate imposed by the governing body that created the trust fund. Nothing shall prohibit any taxing authority from voluntarily contributing a tax increment at a higher rate for a period of time as specified by interlocal agreement between the taxing authority and the community redevelopment agency.

b. At any time more than 24 years after the fiscal year in which a taxing authority made its first contribution to a redevelopment trust fund, by resolution effective no sooner than the next fiscal year and adopted by majority vote of the taxing authority's governing body at a public hearing held not less than 30 or more than 45 days after written notice by registered mail to the community redevelopment agency and published in a newspaper of general circulation in the redevelopment area, the taxing authority may limit the amount of increment contributed by the taxing authority to the redevelopment trust fund to the amount of increment the taxing authority was obligated to contribute to the redevelopment trust fund in the fiscal year immediately preceding the adoption of such resolution, plus any increase in the increment after the adoption of the resolution computed using the taxable values of any area which is subject to an area reinvestment agreement. As used in this subparagraph, the term "area reinvestment agreement" means an agreement between the community redevelopment agency and a private party, with or without additional parties, which provides that the increment computed for a specific area shall be reinvested in services or public or private projects, or both, including debt service, supporting one or more projects consistent with the community redevelopment plan that is identified in the agreement to be constructed within that area. Any such reinvestment agreement must specify the estimated total amount of public investment necessary to provide the projects or services, or both, including any applicable debt service. The contribution to the redevelopment trust fund of the increase in the increment of any area that is subject to an area reinvestment agreement following the passage of a resolution as provided in this sub-subparagraph shall cease when the amount specified in the area reinvestment agreement as necessary to provide the projects or services, or both, including any applicable debt service, has been invested.

2. For any community redevelopment agency that was not created pursuant to a delegation of authority under s. [163.410](#) by a county that has adopted a home rule charter and that modifies its adopted community redevelopment plan after October 1, 2006, in a manner that expands the boundaries of the redevelopment area, the amount of increment to be contributed by any taxing authority with respect to the expanded area shall be limited as set forth in sub-subparagraphs 1.a. and b.

(2)(a) Except for the purpose of funding the trust fund pursuant to subsection (3), upon the adoption of an ordinance providing for funding of the redevelopment trust fund as provided in this section, each taxing authority shall, by January 1 of each year, appropriate to the trust fund for so long as any indebtedness pledging increment revenues to the payment thereof is outstanding (but not to exceed 30 years) a sum that is no less than the increment as defined and determined in subsection (1) or paragraph (3)(b) accruing to such taxing authority. If the community redevelopment plan is amended or modified pursuant to s. [163.361\(1\)](#), each such taxing authority shall make the annual appropriation for a period not to exceed 30 years after the date the governing body amends the plan but no later than 60 years after the fiscal year in which the plan was initially approved or adopted. However, for any agency created on or after July 1, 2002, each taxing authority shall make the annual appropriation for a period not to exceed 40 years after the fiscal year in which the initial community redevelopment plan is approved or adopted.

(b) Any taxing authority that does not pay the increment revenues to the trust fund by January 1 shall pay to the trust fund an amount equal to 5 percent of the amount of the increment revenues and shall pay interest on the amount of the unpaid increment revenues equal to 1 percent for each month the increment is outstanding, provided the agency may waive such penalty payments in whole or in part.

(c) The following public bodies or taxing authorities are exempt from paragraph (a):

1. A special district that levies ad valorem taxes on taxable real property in more than one county.
2. A special district for which the sole available source of revenue the district has the authority to levy is ad valorem taxes at the time an ordinance is adopted under this section. However, revenues or aid that may be dispensed or appropriated to a district as defined in s. [388.011](#) at the discretion of an entity other than such district shall not be deemed available.
3. A library district, except a library district in a jurisdiction where the community redevelopment agency had validated bonds as of April 30, 1984.
4. A neighborhood improvement district created under the Safe Neighborhoods Act.
5. A metropolitan transportation authority.
6. A water management district created under s. [373.069](#).

7. For a community redevelopment agency created on or after July 1, 2016, a hospital district that is a special district as defined in s. [189.012](#).

(d)1. A local governing body that creates a community redevelopment agency under s. [163.356](#) may exempt from paragraph (a) a special district that levies ad valorem taxes within that community redevelopment area. The local governing body may grant the exemption either in its sole discretion or in response to the request of the special district. The local governing body must establish procedures by which a special district may submit a written request to be exempted from paragraph (a).

2. In deciding whether to deny or grant a special district's request for exemption from paragraph (a), the local governing body must consider:

- a. Any additional revenue sources of the community redevelopment agency which could be used in lieu of the special district's tax increment.
- b. The fiscal and operational impact on the community redevelopment agency.
- c. The fiscal and operational impact on the special district.
- d. The benefit to the specific purpose for which the special district was created. The benefit to the special district must be based on specific projects contained in the approved community redevelopment plan for the designated community redevelopment area.
- e. The impact of the exemption on incurred debt and whether such exemption will impair any outstanding bonds that have pledged tax increment revenues to the repayment of the bonds.
- f. The benefit of the activities of the special district to the approved community redevelopment plan.
- g. The benefit of the activities of the special district to the area of operation of the local governing body that created the community redevelopment agency.

3. The local governing body must hold a public hearing on a special district's request for exemption after public notice of the hearing is published in a newspaper having a general circulation in the county or municipality that created the community redevelopment area. The notice must describe the time, date, place, and purpose of the hearing and must identify generally the community redevelopment area covered by the plan and the impact of the plan on the special district that requested the exemption.

4. If a local governing body grants an exemption to a special district under this paragraph, the local governing body and the special district must enter into an interlocal agreement that establishes the conditions of the exemption, including, but not limited to, the period of time for which the exemption is granted.

5. If a local governing body denies a request for exemption by a special district, the local governing body shall provide the special district with a written analysis specifying the rationale for such denial. This written analysis must include, but is not limited to, the following information:

- a. A separate, detailed examination of each consideration listed in subparagraph 2.
- b. Specific examples of how the approved community redevelopment plan will benefit, and has already benefited, the purpose for which the special district was created.

6. The decision to either deny or grant an exemption must be made by the local governing body within 120 days after the date the written request was submitted to the local governing body pursuant to the procedures established by such local governing body.

(3)(a) Notwithstanding the provisions of subsection (2), the obligation of the governing body which established the community redevelopment agency to fund the redevelopment trust fund annually shall continue until all loans, advances, and indebtedness, if any, and interest thereon, of a community redevelopment agency incurred as a result of redevelopment in a community redevelopment area have been paid.

(b) Alternate provisions contained in an interlocal agreement between a taxing authority and the governing body that created the community redevelopment agency may supersede the provisions of this section with respect to that taxing authority. The community redevelopment agency may be an additional party to any such agreement.

(4) The revenue bonds and notes of every issue under this part are payable solely out of revenues pledged to and received by a community redevelopment agency and deposited to its redevelopment trust fund. The lien created by such bonds or notes shall not attach until the increment revenues referred to herein are deposited in the redevelopment trust fund at the times, and to the extent that, such increment revenues accrue. The holders of such

bonds or notes have no right to require the imposition of any tax or the establishment of any rate of taxation in order to obtain the amounts necessary to pay and retire such bonds or notes.

(5) Revenue bonds issued under the provisions of this part shall not be deemed to constitute a debt, liability, or obligation of the public body or the state or any political subdivision thereof, or a pledge of the faith and credit of the public body or the state or any political subdivision thereof, but shall be payable solely from the revenues provided therefor. All such revenue bonds shall contain on the face thereof a statement to the effect that the agency shall not be obligated to pay the same or the interest thereon except from the revenues of the community redevelopment agency held for that purpose and that neither the faith and credit nor the taxing power of the governing body or of the state or of any political subdivision thereof is pledged to the payment of the principal of, or the interest on, such bonds.

(6) Effective October 1, 2019, moneys in the redevelopment trust fund may be expended for undertakings of a community redevelopment agency as described in the community redevelopment plan only pursuant to an annual budget adopted by the board of commissioners of the community redevelopment agency and only for the purposes specified in paragraph (c).

(a) Except as otherwise provided in this subsection, a community redevelopment agency shall comply with the requirements of s. [189.016](#).

(b) A community redevelopment agency created by a municipality shall submit its annual budget to the board of county commissioners for the county in which the agency is located within 10 days after the adoption of such budget and submit amendments of its annual budget to the board of county commissioners within 10 days after the adoption date of the amended budget.

(c) The annual budget of a community redevelopment agency may provide for payment of the following expenses:

1. Administrative and overhead expenses directly or indirectly necessary to implement a community redevelopment plan adopted by the agency.
2. Expenses of redevelopment planning, surveys, and financial analysis, including the reimbursement of the governing body or the community redevelopment agency for such expenses incurred before the redevelopment plan was approved and adopted.
3. The acquisition of real property in the redevelopment area.
4. The clearance and preparation of any redevelopment area for redevelopment and relocation of site occupants within or outside the community redevelopment area as provided in s. [163.370](#).
5. The repayment of principal and interest or any redemption premium for loans, advances, bonds, bond anticipation notes, and any other form of indebtedness.
6. All expenses incidental to or connected with the issuance, sale, redemption, retirement, or purchase of bonds, bond anticipation notes, or other form of indebtedness, including funding of any reserve, redemption, or other fund or account provided for in the ordinance or resolution authorizing such bonds, notes, or other form of indebtedness.
7. The development of affordable housing within the community redevelopment area.
8. The development of community policing innovations.
9. Expenses that are necessary to exercise the powers granted under s. [163.370](#), as delegated under s. [163.358](#).

(7) On the last day of the fiscal year of the community redevelopment agency, any money which remains in the trust fund after the payment of expenses pursuant to subsection (6) for such year shall be:

(a) Returned to each taxing authority which paid the increment in the proportion that the amount of the payment of such taxing authority bears to the total amount paid into the trust fund by all taxing authorities for that year;

(b) Used to reduce the amount of any indebtedness to which increment revenues are pledged;

(c) Deposited into an escrow account for the purpose of later reducing any indebtedness to which increment revenues are pledged; or

(d) Appropriated to a specific redevelopment project pursuant to an approved community redevelopment plan. The funds appropriated for such project may not be changed unless the project is amended, redesigned, or delayed, in which case the funds must be reappropriated pursuant to the next annual budget adopted by the board of commissioners of the community redevelopment agency.

(8)(a) Each community redevelopment agency with revenues or a total of expenditures and expenses in excess of \$100,000, as reported on the trust fund financial statements, shall provide for a financial audit each fiscal year by an independent certified public accountant or firm. Each financial audit conducted pursuant to this subsection must be conducted in accordance with rules for audits of local governments adopted by the Auditor General.

(b) The audit report must:

1. Describe the amount and source of deposits into, and the amount and purpose of withdrawals from, the trust fund during such fiscal year and the amount of principal and interest paid during such year on any indebtedness to which increment revenues are pledged and the remaining amount of such indebtedness.

2. Include financial statements identifying the assets, liabilities, income, and operating expenses of the community redevelopment agency as of the end of such fiscal year.

3. Include a finding by the auditor as to whether the community redevelopment agency is in compliance with subsections (6) and (7).

(c) The audit report for the community redevelopment agency must accompany the annual financial report submitted by the county or municipality that created the agency to the Department of Financial Services as provided in s. [218.32](#), regardless of whether the agency reports separately under that section.

(d) The agency shall provide a copy of the audit report to each taxing authority.

History.—s. 11, ch. 77-391; s. 78, ch. 79-400; s. 9, ch. 83-231; s. 15, ch. 84-356; s. 27, ch. 87-224; s. 35, ch. 91-45; s. 4, ch. 93-286; s. 10, ch. 94-236; s. 1, ch. 94-344; s. 10, ch. 98-314; s. 8, ch. 2002-18; s. 8, ch. 2002-294; s. 7, ch. 2006-307; s. 1, ch. 2016-155; s. 8, ch. 2019-163.

Select Year:

The 2019 Florida Statutes

[Title XIII](#)[Chapter 189](#)[View Entire Chapter](#)

PLANNING AND DEVELOPMENT UNIFORM SPECIAL DISTRICT ACCOUNTABILITY ACT

189.015 Meetings; notice; required reports.—

(1) The governing body of each special district shall file quarterly, semiannually, or annually a schedule of its regular meetings with the local governing authority or authorities. The schedule shall include the date, time, and location of each scheduled meeting. The schedule shall be published quarterly, semiannually, or annually in a newspaper of general paid circulation in the manner required in this subsection. The governing body of an independent special district shall advertise the day, time, place, and purpose of any meeting other than a regular meeting or any recessed and reconvened meeting of the governing body, at least 7 days before such meeting, in a newspaper of general paid circulation in the county or counties in which the special district is located, unless a bona fide emergency situation exists, in which case a meeting to deal with the emergency may be held as necessary, with reasonable notice, so long as it is subsequently ratified by the governing body. No approval of the annual budget shall be granted at an emergency meeting. The advertisement shall be placed in that portion of the newspaper where legal notices and classified advertisements appear. The advertisement shall appear in a newspaper that is published at least 5 days a week, unless the only newspaper in the county is published fewer than 5 days a week. The newspaper selected must be one of general interest and readership in the community and not one of limited subject matter, pursuant to chapter 50. Any other provision of law to the contrary notwithstanding, and except in the case of emergency meetings, water management districts may provide reasonable notice of public meetings held to evaluate responses to solicitations issued by the water management district, by publication in a newspaper of general paid circulation in the county where the principal office of the water management district is located, or in the county or counties where the public work will be performed, no less than 7 days before such meeting.

(2) All meetings of the governing body of the special district shall be open to the public and governed by the provisions of chapter 286.

(3) Meetings of the governing body of the special district shall be held in a public building when available within the district, in a county courthouse of a county in which the district is located, or in a building in the county accessible to the public.

History.—s. 10, ch. 79-183; s. 78, ch. 81-259; s. 24, ch. 89-169; s. 19, ch. 97-255; s. 33, ch. 99-378; s. 39, ch. 2014-22.

Note.—Former s. 189.005; s. 189.417.

**CITY OF FRUITLAND PARK
CONSENT AGENDA ITEM SUMMARY SHEET
Item Number: 5a&b**

ITEM TITLE: Draft Regular Meeting Minutes and Resolution 2020-033

For the Meeting of: July 23, 2020

Submitted by: City Clerk

Date Submitted: July 17, 2020

Funds Required: None

Account Number: N/A

Amount Required: N/A

Balance Remaining: N/A

Attachments: Yes, draft regular July 9, 2020 minutes, proposed Resolution 2020-033, and July 15, 2020 draft Board of Trustees' Firefighters Pension Trust Fund minutes

Item Description: Routine items and items not anticipated to be controversial are placed on the Consent Agenda to expedite the meeting. If a commissioner, staff member or member of the public wish to discuss any item, the procedure is as follows: (1) Pull the item(s) from the Consent Agenda; (2) Vote on remaining item(s), and (3) Discuss each pulled item separately and vote.

- (a) July 9, 2020 regular meeting minutes and**
- (b) Resolution 2020-033, Board of Trustees' Appointment – Mr. C. Themm (residents: commission-appointed category)**

Action to be Taken: Approve the consent agenda

Staff's Recommendation: Approval

Additional Comments: None

City Manager Review: Yes

Mayor Authorization: Yes

**FRUITLAND PARK CITY COMMISSION REGULAR
MEETING MINUTES
July 9, 2020**

A regular meeting of the Fruitland Park City Commission was held at 506 W. Berckman Street, Fruitland Park, Florida 34731 on Thursday, July 9, 2020 at 6:00 p.m.

Members Present: Mayor Chris Cheshire, Vice Mayor John L. Gunter, Jr., Commissioners Christopher Bell, Patrick DeGrave and John Mobilian.

Also Present: City Manager Gary La Venia; City Attorney Anita Geraci-Carver; City Treasurer Jeannine Racine; Sergeant Henry Rains, Police Department, Public Works Director Robb Dicus, Interim Fire Chief Donald Gilpin, Deputy Fire Chief Tim Yoder, Fire Department and City Clerk Esther B. Coulson.

1. CALL TO ORDER, INVOCATION AND PLEDGE OF ALLEGIANCE

ACTION: 6:00 p.m. After the Reverend Dr. George A. Mulford III, Grace Bible Baptist Church gave the invocation, Sergeant Rains led in the Pledge of Allegiance to the flag.

2. ROLL CALL

ACTION: 6:02:46 p.m. and 6:05:21 p.m. Mayor Cheshire requested that Ms. Coulson call the roll and a quorum was declared present.

Later in the meeting and upon Mayor Cheshire's recommendation, **the city commission, by unanimous consent, accepted the following changes to Item 5.(b) on this evening's agenda:**

- the Agenda Summary Report Correction to reflect the Planning and Zoning (P&Z) Board and not LCLC and
- the addendum – P&Z Board applications from Messrs. C. Burch, L. Elliot, and R. Ray.

3. SPECIAL PRESENTATION

On behalf of the city commission, Mayor Cheshire presented Mr. Phillip "Phil" D. Purlee, P&Z Board member from 2012 to 2020 with a plaque thanking him for his dedication and commitment.

ACTION: 6:03:01 p.m. Mr. Purlee accepted the plaque with much appreciation and thanked the city commission for the recognition.

4. CONSENT AGENDA

(a) June 25, 2020 regular meeting minutes as submitted.

(b) Resolution 2020-030 Community Center Split System Air Conditioning System - FY 2019-20 Budget Amendment

A RESOLUTION OF THE CITY COMMISSION OF THE CITY OF FRUITLAND PARK, FLORIDA, AMENDING THE 2019/2020 FISCAL YEAR BUDGET PURSUANT TO SEC. 6.07 OF THE CITY CHARTER TO TRANSFER FUNDS FROM CONTINGENCY TO RECREATION FACILITY MAINTENANCE BUDGET; AND PROVIDING FOR AN EFFECTIVE DATE.

ACTION: 6:05:00 p.m. After discussion and **on motion of Commissioner Bell, seconded by Commissioner DeGrave and unanimously carried, the city commission approved the consent agenda as previously cited.**

5. REGULAR AGENDA

(a) Resolution 2020-031 – P&Z Board Appointment

After Ms. Geraci-Carver read into the record proposed Resolution 2020-031, the substance of which is as follows, Mayor Cheshire noted the corrections to the agenda:

A RESOLUTION OF THE CITY COMMISSION OF THE CITY OF FRUITLAND PARK, FLORIDA, APPOINTING A MEMBER TO THE CITY OF FRUITLAND PARK PLANNING AND ZONING BOARD; PROVIDING THE TERM EXPIRATION DATE; AND PROVIDING FOR AN EFFECTIVE DATE.

Mayor Cheshire cited reasons to accept his appointment of Mr. Carlisle Burch to serve on the P&Z Board.

ACTION: 6:05:21 p.m. After discussion, **a motion was made by Commissioner Bell and seconded by Vice Mayor Gunter that the city commission adopt Resolution 2020-031 with the appointment of Mr. Carlisle Burch.**

Mayor Cheshire called for a roll call vote on the motion and declared it carried unanimously.

(b) Resolution 2020-027 FY 2019-20 (Estimated) Preliminary Fire Services Assessment

Ms. Geraci-Carver read into the record proposed Resolution 2020-027, the substance of which is as follows:

A RESOLUTION OF THE CITY OF FRUITLAND PARK, FLORIDA, RELATING TO THE PROVISION OF FIRE SERVICES THROUGHOUT THE CITY OF FRUITLAND PARK; ESTABLISHING THE ESTIMATED ASSESSMENT RATE FOR FIRE SERVICES ASSESSMENT FOR THE FISCAL YEAR BEGINNING OCTOBER 1, 2020; DIRECTING THE

PREPARATION OF AN ASSESSMENT ROLL; AUTHORIZING A PUBLIC HEARING AND DIRECTING THE PROVISION OF NOTICE THEREOF; PROVIDING FOR CONFLICTS; PROVIDING FOR SEVERABILITY; AND PROVIDING AN EFFECTIVE DATE.

After much discussion and in response to the concerns raised by Mr. Carl Yauk, Villages of Fruitland Park (Pine Hills) resident, regarding the calendar year 2015 call data analysis, Mr. La Venia outlined reasons for the utilization of same based on budgetary figures.

ACTION: 6:08:31 p.m. A motion was made by Commissioner DeGrave and seconded by Commissioner Mobilian that the city commission adopt Resolution 2020-027 as previously cited.

Mayor Cheshire called for a roll call vote on the motion with the city commission members voting as follows:

Commissioner Mobilian	Yes
Vice Mayor Gunter	No
Commissioner Bell	No
Commissioner DeGrave	Yes
Mayor Cheshire	Yes

The motion was declared carried by a three-to-one (3-1) vote.

(c) Resolution 2020-029 – SRO - School Board, Law Enforcement Agencies and Lake County Sheriff's Office ILA

Ms. Geraci-Carver read into the record proposed Resolution 2020-029, the substance of which is as follows:

A RESOLUTION OF THE CITY COMMISSION OF THE CITY OF FRUITLAND PARK, FLORIDA, ADOPTING THE INTERLOCAL AGREEMENT BETWEEN THE SCHOOL BOARD OF LAKE COUNTY, FLORIDA AND LAW ENFORCEMENT AGENCIES INCLUDING THE CITY OF FRUITLAND PARK, FLORIDA RELATING TO THE REPORTING OF ACTS THAT POSE A THREAT TO SCHOOL SAFETY; PROVIDING FOR AN EFFECTIVE DATE.

ACTION: 6:20:02 p.m. After discussion, a motion was made by Commissioner Bell and seconded by Commissioner Mobilian that the city commission adopt Resolution 2020-029 as previously cited.

(d) Water Tank Maintenance Discussion

Mr. La Venia addressed the need for the inspection, cleaning and maintenance of the two 200,000 gallon water storage tanks (the elevated tower located at 200 Shiloh Street and ground storage tank at 201 West Berckman Street) for approximately \$65,000 and pointed out the current agreement with Suez/Utility Service Company Inc., a copy of which is filed with the supplemental papers to the minutes of this meeting.

Mr., La Venia outlined the possibility for staff to perform external maintenance on the ground storage water tank and relayed his recommendation to pursue two long term agreements in this regard.

ACTION: 6:08:31 p.m. Following extensive discussions and **by unanimous consent, the city commission authorized staff to negotiate with Suez/Utility Service Company Inc. the maintenance costs and terms on the elevated water tower located at 200 Shiloh Street and the ground storage tank at 201 West Berckman Street and report back to the city commission with more information.**

(e) Records Management - Redact - Veritone Inc Agreement Discussion

In recognizing Veritone Inc.'s indemnification provision limitation of liability on its records management redact services agreement, Ms. Geraci-Carver pointed out same raised at the March 12, 2020 regular meeting, and relayed Veritone's desire for an open-ended liability and disagreement with the proposed reduction and \$500,000 cap. She cited reasons why she recommended that the city limit its liability.

ACTION: 6:35:14 p.m. After much discussion, **a motion was made by Commissioner DeGrave and seconded by Commissioner Mobilian that the city commission authorize the city attorney to draft a resolution regarding the approval of the redaction software with Veritone Inc. for consideration at the next meeting and agreed to evaluate the license agreement and market trends annually.**

6. OFFICERS' REPORTS

(a) City Manager

i. Economic Development Status Update

Mr. La Venia advised that he has no report to submit regarding the economic development status.

ACTION: 6:40:44 p.m. No action was taken.

ii. COVID-19 Status Update

Mr. La Venia addressed the institution of COVID-19 measures as outlined at the July 9, 2020 regular meeting.

After discussions were held on various local governments named in lawsuits filed on a mandatory mask requirement for public and indoor locations and consideration of same by governmental entities on their respective agenda, Ms. Geraci-Carver recognized the local legislations' minimal fines and penalties and anticipated receiving direction on what would be needed.

ACTION: 6:40:52 p.m. No action was taken.

iii. Public Works Building Location Discussion

Mr. La Venia conveyed the discussions he recently had with Mr. Dicus regarding the public works' proposed building location; his conversations with the engineers retained by the city on the proposal to commence with the construction of the new public works site work and the water wastewater treatment plant, and the concept on the proposed locations (north of Spring Lake Road or the current site, 202 West Berckman Street), the city commission's position and its plans on the current site.

ACTION: 6:43:12 After extensive discussions and **by unanimous consent, the city commission agreed to construct the proposed public works building on the water wastewater treatment sewer plant site, north of Spring Lake Road.**

iv. City Logo – Flags Discussion

Mr. La Venia relayed the request of Parks and Recreation Director Ms. Michelle Yoder that for all national public holidays, patriotic banners alternated with the city's windmill logo are to be used on the electric poles. He suggested gradually transitioning from the city's current logo to the windmill for major items.

After discussion, Vice Mayor Gunter suggested seeking and utilizing beautification grants to apply for windmill banners hanging from the light poles on the CR 466 median.

ACTION: 6:51:47 p.m. **By unanimous consent, the city commission agreed to change the city's current logo by slowly transitioning to the windmill logo.** (Note: the banners would be situated on the brackets on Berckman Street, College Avenue, and Fountain Street during the holidays.)

(b) City Attorney

i. City of Fruitland Park v. T. D. Burke

Ms. Geraci-Carver announced that she has nothing to report on the T. D. Burke case.

ACTION: 7:04:48 p.m. No action was necessary.

ii. **City of Fruitland Park v. State of Florida Department of Management Services**

Ms. Geraci-Carver announced that she has nothing to report on the State of Florida Department of Management Services.

ACTION: 7:04:48 p.m. No action was necessary.

iii. **Michael and Laurie Fewless v. City of Fruitland Park**

Ms. Geraci-Carver announced that she has nothing to report on the Michael and Laurie Fewless case.

ACTION: 7:04:48 p.m. No action was necessary.

iv. **Norman C. Cummins v. Stephen P. Angelillo and City of Fruitland Park, Lake County Case No. 2020-CA-1026**

Ms. Geraci-Carver pointed out her report at the June 25, 2020 regular meeting. She indicated that a response on the Norman C. Cummins V. Stephen P. Angelillo and City of Fruitland Park case is due on the July 13, 2020 which has been submitted to the insurance company to determine coverage; otherwise, she will file a response on the city's behalf.

ACTION: 7:04:48 p.m. No action was necessary.

v. **COVID-19 Status Update**

Ms. Geraci-Carver reported that on July 7, 2020, the Florida Governor has signed Emergency Management – Extension of Executive Order 20-52, COVID-19 Executive Order 20-166 extending the emergency for another 60 days. She explained that local government public meetings (under Executive Order 20-69) suspended the Florida Statutes requiring a quorum to be present in person and addressed the city commission's option to revert to conducting its meetings virtually or by telephonic conference during the 60-day period.

ACTION: 7:05:02 p.m. No action was necessary.

vii. **Lake County Commission**

Ms. Geraci-Carver referred to the Lake County Board of County Commissioners July 7, 2020 approval at its regular meeting amending the Coronavirus Aid, Relief, and Economic Security Act (providing \$150 billion in direct assistance) agreement for later ratification; noted that the allocation of a percentage of \$16,014,815 would be disbursed to assist small businesses, not for profit organizations, and faith-based organizations and

for personal protective equipment. She addressed her plan to attend its future meeting in that regard and provide an update report to the city commission.

ACTION: 7:05:27 p.m. No action was necessary.

7. PUBLIC COMMENTS

Mr. Carl Yauk, VOFP (Pine Hills) resident, pointed out the city commission's discussions earlier on this evening's agenda and questioned the city's plans to make the community inviting and a desirable place in which to live, work and visit and gave reasons why he believed that the police department equipped with body cameras ought to be of high priority.

Mr. Burke commended the builder's construction of duplexes close to his property on Sunset Way which he deemed as aesthetically pleasing as well as the builder's erection of millings on top of a dirt road. Mr. Burke voiced his concurrence with earlier statements for the city center's focus as its hometown and believed that the public works department's proposed site ought to be obscure or its equipment placed off-site. He expressed appreciation to the city commission's and its earlier remarks on his appointment to serve on the P&Z Board.

Mr. Leland Hubbell, City of Fruitland Park resident, outlined his experience as a water plant operator in the Town of Lady Lake, his knowledge in the operation and maintenance of the ground water storage tank, and gave his assurance on the town's long-term relationship with and performance of Suez/Utility Service Company Inc.

ACTION: 7:06:40 p.m. No action was necessary.

8. COMMISSIONERS' COMMENTS

(a) Commissioner Mobilian

Commissioner Mobilian stated that he has nothing to report at this time.

ACTION: 7:13:52 p.m. No action was necessary.

(b) Commissioner DeGrave

Commissioner DeGrave stated that he has nothing to report at this time.

ACTION: 7:13:56 p.m. No action was necessary.

(c) Commissioner Bell

Commissioner Bell referred to the July 6, 2020 Town of Lady Lake Council meeting regarding its approval at first reading of proposed Ordinance 2020-04 amending the permitted uses for certain property (approximately 40.44 acres with a maximum building height of 35 feet) zoned planned unit development and heavy commercial north of Lake Ella Road and west of Highway 27/US 441 within the town limits where the proposed use will impact the city.

After discussion, Commissioner Bell suggested initiating an agreement as it is within the city's boundary line and that the city ought to be kept informed.

ACTION: 7:14:04 p.m. By unanimous consent, the city commission directed the city manager to contact the city manager on the proposed amended permitted use.

(d) Vice Mayor Gunter, Jr.

i. Unfinished Business - Gardenia Park Phase III Florida Recreation Development Assistance Program (FRDAP) Grant (Skate Park)

Earlier in the meeting, Vice Mayor Gunter recalled the line item as a placement on previous city commission agenda for "Old Business" and expressed concerns on the elimination of same.

After discussion and at Mayor Cheshire's request, Ms. Coulson recalled the city commission's unanimous consensus (at its June 8, 2017 regular meeting) to remove future "Old Business" as an item listed under its regular agenda.

Vice Mayor Gunter referred to Ms. Yoder's statements at the June 9, 2020 regular meeting on the approximate \$80,000 cost for the Gardenia Park skate park concrete version of the halfpipe; made comparisons of other quotes on similar equipment and believed staff ought to seek bids on same.

Following further discussion, Mr. La Venia and Ms. Michaud recognized the funding sources (\$265,000 identified in reserves and \$20,000 from same or from contingency) which ought to be addressed.

ACTION: 6:57:41 p.m. Upon Vice Mayor Gunter's request, the city commission, by unanimous consent, agreed for the parks and recreation director to appear before the city commission at its next meeting to revisit discussions on the Gardenia Park Phase III Florida Recreation Development Assistance Program Grant Skateboard Park.

After discussion, and by unanimous consent, the city commission agreed to include "Unfinished Business Items" back under its future meeting agenda.

ii. Excused Absence

In response to Vice Mayor Gunter's request to be excused from the July 23, 2020 regular meeting, it was determined that he could virtually attend said meeting.

ACTION: 7:16:24 P.M. No action was necessary.

9. MAYOR'S COMMENTS

Dates to Remember

Mayor Cheshire recognized the following dates:

- July 13, 2020 Lake County Arts and Cultural Council, 20763 US Highway 27, Groveland, Florida 34736 at 3:00 p.m.;
- July 23, 2020 City Commission Meeting regular at 6:00 p.m.;
- August 3, 2020 City Commission Workshop at 6:00 p.m.;
- August 4, 2020 City Commission Workshop at 6:00 p.m.;
- August 13, 2020 City Commission Meeting regular at 6:00 p.m.;
- August 26, MPO Governing Board Virtual
- August 27, 2020 City Commission Meeting regular at 6:00 p.m.
- September 7, 2020 City Hall Closed, Labor Day;
- September 10, 2020 City Commission Meeting regular at 6:00 p.m.;
- September 17, 2020 City Commission/P&Z Board Joint Workshop Meeting at 6:00 p.m.
- September 24, 2020 City Commission Meeting regular at 6:00 p.m.

In addition to the aforementioned dates, Commissioner Bell recognized that on August 10, 2020, meetings will be held at the Lake County Tourist Development Council at 3:00 p.m. and the Lake County Parks Recreation Trails Advisory Board at 3:30 p.m.

ACTION: 7:18:30 p.m. No action was taken.

10. ADJOURNMENT

There being no further business to come before the city commission, the meeting adjourned at 7:19 p.m.

The minutes were approved at the July 23, 2020 regular meeting.

Signed _____
Esther B. Coulson, City Clerk

Signed _____
Chris Cheshire, Mayor

RESOLUTION 2020-033

A RESOLUTION OF THE CITY COMMISSION OF THE CITY OF FRUITLAND PARK, FLORIDA, APPOINTING A MEMBER TO THE BOARD OF TRUSTEES OF THE MUNICIPAL FIRE FIGHTERS PENSION TRUST FUND OF THE CITY OF FRUITLAND PARK; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the City of Fruitland Park established a municipal fire fighters pension trust fund; and

WHEREAS, one (1) vacancy currently exists on the board of trustees.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COMMISSION OF THE CITY OF FRUITLAND PARK, FLORIDA:

1. Charles Themm is hereby appointed to the board of trustees of the municipal fire fighters pension trust fund of the City of Fruitland Park to serve another two-year term. His term shall expire December 31, 2021.

2. This resolution shall take effect immediately upon its final adoption by the City Commission of the City of Fruitland Park, Florida.

PASSED AND RESOLVED this 23rd day of July 2020, by the City Commission of the City of Fruitland Park, Florida.

Chris Cheshire, Mayor

Attest:
Esther B. Coulson, City Clerk, MMC

Mayor Cheshire _____ (Yes), _____ (No), _____ (Abstained), _____ (Absent)
Vice Mayor Gunter _____ (Yes), _____ (No), _____ (Abstained), _____ (Absent)
Commissioner Bell _____ (Yes), _____ (No), _____ (Abstained), _____ (Absent)
Commissioner Mobilian _____ (Yes), _____ (No), _____ (Abstained), _____ (Absent)
Commissioner DeGrave _____ (Yes), _____ (No), _____ (Abstained), _____ (Absent)

Approved as to form and legality:

Anita Geraci-Carver, City Attorney

**FRUITLAND PARK
BOARD OF TRUSTEES FIREFIGHTERS PENSION TRUST FUND
DRAFT MINUTES
July 15, 2020**

A meeting of the City of Fruitland Park Board of Trustees Firefighters Pension Trust Fund was held in the City Commission Chambers at 506 West Berckman Street, Florida, 34731 on Wednesday, July 15, 2020 at 6:00 p.m.

Members Present: Messrs. Taylor Luttfiring (firefighter: fire department appointed), Vice Chair
Edgar J. “Jerry” Elton (residents: commission-appointed)
Marc Matthews Jr., (pension board: appointed),
Charles “Chuck” Themm (residents: commission-appointed), and
City Treasurer Jeannine Racine (alternate)

Members Absent: Firefighter Kevin Ducharme (firefighter: fire department appointed), Chair

Also Present: City Clerk Esther B. Coulson.

The vice chair called the meeting to order at 6:00 p.m.

1. Pledge of Allegiance

The vice chair led in the Pledge of Allegiance to the flag.

2. Roll Call

Ms. Coulson called the roll and a quorum was declared present.

3. Approval of Minutes

On motion of Mr. Matthews, seconded by Mr. Elton and unanimously carried, the board approved the October 8, 2019 meeting minutes as submitted.

4. Public Comments

There were no public comments at this time.

5. Membership

• **Chuck Themm**

Ms. Coulson announced that Mr. Themm’s term on the Board of Trustees Firefighters Pension Trust Fund member expired on December 31, 2019.

After Mr. Themm addressed his willingness to serve for another two-year term and **by unanimous consent, the Board accepted his reappointment.**

• **Kevin Ducharme**

In response to Ms. Coulson’s comments on her intent to communicate with Chairperson Firefighter Kevin Ducharme on his reappointment, the vice chair

noted his recent reappointment (November 14, 2019) to the board.

6. City Treasurer's Report

• **2019 Annual Report**

Ms. Racine referred to the June 30, 2020 memorandum regarding the 2019 Annual Report.

• **Cash-By-Funds Summary – May 30, 2020**

Ms. Racine reviewed the May 30, 2020 Summary of Cash Accounts by Funds to be \$683,689 in the fire fighter pension.

• **Florida Retirement System Catchup – Part Time Employees**

Ms. Racine reported that the city has caught up in the firefighter local pension which started in 2017 to 2019 for the 12 flex employees which determined that they were also volunteers and noted the total in the fund for August 2017 to October 2019 to be \$34,567.

By unanimous consent, the board accepted the treasurer's report as submitted.

7. Other Business

There were no other busines at this time.

8. Board of Trustees' Comments

There were no comments from the board members.

9. Next Meeting Date

After discussion and **by unanimous consent, the board agreed to hold the next meeting at 6:00 p.m. on Wednesday, September 23, 2020.**

10. Adjournment

There being no further business to come before the board at this time, the meeting adjourned at 6:10 p.m.

Submitted: _____
Esther B. Coulson, City Clerk

Chair

**CITY OF FRUITLAND PARK
AGENDA ITEM SUMMARY SHEET
Item Number: 6a i&ii**

ITEM TITLE:	Request for Qualifications
For the Meeting of:	July 23, 2020
Submitted by:	City Manager
Date Submitted:	July 17, 2020
Funds Required:	No
Account Number:	N/A
Amount Required:	N/A
Balance Remaining:	N/A
Attachments:	RFQ 2020-01, Affidavit Qualification Packages, Bid Opening, and Shortlist Ranking

Item Description: Request for Qualifications:

(i) RFQ 2020-01 Professional Architectural Services Design Architect Proposals – Presentations Consider, approve the selection committee’s recommendation and hold presentations on the best qualified firm’s Request for Qualifications 2020-01 Professional Architectural Services Design Architect proposal:

- Architects Design Group, Winter Park
- Blaise, Fiebach and Associates PA, Leesburg, and
- GatorSkitch Corporation, Architects and Planners, Clermont

(ii) RFQ 2020-02 02 Grant Writer Update Status Report

Action to be Taken:	Approve the selection of a firm. The award of the contract to the best qualified firm would be considered at the August 13, 2020 regular meeting.
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Staff’s Recommendation:	N/A
Additional Comments:	None
City Manager Review:	Yes
Mayor Authorization:	Yes

SECTION 1.0 – SCOPE OF WORK AND SPECIFIC CONTRACT REQUIREMENTS

1.1 Purpose

Pursuant to F.S. 287.055 (the Consultant’s Competitive Negotiation Act or CCNA), the City of Fruitland Park is soliciting statements of qualifications and letters of interest from firms qualified to provide architectural design services of a public safety complex and a public works building. **The city may select one architect to design both buildings or may select one architect for design of the public safety complex and a second architect for design of the public works building.**

1.2 Scope of Work

The architectural services assigned includes, the following two projects:

- Building design: Assistance with renderings and design of a public safety complex consisting of approximately 5,000 square feet for police department use and 6,000 square feet for fire safety/emergency medical services use.
- Public works building design: Assistance with renderings and design of a public works building of approximately 7,200 square feet with dimensions of 60’ x 120’ to house the public works department and equipment.

1.3 Qualifying Standards

Responding vendors must exhibit compliance to the qualifications standards and evaluation factors expressed in F.S. 287.055 to be considered for award under this solicitation. Respondents are advised their location and that their listing of subcontractors, to include location and respective percentage of use, are a listed evaluation factor under CCNA. Additional detail in this regard is stated in Section 3.7.3. Adherence to the following additional qualifications is also required for a responding vendor to be considered for award:

1. Relative degree of specific experience and expertise in the services and projects listed in section 1.2.

1.4 Period of Performance / Term of Contract

The term of agreement developed from this request for qualifications statement will be for the period of time to complete the terms and condition from the date of agreement execution.

1.4.1 Most Favored Client

The respondent agrees to treat the city as a most-favored-customer and the respondent specifically agrees that all prices, terms, warranties, and benefits granted to the city, are comparable to or better than equivalent terms having been offered, being offered, or to be offered to any respondent customer during the term of the contractual agreement between the parties.

1.4.2 Cost Criteria

After the approval of the short-listed firms, compensation will be negotiated to an amount which the city determines is fair, competitive, and reasonable. The city will require any and all firms receiving an award for this contract to execute a truth-in-negotiations certificate stating that the direct labor costs supporting the compensation are current at the time of negotiations.

1.5 Key Contractor Personnel

In submitting a qualifications package, the respondent is representing that each person listed or referenced in the qualifications package shall be available to perform the services described for the city, barring illness, accident, or other unforeseeable events of a similar nature in which case the respondent must be able to promptly provide a qualified replacement. In the event the respondent wishes to substitute personnel, the respondent shall propose a person with equal or higher qualifications and each replacement person is subject to prior written city approval. In the event the requested substitute person is not satisfactory to the city and the matter cannot be resolved to the satisfaction of the city, the city reserves the right to cancel the contract for cause.

1.6 Prohibition Against Contingent Fees

Any contract entered into as a result of this request for response shall contain the following statement.

“I, as an authorized agent of _____ *[type firm name]* warrant that _____ *[type firm name]* has not employed or retained any company or person, other than a bona fide employee working solely for _____ *[type firm name]* to solicit or secure this agreement and that _____ *[type firm name]* has not paid or agreed to pay any person, company, corporation, individual, or firm, other than a bona fide employee working solely for _____ *[type firm name]* any fee, commission, percentage, gift, or other consideration contingent upon or resulting from the award or making of this agreement.”

1.7 Insurance Requirements

Each vendor shall include in its solicitation response package proof of insurance capabilities, including but not limited to, the following requirements: [This does not mean that the vendor must have the coverage prior to submittal but that the coverage must be in effect prior to a purchase order or contract being executed by the city.]

An original certificate of insurance indicating that the awarded vendor has coverage in accordance with the requirements of this section, shall be furnished by the vendor to the contracting officer within five (5) working days of such request and must be received and accepted by the city prior to contract execution and/or before any work begins.

The vendor shall provide and maintain at all times during the term of any contract, without cost or expense to the city, policies of insurance with a company or companies authorized to do business in the State of Florida and which are acceptable to the city, insuring the vendor against any and all claims, demands or causes of action whatsoever, for injuries received or damage to property

relating to the performance of duties, services and/or obligations of the vendor under the terms and provisions of the contract. The vendor is responsible for timely provision of certificate(s) of insurance to the city at the certificate holder address evidencing conformance with the contract requirements at all times throughout the term of the contract.

Such policies of insurance and confirming certificates of insurance shall ensure the vendor is in accordance with the following minimum limits:

- General liability insurance on forms no more restrictive than the latest edition of the occurrence form.
- Commercial general liability policy (CG 00 01) of the Insurance Services Office or equivalent without restrictive endorsements, with the following minimum limits and coverage.
- Each occurrence/general aggregate \$1,000,000/2,000,000.
- Products-completed operations \$2,000,000.
- Personal and advertising injury \$1,000,000.
- Fire damage \$50,000.
- Medical expense \$5,000.
- Contractual liability included.
- Automobile liability insurance, including owned, non-owned and hired autos with the following minimum limits and coverage:
 - Combined Single Limit \$1,000,000
- Workers' compensation insurance based on proper reporting of classification codes and payroll amounts in accordance with Chapter 440, F.S. and/or any other applicable law requiring workers' compensation (Federal, maritime, etc.). If not required by law to maintain workers compensation insurance, the vendor must provide a notarized statement that if he or she is injured; he or she will not hold the city responsible for any payment or compensation.
- Employers liability insurance with the following minimum limits and coverage:
 - Each accident \$1,000,000
 - Disease-each employee \$1,000,000
 - Disease-policy limit \$1,000,000
 - Professional liability and/or specialty insurance (medical malpractice, engineers, architect, consultant, environmental, pollution, errors, and omissions, etc.) insurance as applicable, with minimum limits of \$1,000,000 and annual aggregate of \$2,000,000.

The City of Fruitland Park, a municipality of the State of Florida, shall be named as additional insured as their interest may appear on all applicable liability insurance policies.

The certificate(s) of insurance shall provide for a minimum of thirty (30) days prior written notice to the City of any change, cancellation, or nonrenewal of the provided insurance. It is the vendor's specific responsibility to ensure that any such notice is provided within the stated timeframe to the certificate holder.

Certificate(s) of insurance shall identify the applicable solicitation RFQ number in the Description of Operations section of the Certificate.

Certificate holder shall be:

CITY OF FRUITLAND PARK, a Florida municipality 506 West Berckman Street
FRUITLAND PARK, FLORIDA 34731

Certificates of insurance shall evidence a waiver of subrogation in favor of the city, that coverage shall be primary and noncontributory, and that each evidenced policy includes a cross liability or severability of interests provision, with no requirement of premium payment by the city.

The vendor shall be responsible for subcontractors and their insurance. Subcontractors are to provide certificates of insurance to the prime vendor evidencing coverage and terms in accordance with the vendor's requirements.

All self-insured retentions shall appear on the certificate(s) and shall be subject to approval by the city. At the option of the city, the insurer shall reduce or eliminate such self-insured retentions or the vendor or subcontractor shall be required to procure a bond guaranteeing payment of losses and related claims expenses.

The city shall be exempt from and in no way liable for any sums of money which may represent a deductible or self-insured retention in any insurance policy. The payment of such deductible or self-insured retention shall be the sole responsibility of the vendor and/or subcontractor providing such insurance. Failure to obtain and maintain such insurance as set out above will be considered a breach of contract and may result in termination of the contract for default.

Neither approval by the city of any insurance supplied by the vendor or subcontractor(s) nor a failure to disapprove that insurance, shall relieve the vendor or subcontractor(s) of full responsibility for liability, damages, and accidents as set forth herein.

SECTION 2.0 – GENERAL TERMS AND CONDITIONS

2.1 General Qualification Guidance

Receipt of this document does not indicate that the City of Fruitland Park has pre-determined your company's qualifications to receive a contract award. Such determination will be made after the opening and will be based on our evaluation of your qualifications package compared to the specific requirements and qualifications contained in this document.

F.S. Section 287.055 "The Consultants' Competitive Negotiation Act" will be followed to secure the required firm. The contracting officer listed on the face page, will be responsible for the selection process and will be the sole point of contact for all respondents. In addition to the materials provided in the written responses to this RFQ, the city may utilize site visits or may request additional material, information, presentations, or references from the respondent(s) that submitted qualifications packages.

2.2 Incurred Expenses

This RFQ does not commit the city to make an award or shall the city be responsible for any cost or expense which may be incurred by any respondent in preparing and submitting a qualifications package or offer or any cost or expense incurred by any respondent prior to the execution of a purchase order or contract agreement. By submitting a qualifications package, the respondent agrees that all costs associated with the preparation of the qualifications package will be solely the respondent's responsibility. You also agree that the city bears no responsibility for any costs associated with the preparation of the qualifications package, preparing, and delivering presentations, and/or any administrative or judicial proceedings resulting from this solicitation process.

2.3 Minor Irregularities

The city reserves the right to waive minor irregularities in submitted qualifications packages when such action is in the best interest of the city. Minor irregularities are defined as those that have not adverse effect on the city's best interests and will not affect the outcome of the selection process by giving the respondent an advantage or benefit not enjoyed by other respondents.

2.4 Collusive Responses

The respondent certifies, by submission of a response, that its response is made without any previous understanding, agreement or connection with any person, firm or corporation making a response for the same service with prior knowledge of competitive prices and is in all respects fair, without outside control, collusion, fraud or otherwise illegal action. Any evidence of collusion among respondents and prospective respondents acting to illegally restrain freedom of competition by agreement to offer a fixed price or otherwise, will render the responses of such responders void.

2.5 Conflict of Interest

If any officer, director, or agent of your organization is also an employee of the city or its commission, then you shall clearly identify in your response the name of the individual(s) and the position he or she holds in your organization. Further, you shall disclose the name(s) of any city employee(s) who owns, directly or indirectly, any interest in your organization or any of its branches. This does not include stock in a publicly traded organization unless the individual holds more than a ten percent (10%) stake. You shall complete and have notarized a Conflict of Interest Form (Form A-1) and include it in your qualifications package.

If there is a conflict of interest as defined above and by F.S. Chapter 112, Part III and Code of Ethics for Public Officers and Employees, the issue will be addressed to the Office of the City Attorney for review and opinion whether or not the respondent can be considered for award.

2.6 Public Entity Crimes

Pursuant to Section 287.132 and 287.133 F.S., the city, as a public entity, may not consider a qualifications package from, award any contract to, or transact any business in excess of the threshold amount set forth in Section 287.017 F.S. with any person or affiliate on the convicted contractor list for the time periods specified unless such person has been removed from the list

pursuant to law. By submitting a qualifications package in response to this RFQ, the respondent is certifying that it is eligible for award under this solicitation pursuant to Section 287.132 and 287.133 F.S.

2.7 No Confidentiality of Information

When the qualifications package is opened, it becomes a public record, except as listed below. All material submitted becomes the property of the city and may be returned only at the city's option. The city has the right to use any or all ideas presented in any reply to this RFQ. Selection or rejection of a qualifications package does not affect this right.

The city is governed by the Public Records Law, Chapter 119, F.S. Only trade secrets as defined in Section 812.081, F.S., will be exempt from disclosure. If a respondent submits trade secret information, the information must be segregated, and each pertinent page must be clearly labeled "**trade secret.**" The city will maintain the confidentiality of such trade secrets to the extent provided by law. If a respondent labels all or most pages "trade secret", the respondent may not be considered for award.

Also pursuant to Section 119.071(1)(c), F.S., financial statements will be exempt from examination by anyone other than legally authorized city employees or agents. The City will maintain the confidentiality of such financial data to the extent provided by law.

SECTION 3.0 – SUBMITTAL OF RESPONSE AND AWARD

3.1 Response Closing Location, Date, and Time

The vendor response to this solicitation, along with the specified number of copies, shall be received at the specified location, date, and time specified on the front page of this solicitation. Any original response package received at the specified location after the specified date and time will not be considered and will be returned unopened to the submitter at the submitter's expense.

3.2 Delivery of Qualifications Packages

Each package shall be clearly marked with RFQ number, title, and company name.

Please submit your response to:

CITY OF FRUITLAND PARK CITY HALL
506 West Berckman Street FRUITLAND PARK, FLORIDA 34731

NOTE: Facsimile (fax) or electronic submissions will not be accepted.

3.3 Public Opening

At the date and time specified, all timely qualifications packages that have been accepted by the city will be formally opened and conditionally accepted for consideration. The names of the firms submitting packages will be read aloud and recorded. Individuals covered by the Americans with Disabilities Act of 1990 in need of accommodations to attend public openings or meetings should contact the city hall in Fruitland Park (352) 360-6790 at least five (5) days prior to the scheduled opening date.

3.4 Questions Concerning RFQ

Questions concerning any portion of this RFQ shall be directed in writing [fax and e-mail accepted] to the below named individual who shall be the official point of contact for this RFQ. Questions should be submitted at least seven (7) working days before the closing date.

Gary La Venia, City Manager City of Fruitland Park
506 West Berckman Street Fruitland Park, Florida 34731 Fax (352) 360-6686
Email: glavenia@fruitlandpark.org

Failure by a potential respondent to ask questions or request changes by the dates indicated above shall constitute the respondent's acceptance of the requirements set forth in this RFQ. No answers provided by any party given in response to questions submitted shall be binding upon this RFQ unless released in writing as an addendum to the RFQ by the City of Fruitland Park.

3.5 Respondents Responsibility / Clarification and Addenda

While the city has used considerable efforts to ensure an accurate representation of information in this RFQ, each prospective respondent is urged to conduct its own investigations into the material facts and the city shall not be held liable or accountable for any error or omission in any part of this RFQ. It is incumbent upon each prospective respondent to carefully examine these requirements, terms, and conditions. A respondent, by submitting a qualifications package, represents that the respondent has read and understands the RFQ requirements and its response is made in accordance therewith and that the respondent is familiar with the local conditions under which the awarded respondent must perform. Any inquiries, suggestions, or requests concerning interpretation, clarification or additional information shall be made in writing [fax (352) 360-6686 or e-mail glavenia@fruitlandpark.org are acceptable] in accordance with procedures set forth herein. The city will not be responsible for any oral representation given by any employee, representative or others. The issuance of a written addendum is the only official method by which interpretation, clarification or additional information can be given. If the city revises (amends) this RFQ, notice will be posted on the city's website: <https://www.fruitlandpark.org/rfps>. You must acknowledge each addendum in your proposal. Failure to acknowledge each addendum may prevent your proposal from being considered for award. It is solely your responsibility to ensure that you have received all addenda to this RFQ before submitting your proposal.

Before submitting a qualifications package, each respondent shall make all investigations and examinations necessary to ascertain site conditions and requirements affecting the full performance of the contract and to verify any representations made by the city upon which the respondent will rely. If the respondent receives an award because of its submission, failure to have

made such investigations and examinations will in no way relieve the respondent from its obligations to comply in every detail with all provisions and requirements of the contract nor will a plea of ignorance of such conditions and requirements be accepted as a basis for any claim by the respondent for additional compensation or relief.

3.6 Restricted Discussions

From the date of issuance of this solicitation until final city action, vendors should not discuss the solicitation or any part thereof with any employee, agent, or any other representative of the city except as expressly authorized by the designated procurement representative. The only communications that shall be considered pertinent to this solicitation are appropriately signed written documents from the vendor to the designated procurement representative and any relevant written document promulgated by the designated procurement representative.

3.7 Specific Directions Regarding Format and Contents of Response

Firms, organizations, joint ventures, or individuals interested in submitting a qualifications package (offer) in response to this RFQ shall submit one (1) original, marked "ORIGINAL," and five (5) copies, each marked "COPY," of their qualifications package for review and evaluation by the city. Failure to provide the required copies and information may result in the qualifications package not being considered.

To facilitate analysis of its qualifications package, the respondent shall prepare its qualifications package in accordance with the instructions outlined in this section. If the respondent's qualifications package deviates from these instructions, such response may, in the city's sole discretion, be rejected. The city emphasizes that the respondent concentrates on accuracy, completeness, and clarity of content.

3.7.1 Economy of Presentation

Each qualifications package shall be prepared simply and economically, providing a straightforward and concise description of the respondent's capabilities regarding the conditions and requirements of the specific work to be performed pursuant to this RFQ. Elaborate bindings, colored displays, and any superfluous promotional material are not desired, and at a level considered unwarranted by assigned evaluators, may serve as evidence of cost inefficiency supportive of a lower technical rating. Emphasis in each qualifications package must be on completeness and clarity of content. To expedite the evaluation of qualifications packages, it is **mandatory** that respondent follow the format and instructions contained herein. The city retains the prerogative to reject any response that does not essentially conform to the stated requirements.

3.7.2 Qualifications Package Guidelines

Cross Referencing - To the greatest extent possible, each section shall be written on a stand-alone basis so that its contents may be evaluated with a minimum of cross-referencing to other sections of the qualifications package. Information required for evaluation of qualifications, which is not found in its designated section, will be assumed to have been omitted from the qualifications package.

Abbreviations and Acronyms – All abbreviations and acronyms used in the qualifications package shall be explained and/or defined upon their first usage in each section of the qualifications package.

Page Limitation, Size, and Format – Responses are limited to a total page count not to exceed fifty (50) pages. This count includes all response content to include completed City Forms 1A, and 1 through 5. Page size shall be 8.5 x 11 inches, not including foldouts. Pages may be single-spaced. The text size should be 11 point or larger. Use at least one (1) inch margins on the top and bottom and three-quarter (3/4) inch side margins.

Pages shall be numbered sequentially by section. Legible tables, charts, graphs, and figures shall be used wherever practical to depict organizations, systems and layouts, implementation schedules, plans, etc. These displays shall be uncomplicated, legible and shall not exceed eleven (11) by seventeen (17) inches in size. Foldout pages shall fold entirely within the section, and count as a single page. Foldout pages may only be used for large tables, charts, graphs, diagrams, and schematics, and not for pages of text.

Binding and Labeling – The entirety of the qualifications package should be spiral bound on the left margin to permit the qualifications package to lie flat when opened. All response sections must be appropriately separated and tabbed. Staples shall not be used.

3.7.3 Qualifications Package Sections

The respondent shall organize its qualifications package into the following major sections.

- CITY'S RFQ COVER SHEET
- TAB A – STATEMENT OF INTEREST: To be submitted on the firm's letterhead.

The statement of interest shall:

- Concisely state the firm's understanding of the services required by the city.
- Include additional relevant information not requested elsewhere in the RFQ.
- The signature on the statement shall be that of a person authorized to bind the firm.

Tab A shall also contain a properly completed, signed, and notarized Form A-1, Conflict of Interest Disclosure Form.

- TAB B – FIRM PROFILE: Include completed Form 1 and a copy of the respondent's current State of Florida Board of Professional Regulation License.

- TAB C – TEAM COMPOSITION AND SUBCONSULTANTS: Complete Form 2. List the key people proposed for the city’s project along with any proposed sub consultants. Include a copy of each person’s current State of Florida Board of Professional Regulation License.

Additional resumes and/or information about the individuals proposed on this team may be attached but will be included in the total page count. Respondents are advised that their location and that their listing of subcontractors, to include location and respective percentage of use, are a listed evaluation factor under CCNA, and that this information will be considered and documented throughout the evaluation and award process.

- TAB D – LOCATION AND PERCENTAGE OF WORK TO BE COMPLETED: Complete Form 3.
- TAB E – SIMILAR PROJECTS: Complete Form 4. This form may be reproduced.
- TAB F – ADDITIONAL INFORMATION: Complete Form 5.

3.8 Withdrawal of Qualifications Package

You may withdraw your qualifications package or modify it at any time prior to the official closing date and time. You shall be required to produce photo identification that satisfies the city prior to withdrawal or modification of your qualifications package. Negligence upon your part in preparing your qualifications package confers no right of withdrawal after the time fixed for the submission of qualifications packages.

3.9 Qualifications Package Acceptance/Rejection

The city reserves the right to accept or reject any or all qualifications packages received as a result of this RFQ, or to negotiate separately with competing contractors. The city reserves the right to waive any informalities, defects, or irregularities in any qualifications package, or to accept that qualifications package, which in the judgment of the proper officials, is in the best interest of the city and the citizens of the city.

3.10 Post-closing Discussions and/or Presentations

The city, at its sole discretion, **may** conduct discussions with, and/or require formal presentations by, any respondent without charge to the city. The city reserves the right to require any respondent to demonstrate to the satisfaction of the city that the respondent has the fiscal and technical ability to furnish the service(s) or product(s) as proposed. The city shall be the sole judge of compliance in this regard.

The city reserves the right to conduct discussions with any respondent(s) which has (have) been “shortlisted” as a most-qualified respondent. Respondents are cautioned not to assume that they will be asked for discussions or to make a presentation and should include all pertinent and required information in their original qualifications package.

Discussions and/or presentations shall follow the spirit and intent of provision 3.7.1 above. Any formal presentations that are overly elaborate and appear to rely more on the technical manner of presentation rather than on the actual content of presentation will be subject to lesser technical ranking. The discussion and/or presentation shall be focused on the essentials of the project itself, and, unless requested by the respondent and approved by the city, shall include no more than three representatives from the respondent, one of whom shall be the respondent's proposed project manager for the effort to be performed. Any additional attendees requested by a respondent must have a documented direct function in the work to be performed.

Upon completion of discussions and/or presentations with short-listed respondents, the city will determine which one of those respondents is considered the best qualified for the specific work being solicited. Pricing negotiations will then ensue with the respondent(s) in the manner stated in F.S. 287.055.

3.10.1 Evaluation Criteria

During the selection process the following key considerations will be made:

Minimum requirements to qualify:

- The consultant must be a licensed architect in the State of Florida.
- The consultant's local office location.
- The consultant's principal-in-charge must be located in the local office. This person must be authorized to negotiate fees, contracts, staffing commitments, etc. on behalf of the firm to satisfy the requirements of the contract. In addition, the office must be staffed with clerical and technical support, and appropriate office, computer, and drafting software for successful completion of assigned city projects.
- Secondary services can be performed at other office locations.
- The affiliation and location of all team members must be clearly indicated in the proposal.
- The contract between the city and the selected consultant(s) will include limitations on markup of subcontracted services.
- The qualifications will be reviewed and evaluated in accordance with the following criteria:

<u>Criteria</u>	<u>Points</u>
1. Ability of Professional Personnel (to include past performance and experience)	40
2. Past Performance and Experience – Firm	10
3. Ability to Complete Projects on Time	15
4. Ability to Complete Projects Within Budget	15

5.	Current and Projected Workloads	10
6.	Location of Local Office (See Schedule Below:)	<u>10</u>

TOTAL 100

<u>Local Office Location Schedule:</u>	<u>Points</u>
Office established within Lake County	10
Office located outside Lake County but within 40 miles of Fruitland Park	5
Office located more than 40 miles from Fruitland Park	0

The responses received by the deadline that contain all the required information of this RFQ will be reviewed by city staff and/or other individuals, agencies, and elected officials. This process will culminate with the identification of those considered to be the best qualified.

3.11 Award of Contract(s)

The city reserves the right to reject any or all responses, to waive any minor informality or irregularity in any response, and to make award to the response deemed to be most advantageous to the city within the selection factors and process cited within F.S. 287.055. It is understood that the city is not obligated to make an award under or as a result of this RFQ or to award such contract, if any, on one factor alone. The city reserves the right to award such contract, if any, to the best qualified respondent(s).

The city has the sole discretion, and reserves the right, to cancel this RFQ, or to re-advertise with either the identical or revised specifications, if it is deemed to be in the city's best interests to do so.

Any qualifications package that is contingent upon an award or a contract for any additional service shall be rejected and not considered for an award.

In the event of default by the awarded respondent, the city reserves the right to negotiate and award the contract to the next best qualified respondent without any further competition.

3.12 Time Limit to Submit Required Award or Initial Performance Related Documentation

Within ten (10) calendar days after city notification of intent to award or subsequent intent to proceed, any successful respondent must furnish all deliverables or documentation required to specifically support the city's intent. If any successful respondent fails to furnish the required deliverables within the required time frame, intent to award or award to that respondent may be withdrawn and award made to the next highest rated respondent.

3.13 Disputes/Exceptions

Any prospective respondent who disputes the reasonableness or appropriateness of any item within this RFQ document, any addendum to this RFQ document, notice of award or notice of rejection shall set forth the specific reason and facts concerning the dispute, in writing, within five (5) business days of the city's issuance of the qualifications package document or addenda, or notice of award or rejection. The written dispute shall be sent via certified mail or delivered in person to the city clerk who shall provide the written dispute to the city manager to review the written dispute and attempt to resolve the dispute, but if the city manager is unable to resolve, then he shall issue a written determination within five (5) business days of receipt of the written dispute but no less than twenty-three (23) hours prior to the due date for submittal of the qualifications package to the city. However, respondents are advised that any protest based exclusively on disagreement with the technical judgment of evaluators is subject to summary rejection will be rejected unless there is any clear evidence of arbitrary or capricious action in that regard. Any prospective respondent who may have any exceptions to any requirements set forth in this RFQ or the scope of work may identify the item(s) that exception is taken to, including the reason and include these item(s) in a separately marked section of their submitted qualifications package. All such exceptions shall be evaluated by the city personnel involved in the review and evaluation process. It is recommended that any such exception or deviation be addressed to the assigned contracting officer in writing during the solicitation period.

4.1 Preliminary Schedule

This RFQ is the initial step in the process of selecting one or more individuals or firms for this project. The following is an outline of the steps and tentative schedule that will lead to the selection, negotiation, and agreement approval between the party and the:

<u>June 3, 2020</u>	Advertise RFQ
<u>July 6, 2020</u>	Deadline for receipt of response due by 2:00 p.m. (must be date and time stamped by city hall)
<u>July 16, 2020</u>	Review committee determination for short-listed firms
<u>July 23, 2020</u>	Short-listed firms to make presentations
<u>July 23, 2020</u>	City commissioners' approval of short-listed firms
<u>July 30, 2020</u>	Deadline for firm receiving first place ranking to submit proof of insurance (see insurance requirements)
<u>August 13, 2020</u>	Recommendation to city commissioners for approval of

contract

August 13, 2020

City commissioners' approval of
contract

The process and dates shown above may be modified with notice from the city to all parties being considered at the time of any said change of procedure or date.

**FORM 1
FIRM PROFILE**

<p>1. Firm (or joint venture) Name and Primary Corporate Address</p>	<p>1c. Licensed to do business in the State of Florida <input type="checkbox"/> Yes <input type="checkbox"/> No</p> <p>1c. Registered to do business in the State of Florida <input type="checkbox"/> Yes <input type="checkbox"/> No</p>
<p>1a. Firm is <input type="checkbox"/> National <input type="checkbox"/> Regional <input type="checkbox"/> Local</p> <p>FEIN # _____</p>	<p>1d. Name, Title & Telephone Number of Principal to Contact</p>
<p>1b. Firm is a Certified Minority Business Enterprise <input type="checkbox"/> Yes <input type="checkbox"/> No</p>	<p>1e. Address of office to perform work, if different from Item 1</p>
<p>2. Please list the number of people by discipline that your firm/joint venture will commit to the City's project.</p>	
<p>3. If submittal is by joint venture list participating firms and outline specific areas of responsibility (including administrative, technical, and financial) for each firm: 3a. Has this joint venture previously worked together? <input type="checkbox"/> Yes <input type="checkbox"/> No</p>	

**FORM 2
TEAM COMPOSITION**

Name of Prime Firm: _____

Role	Name and City of Residence of individual assigned to the project	Florida Active Registrations

Sub Consultants:

Role (i.e. Landscape Architectural...)	Company Name and Address of Office Handling this Project	Project ed% of Over-All Work on Entire Project	Name of Individual Assigned to this Project	Firm worked with prime before (Yes or No)	Individual Worked with prime before (Yes or No)

Are there any contractual agreements between the respondent (prime consultant) and any of the proposed sub-consultants? _____ Yes _____ No

If the answer is yes, the respondent shall attach, with their submittal, information describing the contractual relationship including a copy of any written contractual agreement.

FORM 3 LOCATION

1. Specify address of Prime Consultant’s designated office where the majority of work on this project will be performed:

_____ %

2. Indicate percentage of total over-all project fees projected to be performed on this project by the Prime Consultant’s office specified above. (Do not include percentage of fees anticipated to be performed on this project by sub-consultants)

_____ %

3. Specify address of Prime Consultant’s other office(s) where any part of the work on this project will be performed (if applicable):

_____ %

4. Indicate percentage of total over-all fees projected to be performed on this project by the office specified above. Do not include percentage of fees anticipated to be performed on this project by sub-consultants.

_____ %

5. Indicate percentage of total over-all fees projected to be performed on this project by firms located within the City including the prime consultant and sub-consultants, utilizing information supplied above and on **Form 2**.

_____ %

FORM 4
PROFESSIONAL PERSONNEL FOR SIMILAR PROJECTS

Work by firm or joint venture members which best illustrate current qualifications relevant to the city's project that have been/is being accomplished by personnel that shall be assigned to the city's project.
List no less than three (3) but no more than ten (10) projects.

Project Name and Location		Project Owners Name and Address	
Project Manager:		Project Owner's Contact Person, Title, and Telephone Number	
Completion Date (Actual or Estimated)			
Estimate Cost (In Thousands)			
Entire Project	Work for which firm was/is responsible		
\$	\$		
Scope of Entire Project (Please give quantitative indications wherever possible)			
Nature of Firm's Responsibility in Project (Please give quantitative indications wherever possible)			
Firm's Personnel (Name/Project Assignment) That Worked on the Stated Project that Shall Be Assigned to the City's Project			

FORM 5

Use this space to provide additional information or description of resources supporting your firm's qualifications for the city's project.

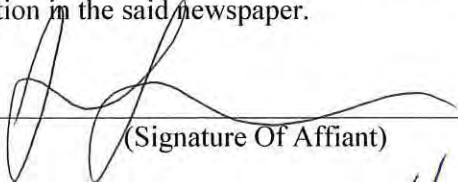
The VillagesSM
DAILY SUN

Published Daily
Lady Lake, Florida
State of Florida
County Of Lake

Before the undersigned authority personally appeared **Jackie Lancero**, who on oath says that she is Legal Ad Coordinator of the DAILY SUN, a daily newspaper published at Lady Lake in Lake County, Florida with circulation in Lake, Sumter and Marion Counties; that the attached copy of advertisement, being a Legal #00947194 in the matter of **NOTICE OF REQUEST FOR QUALIFICATIONS**

was published in said newspaper in the issues of
JUNE 4, 2020

Affiant further says that the said Daily Sun is a newspaper published at Lady Lake in said Lake County, Florida, and that the said newspaper has heretofore been continuously published in said Lake County, Florida each week and has been entered as second class mail matter at the post office in Lady Lake, in said Lake County, Florida, for a period of one year next preceding the first publication of the attached copy of advertisements; and affiant further says that he has neither paid nor promised any person, firm, or Corporation any discount, rebate, commission or refund for the purpose of securing this advertisement for Publication in the said newspaper.

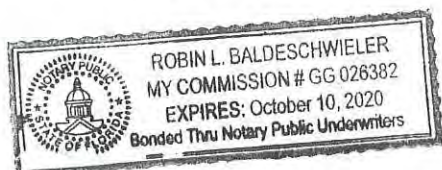

(Signature Of Affiant)

Sworn to and subscribed before me this 4
day of June 2020.


Robin L. Baldeschwieler, Notary

Personally Known X or
Production Identification _____
Type of Identification Produced _____

Attach Notice Here:



NOTICE OF REQUEST FOR QUALIFICATIONS STATEMENT FOR: Professional Architectural Services

Pursuant to Section 287.055, Florida Statutes (F.S.), and the policies and procedures of the City of Fruitland Park, notice is hereby given that a sealed Qualifications Statement for Professional Architectural Services to the City of Fruitland Park must be received by 2:00 p.m. local time, July 2, 2020, at Fruitland Park City Hall, 506 West Berckman Street, Fruitland Park, Florida, 34731. A qualifications statement document may be obtained on the City of Fruitland Park's website at www.fruitlandpark.org.

In accordance with Section 287.055 (11), F.S., the City of Fruitland Park declares that all or any portion of the documents and work papers prepared and submitted pursuant to this notice of request, shall be subject to reuse by the city.

The city reserves the right to waive any in formalities in the selection process and to reject any or all qualifications statements or to re-advertise. #947194. June 3, 2020

CITY OF FRUITLAND PARK BID OPENING

July 2, 2020

City Hall Commission Chambers
506 W. Berckman Street
Fruitland Park, FL 34731

2:00 p.m.

The advertised Notice of Request for Qualifications (RFQ) Number 2020-01 for professional architectural services for the City of Fruitland Park bid packages were received on Thursday, July 2, 2020 at 2:00 p.m. with the following individuals present:

Review Committee Members Present: City Manager Gary La Venia, Community Development Director Tracy Kelley and City Clerk Esther Coulson.

Review Committee Member Absent: City Treasurer Jeannine Racine

At 2:00 p.m., the names of the following firms -- whose timely qualification bid packages were received, formally opened and conditionally accepted for consideration -- were announced and recorded on the sheet; a copy of which is filed with the supplemental papers to the minutes of this bid opening:

- Architects Design Group, Leesburg
- Gator Sktch Corporation, Architects and Planners, Clermont and
- Blaise, Fiebach and Associates PA, Leesburg

After Mr. La Venia determined that the Review Committee will be meeting on July 16, 2020 at 2:00 p.m. to review the vendors' submitted written responses.

Upon intervention by city staff, **the committee agreed to recess the opening at 2:04 p.m. to determine the acceptance of a package delivered at city hall from Brame Heck Architects Inc. The committee reconvened at 2:38 p.m. and as a result of its observations of the video camera footage, the committee did not consider the package received from Brame Heck Architects as it arrived after the 2:00 p.m. deadline; therefore, the package will be returned unopened to the submitter.**

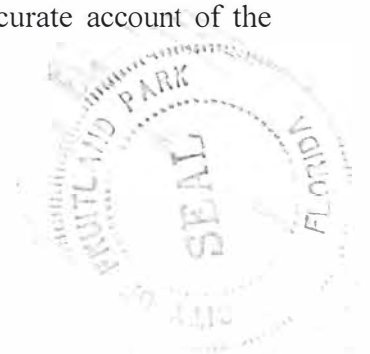
The proceedings concluded at 2:40 p.m.

This synopsis represents the city clerk's record of the proceedings. Any misunderstandings or incorrect statements, please notify this office within five (5) days of receipt. If no corrections are received within this period this document will be considered to be an accurate account of the events.

Attest:



Esther Coulson, City Clerk



CITY OF FRUITLAND PARK

BID OPENING

PROJECT: Professional Architectural Services RFQ 2020-01

BID DATE: July 2, 2020 at 2:00 p.m. – City Hall, 506 West Berckman Street, Fruitland Park, Florida 34731

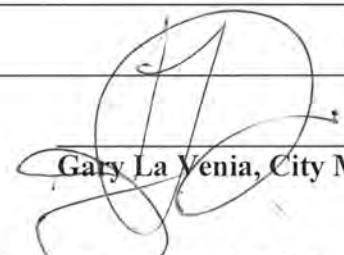
Name of Company

Architects Design Group, 333 North Knowles Avenue, Winter Park, Florida 32789

GatorSkitch Corporation, 1000 East Highway 50, Suite 201, Clermont, Florida 34711

Blaise, Fiebach and Associates PA, 8533 US Highway 441, Leesburg, Florida 34788


Esther B. Coulson, City Clerk


Gary La Venia, City Manager

At the date and time specified, all timely qualifications packages that have been accepted by the city will be formally opened and conditionally accepted for consideration. The names of the firms submitting packages will be read aloud and recorded. Individuals covered by the Americans with Disabilities Act of 1990 in need of accommodations to attend public openings or meetings should contact the City Hall in Fruitland Park 352-360-6790 at least five (5) days prior to the scheduled opening date.

All vendors' employees performing services under any city contract are expected to follow the mandate given to all municipal government employees by the Governor's Executive Order s:

RFQ NO. 2020-01 | ORIGINAL FRUITLAND PARK PUBLIC SAFETY AND PUBLIC WORKS BUILDING



Submitted by:  Architects Design Group
Winter Park, FL

City of Fruitland Park

REQUEST FOR QUALIFICATIONS (RFQ)



Professional Architectural Services

RFQ Number:	<u>2020-01</u>	Opening Date: <u>July 2, 2020</u>
<u>Issue Date:</u>	<u>June 2, 2020</u>	Opening Time: 2:00 p.m.
Pre-Conference:	<u>None</u>	Contracting Officer: Gary La Venia City Manager

LEGAL NOTICE

NOTICE OF REQUEST FOR QUALIFICATIONS STATEMENT FOR: Professional Architectural Services

Pursuant to Section 287.055, Florida Statutes (F.S.), and the policies and procedures of the City of Fruitland Park, notice is hereby given that a sealed Qualifications Statement for Professional Architectural Services to the City of Fruitland Park must be received by **2:00 p.m. local time, July 2, 2020**, at Fruitland Park City Hall, 506 West Berckman Street, Fruitland Park, Florida, 34731. A qualifications statement document may be obtained on the City of Fruitland Park's website at <https://www.fruitlandpark.org/rfps>.

In accordance with Section 287.055 (11), F.S., the City of Fruitland Park declares that all or any portion of the documents and work papers prepared and submitted pursuant to this notice of request, shall be subject to reuse by the city.

The city reserves the right to waive any informalities in the selection process and to reject any or all qualifications statements or to re-advertise.



CLERMONT POLICE HEADQUARTERS | ENTRANCE LOBBY

STATEMENT OF INTENT



July 2, 2020

City of Fruitland Park
Fruitland Park City Hall
506 West Berckman Street
Fruitland Park, FL 34731

RE: PROFESSIONAL ARCHITECTURAL SERVICES FOR A PUBLIC SAFETY COMPLEX AND PUBLIC WORKS BUILDING

Dear Selection Committee Members:

Architects Design Group (ADG) is pleased to submit this proposal to provide professional architectural services for the Fruitland Park Public Safety Complex and Public Works Building. We take pride in delivering inspired architectural design while providing efficient, effective, and innovative solutions. We are committed to meeting your needs, fitting your schedule, and accommodating your project budget.

ADG is a nationally-recognized firm, headquartered in Central Florida, specializing in the master planning and design of government facilities across the United States. Over the past 49 years, ADG has worked on over 350+ government facilities, many of these with very similar components to this project. We believe the tenure of our firm speaks well to our strengths of client service and satisfaction. ADG has successfully designed several public safety facilities in Lake County, including the Clermont Police Headquarters, Lake County EOC, Wildwood Police Headquarters, and the Mt. Dora Public Safety Building renovation. Additionally, we are currently working with the City of Mt. Dora on their public works facility, EOC, and multiple fire stations.

UNDERSTANDING OF SCOPE

With over 10,000 residents, the City of Fruitland Park has experienced a significant increase in population over recent years. This population increase has a direct bearing on the space required for the city's public safety and public works departments to operate efficiently and continue to provide high-quality service to the city's residents. The city is seeking a qualified team to provide architectural services for a public safety complex and public works building. At approximately 11,000 SF, the public safety complex will house police and fire / EMS services, with an estimated 5,000 SF for the police department and 6,000 SF for fire / EMS departments. The public works facility will be approximately 7,200 SF with dimensions of 60' x 120' to house department and equipment needs.

Our team has a strong understanding of the unique requirements of police, fire / EMS, and public works facilities, as well as the components necessary to ensure safe and efficient daily operations, and how to incorporate these components into the new public safety complex and public works building. Our primary mission is to guide the city through the design process to deliver a useful, state-of-the-art public safety complex and public works building. Our team will work diligently to ensure both facilities realize your vision and meets all project goals. As experts in our field, we provide a team who can hit the ground running to accomplish innovative design on an expedited timeline for delivery of services for both of the city projects.

COLLABORATIVE DESIGN APPROACH

Our experience has taught us that engaging facility users, project stakeholders, and community groups are vital to the success of the project. ADG has developed an expansive plan to involve stakeholders throughout the duration of the project. This plan starts with our interactive method of designing known as our "Participatory Planning Process." The basis of this approach is to listen carefully to the owner's concerns, communicate with the project manager and team,

understand the facility and community needs, and utilize creativity to meet the city's goals and objectives. Our team will work hand-in-hand with the city, owner's rep, and selected contractor to ensure a smooth transition throughout design and construction. We offer the City of Fruitland Park:

- Thorough Understanding of Your Specific Project Needs
- 100% Local, Florida-Based Team
- Experience with 350+ Government Facilities Nation-Wide
- Completed Multiple Facilities Similar to this Size / Scope
- Strong Project Management Protocols

UNMATCHED TEAM OF PROFESSIONALS

This team brings experienced, multidisciplinary professionals to the Fruitland Park Public Safety Complex and Public Works Building project. All team members have successfully worked with ADG, and / or the City of Fruitland Park on past public safety and municipal projects. Our team of consultants for this project include:

AVCON, Inc. - Civil Engineering | Orlando, FL

SGM Engineering - MEP Engineering | Orlando, FL

BBM Structural Engineers - Structural Engineering | Longwood, FL

TLC Engineering Solutions - Security and Technology | Orlando, FL

Kimley Horn - Landscape Architecture | Orlando, FL

Additionally, ADG's Project Architect, Ian Reeves, AIA, served on the International Association of Chief's of Police (IACP) committee for updating the police facility design guidelines and standards which was just published in October 2019. As such, our team understands the unique requirements of public safety facilities.

We pride ourselves on our superior level of communication and service to clients. The use of schedules, which are coordinated with the client and reviewed during meetings, facilitates accountability. We understand that current protocols are being reevaluated to ensure staff safety, with that being said, our team has procedures in place to continue operations remotely if necessary. During the first few weeks of the project, we can utilize Go-To Meetings to kick-off any project phases should the ability in the event we are unable to hold in-person meetings. Current management projections of manpower availability, which are updated monthly, reflect that the team is clearly able to undertake a new task order project immediately upon execution of a contract.

CONCLUSION

The entire team is excited about the opportunity to establish a long-lasting relationship with the community and City of Fruitland Park. We believe the combination of our team's experience with public safety and public works entities throughout Florida and the United States makes us uniquely qualified to work with you on this important project. Thank you for reviewing this proposal and we look forward to meeting in person to discuss this project in greater detail.

Sincerely,



Rodney McManus, LEED AP
Vice President of Operations
Architects Design Group

**FORM A-1
CONFLICT OF INTEREST DISCLOSURE FORM**

1. I, Rodney McManus (*printed name*) am the
Vice President of Operations (*title*) and the duly authorized representative of the
firm of Architects Design Group (*firm name*) whose address is:
333 North Knowles Avenue, Winter Park, FL 32789


_____, and that I possess
the legal authority to make this affidavit on behalf of myself and the firm for which I am acting, and,

2. Except as listed below, no employee, officer, or agent of the firm have any conflicts of interest, real or
apparent, due to ownership, other clients, contracts, or interests associated with this project.

And,

3. This proposal is made without prior understanding, agreement, or connection with any corporation, firm,
or person submitting a proposal for the same services, and is in all respects fair and without collusion or
fraud.

EXCEPTIONS (List)

Signature: 

Printed Name
Rodney McManus

Firm Name
Architects Design Group

Date July 2, 2020

Sworn o or affirmed and subscribed before me by means of physical presence or online notarization, this
2nd day of July, 2020, by
Rodney McManus (insert name of person making statement)

Personally known OR Produced identification _____
Nicole Hevia Notary Public – State of Florida

My Commission expires January 1, 2023







NEW PORT RICHIE PUBLIC WORKS | CONFERENCE ROOM

PHOTOGRAPHY

**FORM 1
FIRM PROFILE**

1. Firm Name and Primary Corporate Address: Architects Design Group 333 N. Knowles Ave Winter Park, FL 32789	1C. Licensed to do business in the State of Florida <input checked="" type="checkbox"/> Yes
1A. Firm is National Regional Local FEIN # AAC001197	1D. Name, Title & Telephone Number of Principal to Contact Ian Reeves AIA, IALEP President (407) 647 - 1706
1B. Firm is a Certified Minority Business Enterprise: <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	1E. Address of office to perform work, if different from Item 1. N/A

2. Please list the number of people by discipline that your firm will commit to the City's project:

Architectural Services | 3
 Construction Administration | 2
 Administrative Support | 2

3. If submittal is by joint venture list participating firms and outline specific areas of responsibility (including administrative, technical, and financial) for each firm.

N/A

3A. Has this joint venture previously worked together? Yes No





ADG FIRM PROFILE

BACKGROUND AND HISTORY

Architects Design Group (ADG) was established in 1971 by I.S.K. Reeves, V, FAIA as a full-service architectural and planning firm. Since then, ADG has grown to a national firm providing programming, master planning, design, and construction administration services for hundreds of governmental agencies across the United States.

ADG is a design-oriented firm blending the science of building technology, problem solving, and the art of architecture. We believe in the tenets of authentic, contemporary architecture, and direct our practice to achieve the highest standards of design quality. With each project, we embark on a search for design excellence. Our success reflects the resolution of specific design issues while meeting the functional needs of the program within the established budget.

UNIQUE ATTRIBUTES AND DESIGN QUALITY

Over the years, ADG has narrowed its focus from a diversity of project types to a small number of areas of specialization. The primary areas of expertise includes design services for new and renovated law enforcement, fire-rescue, public works, and public safety facilities. Our projects reflect our current knowledge of facility programming, design, and our ability to focus collective talents toward innovative applications.

ADG has four separate, but inter-supporting design studios, each directed by a registered architect. The Studio Director whose experience best relates to each project serves as the project architect and client contact. Additionally, each project is overseen by the firm's President, Ian Reeves. ADG is proud to have earned numerous national, regional, and local awards that reflect our firm's ability to solve complex design challenges, use the most innovative and cost effective techniques, maximize space functionality, and achieve the highest level of overall quality. The result is an environment that encourages efficiency and productivity.

HONORS AND AWARDS

Over the past 49 years, ADG has received many honors and awards for design excellence including AIA Orlando Firm of the Year and AIA Florida Firm of the Year. Additionally, ADG has won AIA, design, and technology awards for over 75 of our municipal projects, including the Sarasota Police Headquarters project.

FIRM INFORMATION:

333 N. Knowles Avenue
Winter Park, FL
(407) 647-1706
marketing@adgusa.org
49 Years in Business

NUMBER OF EMPLOYEES:

Total Staff - 45

PROFESSIONAL LIABILITY INSURANCE:

\$2M with a \$4M Umbrella Policy

AVAILABLE IN- HOUSE SERVICES:

- Feasibility Studies
- Spatial Needs Assessments
- Master Planning
- Conceptual Design + Renderings
- Architectural Design
- Construction Administration
- Interior Design
- Grant Writing Assistance





SANFORD PUBLIC SAFETY FACILITY | HALLWAY GALLERY

TEAM BUILT COTTON AND CORPORATION

**FORM 2
TEAM COMPOSITION**

NAME OF PRIME FIRM: Architects Design Group

Role	Name and City of Residence of Individual assigned to the project	Florida Active Registrations
Principal in Charge	Rodney McManus, LEED AP / Winter Park, FL	LEED AP
Project Architect	Ian Reeves, AIA / Winter Park, FL	Architect, AIA
Project Manager	Daniel Taylor, Associate AIA / Winter Park, FL	N/A

SUBCONSULTANTS

Role	Company Name and Address of Office Handling this Project	Projected % of Overall Work on Entire Project	Name of Individual Assigned to this Project	Firm worked with prime before	Individual worked with prime before
Civil Engineer	AVCON, Inc.	3%	Mike Kerns, PE	Yes	Yes
Mechanical & Plumbing / Fire Engineer	SGM Engineering	12%	Bobby Shahnam, PE, LEED AP BD+C, CxA	Yes	Yes
Electrical Engineer	SGM Engineering	10%	Justin Mundell, PD, RCCD	Yes	Yes
Structural Engineer	BBM Structural Engineers	8%	Bora Erbilin, PE	Yes	Yes
Security & Technology	TLC Engineering Solutions	1%	Taw North, RCDD, LEED AP	Yes	Yes
Landscape Architect	Kimley Horn	1%	Brett Kuzoain, RLA	Yes	Yes

Are there any contractual agreements between the respondent (prime consultant) and any of the proposed subconsultants? YES X NO

If the answer is yes, the respondent shall attach with their submittal, information describing the contractual relationship including a copy of any written agreement.

**FIRM**

Architects Design Group

EDUCATIONBachelor of Architecture,
University of North Carolina at
Charlotte**REGISTERED**

LEED AP

TOTAL YEARS OF EXPERIENCE

24

**NUMBER OF
MUNICIPAL PROJECTS**

25+

RODNEY MCMANUS, LEED AP

PRINCIPAL IN CHARGE

ROLE ON FRUITLAND PARK PUBLIC SAFETY AND PUBLIC WORKS PROJECTS

For this project, Rodney will serve as principal in charge. He will oversee the project and provide quality control during all project phases. Utilizing his experience, he will assist Ian and Daniel with the management of the project budget and schedule. He will be active throughout the entire project. Rodney will also oversee ADG's quality control and assurance program for these projects.

EXPERIENCE

Rodney McManus is the Vice President of ADG and has worked with the firm for over seven years. His work as a project and account manager in the public sector includes governmental, public safety, law enforcement, and fire-rescue facilities. Prior to joining ADG, Rodney was a partner of an architecture firm in New York City where his focus was on large-scale projects in the city.

Rodney's 24+ years of experience with all facets of project design and management enables him to understand a project from many perspectives. He is detail-oriented but is also able to maintain a global focus throughout the project. His management style allows him to understand the nuances of a project and provide specific information and guidance to the design team while responding to the needs of the client. Rodney's multi-faceted background, affords him a solid understanding of specific project requirements, allowing for the smooth development of a project from programming to completion.

Rodney understands that the foundation of a project, beginning with the initial interviews and programming, is of the utmost importance and builds a solid foundation for a project's success. His hands-on approach to project management and knowledge of various building types helps him identify potential issues in a timely manner so that they can be proactively addressed to ensure a successful project each time.

PROJECT LIST

- 20+ Public Safety Projects
- Branson Police Headquarters
- Citrus County Judicial Facility
- Cookeville Police Headquarters
- Cocoa Beach Police Department, City Hall, and Municipal Parking Structure Design Criteria Package
- Florosa Fire Headquarters and Station No. 1
- Gilchrist County Courthouse
- Indian River County Sheriff's Office Pre-Design
- Knoxville Public Safety Complex and Courts Renovation
- Miami Fire Department Urban Search and Fire-Rescue Feasibility Analysis
- Miami Fire Station No. 14 Owner's Rep
- Miramar Public Safety Complex
- Monroe County EOC
- Tallahassee Police Department
- Village of Palm Springs Police and Municipal Complex
- Wildwood Police Headquarters
- Windermere Police and Municipal Facility



IAN REEVES, AIA

PROJECT ARCHITECT

ROLE ON FRUITLAND PARK PUBLIC SAFETY AND PUBLIC WORKS PROJECTS

Ian, serving as the project architect, will oversee the entire project from early planning activities through design, construction, and project close-out. He works closely with the team's principal in charge, project manager, and client to establish project objectives and high quality standards. He directs integration of the entire ADG project team to establish and monitor performance objectives for the project. He is the point of contact for resolution of project issues related to contracts, schedules, and overall performance throughout the entirety of both projects.

EXPERIENCE

Ian Reeves, AIA, ICA, IALEP is the President of ADG and has been with the firm for 29 years. He has dedicated his entire career to the planning and design of law enforcement, fire-rescue, public works, and public safety facilities. He participates in all phases of architecture providing oversight for programming, design, and construction administration. He is an expert in both CPTED and CALEA design standards and has assisted many public safety entities in obtaining this important accreditation through facility design. He recently served on the International Association of Chief's of Police (IACP) committee for updating the police facility design guidelines and standards.

Mr. Reeves will be involved throughout the entire project and will lead in implementing the project's scope and goals. Additionally, Mr. Reeves works very closely with the client ensuring that the "Participatory Design Process" that ADG utilizes results in a product that exemplifies design excellence while exceeding all program requirements. He leads our team of experts in this highly specialized field of architecture to produce state-of-the-art facilities for our clients on a national level.

Mr. Reeves also leads ADG's grant writing services by helping clients with effectively utilizing grant resources and efficiently obtaining funding for their projects. He has been successful in helping our clients receive millions of dollars in funding, through local, state, and federal grants, FEMA Hazardous Mitigation Grant Program (HMGP), FEMA Pre-Disaster Mitigation Grant Program (PDM), and assisting with voter referendum and community outreach efforts.

PROJECT LIST

- Over 8 Million Square Feet of Programmed / Designed Public Safety Space
- Altoona Public Safety Facility
- Bartow Public Works Complex
- Bay County Public Works Complex
- Clermont Police Headquarters
- Clermont Public Works Spatial Needs Assessment
- Daytona Beach Shores Public Safety Complex Renovation
- Georgetown Public Safety and Training Complex
- Johnston Public Safety Facility
- New Port Richey Public Works Complex
- Orlando Police Headquarters
- Riviera Beach Public Safety and Public Works Facility
- Sanford Public Safety Facility
- Tampa Public Works Facility

FIRM

Architects Design Group

EDUCATION

Master of Architecture,
University of Florida, 1996

Bachelor of Arts in
Architecture, University of
New Mexico, 1992

REGISTERED IN

Architect - FL (#AR94944), AL,
CO, GA, LA, IL, IN, MA, MO, NC,
NJ, NY, OH, OK, RI, SC, TN, TX, UT,
VA, WI; NCARB

TOTAL YEARS OF EXPERIENCE

29

NUMBER OF MUNICIPAL PROJECTS

150+

**FIRM**

Architects Design Group

EDUCATIONMaster of Architecture,
Massachusetts Institute of
Technology**TOTAL YEARS OF EXPERIENCE**

17

**NUMBER OF
MUNICIPAL PROJECTS**

45+

DANIEL TAYLOR, ASSOCIATE AIA

PROJECT MANAGER

ROLE ON FRUITLAND PARK PUBLIC SAFETY AND PUBLIC WORKS PROJECTS

Daniel will serve as the project manager utilizing his experience to lead the project team in all phases of project development. He will serve as the daily point of contact for city and project team. Daniel will coordinate all project activities including adherence to schedule and budget requirements, as well as the team's subconsultants. He will be active throughout the entirety of both projects.

EXPERIENCE

Mr. Taylor has worked on over 35+ public safety projects. He has 17 years of experience in the field of public safety architecture. He has worked on several different types of projects including public safety, emergency management, and public works facilities. His expertise centers around environmental hazard analysis, conceptual design, space planning, systems integration, design development, construction documents, and construction administration.

He has extensive experience in extreme weather hardened facilities including building envelope detailing, exterior equipment protection, site security, and engineering coordination. While dealing with the most critical of facilities, he is devoted to designing sophisticated projects that incorporate sustainable practices. Natural day lighting, solar shading, and energy efficient design strategies are at the core of his philosophy.

PROJECT LIST

- Clermont Police Department
- Lake County Emergency Communications and EOC
- Altoona Public Safety Facility
- Bradford County EOC & 911
- Casselberry Fire Station No. 21
- Chatham County EOC and 911 Center
- Charleston County Consolidated Communications and EOC
- Clay County Emergency Services Complex
- Daytona Beach Shores Public Safety Complex
- Dover Police Headquarters
- Horry County EOC and 911 Center
- Kissimmee Fire Station
- Lawrence County EOC and 911 Facility
- Mount Dora Public Safety Facility Renovation
- Manchester Police Headquarters
- Monroe County EOC
- New Port Richey Public Works Operations Facility
- Nacagdoches Regional Emergency Operations Center
- Osceola County EOC
- Port Fourchon EOC
- Sarasota Police Headquarters
- Sarasota Bus Transfer Facility
- Sanford Public Safety Facility
- Wells Public Safety Facility
- Williamson County EOC and 911 Center

**FIRM**

AVCON, Inc.

EDUCATIONBachelor of Civil Engineering,
University of Central Florida**REGISTERED IN**

ENGINEER - FL (#PE70599)

TOTAL YEARS OF EXPERIENCE

15

**NUMBER OF
MUNICIPAL PROJECTS**

15+

**FIRM**

BBM Structural Engineers

EDUCATIONMBA, Florida Institute of
Technology**REGISTERED IN**

ENGINEER - FL (#PE55996)

TOTAL YEARS OF EXPERIENCE

28

**NUMBER OF
MUNICIPAL PROJECTS**

45

MIKE KERNS, PE

CIVIL ENGINEER

ROLE ON FRUITLAND PARK PUBLIC SAFETY AND PUBLIC WORKS PROJECTS

Mike will be responsible for overseeing all site design activities for both projects. He will complete all civil engineering tasks; specifically, he will prepare and coordinate all grading, drainage, and site utility aspects of both projects. Mike will also coordinate the site permitting process of all governing boards needed.

EXPERIENCE

Mike has 15 years of diverse experience in civil design, including various stormwater systems such as retention ponds, detention ponds, and underground ex-filtration. He has prepared permit documents and exhibits for several Florida agencies including the St. Johns River Water Management District, the Florida Department of Environmental Protection, and the Florida Department of Transportation.

PROJECT LIST

- 13+ Public Safety Projects
- Mt. Dora Fire Station No. 35 (with ADG)
- Mt. Dora Public Works and Fire Station No. 34 (with ADG)
- Orange County Fire Station No. 32, 68, 69, 80, and 87 (with ADG)
- Orlando Fire Stations No. 6, 9, and 11 (with ADG)
- Sanford Public Safety Facility (with ADG)
- Sanford Riverwalk

BORA ERBILLEN, PE

STRUCTURAL ENGINEER

ROLE ON FRUITLAND PARK PUBLIC SAFETY AND PUBLIC WORKS PROJECTS

Bora will be responsible for all aspects of structural engineering including analysis, design, investigation, inspection, construction document preparation, cost estimating, and oversight of structural related items for the public safety complex and public works building projects.

EXPERIENCE

Mr. Erbilien is a Principal at BBM and has over 28 years of experience as a consulting structural engineer. He has been with BBM for over 24 years. He has worked on over 40 public municipal projects in his career and is well-versed in all types of building systems and building types with varying degrees of structural design complexity. Most recently he was structural project manager of the new Police and Fire Departments for the City of Boynton Beach, FL with ADG.

PROJECT LIST

- 10+ Public Safety Projects
- Sanford Public Safety Complex (with ADG)
- Winter Park Public Safety Complex (with ADG)
- Orlando Police Headquarters (with ADG)
- Boynton Beach Police Department (with ADG)
- Boynton Beach Fire Department (with ADG)



FIRM
SGM Engineering

EDUCATION
Bachelor in Mechanical
Engineering, University of
Central Florida

REGISTERED IN
ENGINEER - FL (#PE78419)

TOTAL YEARS OF EXPERIENCE
21+

**NUMBER OF
MUNICIPAL PROJECTS**
150



FIRM
SGM Engineering

EDUCATION
Bachelor of Electrical
Engineering, University of
Central Florida

REGISTERED IN
ENGINEER - FL (#PE70700)

TOTAL YEARS OF EXPERIENCE
18

**NUMBER OF
MUNICIPAL PROJECTS**
300

BOBBY SHAHNAMI, PE, LEED AP BD+C, CXA

MECHANICAL AND PLUMBING / FIRE ENGINEER

ROLE ON FRUITLAND PARK PUBLIC SAFETY AND PUBLIC WORKS PROJECTS

For this project, Bobby will serve as mechanical engineer. He will be responsible for all aspects of HVAC system design including heating / cooling load calculation, equipment selection, air distribution systems design, energy code compliance calculations. He will also oversee all plumbing and fire engineering aspects of both projects.

EXPERIENCE

Bobby has over 21 years of experience in his field. His extensive knowledge working on municipal projects in Florida paired with eight years designing public safety and public works facilities with ADG makes him an excellent fit for these projects. He has served as the engineer of record for over 650,00 SF of public safety facilities throughout the state of Florida.

PROJECT LIST

- 45+ Public Safety Projects
- Wildwood Police Headquarters (with ADG)
- Orange County Fire Station No. 32, 68, 69, 80, and 87 (with ADG)
- Osceola County Fire Station Prototypes (with ADG)
- Hillsborough Fire Admin, EOC, and Public Safety Operations Facility (with ADG)

JUSTIN MUNDELL, PE, RCCD

ELECTRICAL ENGINEER

ROLE ON FRUITLAND PARK PUBLIC SAFETY AND PUBLIC WORKS PROJECTS

For these projects, Justin will serve as lead electrical engineer with expertise in the areas of lighting, power, fire alarm systems, and electrical system support for technology systems. He will be responsible for all aspects of electrical system design and load calculations; including preparation of design documents for interior lighting, power distribution, telephone, and data raceway systems.

EXPERIENCE

Mr. Mundell has 17 years of experience in the design of electrical systems, including power, lighting, and communications systems. He is very familiar with building codes and standards. With a keen eye, he also excels in field engineering services and commissioning, detecting faults, assessing reliability, and analyzing utility grade metering.

PROJECT LIST

- 65 Public Safety Projects
- Wildwood Police Headquarters (with ADG)
- Mt. Dora Fire Station No. 35 (with ADG)
- Mt. Dora Public Works and Fire Station No. 34 (with ADG)
- Orange County Fire Station No. 32, 68, 69, 80, and 87 (with ADG)
- Orlando Fire Stations No. 6, 9, and 11 (with ADG)



FIRM

TLC Engineering Solutions

EDUCATION

Bachelor of Science,
West Point

REGISTERED IN

RCCD
LEED AP

TOTAL YEARS OF EXPERIENCE

19

NUMBER OF MUNICIPAL PROJECTS

75+



FIRM

Kimley Horn

EDUCATION

Bachelor of Environmental
Horticulture, University of Florida

REGISTERED IN

LANDSCAPE ARCHITECT - FL
(#LA6667196)

TOTAL YEARS OF EXPERIENCE

14

NUMBER OF MUNICIPAL PROJECTS

75+

TAW NORTH, RCDD, LEED AP SECURITY AND TECHNOLOGY CONSULTANT

ROLE ON FRUITLAND PARK PUBLIC SAFETY AND PUBLIC WORKS PROJECTS

Taw will serve as the security and technology consultant supporting the design team with security, voice/data and audio/visual systems. Taw is highly skilled in municipal and public safety technology due to his extensive years of experience designing the systems required for this specialized building type.

EXPERIENCE

Taw North, RCDD, LEED AP is a principal and the director of the technology operating group at TLC Engineering Solutions. His experience is broad as he has more than 15 years of knowledge in designing and commissioning low-voltage technology systems in public safety facilities. Taw's expertise includes voice-data, security, access control systems, and audio-visual systems. Taw's goal is to provide the best, cutting-edge technology for the best value.

PROJECT LIST

- 50+ Public Safety Projects
- Bradford County Public Safety (with ADG)
- Miramar Public Safety Building (with ADG)
- Orlando Fire Stations No. 6, 9, and 11 (with ADG)
- Orlando Police Department Headquarters (with ADG)
- Wylie Public Safety and Courts (with ADG)

BRETT KUZOAIN, RLA LANDSCAPE ARCHITECT

ROLE ON FRUITLAND PARK PUBLIC SAFETY AND PUBLIC WORKS PROJECTS

For this project, Brett will serve as the landscape architect. He brings his experience and expertise of the local area to this project. He will work with ADG on the coordination of landscape design, planting selection, and stormwater treatment plantings.

EXPERIENCE

With 14 years of experience in Central Florida, Brett has developed his knowledge base by strategically blending practical experience in land planning, landscape architecture, and urban design into an extensive resume providing award-winning design consulting services for many municipalities.

PROJECT LIST

- 20+ Public Safety Projects
- Mount Dora Fire Administration and Station No. 34, 35, and 36 (with ADG)
- Orange County Fire Stations No. 32, 68, 69, 80, and 87 (with ADG)
- Orlando Fire Stations No. 6, 9, and 11 (with ADG)
- St. John's County Sheriff's Command Center and Fire Stations No. 5 and 11 (with ADG)
- Ormond Beach Andy Romano Beachfront Park
- Daytona Beach Derbyshire Park Master Plan



TAMPA PUBLIC WORKS | SUPPLY TANKS

PHOTOGRAPH BY JEFFREY L. HARRIS FOR TAMPA PUBLIC WORKS

**FORM 3
LOCATION**

Specify address of Prime Consultant's designated office and where the majority of work on this project will be performed:

**333 N. Knowles Ave
Winter Park, FL 32789**

100 %

Indicate percentage of total overall project fees projected to be performed on this project by the Prime Consultant's office specified above. (Do not include percentage of fees anticipated to be performed on this project by subconsultants).

65 %

Specify address of Prime Consultant's other office(s) where any part of the work on this project will be performed (if applicable):

0 %

Indicate percentage of total overall project fees projected to be performed on this project by the Prime Consultant's office specified above. (Do not include percentage of fees anticipated to be performed on this project by subconsultants).

65 %

Indicate percentage of total overall fees projected to be performed on this project by firms located within the city including the prime consultant and subconsultants, utilizing information supplied above and on **Form 2**.

0 %



ORLANDO POLICE HEADQUARTERS

CONST. MANAGEMENT

WATER & SEWER UTILITY
RECLAIMED SERVICES



CITY OF ORLANDO POLICE HEADQUARTERS

Architects Design Group, as the architect of record for a design-build team, was selected to update the design build criteria package and complete full design services for the new Orlando Police Department Headquarters. This effort included analyzing what development could be realized within the fixed construction budget. It became readily apparent that the needs of the department far exceeded the city's development budget. Working together, the design team and general contractor prepared four development options to allow for 450 sworn officers to operate out of the new headquarters. Of the four options, only one fit the construction budget while meeting all program needs. This option included the adaptive reuse of an off-site warehouse for property and evidence, crime scene, and a portion of the training unit program.

The 100,000-SF facility serves as a major catalyst for urban growth while integrating itself into the historic neighborhood, the Parramore District. The entrance plaza is located at the most prominent corner of the site and welcomes public visitors through the north public entrance. The building features a community meeting room for up to 320 people, a 4,500-SF gymnasium, real-time crime center, and over 35,000 SF of office space for every bureau within the police department. The meeting room is a multi-purpose space with an adjacent warming kitchen and chair storage space offering the flexibility to accommodate a full range of uses from graduation banquets for the police academy and other community meetings. For more information, please visit: <https://tinyurl.com/OPDexterior> and <https://tinyurl.com/OPDnewsvideo>. *This project was featured in the International Association of Police Chiefs (IACP) Police Facilities Planning Guidelines as a case study.*

OWNERS NAME AND LOCATION

Orlando Police Department
401 S. Orange Blossom Trail
Orlando, FL 32805

ESTIMATE COST | ENTIRE PROJECT COST

\$32M | \$25.2M

WORK FOR WHICH FIRM WAS RESPONSIBLE | \$2.7M

OWNER'S CONTACT PERSON, TITLE AND PHONE NUMBER

Claudio Rosado | Support Services Manager | (407)-246-2656

FIRM'S PERSONNEL

Ian Reeves | Principal in Charge
Rick Mullis | Project Manager

COMPLETION DATE | February 2017





CLERMONT POLICE HEADQUARTERS

In order to provide the Clermont Police Department with adequate space for improved services, safety, and increased staffing levels, Architects Design Group, acting as the prime architect, developed a spatial needs assessment, master plan, and site analysis for an addition and renovation to the existing police headquarters. Strategic planning included a new secure sally-port, expanded temporary holding area, specialized property and evidence storage areas, and technologically advanced records retention area.

The city then entered into a developer's agreement to purchase a pad-ready site from the local developer. The design, construction documents, and permitting were completed for a new site. Contract issues with the developer and the cost of a pad-ready site forced the project to be placed on hold again. ADG was contracted further to investigate an addition to the newly purchased City of Clermont Arts & Recreation Center. This option was also abandoned. Because time had lapsed since the original study, an updated spatial needs assessment was provided to the police department along with analysis of various sites. A final site was selected, and ADG proceeded to update the construction documents prepared for the new site. The completed 30,611-SF building is a two-story structure which includes an evidence processing lab, evidence bulk storage, a training classroom, temporary holding cells, a sally port, and the regular administration areas needed in a facility of this nature. The building has been programmed to satisfy the current and future needs of the Clermont Police Department to the year 2030.

OWNERS NAME AND LOCATION

City of Clermont
685 W. Montrose Street
Clermont, FL 34711

OWNER'S CONTACT PERSON, TITLE AND PHONE NUMBER

Charles Broadway | Chief of Police | (352) 394-5588

COMPLETION DATE | March 2017

ESTIMATE COST | ENTIRE PROJECT COST

\$10.2M | \$7.3M

WORK FOR WHICH FIRM WAS RESPONSIBLE | \$655,351

FIRM'S PERSONNEL

Ian Reeves | Principal in Charge
Daniel Taylor | Project Manager





DOVER POLICE HEADQUARTERS

Architects Design Group, acting as the specialty design architect in association with a local architecture firm, was selected by the City of Dover to design the new 28,000-SF Dover Police Department Headquarters and 121,000-SF municipal parking garage. The goal was to design for current and future needs of the expanding police department and integrate a much-needed public parking garage. The facility was built in the downtown core of Dover, a mature city that boasts a brick industry and successful mill operations.

This project focused on using space wisely and working with the community to find solutions to the multiple requirements, all while melding into the overall historic urban fabric design. Included in the space is a jointly-accessible police and community parking garage, a viable community enhancement. The new police headquarters is comprised of the police administration, uniform patrol, communications / dispatch, criminal investigations division, evidence processing and storage, code enforcement, records, booking and intake, professional services, and a municipal emergency operations center. The municipal parking garage provides parking spaces for joint-use by the public and law enforcement with two separate secured entrances for police department staff only. One of ADG's unique design solutions was to leverage premium building square-footage. The facility provides flexible multi-use opportunities in concert with the defined spatial requirements. One specific example is the meticulous design of the sally port. Detainees can be brought into the secured booking and intake area without interfering with police vehicle storage or additional municipal parking.

OWNERS NAME AND LOCATION

City of Dover
46 Locust St. Dover
NH 03820

ESTIMATE COST | ENTIRE PROJECT COST

\$19.3M | \$17.5M

WORK FOR WHICH FIRM WAS RESPONSIBLE | \$173,628

OWNER'S CONTACT PERSON, TITLE AND PHONE NUMBER

William Breault | Police Captain | (603) 742-4646

FIRM'S PERSONNEL

Ian Reeves | Principal in Charge
Daniel Taylor | Project Manager

COMPLETION DATE | April 2016





WINTER PARK PUBLIC SAFETY FACILITY

The City of Winter Park selected ADG for a detailed spatial needs assessment, master planning, cost estimating, facility design, and construction administration services for a new Winter Park Public Safety Facility and Station No. 2. The new facility totals approximately 78,000 SF and serves both the city's fire and police operations.

Police components include specialized areas for booking and intake, evidence processing, investigative services, and an armory. It also features a 911 dispatch center, flexible training space, a community meeting room, administrative offices, fitness center, K-9 kennel, and secured employee parking. The new fire department includes four, double-deep apparatus bays with specialized exhaust systems, bunker gear storage and decontamination areas, a fire training tower, and the department's administrative headquarters.

This joint-use facility is designed to withstand Category 4 hurricane force winds and pressures. The building's envelope is constructed out of 7 ¼" thick reinforced concrete "tilt wall" panels throughout. The roof also has an insulating lightweight concrete roof slab to provide structural integrity to the roof which is known to be the highest area of probable damage during exposure to hurricane forces. The insulating properties of the lightweight concrete also afford the facility reduced heat gain thus lowering the operational costs associated with the cooling bands.

OWNERS NAME AND LOCATION

City of Winter Park
401 Park Avenue South
Winter Park, FL 32789

ESTIMATE COST | ENTIRE PROJECT COST

\$7.9M | \$8.3M

WORK FOR WHICH FIRM WAS RESPONSIBLE | \$549,656

OWNER'S CONTACT PERSON, TITLE AND PHONE NUMBER

Pam Marcum | Division Chief | (407) 599-3344

FIRM'S PERSONNEL

Ian Reeves | Project Manager

COMPLETION DATE | June 2003





SANFORD PUBLIC SAFETY FACILITY

This facility was a concept nearly two decades in the making. A spatial needs assessment conducted by ADG showed the police and fire services had outgrown their existing facilities. To provide state-of-the-art facilities, ADG designed a two-story facility housing the city's police department, fire administration, and a five-bay fire station. Both departments are designed as separate facilities connected by a shared two-story atrium, which includes vertical circulation, lobby / reception, a historic apparatus display, and community meeting room that overlooks the civic plaza.

The facility includes a state-of-the-art crime lab that is part of the investigative services/crime scene department. Several aspects of the facility support the crime lab, including: a central evidence drop-off/processing area, biohazard evidence storage and blood drying rooms, crime lab with fuming hoods, latent print analysis, forensic-science support, and forensic facial imaging. The facility houses the fire department administration and five-bay Fire Station No. 31. The station includes a watch office, crew quarters, SCBA room, bunker gear storage, decontamination, EMS supply, fire training rooms, fire training tower, a historic fire apparatus display, and community meeting room that overlook the civic plaza. The main training room also serves as the city's EOC.

Exterior walls are concrete tilt wall construction with hurricane impact glazing throughout, designed to withstand 150 mph and is designed with 100% backup to all mechanical and electrical systems.

OWNERS NAME AND LOCATION

City of Sanford
815 Historic Goldsboro Blvd.
Sanford, FL 32771

OWNER'S CONTACT PERSON, TITLE AND PHONE NUMBER

Jennifer Peickert | Administrative Services Manager | (407) 688-5070 X 5174

COMPLETION DATE | November 2009

ESTIMATE COST | ENTIRE PROJECT COST

\$19M | \$15.3M

WORK FOR WHICH FIRM WAS RESPONSIBLE | \$1M

FIRM'S PERSONNEL

Ian Reeves | Project Architect
Daniel Taylor | Project Manager





JOHNSTON PUBLIC SAFETY FACILITY

In association with a local architectural firm, Architects Design Group was selected as the Specialty Design Architect to provide programming, conceptual design, and voter referendum assistance, which was followed by full design services. The project included the analysis of the community's public safety needs and ISO ratings to determine the appropriate location to site both the Public Safety Facility and Station No. 1, as well as the separate, stand-alone fire station located on the west side of town. The main facility is designed to LEED Silver standards and is 40,000 SF. It contains the headquarters for police and fire administration and the main fire station. Fire Station No. 1 includes three drive-through apparatus bays, two EMS bays, fire training, sleeping quarters, kitchen, dayroom, dining area, decon room, physical agility room, bunker gear storage, 911 communications, and the City EOC.

Fire Station No. 2 components include two drive-through bays and two ambulance bays, a training tower, maintenance, SCBA, extractor area, dayroom, fire administration, twelve private sleeping quarters, kitchen, dining, and shower/locker room space. The project also received a FEMA HMGP grant to help pay for a backup generator for the public safety building, reducing the city's costs by 34%. For a video that shows more of this facility's features, please visit: <https://tinyurl.com/Johnstonpublicsafety>

OWNERS NAME AND LOCATION

City of Johnston
PO Box 410
Johnston, IA 50131

ESTIMATE COST | ENTIRE PROJECT COST

\$12.2M | \$9.5M

WORK FOR WHICH FIRM WAS RESPONSIBLE | \$127,934

OWNER'S CONTACT PERSON, TITLE AND PHONE NUMBER

Jim Sanders | City Administrator | (515) 727-7760

FIRM'S PERSONNEL

Ian Reeves | Project Manager

COMPLETION DATE | January 2014





MOUNT DORA PUBLIC SAFETY FACILITY RENOVATION

The expansion and renovation to the existing Mount Dora Public Safety Complex by ADG provides the police and fire departments with larger, more secure functional areas. This included a size-able fire administration area, municipal EOC, a vehicle sally-port, booking and intake area, secure interview rooms, and a property and evidence storage / processing area. A new communications center with multiple computer monitors, high resolution screens, and camera images allows the communications department to efficiently monitor incoming service calls, officer locations, and response times. In addition, separate locker facilities, a new break room, and physical agility center allows officers adequate space for officer training and patrol preparation.

Among the technological innovations incorporated into the facility is a state-of-the-art security system. The need for secure personnel areas is balanced with community-friendly spaces including an open public lobby which gives residents separate and efficient access to city services and records. ADG's design of the facility also incorporates energy efficiency features exceeding the most stringent energy code requirements, including appropriate lighting, window glazing, and sun shades. Utilizing a phased approach to construction, the addition was built first in order to allow fire administration to move into the new addition. After the first phase, the existing portion of the building was extensively renovated to create a better work flow for police department operations. During construction, ADG visited the construction site weekly to monitor construction was being done in accordance with construction documents.

OWNERS NAME AND LOCATION

City of Mount Dora
1300 N. Donnelly Street
Mt. Dora, FL 32757

ESTIMATE COST | ENTIRE PROJECT COST

\$3.6M | \$2.9M

WORK FOR WHICH FIRM WAS RESPONSIBLE | \$259,911

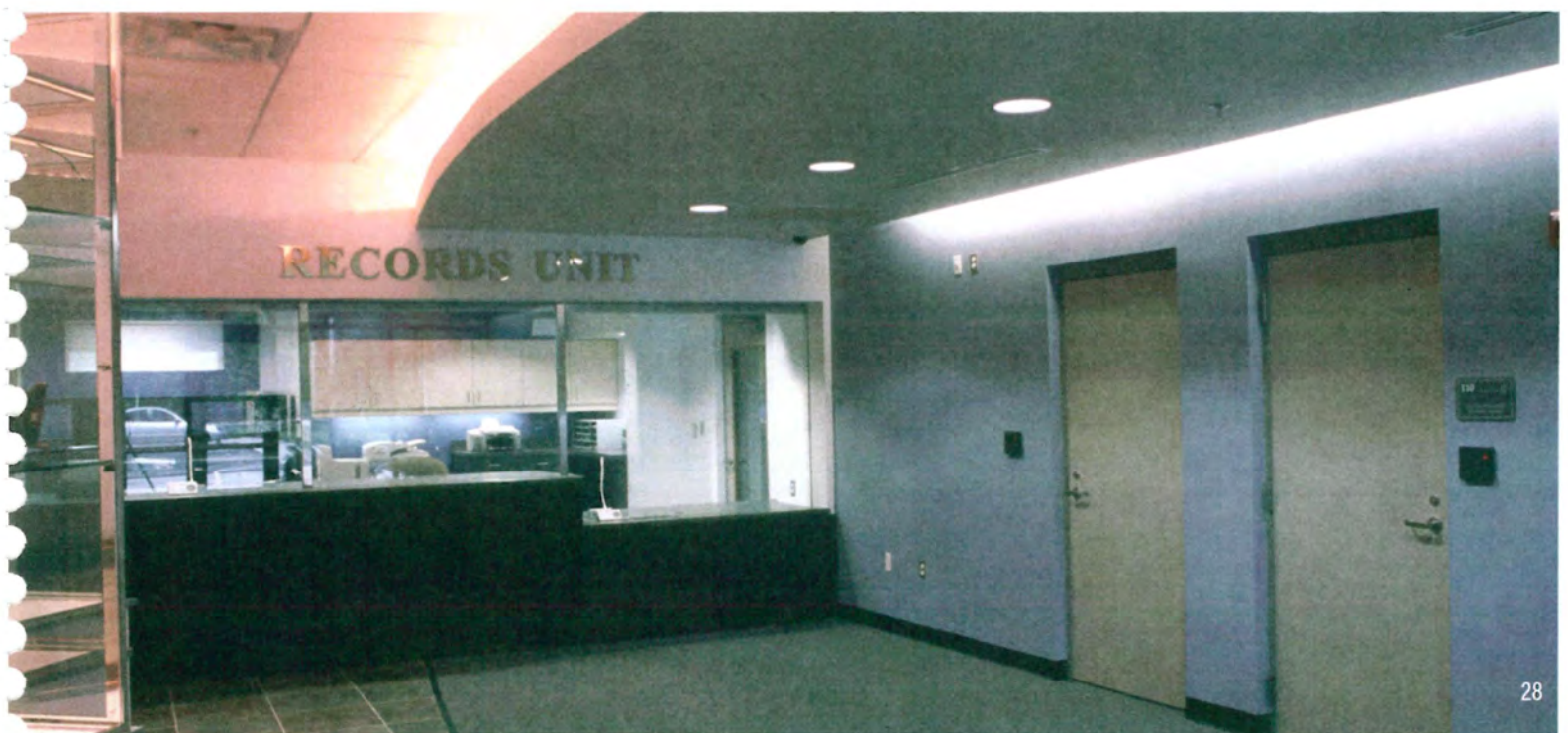
OWNER'S CONTACT PERSON, TITLE AND PHONE NUMBER

Rob Rauth | Chief of Police, Retired | (407) 466-2176

FIRM'S PERSONNEL

Ian Reeves | Project Assignment
Daniel Taylor | Project Manager

COMPLETION DATE | June 2006





DAYTONA BEACH SHORES PUBLIC SAFETY FACILITY

ADG was selected to provide a comprehensive spatial needs assessment, master plan, and design services for the City of Daytona Beach Shores' City Hall, Public Safety Facilities, and Community Services departments. Upon the completion of this study ADG recommended that the city proceed with a phased approach. With multiple buildings on the campus, ADG created a master plan for the entire municipal site to allow visitors ease of use and created a stronger sense of place for the new community-centered municipal complex. The complex utilized various development options, including the renovation of an existing three-story, 22,000-SF building for city hall, the renovation of the existing 12,000-SF police and fire administration building, and a 20,000-SF new building for police and fire-rescue operations.

The 32,000-SF public safety complex consists of two facilities. The main facility houses the department's records unit, patrol/field services division, booking and intake, investigative services, fire administration, and the administrative offices of the Chief. Located directly off of the public lobby is a large capacity community meeting room, which is made available to community groups to host their organization's meetings. The ground level also supports the vehicle sally-port and the fire apparatus bays. The secondary 12,000-SF facility at the Public Safety Complex is a single-story existing structure that was remodeled extensively and now provides areas for the training classroom, physical agility room, staff locker and shower rooms, property and evidence storage and processing areas, and a secured vehicle processing bay. A two-bay fleet maintenance component is also provided, as well as a secured impound lot which is discreetly located behind this structure, out of public view.

OWNERS NAME AND LOCATION

City of Daytona Beach Shores
2990 South Atlantic Avenue
Daytona Beach Shores, FL 32118

ESTIMATE COST | ENTIRE PROJECT COST

\$8.7M | \$8.7M

WORK FOR WHICH FIRM WAS RESPONSIBLE | \$982,343

OWNER'S CONTACT PERSON, TITLE AND PHONE NUMBER

Fred Hiatt | Director of Community Services | (386) 763-5365

FIRM'S PERSONNEL

Ian Reeves | Project Manager

COMPLETION DATE | January 2007





TAMPA PUBLIC WORKS FACILITY

ADG was selected to provide planning, interior design, and architectural design services for the city's new public works / fleet maintenance complex, which is located on 11 acres of land. The facility includes a multi-story administration and hurricane shelter building, a warehouse, open and covered secured storage, a fueling station, a truck and equipment washing and degreasing facility, and parking for 430 vehicles. A creative approach to the site layout preserves a mature canopy of grand oak trees, complying with the city's tree ordinance. Zones of activity were created based on the potential impact within the ecology and broader land use context. Upon completion, ADG was recognized by both the Tampa Chapter and the Florida Chapter of the American Public Works Association (APWA) as the "Architect of the Year" for the successful design of this facility. This project was completed on-time and on-budget.

OWNERS NAME AND LOCATION

City of Tampa
306 E. Jackson Street, 4N
Tampa, FL 33602

ESTIMATE COST | ENTIRE PROJECT COST

\$6.6M | \$6.6M

WORK FOR WHICH FIRM WAS RESPONSIBLE | \$400,000

OWNER'S CONTACT PERSON, TITLE AND PHONE NUMBER

James Jackson, Jr., AIA | City Architect | (813) 393-7881

FIRM'S PERSONNEL

Ian Reeves | Project Manager

COMPLETION DATE | 2003





NORTHPORT PUBLIC WORKS FACILITY

ADG completed programming / spatial needs assessment services under a contract with the city for a comprehensive municipal facilities needs assessment. The new fleet maintenance building is designed and constructed to enhanced Florida Building Code requirements, and is equipped with an emergency generator and on-site fuel storage and dispensing for fleet and first responders. This project was completed on-time and on-budget.



OWNERS NAME AND LOCATION

City of North Port
4970 City Hall Boulevard
North Port, Florida 34286

OWNER'S CONTACT PERSON, TITLE AND PHONE NUMBER

Ben Newman | City Engineer | (941) 240-8050

COMPLETION DATE | May 2012

ESTIMATE COST | ENTIRE PROJECT COST

\$6.4M | \$6.2M

WORK FOR WHICH FIRM WAS RESPONSIBLE | \$199,787

FIRM'S PERSONNEL

Ian Reeves | Project Manager



JOHNSTON PUBLIC SAFETY FACILITY | APPARATUS BAY

FORM 5

Use this space to provide additional information or description of resources supporting your firm's qualifications for the city's project.

NATIONAL EXPERIENCE

Architects Design Group has extensive experience in the planning and design of public safety and public works facilities. We have completed planning and / or design services for over 350 government facilities in the last 49 years. The listing below is a sample of similar projects.

- Altamonte Springs Public Safety Complex
- Alpharetta Public Safety Facility
- Bartow Public Works
- Bartow Public Works Complex
- Belle Glade Public Safety Complex
- Belton Public Safety Addition and Renovation
- Boca Raton Public Safety Information Management Center
- Brevard Community College Public Safety Training
- Cape Coral Public Safety
- Cedar Falls Public Safety Facilities
- City of Sanford Public Safety Complex
- Clermont Public Works Complex
- Cocoa Beach Public Safety Complex
- Deltona Public Safety
- Flagler County Sheriff's Office District 2
- Flint-University of Michigan Public Safety Feasibility Study
- Georgetown Public Safety Complex
- Grand Prairie Public Safety Training Facility
- Hernando County Public Works
- Irving Police and Fire Training Complex
- Jacksonville Public Safety Complex
- Johnston Public Safety
- Knoxville Public Safety
- Lake Worth Public Safety Complex
- Largo Public Safety Facility
- Lauderhill Public Safety
- Longview Public Safety Training
- Lowell Police Department and Public Works
- Marietta Public Training Facility
- Midlothian Public Safety and Courts
- Mt. Dora Public Works and EOC
- Mt. Vernon Public Safety Facility
- New Port Richey
- North Miami Beach Public Works
- North Port Public Works
- Orange County Landfill Operations and Maintenance Facility
- Palm Bay Public Works



GEORGETOWN PUBLIC SAFETY COMPLEX

- Pinellas County Public Works Master Plan
- Riviera Beach Public Safety and Public Works Complex
- Sanford Public Safety
- Sanford Public Works Space Needs Assessment
- Sarasota County Public Safety Building
- Springfield-Greene County Public Safety Coordination Center
- Sunrise Public Safety Complex
- Tampa Public Works Facility

- Venice Public Safety Facility Space Needs Assessment
- Waukee Public Safety Facility Study
- Williamson County Fire Station and Public Safety Headquarters
- Winter Park Public Safety
- Winter Springs Public Safety Complex
- Winter Springs Public Safety Facility
- Wylie Public Safety Facility

Additionally, ADG has experience in numerous specialized facilities with similar components to these Fruitland Park essential community projects.

**100+ FLORIDA
PUBLIC SAFETY PROJECTS**



**50+ FIRE
STATION PROJECTS**



PROJECT APPROACH

PROJECT APPROACH

The scope of services of this RFQ speaks directly to the accomplishments that the ADG team has completed for over 350 government facilities nationwide. We understand the unique requirements of public safety and public works facilities, the necessary components to ensure safe and efficient daily operations, and how to incorporate these components into the facility to provide long-term value to the community. The following approach is based on the traditional CMAR project delivery method. Should the county elect to utilize an alternative delivery methodology; such as design-bid-build, the ADG team has extensive experience with all delivery methods and is fully capable of responding to all project goals and objectives.

KICK-OFF MEETING / PROJECT STAKEHOLDERS WORKSHOP

Our team will conduct an initial meeting with the city, police, fire / EMS, and public works representatives to review the proposed project and confirm the schedule for specific tasks. This initial meeting is an orientation to the methodology, project objectives, and responsibilities of the city's project management team, police, fire, ems, and public works departments' representatives, planning department, and project stakeholders. The goals and objectives for the project, activities, and project milestones are discussed and agreed upon.

SPATIAL NEEDS ASSESSMENT & EXISTING FACILITY EVALUATION FOR EACH DEPARTMENT

Should we be selected for this project, we will review all existing project studies provided for, or completed by the city. We will provide recommendations and during this task, our team will schedule several meetings with city and project stakeholders. The spatial needs assessment phase is an early, essential part of the comprehensive planning approach to determine the future spatial needs of the city's police, fire / ems, and public works departments. The space needs provides four important elements of the planning process:

- Identifies and documents deficiencies of the existing facilities
- Provides a detailed space-by-space definition of the elements to be included in the new facilities, including projections for potential future buildings' needs
- Provides the initial budget analysis and options for identifying the cost of an appropriate facilities
- Initiates the political process necessary to create consensus for the facilities

Program / Space Needs Analysis
Executive Summary

Georgetown Public Safety Operations and Training Complex
Georgetown, TX
ADG Project Number: 875-12

General Notes	Space Designation		Space Requirements (Square Feet)		
	No.	Space Function	Phase I YEAR: 2018	Phase II YEAR: 2020	Phase III YEAR: 2024
	1.0	Public Access Areas	6,862	1,000	4,810
	2.0	Club Sit-down Area	991	1,004	810
	3.0	Fire Administration	1,004	4,200	1,510
	4.0	Operations Division	1,721	3,015	4,410
	5.0	Records Unit	1,400	1,770	1,770
	6.0	Training and Conference	1,007	1,004	1,000
	7.0	Priority and Services	1,100	1,000	1,000
	8.0	Chief's Office	2,500	1,000	2,000
	9.0	Public Community Administration	1,224	1,000	1,200
	10.0	Officer's Living Quarters, Personnel	4,800	1,500	1,400

ADG/PHASE NEEDS/08/11/2018/Georgetown Public Safety Operations and Training Complex

Information Gathering and Data Collection: The design team will analyze data obtained from the city, including current copies of departmental organizational structures reflecting the "chain of command" and identification of the department administrators of each program component of the projects. Data collection gathers population and demographic statistics useful in the beginning to project future needs.

Staff Questionnaire: During this task, our team will prepare and distribute a detailed questionnaire (survey) to staff leaders. The questionnaire serves two important objectives. First, it documents important information formulated from facility-user input. Secondly, it begins the formal process during which the users begin to think critically about their current facility and what an appropriate facility should be in order to best serve the needs of the public and the departments.

On-Site Interviews: Our team will meet one-on-one with the facility users to gain a detailed understanding of entity functions and general spatial requirements anticipated to be accommodated by the projects. On-site interviews with the questionnaire respondents are necessary to "read between the lines and fill-in the gaps" of the respondents' observations. We will spend quality time working on-site with each department's personnel. We will record in detail what the needs are

for each space and will assist the departments' personnel in achieving a deeper understanding of how the new public safety and public works facilities must function.

Crunch the Numbers: Once a clear understanding of the components and operations of each department is achieved, our team will quantify the space needed in terms of actual square footage. We will then list individual space by division in each department. The space is listed by current square foot need and at least two subsequent future phases of potentially increased square foot needs. The one constant in life is change. With that concept in mind, the planned facility must be able to accommodate change over a minimum 20-year life of the building. The tabulation of space needs will be distributed in "draft" form to allow a detailed review by the city's internal project management team.



Site Requirements: Our team will evaluate the site requirements. The analysis will include lot size recommendations, required site elements, and parking, as well as general security, lighting, and access requirements.

Spatial Needs Assessment Draft Report: A thorough analysis of all of the information obtained will result in a detailed report. The team will prepare an analysis of the routine operations of the departments in order to fully understand their function, operation, respective interaction, relationship, and adjacency priorities. The team will utilize the space standards for individual staff work areas which ADG has developed over the past 49 years of experience in planning and designing public safety and public works facilities. The information during this task will be provided in a draft report and dispersed to city stakeholders for review and comments before the final spatial needs assessment is completed.

SITE ANALYSIS

During the site analysis phase, the team will prepare a detailed report of the site. The local civil engineer, AVCON Engineering, will obtain to the extent possible existing aerial photographs, city /county maps, legal description, and surveys to assist in documenting the size and the location of primary features, such as buildings, paved areas, major landscape elements, easements, environmental jurisdictional limits, and other physical aspects that potentially affect or impact upon the proposed development and future expansion of the building. The team will obtain documentation through the city's land development ordinance relative to codes and / or development requirements including criteria relative to build-able area, height limitations, parking requirements, provision of utilities, storm water retention and disposal, environmental issues, soil contamination, landscape requirements, setbacks, and similar factors which may potentially impact upon land usage.

MASTER PLANNING

After the site information is obtained and reviewed, our team will work with the city to develop the conceptual site plans and renderings for the new public safety complex and public works building. During this phase, we will explore various conceptual site plans to achieve current and future needs. Our team will also evaluate the adjacent site areas relative to current zoning and actual land use, reflecting this information in the master plan documents. Based upon the accepted spatial needs assessment and issues associated with adjacent site areas, our team will prepare a master plan document illustrating:

- Proposed land utilization
- Location and general configuration of the "current need" within the facilities
- Areas of potential expansion for future needs
- Location of vehicle access and egress, both staff and public
- Vehicle parking areas for the secured and public access areas



- Provide ample pedestrian access
- Site circulation with at least two egress points for staff
- Natural vegetation area designed for storm-water retention / detention
- Environmentally-sensitive areas
- Utility access and distribution
- Site security
- Ability to apply principles of Crime Prevention Through Environmental Design (CPTED) standards

CONCEPTUAL DESIGN

One of our team's greatest abilities is to program a building to maximize operational efficiency. Operational adjacency studies are a critical part of developing the full program and conceptual design in this phase. During this task, our team will conceptualize several graphic options showing operational adjacencies of internal divisions, overall building adjacencies, general site adjacencies, security zoning layers, publicly accessible areas, etc.

At this point of design, the concept plan will be further detailed into sketches. This will include site plan refinements showing setbacks, parking and access / egress requirements, adjacency diagrams / floor plans, 3-D massing diagrams, building elevations, and renderings. Our team utilizes the latest software to create realistic renderings. These renderings will assist the city in visualizing the different options for the building, as well as aid in the community outreach efforts.



MASTER PLANNING AND CONCEPTUAL DESIGN REVIEW MEETING

Our team will conduct an interactive design meeting to review the proposed master plan and conceptual design drawings. This meeting will include the design team, city's project manager, members of the police, fire / ems, and public works departments, planning, city management, project stakeholders, and if deemed appropriate by the city, interested citizens and / or community groups. The premise of this meeting will be to obtain consensus and agreement on the conceptual site plan, conceptual floor plans, building elevations, and renderings. After feedback from the design meeting, our team will prepare revised drawings illustrative of the proposed solution for the new public safety complex, public works building, and the surrounding community.

DEVELOPMENT OF COST ESTIMATES

Key decisions made at the start of a project have the greatest impact on the ultimate success of the project. Good decisions are a product of thorough analysis of appropriate and accurate data. During the early phases of the project, accurate budgeting is necessary. Our team has an excellent history of accurate cost estimating, specifically for public safety and public works projects. For the purpose of accurate project cost projecting, ADG maintains an extensive database of public safety projects on a national basis. This is a very important contributing factor in their success of designing to the budget in order to prevent value engineering at the end of the design process. The database is populated with the following project components: project location (and specific regional issues that need to be mitigated), wind speed requirements for the building envelope, impact level, project size, number of stories, year bid or estimated, construction cost and construction delivery method, cost per square foot with and without site development costs, and population served. If desired by the city, and if a hard bid construction delivery method is chosen, we can hire an outside

cost estimator to verify costs. The end result of this phase will be a budgetary cost estimate to develop a total renovation cost package.

SCHEMATIC DESIGN

During the schematic design phase, on-site design sessions will be conducted to refine design options, which will provide improved facility design and cost savings. The schematic plans for each facility will be developed to establish the best possible organization for the public safety complex and public works building. This will take into consideration the ideal operational adjacencies for the efficient functionality of the facilities. In addition, engineering systems and concepts for the building systems will be evaluated. During the on-site session, our team will continually provide value management and constructibility reviews. At the end of the schematic design phase, a cost estimate will be prepared for each of the phases and alternatives. We will work with the city to address the priorities of each department and project budget constraints to determine an appropriately balanced solution. This phase includes the following:

- Preliminary code research and evaluation
- Preliminary floor plans that provide a layout that has been checked for code compliance
- Schematic design for the facilities and exterior elevation studies
- Preliminary finish schedule for all areas of work
- Specification narrative of building systems
- Submit to fire marshall for preliminary review
- A preliminary construction budget
- Exterior renderings



DESIGN DEVELOPMENT

During the design development phase, the buildings' materials, systems, and enhanced functional responses are refined. The design process integrates the design team and city's input responding to environmental and survivability issues, life-cycle cost issues, security issues, and budget considerations. The design approach, preliminary architectural, structural, mechanical, electrical, and plumbing concepts are developed to a level of detail that allows the selected CMAR or contractor's pre-construction team to prepare detailed cost estimating prior to initiating construction documents. If requested, our team can provide interior design services including furniture recommendations, layout, contract documents, bidding / procurement assistance, and installation administration. The following items are concluded at this design phase:

- Selection of systems, materials, and equipment for program response and sustainable design goals
- Preparation of initial design details
- Thorough documentation of civil, architectural, structural, mechanical, electrical, plumbing, and fire protection systems
- Building security (access control and CCTV), audio visual technology, and identification of survivable systems components
- Forecast of potential energy performance, life-cycle cost, and architectural quality of design relative to the previously determined project goals
- Adjustment of the design as necessary to achieve project goals and budget targets

Our team will also implement our responsive security technology approach. This approach is defined as the review and application of all available and emerging systems to secure public safety and public works facilities. Some of the highly secured areas that are accommodated by these systems include:

- Perimeter surveillance (site and building)
- Site ingress / egress points
- Gated access points
- All building entrance points
- Primary entry lobby
- Blind areas around site and buildings using CPTED design principles (Crime Prevention Through Environmental Design) within the public safety complex
- Interior entrances into secure zones of the building
- Property and evidence within the public safety complex
- Forensics section / crime lab (evidence processing) within the public safety complex
- Secured interview suite within the public safety complex
- Secured staff parking areas
- Vehicle processing bays within the public safety complex
- Inventory warehouse/storage spaces (logistics & public works/ purchasing spaces), include not only access control, but inventory control systems

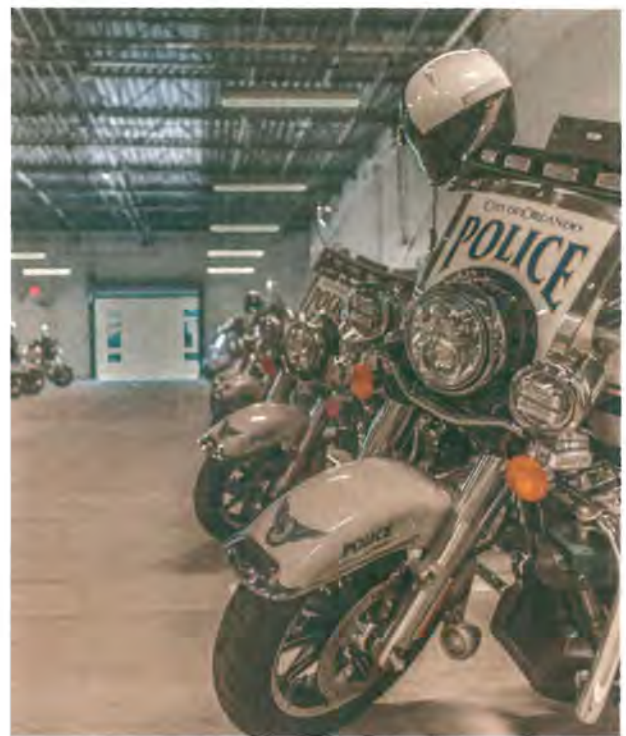
Once the city has accepted and approved the design report and issued the notice to proceed, we will begin construction documents and will begin outlining the sequencing of construction. At the city's request, and if the CMAR delivery system is chosen, our team can develop an early site package at the end of the design document phase to expedite permitting and allow the CMAR or GC to mobilize faster.

CONSTRUCTION DOCUMENTS

During the construction documents phase, our team will prepare drawings and specifications necessary for bidding and construction. A final building code analysis will be completed during this phase. Reviews by the city's project manager, facility stakeholders, and the design team will be conducted at the 30%, 60%, and 90% complete phases. The plans will integrate the unique response to the project's goals and will incorporate the changes required to keep the project in budget, on schedule, and to meet the city's projects' goals. The plans and specifications will undergo our team's quality control review process, which involves a comprehensive review by separate architects and engineers who are senior within our team.

This review process begins during design development and concludes with the completion of construction documents. An estimation of probable costs will be updated at the 60% and 90% completion phases of construction documents by cost estimator, if the city utilizes a CMAR through a CMAR methodology, or a general contractor (GC) should the city decide to utilize a design-bid-build process. Prior to completing bid documents, our team will hold an interactive, on-site review session with the city. This session will allow the city to provide comments and review input of the bid package. Our team will prepare the final set of construction documents to minimize RFI's, requests for change orders, and any additional costs. At this time, permit applications will be submitted.

If the CMAR delivery method is utilized: After the approval of the 90% construction documents, the selected CMAR begins managing the bidding process. The CMAR will advertise the prime bid packages, distribute documents, coordinate pre-bid conferences and the bid opening, and evaluate the bids. The design team will be available to answer questions and



For the 95% DeSoto bidding document set, we noticed how well-done the set is; in our opinion, this is a high-quality set. We noticed the documents "read well" and are easier to understand than others due to the nomenclature systems and graphics used. Also, details included are advanced and there are very few missing. This is across the board for all design disciplines. In short, the information is great and this translates to a better understanding of the planned scope of work by estimators, consultants, contractors, and others allied to the field.

John Coakley, CPE, LEED AP
CCM Construction Services

to prepare bulletins / addenda required by CMAR throughout the bidding procedure.

If Design-Bid-Build delivery: Our team will assist with preparing an invitation to bid for general contracting services. If requested, our team would recommend hosting a local subcontractor pre-submittal conference to explain the project's scope to all interested parties. We have found that this is helpful in finding qualified, local subcontractors. During this phase, we will assist the city in the review of qualified contractor bids, and if desired, make a recommendation for contractor selection. Our team will assist in issuing bid documents, attend the pre-bid meeting, and issue addenda as necessary. The design team will be available to answer questions and to prepare bulletins / addenda as required throughout the bidding procedure.

CONSTRUCTION ADMINISTRATION

Our team will observe construction activity for compliance with the contract document's design intent. Written reports and progress photos will be filed following each site visit. Shop drawing review, color selections, interpretations of the documents, and material compliance are typical services of significant importance to the project's success. Twice-monthly owner / architect / contractor progress meetings will be held with the selected CMAR / GC and the city. Minutes of all meetings will be prepared and distributed. Applications for payment will be reviewed and compared with the actual construction progress. We will continually be available for special on-site meetings and will review construction progress throughout this phase. We will review and assist the city with any potential claims for cost and time extension submittals by subcontractors and prepare and submit proposed construction change orders as required.

Upon completion of construction, a substantial completion inspection will be conducted and a punch list developed for the project. Upon notification of punch list completion, a final inspection will be conducted. Following final acceptance, our team will review the final pay request and recommend the amount of final payment. We will, at the completion of the work, assist in the development of final record drawings and issue maintenance, as well as warranty manuals.

COST CONTROLS

Budgets and schedules do not manage themselves. The project management team ensures adherence to the budget and schedule through proper planning and constant communication. ADG maintains control and ensures collaboration between the city's project management team, facility users, city leadership, the selected CMAR / GC, and stakeholders. The project will be completed in a timely manner and available funds will be used effectively.

COST ADHERENCE

As the city's lead design professionals for the project, we would see ourselves as stewards of taxpayer dollars. We would manage project finances in the utmost responsible manner - tools of cost containment are part of our fiscal obligation. Our years of experience working for governmental entities have taught us that cost containment is a fundamental approach to project management. Key elements of our cost control approach include: exhaustive pre-design planning, accurate cost estimating, and attention to the "three C's:" Coordination, Communication, Contingency.

As the project design evolves, the careful coordination of the numerous design disciplines becomes critical to eliminating errors and omissions; thereby containing cost. The specific nature of these facility types requires an understanding of areas that require complete and seamless coordination among team members. Timely resolution to issues is critical. Monitoring and addressing an issue are necessary until consensus is reached, and resolution is complete.

Proper communication requires that all parties involved in the design are informed, and that the team leader never makes assumptions about completed tasks until the checklist is complete. It is important to note that our team will not shy away from bringing difficult issues to the attention of the city. A problem cannot be solved if it is not discussed openly and honestly. Having said this, our team will not bring an issue to the city without first having a viable solution.

A contingency plan is always maintained to assure alternate avenues of response. Contingency plans can take several formats. The simplest cost containment approach is to assign value to "contingency" items. However, the most effective contingency plan is one that evolves with the project and helps to reduce financial risks as the project becomes more detailed and construction items are complete. Often, the most workable approach is to create contingency allowance items for systems known to be complex and subject to modification as the project evolves.

SCHEDULE CONTROLS

A comprehensive, detailed project schedule is important to the success of a project. Our team will work with the county to develop a schedule for this project. The team's Project Manager, Daniel Taylor, will monitor the impact of daily planning and design decisions on the budget, ensuring the project stays within the city's budget. Our team will meet to discuss the schedule and progress of work on a regular basis to coordinate schematic design and production. In order to achieve schedules, we utilize the following fundamental principles:

- Scheduling is a priority. We document, review, and update our schedule at each team meeting.
- Project work elements are organized into sections, which are necessary to clarify the critical path elements that maintain schedule compliance.
- Realistic exceptions or alternatives are established early in the design process.
- We anticipate that changes will occur and provide for these eventualities as early as possible.
- The team must buy in and commit to the schedule.

The ADG team has extensive experience with public safety and public works projects throughout Florida and the United States. All team members have reviewed the proposed schedule, along with their current and projected workloads, and see no issues in providing services for this project. The methodology chart below is a graphic representation of the timeline of tasks needed to complete the project utilizing a CMAR delivery option. Should the city decide to utilize another construction delivery method, we will revise the schedule below. The proposed schedule reflects the city's desire for the design to be completed quickly and efficiently. It also includes several milestones for review and feedback from the city.

WORKLOAD

Our entire project team has carefully examined our overall current and projected workloads, and are confident we will have no difficulties providing responsive and timely services for this contract. Our team has the ability to handle multiple projects simultaneously at various stages of development. Current management projections of manpower availability, which are updated weekly, reflect the team is clearly able to undertake this project immediately upon execution of a contract. All of the key people proposed for your project are immediately available to begin work as your schedule requires. The listing below indicates ADG's existing workload.

Space Needs Assessment:
Mount Dora Fire Station Nos. 34, 35, and 36
Flagler County Sheriff's Office District II

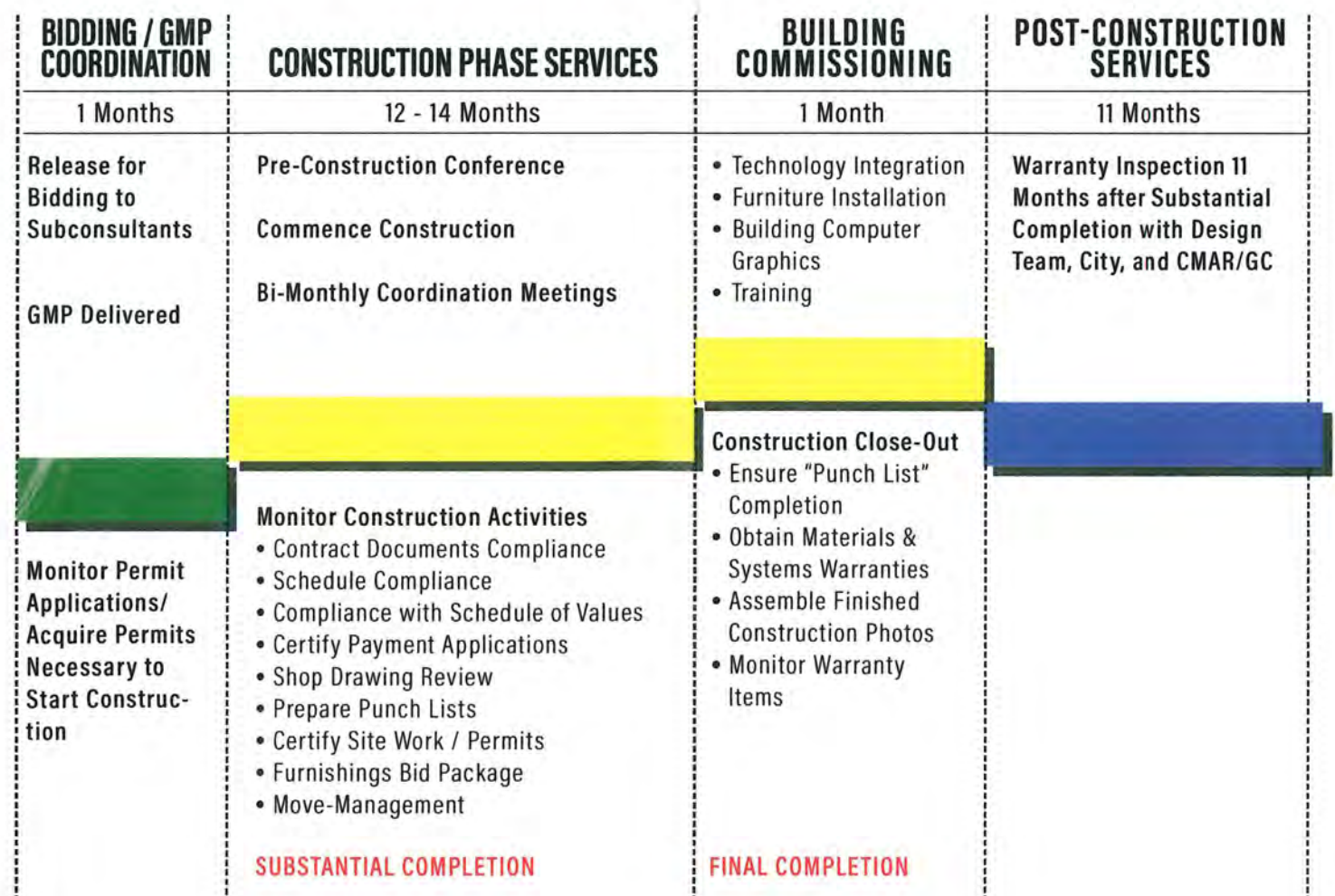
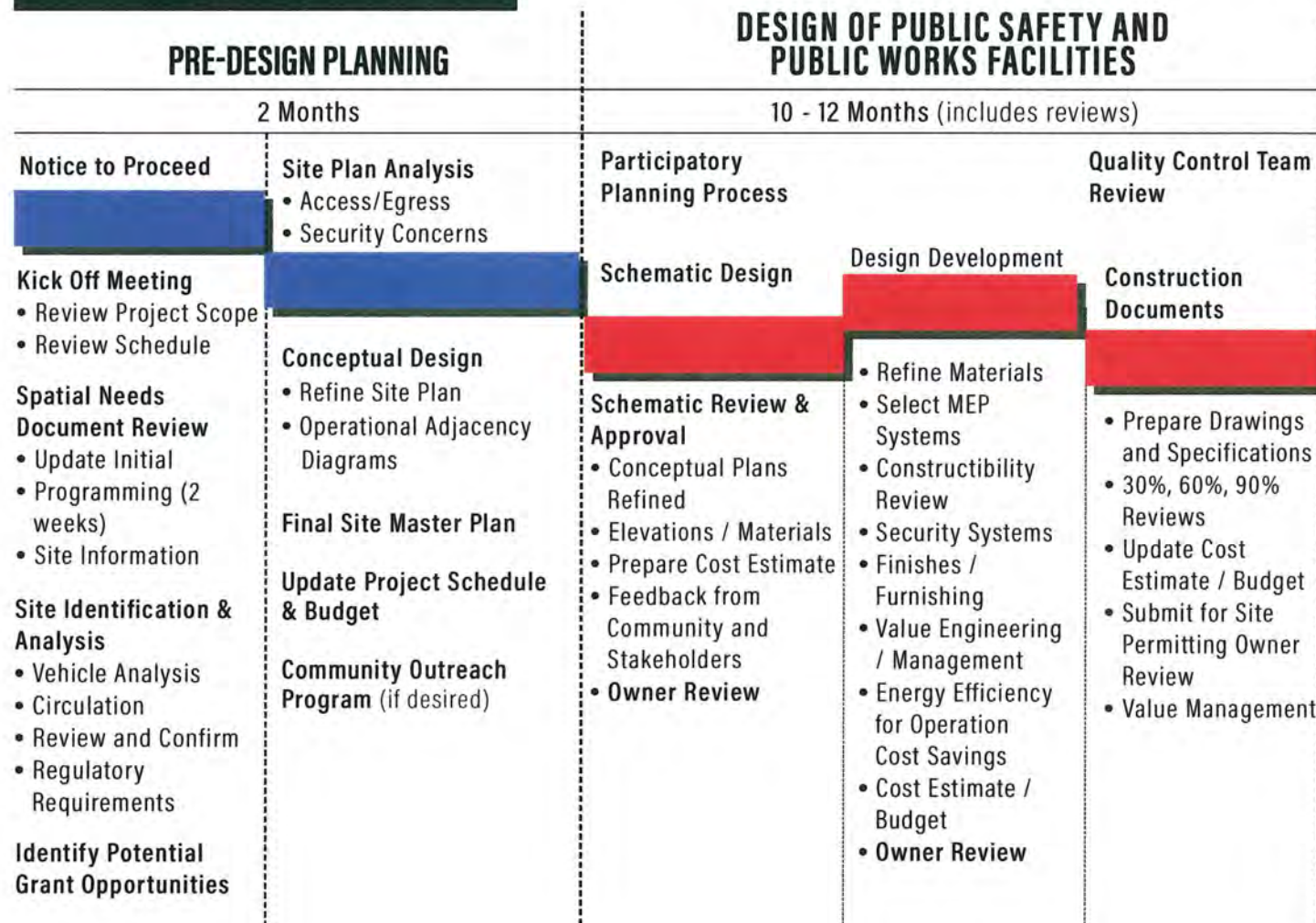
Bidding and Procurement:
St. Louis Police Precincts Nos. 1 and 3

Schematic Design:
Provo City Hall, Police, and Fire Complex

Construction Administration:
Miramar Historic Public Safety Complex
St. Johns County Fire Station No. 19
Wylie Public Safety Facility

Design Development and Construction Documents:
Longview Public Safety Facility
Seminole County Sheriff's 911 Center Renovation
Windermere Police and Municipal Facility

METHODOLOGY



POLICE DESIGN

ADG has had the opportunity to be involved in the programming, master planning, and design of police facilities throughout the United States. This extensive experience has provided our firm with an insight into those issues which are very specific to this facility type. There are many areas of the police facility that should be given special design consideration including: public lobby, interior corridors, records, investigative services, property and evidence, crime lab, holding area, armory, SWAT/tactical ready room, briefing and muster, locker and shower rooms, physical agility rooms, community policing unit, victim interview/waiting room, and the firing range. The crucial components that are to be considered in the planning and design of police facilities are grounded in the commitment to protect those specialized areas that present the highest risk and liability to the department, such as property and evidence. For example, if a law enforcement agency cannot prove in a court of law that the evidence has been secured and protected from potential access, tampering, or contamination by an unauthorized individual known as "maintaining the sanctity of custody", then the evidence may be deemed inadmissible in a court of law. ADG brings in-depth knowledge of the International Association of Property and Evidence (IAPE) guidelines to this project.

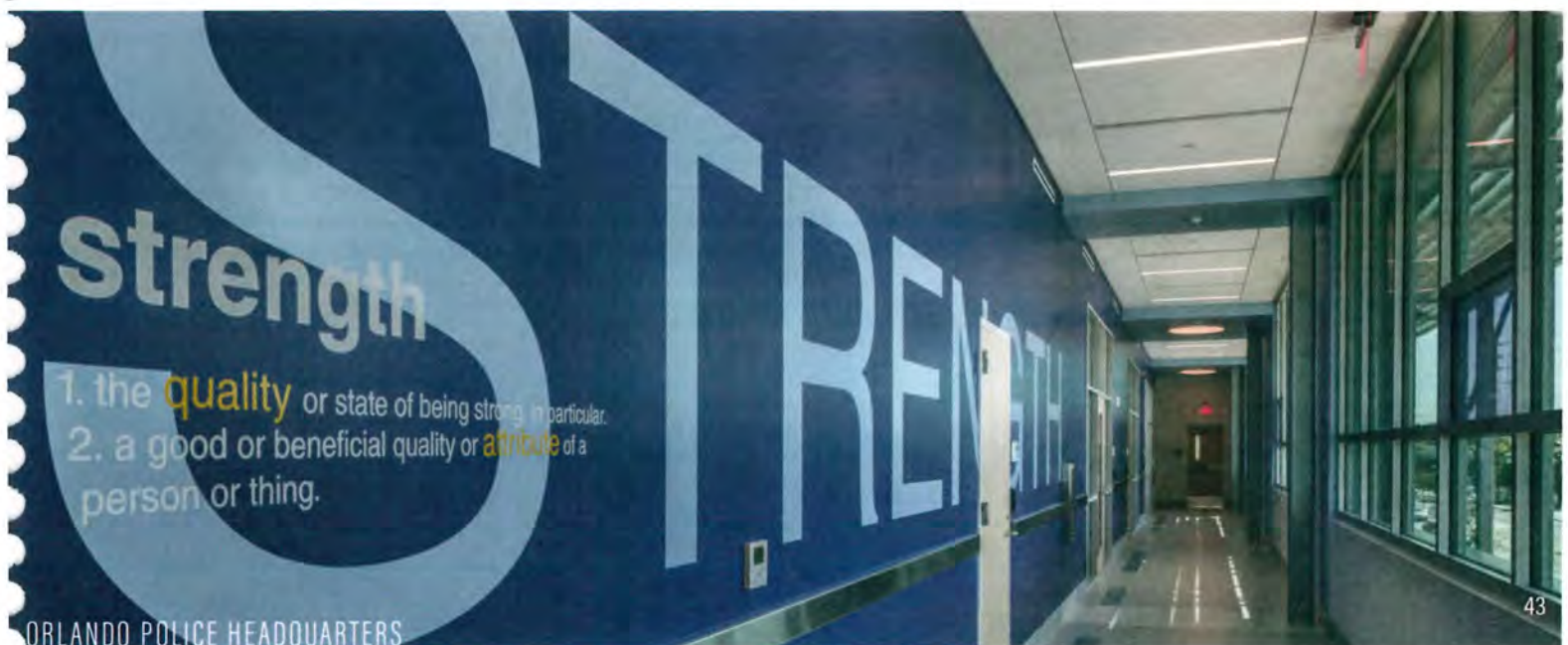
PUBLIC ACCESS

The preliminary design approach to protecting the sanctity or chain of custody through design is to prohibit or limit public access to a controlled, highly visible, secure area only. During business hours, the public must enter the facility through secured gate access points which are monitored and video recorded. With exception to the public accessed lobby / waiting / property return areas, all exterior doors require security access control. The public has no access beyond the secured access point. Additionally, all walls, doors, and glazing adjacent to the lobby / waiting / property return space are bullet resistant, ballistic rated. Secure, programmable card-key access by authorized personnel only, is required beyond this point. This ensures both the safety of the public and law enforcement personnel and any potential contamination from an outside influence.

EVIDENCE HANDLING / PROPERTY AND EVIDENCE

The planning and design of property and evidence areas must incorporate all recognized criterion that address the four critical components. They include: (1) Preparation; (2) Processing; (3) Holding/Storage; (4) Support Infrastructure.

(1) Preparation: Law enforcement evidence custodians/technicians generally follow normal 9-5 business hours. However, a large majority of the property and evidence that comes into an agency does so after these hours and therefore must be accurately documented for the custodians/technicians to process and track the articles. The facilities must be outfitted with an area referred to as the "bag and tag station." This is where the officer will log in the article(s), assign a case number, and securely store the article(s) avoiding access by anyone other than the evidence custodian/technician. As an example, in ADG's Miramar Crime Scene Facility design, evidence is brought to the evidence drop-off through secured





corridors, and bagged and tagged for storage or further processing in the specialized, lockable evidence lockers. Also required is a chemical-resistant counter top work area with access to stored materials for packaging the property and evidence articles. The space needs to be located near a bank of evidence drop lockers, in a variety of sizes, to accommodate anything from DUI/DWI video tapes to rifles, as well as a group of refrigerated units that will preserve articles containing DNA or bodily fluids without risk of deterioration. This bank of evidence lockers is a front-loaded, locked, and rear-retrieving configuration placed on a concrete curb with a floor drain located in close proximity to the refrigerated units as the condensation could be released onto the immediate floor area.

(2) Processing: The processing of the property and evidence articles is generally done only by individuals trained and certified in the proper techniques to comply with the sanctity of custody regulations. Initial processing occurs in an open work area, most typically located directly on the secure side of the bank of evidence drop lockers. Again, chemical-resistant or stainless steel counter top work areas should be provided with an integral sink. The custodians/technicians will finalize the case identification for the articles and prepare them for storage. On many occasions, the evidence will need to be further examined by the technicians or crime scene analysts. This requires very specialized lab areas with particular concern to handling of hazardous and bio-hazardous materials. A vehicle evidence bay is often located adjacent to a vehicle sally-port area of the facility. The vehicle evidence bays must follow the same regulatory guidelines as other areas associated with the storage and processing of articles of property and evidence. The bays are typically sized a minimum of 20 feet wide to accommodate personnel access on both sides of a vehicle with the doors open. They are outfitted with such components as epoxy quartz chemical-resistant flooring surfaces, floor drains tied into an oil-water separator, pull-down electrical reels and low-velocity air distribution systems. Dual means of access control devices to monitor who has accessed these areas, and CCTV systems (closed circuit television cameras) used to record in color/digital format anyone occupying these spaces, are also included. High performance artificial lighting must be provided.



(3) Holding/Storage: The storage of property and evidence is as critical as the processing. Locating the articles relies on the accurate identification and recording of the pertinent case information associated with each article. The storage of the various types of articles is often segregated into the following definitions: bulk evidence, cash/valuables, narcotics, weapons, cold-case files, capital case files, DNA evidence, etc. All holding areas must be equipped with dual-recording access control devices to meet law enforcement (CALEA) Accreditation standards. Likewise, any visitor to these areas must have their personal identification checked and verified, their times documented when entering and leaving, and signed by a witness, typically the custodian/technician working this area. High density storage systems are often utilized to maximize the use of these areas. High volume ceilings shall be provided to accommodate the storage systems.

(4) Support Infrastructure: The property and evidence areas of any law enforcement agency pose one of the highest areas of potential liability for that agency. The entire compound of the area must be contained within a security perimeter constructed out of tamper-proof (solid concrete walls) and ceilings, or of similarly secured construction. The area is provided air conditioning systems designed for 100% exhaust and 100% make-up fresh air to ensure that none of the air from these areas is recycled into the main facility due to the concern of airborne pathogens that may be contained within the articles being stored or processed. Any HVAC ductwork which breaches the perimeter of this area that is larger than 6 inches in diameter should be installed with No. 5 steel reinforcing bars (5/8" diameter) at 4 inches on center and embedded into the concrete at both ends no less than four inches on each side. The accessibility to the area is regimentally documented at both entering and exiting by all individuals. This is easily accommodated through the use of sophisticated dual-recording access control devices as previously noted. A variety of technology is available such as fob readers, proximity cards, key pads, biometric readers, or a combination thereof. Strict adherence to these protocols and the accreditation standards will confirm an agency maintains the sanctity of custody. Our team will ensure that these four critical components are properly planned for and designed.

COMMUNITY ENGAGEMENT

Law enforcement is constantly evolving to meet the needs of today's environment. One of the biggest trends we have seen in the last few years is the emphasis on community engagement in policing. The premise of community engagement is to involve and build relationships with members of the community in order to strengthen the department's presence. We will work with Fruitland Park Police Department (FPPD) staff, as we have done with many other national police departments, to identify and account for these spaces within the assessment and design of the new headquarters. There are many ways to implement this philosophy; however, facility design can play a critical part in the department's community engagement initiatives. During the planning phases, our staff will meet with the police department to discuss exactly what their specific community needs are. We will then discuss contemporary trends in design, which will detail spaces that can be used to connect with the community. ADG is experienced in this trend and will be able to provide examples related to how the interior and exterior of the building can facilitate community engagement initiatives. ADG has spoken in past years, at the International Association of Chiefs of Police (IACP) Conference, on the implementation of design strategies to promote the Community Oriented Policing Philosophy.



CALEA /CFA / CPTED STANDARDS

CALEA accreditation is recognized as a means of maintaining the highest standards of professionalism in many law enforcement agencies and their facilities. Several states have followed CALEA and established an accreditation commission. Generally, the goals of accreditation and the process follow the National Accreditation Program model. The Commission for Florida Law Enforcement Accreditation (CFA) was formed through the combined efforts of several law enforcement agencies in Florida for the purpose of providing member agencies a network of Law Enforcement professionals encouraging communication, mutual cooperation, support, and sharing of resources. CFA provides all members with current relative information pertaining to National and State Accreditation. Although the aim of an accreditation program is to enhance the entire spectrum of professional law enforcement services, the facilities available to an agency have a significant impact on success, and more importantly, protects the municipal entity from potentially frivolous litigation. An agency requires adequate and appropriate space for personnel to conduct their work. Certain areas of the facility are assessed and continually undergo scrutiny of how it protects the interests of the department, its personnel, and the citizens coming into contact within the facility. Areas which may be evaluated include the records unit, training, patrol, property and evidence, vehicle sally port and detention, hazardous materials storage, criminal investigations, intake and holding, and dispatch.

Crime Prevention Through Environmental Design (CPTED) is defined as a multi-disciplinary approach to deterring criminal behavior through environmental design. CPTED strategies rely upon the ability to influence offender decisions that precede criminal acts by affecting the built, social, and administrative environment. Our team's Project Architect, Ian Reeves, AIA, IALEP, ICA, has undergone significant training and is an expert in both CPTED and CALEA design standards. ADG is often contracted specifically because of his knowledge and experience with facility design that meets or exceeds accreditation requirements standards.

SUFFICIENT PARKING FOR STAFF AND PUBLIC

Site planning begins the process of defining how the proposed facility will come together. Clearly defined separation of the public and staff vehicles will be accomplished through a series of design measures including the use of readily discernible signage, perimeter security walls and gates, and CCTV surveillance systems. The implementation of design initiatives such as those promoted by the International CPTED Association (ICA), which ADG is a long-standing member of, will decrease opportunities for crime and provide a heightened sense of safety to the visitors and users of the facility. These measures have been incorporated into every law enforcement facility ADG has designed.



SECURITY / TECHNOLOGY

Security control is only one of the tools to provide protection of evidence and staff. Established operational procedures including "chain of custody" must also be established and followed to be successful. Security measures include the following procedures to protect and preserve the evidence:

- Vehicle sally-port to have door control access where only one door to the area can be opened at a time. Multiple cameras will be installed in all corners of the area used for safely bringing in persons of interest to the facility
- CCTV coverage and NVR hard drive storage of all areas including the intake, storage, handling, and disposition times of evidence
- Separate controlled access rooms within the evidence facility for fire arms, narcotics, and currency / valuables. For each of these spaces ADG typically



provides dual-credential access such as card and pin or card and biometrics. Additionally, within the rooms we would provide motion detection, as well as infrared camera coverage

- Temperature and humidity sensors / alarms to security control, as well as connection to cell phones when settings are exceeded for specific rooms or spaces
- Specific ventilation needs for areas where decomposition may occur
- Generator and UPS back up of key areas and equipment

Every design is crafted to allow flexibility for growth and change. Specialized systems for police facilities include integrated CCTV and security access control; CAT6 or 6A with Multimode and Single Mode fiber optics voice/video/data distribution; public address system; intercom; CATV coax broadband distribution and audio/visual presentation systems. The facilities are provided with redundant telecommunications services for an increase in survivability. As a support function, the facility does generally have the need for a dedicated communications tower adjacent to the facility for Multiple RF radio systems.



MEMORIAL / PUBLIC PLAZAS

Public plazas and memorials are becoming a feature in many law enforcement facilities. ADG has implemented these in the majority of the law enforcement facilities they have designed in the last 40 years and is well-versed on design opportunities to honor the department's history and past. The required stand-off zones and security measures in front of this specialized type of building lends itself to a great opportunity to create public plazas. These plazas incorporate bollards and benches to deter vehicles close to the building as well as ways to limit the size and location of protests. Providing areas for protests lessens the possibility that they block the front doors. These areas are also ideal places to host national night out gatherings. These spaces are designed for both public services as well as private contemplative visits. Plazas on the staff side of the building can also serve as areas for meditation, recharge, and team building. An example of our team's history on providing space for this includes the Sarasota Police Headquarters (pictured.) We were able to create a 911 memorial with a piece of steel from the World Trade Center.



PRESERVING HISTORY | ART IN PUBLIC PLACES

Opportunities exist to display public art in police facilities to add beauty, create civic pride, provide a visual reference of historical timelines of the department, and depict the heritage and character of law enforcement throughout the department's history. Interior art can utilize historical photographs and memorabilia, enlarged collages depicting details of equipment, and commissioned pieces. Exterior art can include displaying vintage squad cars, creating mosaics, and honoring fallen comrades through memorials. ADG has worked with many departments to capitalize on these opportunities. On the Orlando Police Headquarters project, the city had a 1% public art goal for all new city-owned facilities. ADG worked directly with art committees and artists to create appropriate settings for their art within the lobby of the building, as well as a sculpture in the public plaza.

STAFF WELLNESS

Similar to LEED certification, which uses design features to make a building more environmentally friendly, WELL interiors are designed to improve wellness and health for inhabitants. There are plenty of overlaps in wellness and environmental sustainability between the two. Given the high-stress environment of a police headquarters, particular attention needs to be paid to the circulation flow within the building and intuitive way finding in very large buildings. This means providing adequate climate control, low noise levels, adequate task and ambient lighting, and using materials that do not add pollutants to the interior environment and to not support microbial development. It also means providing the flexibility in furnishings and amenities such as break rooms, physical agility spaces, and semi-private outdoor areas so



that employees can have some personal control over their work place. For areas such as the 911 center, we often incorporate a separate, closed “quiet room” for a dispatcher to calm down after a stressful call. We have also found that carefully located break areas around major departments throughout the headquarters, can provide a watering hole for officers and staff to take a break and destress without having to walk across the building or to another level, which increases overall productivity. We have utilized these concepts on many law enforcement facilities around the United States.

CODES / ORDINANCES

Public safety facilities address unique circumstances related to Fire and Life Safety Codes, General Local Building Code Amendments, IC 500, National Building Codes (i.e. such as NFPA 1401 and 1402 as they relate to training buildings), ADA, Florida Accessibility Compliance, and certain

Occupational Safety and Hazards Administration (OSHA) requirements. Our team approach will provide quick review turnaround. ADG’s team of architects and engineers will utilize the experience and personal relationships their firm has formed over many years of code research and coordination at both the local and state review level. With ADG’s knowledge of the updated code requirements, we can plan early for these changes to ensure the project is not delayed. In addition, it is customary for us to visit code officials directly during review to establish open dialogue between the design team and plan reviewers. This hands-on approach allows transparency with the review process and invites those involved with the various submittals to be team members in the design process. The result of this attitude of inclusion is fewer plan review comments and quicker approval for construction.

SUSTAINABLE DESIGN

ADG has made a commitment to sustainable architecture long before LEED came into existence. When LEED certification became the standard for qualifying sustainable design, our team members had been practicing sustainable design for over 20 years. With the onset of LEED accreditation for design professionals and LEED certification for buildings, we have made a concentrated effort to get several staff members LEED accredited. Our team’s Principal in Charge, Rodney McManus, LEED AP, will direct the team’s sustainability initiatives. Additionally, our team for this project boasts several LEED Accredited Professionals and each firm has multiple certified projects. The team has a combined total of over 500 LEED certified projects.



SUNRISE PUBLIC SAFETY COMPLEX

FIRE-RESCUE DESIGN

With the new public safety complex, the city and fire department have the opportunity to create a state-of-the-art fire-rescue / ems facility. Through research and lecturing, ADG remains on the forefront of creative solutions and is prepared to offer guidance in the following opportunities:

- **CREW WELLNESS:** Design strategies to focus on the wellness of the crew and decreasing the firefighters' exposure to carcinogens and pathogens in the fire station have become increasingly important. Several design aspects can address these issues.
- **SURVIVABILITY:** The ability to manage your mission-critical work environment and continue operations under extreme conditions requires that you have a safe, survivable, and controlled facility which supports the fire-rescue service mission. This requires housing staff and equipment in facilities designed to standards which allow for structural integrity and systems redundancy regardless of what's happening outside of the facility.
- **STATION SECURITY:** While fire stations are meant to be a community focal point, real world incidents necessitate securing both the building and the perimeter. There are standards that can be applied directly to station design to ensure that security of the crew, equipment, and facility is addressed while keeping the firehouse accessible to the community.
- **FLEXIBLE STORAGE AND TRAINING OPPORTUNITIES:** ADG has been creative in providing extra storage and training opportunities within the same solution. Designing a mezzanine area above the apparatus bays provides much needed storage space. Designing a training tower as a component of the access stairway to the mezzanine area can maximize the functionality of the access points. This solution can also then decrease the time firefighters have to be away from the station for training activities.
- **COMMUNITY ORIENTED STATION:** The neighborhood fire house has become a focus of the community and the design of the station must facilitate that focus. However, this can be achieved without the citizen accessing the secured areas such as living quarters and apparatus bays.
- **DIVERSITY:** Fire departments can improve station conditions for all by employing a gender neutral design. By considering sleeping quarter arrangements, locker facilities, and restroom layouts, the firehouse can minimize health and legal risks.
- **STATION LAYOUT:** The size, function, layout, and notification system utilized all can affect the response time of the station. With proper planning, units can expect to turnout in one minute with 90% reliability. Additionally, ADA requirements will affect the design of every space within the station and most of those spaces require planning to ensure compliance.
- **FURNITURE, FIXTURES, AND EQUIPMENT:** Fire stations are 24 / 7 / 365 facilities serving multiple shifts. In essence, after five years furnishings have been used the equivalent of fifteen years. Careful consideration must be given to selecting durable furnishings and finishes while maintaining a typically limited, fixed budget.
- **SUSTAINABILITY:** ADG has designed many sustainable facilities such as the Deltona Fire Station No. 65 which included photovoltaic panels funded through the Federal American Recovery and Re-Investment Act. ADG has the experience to design the facility with many sustainable design features to reduce the cost of ongoing operations.
- **ART IN PUBLIC PLACES:** Opportunities exist to create civic pride, provide historical references, and depict the heritage and character of the fire service throughout the public art within the new fire station. ADG has worked with many departments to capitalize on these opportunities.



PUBLIC WORKS DESIGN

Public works facilities provide a consolidated site on which to house a diverse set of goods and services. Logistically, incoming materials need room for delivery, tracking, and eventual distribution. Items for installation, repair, and excess material storage must also be accommodated. Care needs to be taken to provide the proper clearances for delivery trucks and vans (including semi and flatbed trucks), bucket trucks, large and small yardage dumpsters, staff vehicles, etc.

If the budget allows, a covered loading dock area, at least 20-feet high, with adjacent ice machine access, is beneficial for loading and unloading under various weather conditions. Many stored items will also need covered areas to extend the life of the materials and prevent deterioration. Areas for fueling stations, vehicle wash areas, and covered rolling asset storage for items such as trailers, generators, lawn care mowers, and other items under the responsibility of the Public Works Department should be provided for. Opportunities for collecting materials to be recycled should also be considered.

The staff should have an appropriate space for personal lockers, toilet/shower/changing facilities and comfortable break areas, as well as work areas and shops. These areas should be conditioned at well lighted. In general, inventory warehouse areas and some shops can be ventilated if the building is provided with sufficient insulation to keep temperature and humidity levels comfortable.

There are four specialized components of state-of-the-art public works facilities that should be give careful consideration:

1. FLEET MAINTENANCE

- Surface Mounted Lifts
- Fluid Distribution and Reclamation Strategies
- Ventilation and Air Filtration Systems

2. EMPLOYEE AMENITIES

- Lockers, showers, restrooms, break facilities / areas
- Use of color
- Innovative lighting
- Energy reclamation

3. MATERIALS STORAGE AND WAREHOUSE

- Automated inventory storage and reclamation
- Automated high rack storage
- Electronic inventory tracking system

4. FUELING

- Above-ground double walled tanks
- Computer controlled dispensing

5. ENVIRONMENTAL HAZARD MITIGATION

- Spill-control and recovery facility (for leaking transformers, etc.)
- Provisions for materials recycling (wire, metals, concrete, etc.)



City of Fruitland Park

REQUEST FOR QUALIFICATIONS (RFQ)



Professional Architectural Services

RFQ Number: 2020-01 **Opening Date:** July 2, 2020
Issue Date: June 2, 2020 **Opening Time:** 2:00 p.m.

Pre-Conference: None **Contracting Officer:** Gary La Venia
City Manager

LEGAL NOTICE

NOTICE OF REQUEST FOR QUALIFICATIONS STATEMENT FOR: Professional Architectural Services

Pursuant to Section 287.055, Florida Statutes (F.S.), and the policies and procedures of the City of Fruitland Park, notice is hereby given that a sealed Qualifications Statement for Professional Architectural Services to the City of Fruitland Park must be received by **2:00 p.m. local time, July 2, 2020**, at Fruitland Park City Hall, 506 West Berckman Street, Fruitland Park, Florida, 34731. A qualifications statement document may be obtained on the City of Fruitland Park's website at <https://www.fruitlandpark.org/rfps>.

In accordance with Section 287.055 (11), F.S., the City of Fruitland Park declares that all or any portion of the documents and work papers prepared and submitted pursuant to this notice of request, shall be subject to reuse by the city.

The city reserves the right to waive any informalities in the selection process and to reject any or all qualifications statements or to re-advertise.

SUBMITTED BY:
BLAISE, FIEBACH AND ASSOCIATES P.A.

ORIGINAL

Statement of Interest

June 24, 2020

City of Fruitland Park
C/O Gary La Venia, City Manager
506 West Berkman Street
Fruitland Park, Florida 34731

RE: Professional Architectural Services per RFQ Number 2020-01

To The City of Fruitland Park,

Blaise, Fiebach & Associates is pleased to submit our Response to provide Professional Architectural Services for the above referenced Request for Qualifications to the City of Fruitland Park. Based on our previous experience, we feel our firm is well suited for this project.

The scope of work, as we understand, is to provide Architectural Services (Architectural, Mechanical, Plumbing, & Electrical) for two separate projects.

Per AIA Practice of Architecture Definition:

“Architecture” means the rendering or offering to render services in connection with the design and construction of a structure or group of structures which have as their principal purpose human habitation or use, and the utilization of space within and surrounding such structures. These services include planning, providing preliminary study designs, drawings and specifications, job-site inspection, and administration of construction contracts.

Further, it is understood that the City may select one architect to design both buildings or may select one architect for design of the Public Safety Complex and a second architect for design of the Public Works Building.

1. The design of a Public Safety Complex consisting of approximately 5,000 square feet for police department use and 6,000 square feet for fire safety/emergency medical service use.
2. The design of a Public Works Building of approximately 7,200 square feet to house the Public Works Department and equipment.

The following breaks down the phases of a typical building project and the role of architectural services during each phase:

Tab A
Page 1

1. Initial Consultation, Pre-Design, and Schematic Design.

A client meets with an architect and together they define the purpose and basic requirements for the building, known as its program. General design ideas, or concepts, are presented and developed with client feedback into schematic design, which provides a rough sketch how the building will be organized and what the building will look like. This process ensures that the building requirements are clearly understood well before construction documents are produced. During this highly interactive phase, an architect helps the client make the most informed decision possible from the very beginning of the project.

2. Design Development.

Once a scheme is chosen by the client, the rough sketch is developed into a working set of plans and elevations. Such drawings give a general sense of what the final building will include and give a rough idea of cost. Through design development drawings, the architect helps the client and contractor get a clear grasp what the building will be before the final contract documents. This opportunity for review can make a big difference in helping the client understand the size, quality, and cost of a project before the contract documents are completed, so that any necessary changes can be made to the drawings prior to construction.

3. Construction Documents.

Plans, elevations, and other drawings are refined to produce a set of drawings and specifications that will be used to erect the building. The architect works with the client to select appropriate materials and finishes to ensure a high-quality final building. The architect will coordinate with other design consultants, such as civil, structural, or mechanical engineers, that may be needed for the project, depending on its complexity or as required by law. The drawings and specifications represent a legal definition of what the contractor will build, along with other documents produced during bidding, known collectively as the contract documents. A complete, full set of construction documents helps minimize unforeseen problems and cost overruns during construction.

4. Bidding/Contract Negotiation.

The architect acts as the agent of the owner/client, and solicits bids from contractors. The architect can also advise the client in his or her decision process to select a contractor. Once signed, contract documents define the project. An architect can help the client break down the submitted bids to make a true apples-to-apples comparison so that the client receives the best value and quality during construction.

5. Construction Contract Administration.

The architect serves as the agent of the client during construction to make sure the contractor and subcontractor are building faithfully to the drawings and specifications. It is not uncommon for unsupervised contractors to ignore drawings or to cut corners in order to increase their profits. An architect's fee is predetermined, so he or she can act an independent, unbiased observer and advocate for the client when acting as a construction contract administrator. An architect can also provide the following important professional services during construction contract administration:

- Provide written responses and additional detailed drawings to address questions brought up by contractor.
- Resolve any conflicts found between drawings and the specifications.

Tab A

Page 2

- Approve changes to the plans requested by the contactor, in effect mediating changes to the contract between the client and the contractor. These can arise in response to hidden problems in an existing building, or needed changes in the construction schedule or budget.
- Approve pay applications by the contractor, to ensure that only appropriate construction expenses are reimbursed by the client.
- Negotiate any disputes between the contractor and the client that may arise and propose solutions to problems.
- Inspect the building during a final walk-through to ensure that the building is complete enough to be occupied, and follow-up with contactor to address any remaining deficiencies.

Current and Projected Workloads

Current Projects:

- Renovations to the Youth Building at Graceway Church, Leesburg, Florida. Drawings are approximately 20% complete.

Projected Projects:

- Minor revisions to the Fruitland Park Community Building.
- 6,000 square foot Storage/Warehouse for the Salvation Army of Lake and Sumter Counties.

Blaise, Fiebach and Associates would greatly appreciate your consideration for the City's upcoming projects.

Sincerely,



David R. Fiebach
Blaise, Fiebach and Associates

Tab A
Page 3

Blaise, Fiebach & Associates, P.A. has been providing professional architectural services in Lake County since 1992. Founded in 1987 by Architect Robert E. Blaise, Jr., the firm provided services for residential and commercial clients. Shortly after the partnership with David R. Fiebach in 1992, and in association with Booth, Ern, Straughan & Hiott, **BFA** now provides primarily commercial architectural services. The firm has experience in public and private sector projects. **BFA** is experienced in designing commercial buildings, medical offices, recreational facilities and clubhouses, churches, municipal buildings and utility facilities.

David Fiebach, owner of Blaise, Fiebach and Associates, holds a Master of Arts in Architecture from the University of Florida which was awarded in 1978. He has been practicing Architecture in and around Lake County for 40 years.

For a five year duration, **Blaise, Fiebach & Associates** served as small projects architects for the City of Eustis designing facilities for the Police and Emergency Services Department, General Services Department, Senior Center, Community Building, and recreational amenities.

Blaise, Fiebach & Associates has experience in providing design/build services. For the past 3 years, we have been working closely with Signature Construction of Fruitland Park designing commercial buildings, medical offices, recreational facilities, churches, municipal buildings and utility facilities.

The firm's location in Leesburg will allow us to be highly available to the project for design and coordination. Our history with Booth Ern Straughan & Hiott allows us confidence in our commitment to provide you with excellent services and to complete the project team assembled.

BFA maintains two Cad stations with AutoCad.

**FORM A-1
CONFLICT OF INTEREST DISCLOSURE FORM**

1. I, David Fiebach (printed name) am the
Owner (title) and the duly authorized representative of the
firm of Blaise, Fiebach & Associates P.A. (firm name) whose address is:
8533 US Hwy 441, Leesburg, FL 34788

_____, and that I possess
the legal authority to make this affidavit on behalf of myself and the firm for which I am acting, and,

2. Except as listed below, no employee, officer, or agent of the firm have any conflicts of interest, real or
apparent, due to ownership, other clients, contracts, or interests associated with this project,

And,

3. This proposal is made without prior understanding, agreement, or connection with any corporation, firm,
or person submitting a proposal for the same services, and is in all respects fair and without collusion or
fraud.

EXCEPTIONS (List)

Signature: *David Fiebach*

Printed Name
David Fiebach

Firm Name
Blaise, Fiebach & Associates P.A.


Date June 22, 2020

Sworn to or affirmed and subscribed before me by means of physical presence or online notarization, this
22nd day of JUNE, 2020, by

David Fiebach (insert name of person making statement)

Personally known OR Produced identification

J. [Signature] Notary Public – State of FLORIDA

My Commission expires 10/26/2022

NOTARY PUBLIC
STATE OF FLORIDA
Comm# GG251271
Expires 10/26/2022

**FORM 1
FIRM PROFILE**

<p>1. Firm (or joint venture) Name and Primary Corporate Address Blaise, Fiebach & Associates P.A. 8533 US Hwy 441 Leesburg, FL 34788</p>	<p>1c. Licensed to do business in the State of Florida <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No</p> <p>1c. Registered to do business in the State of Florida <input type="checkbox"/> Yes <input type="checkbox"/> No</p>
<p>1a. Firm is <input type="checkbox"/> National <input type="checkbox"/> Regional <input checked="" type="checkbox"/> Local</p> <p>FEIN # <u>59-2902641</u></p>	<p>1d. Name, Title & Telephone Number of Principal to Contact David Fiebach, Owner, 352-323-8279</p>
<p>1b. Firm is a Certified Minority Business Enterprise <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</p>	<p>1e. Address of office to perform work, if different from Item 1</p>
<p>2. Please list the number of people by discipline that your firm/joint venture will commit to the City's project.</p> <p>1 Architect 1 Mechanical, Electrical, Plumbing Engineer (MEP) 1 Accounting/Clerical</p>	
<p>3. If submittal is by joint venture list participating firms and outline specific areas of responsibility (including administrative, technical, and financial) for each firm: 3a. Has this joint venture previously worked together? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</p>	



RICK SCOTT, GOVERNOR

JONATHAN ZACHEM, SECRETARY



**STATE OF FLORIDA
DEPARTMENT OF BUSINESS AND PROFESSIONAL REGULATION**

BOARD OF ARCHITECTURE & INTERIOR DESIGN

THE ARCHITECT CORPORATION HEREIN IS CERTIFIED UNDER THE
PROVISIONS OF CHAPTER 481, FLORIDA STATUTES

BLAISE, FIEBACH & ASSOCIATES P.A.

8533 US HIGHWAY 441
LEESBURG FL 34788

LICENSE NUMBER: AAC002048

EXPIRATION DATE: FEBRUARY 28, 2021

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RICK SCOTT, GOVERNOR

JONATHAN ZACHEM, SECRETARY



**STATE OF FLORIDA
DEPARTMENT OF BUSINESS AND PROFESSIONAL REGULATION**

BOARD OF ARCHITECTURE & INTERIOR DESIGN

THE ARCHITECT HEREIN IS LICENSED UNDER THE
PROVISIONS OF CHAPTER 481, FLORIDA STATUTES

FIEBACH, DAVID ROBERT

8533 US HIGHWAY 441
LEESBURG FL 34788

LICENSE NUMBER: AR0009039

EXPIRATION DATE: FEBRUARY 28, 2021

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**FORM 2
TEAM COMPOSITION**

Name of Prime Firm: Blaise, Fiebach & Associates P.A.

Role	Name and City of Residence of individual assigned to the project	Florida Active Registrations
Architect	David Fiebach Leesburg, FL	AAC002048 AR0009039

Sub Consultants:

Role (i.e. Landscape Architectural...)	Company Name and Address of Office Handling this Project	Project ed% of Over-All Work on Entire Project	Name of Individual Assigned to this Project	Firm worked with prime before (Yes or No)	Individual Worked with prime before (Yes or No)
MEP Engineer	Miller Professional Engineering LLC	20%	Matt Miller	Yes	Yes
	3160 NE 63rd St. Ocala, FL 34479				

Are there any contractual agreements between the respondent (prime consultant) and any of the proposed sub-consultants? Yes X No

If the answer is yes, the respondent shall attach, with their submittal, information describing the contractual relationship including a copy of any written contractual agreement.



Ron DeSantis, Governor



STATE OF FLORIDA

BOARD OF PROFESSIONAL ENGINEERS

THE ENGINEERING BUSINESS HEREIN IS AUTHORIZED UNDER THE
PROVISIONS OF CHAPTER 471, FLORIDA STATUTES

MILLER PROFESSIONAL ENGINEERING, LLC

3180 NE 63RD STREET
OCALA FL 34479

LICENSE NUMBER: CA30872

EXPIRATION DATE: FEBRUARY 28, 2021

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Ron DeSantis, Governor



STATE OF FLORIDA

BOARD OF PROFESSIONAL ENGINEERS

THE PROFESSIONAL ENGINEER HEREIN IS LICENSED UNDER THE PROVISIONS OF CHAPTER 471, FLORIDA STATUTES

MILLER, MATTHEW BUCHANON

3180 NE 63RD STREET

N/A

N/A

OCALA

FL 34479

LICENSE NUMBER: PE66499

EXPIRATION DATE: FEBRUARY 28, 2021

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RESUMES OF KEY INDIVIDUALS

Use one page per individual - use additional pages as necessary

Name of Individual: Matthew Miller, P.E.

Title and/or Position: Manager, Principal

Indicate if individual is authorized to sign contracts on behalf of the Firm: Yes

Name of Company	Office Location	City of Residence	Years of Experience in Field	Years with this Firm
Miller Professional Engineering, LLC	Ocala, FL	Ocala, FL	22 Years	5 Years

Education / Certifications / Registration

Associate in Arts, Central Florida Community College
 Bachelor of Science, Mechanical Engineering, University of Florida
 Licensed Professional Engineer, State of Florida, PE License #66499

Describe Related Experience Within the Last 5 Years and your SPECIFIC ROLE This Firm Previous Firm

Project Descriptions – This Firm, Miller Professional Engineering, LLC
 MLK First Responders Campus, Fire Station, Police Station, Community Center
 Ocala, FL
 Plumbing, Mechanical, and Fire Protection systems engineering design and construction administration for new facilities.

Project Descriptions – This Firm, Miller Professional Engineering, LLC
 Villages Public Safety, Fire Station #40
 The Villages, FL
 Plumbing, Mechanical, and Electrical systems engineering design and construction administration for expansion and remodel of existing facility.

Project Descriptions – Previous Firm, Engineered Building Systems, Inc.
 Villages Public Safety, Fire Station #44 Headquarters
 The Villages, FL
 Plumbing, Mechanical, and Electrical systems engineering design and construction administration for new facility.

Description of Equipment/Hardware Software Familiarity and Significant Accomplishments

AutoCAD
 Florida EnergyGauge Summit

FORM 3 LOCATION

1. Specify address of Prime Consultant's designated office where the majority of work on this project will be performed:

8533 US Hwy 441
Leesburg, FL 34788

100 %

2. Indicate percentage of total over-all project fees projected to be performed on this project by the Prime Consultant's office specified above. (Do not include percentage of fees anticipated to be performed on this project by sub-consultants)

80 %

3. Specify address of Prime Consultant's other office(s) where any part of the work on this project will be performed (if applicable):

N/A %

4. Indicate percentage of total over-all fees projected to be performed on this project by the office specified above. Do not include percentage of fees anticipated to be performed on this project by sub-consultants.

N/A %

5. Indicate percentage of total over-all fees projected to be performed on this project by firms located within the City including the prime consultant and sub-consultants, utilizing information supplied above and on **Form 2**.

0 %

FORM4
PROFESSIONAL PERSONNEL FOR SIMILAR PROJECTS

Work by firm or joint venture members which best illustrate current qualifications relevant to the city's project that have been/is being accomplished by personnel that shall be assigned to the city's project.
List no less than three (3) but no more than ten (10) projects.

Project Name and Location The Salvation Army Lake & Sumter Counties 2605 South St. Leesburg, FL 34748 Project Manager: Signature Construction		Project Owners Name and Address The Salvation Army USA Southern Territorial Headquarters 1424 Northeast Expressway Atlanta, Georgia 30329	
Completion Date (Actual or Estimated) 2016		Project Owner's Contact Person, Title, and Telephone Number Robert Taylor Territorial Property Secretary 404-728-1334	
Estimate Cost (In Thousands)			
Entire Project \$ 5,000 (\$5,000,000)	Work for which firm was/is responsible \$ 3,450 (\$3,450,000)		
Scope of Entire Project (Please give quantitative indications wherever possible) Design of a 28,000 square foot structure which included a chapel, offices, classrooms, gymnasium, dining hall and commercial kitchen. Site engineering was under separate contract.			
Nature of Firm's Responsibility in Project (Please give quantitative indications wherever possible) Blaise, Fiebach & Associates was responsible for 100% of Architectural services and coordination between consultants which included MEP, Fire Protection, Site Engineering, Sound Consultant, Interior Design, & Landscaping.			
Firm's Personnel (Name/Project Assignment) That Worked on the Stated Project that Shall Be Assigned to the City's Project David Fiebach/Architect			
Project was completed on time and within budget			

**FORM4
PROFESSIONAL PERSONNEL FOR SIMILAR PROJECTS**

Work by firm or joint venture members which best illustrate current qualifications relevant to the city's project that have been/is being accomplished by personnel that shall be assigned to the city's project.
List no less than three (3) but no more than ten (10) projects.

<p>Project Name and Location</p> <p>Cart World Golf Cars 133 Hermosa Street Lady Lake, FL 32159</p> <p>Project Manager: Signature Construction</p>		<p>Project Owners Name and Address</p> <p>Cart World Golf Cars Bill Andrews, President 133 Hermosa Street Lady Lake, FL 32159</p>	
<p>Completion Date (Actual or Estimated)</p> <p>2020</p>		<p>Project Owner's Contact Person, Title, and Telephone Number</p> <p>Bill Andrews, President 133 Hermosa Street Lady Lake, FL 32159 352-753-1800</p>	
<p>Estimate Cost (<i>In Thousands</i>)</p>			
<p>Entire Project</p> <p><i>\$ 1,491</i> (\$1,491,000)</p>	<p>Work for which firm was/is responsible</p> <p><i>\$ 1,081</i> (\$ 1,081,000)</p>		
<p>Scope of Entire Project (Please give quantitative indications wherever possible)</p> <p>Design of a 4,000 square foot Service Building, which also included a 4,046 square foot Showroom/Office Building and 3,000 square foot outside Pavilion area. Site engineering was under separate contract performed by BESH.</p>			
<p>Nature of Firm's Responsibility in Project (Please give quantitative indications wherever possible)</p> <p>Blaise, Fiebach & Associates was responsible for 100% of Architectural services and coordination between consultants which included MEP (Matt Miller), Site Engineering (BESH) & Landscaping.</p>			
<p>Firm's Personnel (Name/Project Assignment) That Worked on the Stated Project that Shall Be Assigned to the City's Project</p> <p>David Fiebach/Architect Matt Miller/MEP</p>			
<p>Project was completed on time and within budget</p>			

FORM4
PROFESSIONAL PERSONNEL FOR SIMILAR PROJECTS

Work by firm or joint venture members which best illustrate current qualifications relevant to the city's project that have been/is being accomplished by personnel that shall be assigned to the city's project.
List no less than three (3) but no more than ten (10) projects.

Project Name and Location City of Fruitland Park Water Treatment Plant Railroad Street and W. Berckman St. Fruitland Park, FL Project Manager: Garney Companies, Inc. Subcontractor: Signature Construction, Inc.		Project Owners Name and Address The Villages of Lake-Sumter, Inc. 1020 Lake Sumter Landing The Villages, FL 32162
Completion Date (Actual or Estimated) 2016		Project Owner's Contact Person, Title, and Telephone Number
Estimate Cost (<i>In Thousands</i>)		
Entire Project \$ 2,100 (\$2,100,000)	Work for which firm was/is responsible \$ 150 (\$150,600)	
Scope of Entire Project (Please give quantitative indications wherever possible) Blaise, Fiebach & Associates was a subcontractor of BESH for the design of a 2,166 square foot structure which included space for housing water pumps and electrical gear.		
Nature of Firm's Responsibility in Project (Please give quantitative indications wherever possible) Blaise, Fiebach & Associates was responsible for 100% of Architectural services and coordination between consultant MEP (Matt Miller).		
Firm's Personnel (Name/Project Assignment) That Worked on the Stated Project that Shall Be Assigned to the City's Project David Fiebach/Architect Matt Miller/MEP		

FORM4
PROFESSIONAL PERSONNEL FOR SIMILAR PROJECTS

Work by firm or joint venture members which best illustrate current qualifications relevant to the city's project that have been/is being accomplished by personnel that shall be assigned to the city's project.
List no less than three (3) but no more than ten (10) projects.

Project Name and Location Eastern Service Area Water Treatment Plant (Mount Dora) 1600 Niles Rd. Mount Dora, FL 32757 Project Manager: Signature Construction		Project Owners Name and Address City of Mount Dora 1250 North Highland Street Mount Dora, FL 32757	
Completion Date (Actual or Estimated) 2014		Project Owner's Contact Person, Title, and Telephone Number	
Estimate Cost (<i>In Thousands</i>)			
Entire Project \$4,200 Plant \$400 Wells (\$4,200,000 Plant) (\$400,000 Wells)	Work for which firm was/is responsible \$ 513 (\$ 513,550)		
Scope of Entire Project (Please give quantitative indications wherever possible) Blaise, Fiebach & Associates was a subcontractor of BESH for the design of a 4,192 square foot structure which included space for housing water pumps, electrical gear, offices and restrooms.			
Nature of Firm's Responsibility in Project (Please give quantitative indications wherever possible) Blaise, Fiebach & Associates was responsible for 100% of Architectural services and coordination between consultants which included MEP and Site Engineering (BESH).			
Firm's Personnel (Name/Project Assignment) That Worked on the Stated Project that Shall Be Assigned to the City's Project David Fiebach/Architect			
Project was completed on time and within budget			

**FORM 4
PROFESSIONAL PERSONNEL FOR SIMILAR PROJECTS**

Work by firm or joint venture members which best illustrate current qualifications relevant to the city's project that have been/is being accomplished by personnel that shall be assigned to the city's project.
List no less than three (3) but no more than ten (10) projects.

Project Name and Location Beacon College Administration and Classroom Building 105 E. Main St. Leesburg, FL 34749 Project Manager: Evergreen Construction Management		Project Owners Name and Address Beacon College 105 E. Main St. Leesburg, FL 34749
Completion Date (Actual or Estimated) 2013		Project Owner's Contact Person, Title, and Telephone Number George Hagerty President 352-638-9764
Estimate Cost (In Thousands)		
Entire Project \$ 2,039 (\$2,039,000)	Work for which firm was/is responsible \$ 1,863 (\$1,863,000)	
Scope of Entire Project (Please give quantitative indications wherever possible) Design of a 2 story 6,000 square foot Administration Building which included office space, conference rooms, classrooms and restrooms.		
Nature of Firm's Responsibility in Project (Please give quantitative indications wherever possible) Blaise, Fiebach & Associates was for 100% of Architectural services and coordination between consultants which included MEP, Fire Protection, Site Engineering, Interior Design, Elevator Equipment Supplier & Landscaping.		
Firm's Personnel (Name/Project Assignment) That Worked on the Stated Project that Shall Be Assigned to the City's Project David Fiebach/Architect		
Project was completed on time and under budget.		

July 1, 2020

City of Fruitland Park
C/O Gary La Venia, City Manager
506 West Berkman Street
Fruitland Park, Florida 34731

RE: Professional Architectural Services per RFQ Number 2020-01

To The City of Fruitland Park,

In 2018, David Fiebach became a full time employee of Signature Construction providing architectural design services as a Design/Build entity. Our E&O policy with USI Insurance would not cover David Fiebach as an employee of Signature. The resolution was to terminate the coverage with USI Insurance and allow Signature Construction to provide E&O insurance.

Starting in January 2020 Blaise Fiebach has pursued Architectural Service contracts independent of its Design/Build relationship with Signature Construction, Inc.

In order to facilitate being able to contract and meet insurance requirements for various projects being pursued including Fruitland Parks RFQ-2020-1 and a pending design contract with the Salvation Army of Lake and Sumter County, we are currently seeking the required insurance coverage from Insurance Office of America, Lake Mary, FL, Taylor Crist (Account Representative) Tel: 407-998-4229, Toll Free: 800-243-6899.

Sincerely,



David R. Fiebach
Blaise, Fiebach and Associates

Tab F
Page 1



JIMMY PATRONIS
CHIEF FINANCIAL OFFICER

**STATE OF FLORIDA
DEPARTMENT OF FINANCIAL SERVICES
DIVISION OF WORKERS' COMPENSATION**

**** CERTIFICATE OF ELECTION TO BE EXEMPT FROM FLORIDA WORKERS' COMPENSATION LAW ****

NON-CONSTRUCTION INDUSTRY EXEMPTION

This certifies that the individual listed below has elected to be exempt from Florida Workers' Compensation law.

EFFECTIVE DATE: 6/23/2020

EXPIRATION DATE: 6/23/2022

PERSON: DAVID R FIEBACH

EMAIL: DRFIEBACH@GMAIL.COM

FEIN: 592902641

BUSINESS NAME AND ADDRESS:

BLAISE FIEBACH & ASSOCIATES P A

8533 U.S. HIGHWAY 441

LEESBURG, FL 34788

SCOPE OF BUSINESS OR TRADE:

Architectural or Engineering
Firm-Clerical

IMPORTANT: Pursuant to subsection 440.05(14), F.S., an officer of a corporation who elects exemption from this chapter by filing a certificate of election under this section may not recover benefits or compensation under this chapter. Pursuant to subsection 440.05(12), F.S., Certificates of election to be exempt issued under subsection (3) shall apply only to the corporate officer named on the notice of election to be exempt and apply only within the scope of the business or trade listed on the notice of election to be exempt. Pursuant to subsection 440.05(13), F.S., notices of election to be exempt and certificates of election to be exempt shall be subject to revocation if, at any time after the filing of the notice or the issuance of the certificate, the person named on the notice or certificate no longer meets the requirements of this section for issuance of a certificate. The department shall revoke a certificate at any time for failure of the person named on the certificate to meet the requirements of this section.

DFS-F2-DWC-252 CERTIFICATE OF ELECTION TO BE EXEMPT REVISED 08-13

E01185654

QUESTIONS? (850) 413-1609

**WAIVER OF WORKERS'
COMPENSATION CLAIMS**

1. I, David Fiebach (printed name) am the Owner (title) and the duly authorized representative of the firm of Blaise, Fiebach and Associates (firm name) whose address is: 8533 US Hwy 441, Leesburg, Florida 34788, and that I possess the legal authority to make this affidavit on behalf of myself and the firm for which I am acting, and,
2. As Blaise, Fiebach and Associates is not required by law to maintain workers' compensation insurance, that if David Fiebach is injured in connection with duties performed on projects listed in RFQ 2020-01, David Fiebach will not hold the City Of Fruitland Park responsible for any payment or compensation regarding Workers' Compensation Claims.

Signature: David Fiebach

Printed Name David Fiebach

Firm Name Blaise, Fiebach and Associates

Date June 26, 2020

Sworn to or affirmed and subscribed before me by means of physical presence or online notarization, this

26TH day of JUNE, 2020, by

David Fiebach (insert name of person making statement)

Personally known OR Produced identification

Stephen E. Glasgow Notary Public – State of FLORIDA

Stephen E. Glasgow My Commission expires 10.26.2022



Stephen E. Glasgow
NOTARY PUBLIC
STATE OF FLORIDA
Comm# GG251271
Expires 10/26/2022



GatorSketch

ARCHITECTS & PLANNER

ORIGINAL



RFQ NUMBER 2020-01
CITY OF FRUITLAND PARK
REQUEST FOR QUALIFICATIONS (RFQ)
PROFESSIONAL ARCHITECTURAL SERVICES

1000 E. HGWY. 50, STE. 201
CLERMONT, FL 34711 407-608-567
INFO@GATORSKTCH.COM GATORSKTCH.COI

City of Fruitland Park

REQUEST FOR QUALIFICATIONS (RFQ)



Professional Architectural Services

RFQ Number:	<u>2020-01</u>	Opening Date:	<u>July 2, 2020</u>
<u>Issue Date:</u>	<u>June 2, 2020</u>	Opening Time:	2:00 p.m.
Pre-Conference:	<u>None</u>	Contracting Officer:	Gary La Venia City Manager

LEGAL NOTICE

NOTICE OF REQUEST FOR QUALIFICATIONS STATEMENT FOR: Professional Architectural Services

Pursuant to Section 287.055, Florida Statutes (F.S.), and the policies and procedures of the City of Fruitland Park, notice is hereby given that a sealed Qualifications Statement for Professional Architectural Services to the City of Fruitland Park must be received by **2:00 p.m. local time, July 2, 2020**, at Fruitland Park City Hall, 506 West Berckman Street, Fruitland Park, Florida, 34731. A qualifications statement document may be obtained on the City of Fruitland Park's website at <https://www.fruitlandpark.org/rfps>.

In accordance with Section 287.055 (11), F.S., the City of Fruitland Park declares that all or any portion of the documents and work papers prepared and submitted pursuant to this notice of request, shall be subject to reuse by the city.

The city reserves the right to waive any informalities in the selection process and to reject any or all qualifications statements or to re-advertise.



July 2, 2020

Mr. Gary La Venia
City Manager, City of Fruitland Park
506 West Berckman Street
Fruitland Park, FL 34731
glavenia@fruitlandpark.org

Re: (RFQ No. 2020-01) Request for Qualifications (RFQ) Professional Architectural Services

Dear Mr. La Venia:

The team at GatorSkitch Corporation (GSC) is pleased to submit this Statement of Interest for the Request for Qualifications – Professional Architectural Service. Please, see the following qualifications and key points on why the City of Fruitland Park should commission our design team for this facility.

Our Understanding of the Services Required:

We understand that the Police Department is currently housed in the City Hall, utilizing precious administrative space. It is clear that space is a commodity as there is an overflow of storage placed in a shipping container. That is not to mention the outdoor, fenced-in storage locker adjacent to the Fire Department.

The Fire Department's 5,000 square foot building poses similar issues as the Police's, in conjunction with unique inefficiencies that we plan to rectify. Among those inefficiencies are the current back-in apparatus bays and limited crew quarters.

We are prepared to design options that utilizes the current site in the most efficient way possible. The proposed 5,000 square foot space for the Police Department and 6,000 square foot space for the Fire Department can be easily worked into plans that deliver on their individual needs. We plan to fulfill the City's needs by designing a new state-of-the-art building on the current site. Fortunately, the City owns the entire block and surrounding roads, allowing us to create seamless designs like drive-through apparatus bays for the Fire Department.

We also understand that the Public Works Department is currently working in an awkwardly shaped site that makes further growth impossible. We believe that a new structure, approximately 7,200 square feet with the dimensions of 60 feet by 120 feet can easily meet the needs of the Department. However, an alternative site, like the Waste Water Treatment property, will best fit the new structure and future growth. There are many approaches we see available to make the new structure as efficient and cost-effective as possible, including a pre-engineered, metal building.

GatorSkitch commits itself to exceeding the expectations of the City while adhering to your budget, and we will do so within the timeframe allotted.



Firm & Consultant's Specializations to Achieve Services Required

The GatorSkitch team has more than five decades worth of experience in public safety, municipal, and commercial facilities in six (6) states: Florida, Georgia, Indiana, New York, Pennsylvania, and Virginia. Our team is comprised of three (3) firms who are preeminent in their respective fields:

- **GatorSkitch Corporation** – Clermont, FL
Architects of Record, Needs Study & Assessment, Programming, Conceptual Design, Station Alerting Design, Access Control Design, Audio Visual Design, Interior Design, FFE Services, Renderings, Revit/BIM, Structural Peer Review, and Construction Phase Services
- **TLC Engineering Solutions** – Orlando, FL
Structural Engineering
- **SGM Engineers** – Orlando, FL
Mechanical, Electrical, Plumbing, and Fire Protection

Location of Office that will be Responsible for Managing the Project

GatorSkitch is located at 1000 East Highway 50, Suite 201A, Clermont, FL 34711 (near the intersection of Highway 50 and Highway 27 on the second floor of the Seacoast Bank building). We are centrally located in Clermont, only 26.6 miles from the City of Fruitland Park. Our close proximity allows us to quickly respond, in person, to the needs of the City Staff and Council throughout this project. Lastly, the maintenance of strong transparent communication is paramount to our success and your satisfaction, we accomplish this by having our firm's principals be your main contact.

Brief Summary of Past Experience

The GatorSkitch team has worked on and completed thirty-six (36) unique fire station designs over the past fifteen (15) years. Most recently, we have accomplished design assignments on fire stations, training facilities, and EOC buildings for the City of Tavares, City of Groveland, City of Mascotte, and the City of Temple Terrace. GatorSkitch was recently awarded the City of Tavares Public Works and Transportation Hub project, and we are in the beginning stages of design. Furthermore, we have worked with a multitude of municipalities in attaining funding from agencies like the Economic Development Administration (EDA), Community Development Block Grant (CDBG), and Florida Fish and Wildlife Conservation Commission (FWC).

GatorSkitch Corporation is excited and prepared to stretch our creative potential in our partnership with the City of Fruitland Park to design both a public safety complex and public works facility.

Thank you for your time and consideration,

A handwritten signature in blue ink, appearing to read 'Michael B. Latham', is written over a light blue horizontal line.

Michael B. Latham, AIBD
President

**FORM A-1
CONFLICT OF INTEREST DISCLOSURE FORM**

1. I, Michael B. Latham (printed name) am the President (title) and the duly authorized representative of the firm of GatorSketch Corporation (firm name) whose address is: 1000 E. Highway 50 Ste. 201A, Clermont, FL 34711, and that I possess the legal authority to make this affidavit on behalf of myself and the firm for which I am acting, and,
2. Except as listed below, no employee, officer, or agent of the firm have any conflicts of interest, real or apparent, due to ownership, other clients, contracts, or interests associated with this project,

And,

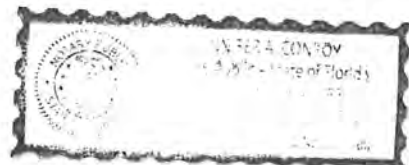
3. This proposal is made without prior understanding, agreement, or connection with any corporation, firm, or person submitting a proposal for the same services, and is in all respects fair and without collusion or fraud.

EXCEPTIONS (List)

Signature [Handwritten Signature]
Printed Name Michael B Latham
Firm Name GatorSketch Corp.
Date 6-30-2020

Sworn to or affirmed and subscribed before me by means of physical presence or online notarization, this 30th day of June, 2020, by Michael Latham (insert name of person making statement)

Personally known OR Produced identification
Jennifer A Conroy Notary Public – State of Florida
My Commission expires _____



**FORM 1
FIRM PROFILE**

<p>1. Firm (or joint venture) Name and Primary Corporate Address</p> <p>GatorSkitch Corporation 1000 E. Highway 50, Ste. 201A Clermont, FL 34711</p>	<p>1c. Licensed to do business in the State of Florida <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No</p> <p>1c. Registered to do business in the State of Florida <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No</p>								
<p>1a. Firm is <input type="checkbox"/> National <input type="checkbox"/> Regional <input checked="" type="checkbox"/> Local</p> <p>FEIN # <u>45 2671600</u></p>	<p>1d. Name, Title & Telephone Number of Principal to Contact</p> <p>Michael B. Latham O:407-608-5677 C:352-978-5650</p>								
<p>1b. Firm is a Certified Minority Business Enterprise <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</p>	<p>1e. Address of office to perform work, if different from Item 1</p>								
<p>2. Please list the number of people by discipline that your firm/joint venture will commit to the City's project.</p> <table border="0"> <tr> <td>Alejandro L. Busto, IV, Principal Architect</td> <td>Amy McDaniel, Interior Designer/CAD</td> </tr> <tr> <td>Bret Dodd, Project Architect</td> <td>Bill Guidry, Construction Administration/CAD</td> </tr> <tr> <td>Michael B. Latham, Project Manager</td> <td></td> </tr> <tr> <td>Andrew Benavides, Architectural Designer</td> <td></td> </tr> </table>		Alejandro L. Busto, IV, Principal Architect	Amy McDaniel, Interior Designer/CAD	Bret Dodd, Project Architect	Bill Guidry, Construction Administration/CAD	Michael B. Latham, Project Manager		Andrew Benavides, Architectural Designer	
Alejandro L. Busto, IV, Principal Architect	Amy McDaniel, Interior Designer/CAD								
Bret Dodd, Project Architect	Bill Guidry, Construction Administration/CAD								
Michael B. Latham, Project Manager									
Andrew Benavides, Architectural Designer									
<p>3. If submittal is by joint venture list participating firms and outline specific areas of responsibility (including administrative, technical, and financial) for each firm: 3a. Has this joint venture previously worked together? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</p>									

GATORSKTCH CORPORATE LICENSE

 RICK SCOTT, GOVERNOR

JONATHAN ZACHEM, SECRETARY



STATE OF FLORIDA
DEPARTMENT OF BUSINESS AND PROFESSIONAL REGULATION
BOARD OF ARCHITECTURE & INTERIOR DESIGN

THE ARCHITECT CORPORATION HEREIN IS CERTIFIED UNDER THE
PROVISIONS OF CHAPTER 481, FLORIDA STATUTES

GATORSKTCH CORP.
1000 E HIGHW 1000 E HIGHWAY 50 STE. 201A
CLERMONT FL 34711-3229

LICENSE NUMBER: AA26002310

EXPIRATION DATE: FEBRUARY 28, 2021

Always verify licenses online at MyFloridaLicense.com



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**FORM 2
TEAM COMPOSITION**

Name of Prime Firm: GatorSketch Corporation

Role	Name and City of Residence of individual assigned to the project	Florida Active Registrations
Project Manager	Michael B. Latham, Groveland	
Principal Architect	Alejandro L. Busto, Clermont	AR0015223
Project Architect	Bret Dodd, Zion	
Architectural Designer	Andrew Benavides, Clermont	
Interior Design	Amy McDaniel, Clermont	
Construction Admin.	Bill Guidry, Winter Springs	

Sub Consultants:

Role (i.e. Landscape Architectural...)	Company Name and Address of Office Handling this Project	Project ed% of Over-All Work on Entire Project	Name of Individual Assigned to this Project	Firm worked with prime before (Yes or No)	Individual Worked with prime before (Yes or No)
Structural	TLC Engineering 255 S Orange Ave #1600 Orlando, FL 32801	15%	Gary Krueger	Yes	Yes
MEPF	SGM Engineering 935 Lake Baldwin Ln. Orlando, FL 32814	20%	Justin Mundell Bobby Shahnami	Yes	Yes

Are there any contractual agreements between the respondent (prime consultant) and any of the proposed sub-consultants? Yes X No

If the answer is yes, the respondent shall attach, with their submittal, information describing the contractual relationship including a copy of any written contractual agreement.

**ALEX BUSTO, AIA,
VP/Principal in Charge**



EDUCATION

Ball State University

Bachelor of Architecture
Bachelor of Science,
Environmental Planning

REGISTRATIONS

Registered Architect:
Florida, South Carolina
NCARB (National Council
of Architectural
Registration Boards)

**PROFESSIONAL
AFFILIATIONS**

National Trust for Historic
Preservation

PUBLICATIONS

Real Estate & Construction
Review
Interview in Northern &
Central Florida Edition
2008

HONORS

**Charles E. Peterson
Prize**

**Historical American
Building Survey**

**The National Parks
Service/ AIA**

Alex Busto as Principal in Charge brings 30 years of architectural experience and a wealth of knowledge in environmental planning and design management. He has provided professional services for a wide variety of facility types, notably educational, commercial, themed retail and historic preservation projects.

Mr. Busto recently served for over 14 years as a Consultant to the Orange County School District in Central Florida. His roles included Pre-construction Director and Planning & Design Manager for one of the nation's most aggressive school construction programs. He was responsible for the planning and design phase for over 80 new and complete replacement campuses and numerous comprehensive renovation projects with a value of over \$2.1 billion dollars. He was involved in all aspects of school planning and development from land acquisition through construction administration. He played an integral role in the School District's receipt of over \$21 million in monetary awards from the State of Florida for the design and construction of economical, thrifty and frugal (SMART) school facilities.

Previous experience includes on-site architectural administration services for all twenty-seven, themed retail establishments in the Universal Studios Orlando, Islands of Adventure Theme Park. Other national retail clients have included multiple facilities for Publix, Winn-Dixie, Albertsons, Food Lion, Eckerds and Walgreens.

Mr. Busto has an affinity for Historic Preservation. He has served as the Architect for several historic undertakings including multi-million-dollar projects for the exterior restoration of Saint Philips Cathedral (National Historic Landmark) and the renovations to McAlister Field House (Basketball Arena) at the Citadel Military College in Charleston, S.C.

International Conceptual Master Planning projects include the Winnabow Estates - Golf Country Club Community with Mixed Use Retail/Commercial Facilities in Belize, Central America and Shanghai Gardens, a Bedroom Community with Casino/Hotel Resort area and municipal facilities in Shanghai, China.

- City of Tavares Public Works
- City of Tavares Public Safety Complex
- City of Groveland Public Safety Complex
- City of Mascotte Fire Station
- Lake Hiawatha Preserve City of Clermont
- Valerie Theatre
- Brevard County Jail Renovations
- Brevard County Moore Justice Cntr.
- Lake County Sheriff Department
- Evans Replacement High School
- West Orange Replacement High School
- Apopka Replacement High School
- East River High School
- East River High School
- Wekiva High School

LICENSE



Licensee

Name: **BUSTO, ALEJANDRO L. IV** License Number: **15223**
 Rank: **Architect** License Expiration Date: **02/28/2021**
 Primary Status: **Current** Original License Date: **06/21/1995**
 Secondary Status: **Active**

Related License Information

License Number	Status	Related Party	Relationship Type	Relation Effective Date	Rank	Expiration Date
26002310	Current	GATORSKETCH CORP.	Responsible Supervisor	10/03/2012	Architect Business	02/28/2021

MICHAEL B. LATHAM
President/Project Mgr.



Education

University of Central
 Florida Electrical
 Engineering, 84-89

Certifications

AIBD Certified
 (American Institute of
 Building Design)

**Professional
 Affiliations**

Associate AIA
 Member

Pig on the Pond
 Scholarship
 Committee

City of Clermont -
 Downtown
 Partnership, Past
 President

Green Isle Boy's
 Ranch, Board of
 Directors

125th Celebration of
 Clermont, Chairman

Michael Latham has over 25 years experience in all phases of Architectural Design and Construction. He has played key roles in projects from \$50,000 to \$30M. As President at GatorSkitch, Mr. Latham ensures the creativity and design elements created by the staff meet and exceed the high standards of our clients.

As a business owner, Mr. Latham knows that communicating one-on-one with our clients is a top priority. His passion for customer service and high quality, combined with his ability to adapt to changing situations makes him one of the best in the industry.

A few notable projects include:

- City of Tavares Public Works, Tavares, FL
- City of Groveland, Public Safety Complex, Groveland, FL
- City of Tavares Public Safety Complex, Tavares, FL
- City of Mascotte, Fire Station
- Cypress Ridge Elem. Cafeteria, Clermont, FL
- Fitness CF, Clermont, Dr. Phillips, & Glenbrook
- Osceola County School Board Cont Service Contract 2018
- Town of Montverde Kiosk
- Brevard County Jail, Viera, FL
- Lake County Sheriff's Department, Lake County, FL
- Lake County Continuing Services, Lake County, FL
- Kissimmee Public Works Compound - Kissimmee, FL
- Cooper Library Historic Renovation, Clermont, FL
- Historic Train Station Renovation, Clermont, FL
- Waterfront Pavilion, Clermont, FL
- Montverde Academy Sports Complex - Montverde, FL
- Wesley Christian Academy, Clermont, FL
- Monarch Learning Academy, Orlando, FL
- Montverde Academy Sports Complex, Montverde, FL
- Central Florida Dream Plex, Clermont, FL
- Dream Academy, Clermont, FL

BRET W. DODD, AIA, LEED AP
Design Architect



EDUCATION

Ball State University Bachelor of Architecture 1987
 Bachelor of Science, Environmental Planning 1987

Registrations Registered Architect: Indiana

Professional Affiliations

American Institute of Architects
 Green Building Council Publications
 Metal Architecture March 2009: Indianapolis International Airport Fire Station No. 1

HONORS

AIA Academy of Architecture for Justice
 • Town of Fishers Police Station
 • Blackford County Security Cntr.
 • Harrison County Justice Cntr.

ACEC

• Honor Award: Noblesville Parks & Recreation – White River Greenway Trail
 • Honor Award: University of Indianapolis – Central Residence Hall
 • Merit Award: West Lafayette Police Station
 • Merit Award: Whitley County Government Center
 • Merit Award: Valparaiso Police Station
 • Merit Award: Pulaski County Justice Center

Bret Dodd has 28 years of experience as an Architect with 24 years of those years as a Chief Design Architect completing over 600 hundred projects and more than 100 Public Safety, Justice and Security related projects. This extensive experience with various project types, architectural design and master planning has resulted in more than \$500,000,000 in Public Safety and Justice projects construction, over 3 million square feet of facilities and 10,000 acres of development. Bret has completed Police, Fire Station, Public Safety Facility and Justice Related Projects form Michigan's Upper Peninsula to Florida and throughout the Midwest. This national experience coupled with local experience with the City of Tavares and Mascotte Public Safety Facilities brings a unique and comprehensive design perspective to the project. Bret's blend of experience, analytical and intuitive problem solving skillset quickly realizes comprehensive, creative and innovative solutions that are within the established project budget. He also has the aptitude to effectively communicate and present complex ideas and abstract concepts to a variety of audiences. Furthermore, Bret has the proven ability to work within a team structure and provide the vision and leadership to successfully accomplish the goals and objectives of the project.

Partial List of Related Project Experience:

- City of Tavares Public Safety Fcty.
- City of Mascotte Public Safety Fcty.
- City of Hammond Police & Justice Center
- City of Hobart Police, Courts & Community Center
- City of Noblesville Police Station Headquarters
- City of Noblesville Public Safety Building
- City of Portage Police Station
- City of Terre Haute Police Station Headquarter
- City of Valparaiso Police Station
- City of West Lafayette Police Stn.
- Crown Point Public Safety Building
- Greencastle Police Station,
- Indiana State Police Post, I 80/90 Toll Road, Indiana
- Town of Fishers Police Station
- Town of Plainfield Police Station
- City of Westfield Public Safety Fcty.
- Lincoln Township Fire Station
- City of Monticello Fire Station
- City of Westfield Fire Station #83
- Indianapolis International Airport Fire Station #1
- Lake Township Fire Station
- Lake Village Fire Station
- Lincoln Township Fire Station
- Pike Township Fire Station,
- Town of Brook Fire Station
- Town of Fishers Fire Station 93
- Town of Fishers Fire Station 94
- Town of Fishers Fire Station 95
- Town of Fishers Station 91 Training Center Addition,
- Union Township Fire Station
- Warren Township Fire Station #443
- Allen County Sheriff's Dpt.Regional Training Facility Master Plan
- Central Indiana Public Safety and Educational Center Master Plan
- Lake County Public Safety and Emergency Responders Training Facility
- Dearborn County Law Enforcement Center

ANDREW BENAVIDES
Architectural Designer



EDUCATION
University of Florida
Master of Architecture
Bachelor of Design

Andrew joins GSC after receiving both his Master of Architecture and Bachelor of Design from the University of Florida. He has participated in the design of various projects including relief options during the UNESCO Puerto Rico ReStart, multi-use complex design competitions, and a future of architecture program. Andrew also brings the ability of constructing full-scale mock-up models of new architectural details, and 3D renderings using Vray and Sketchup software.

- City of Tavares Public Works, Tavares, FL
- City of Groveland, Public Safety Complex, Groveland, FL
- City of Tavares Public Safety Complex, Tavares, FL
- City of Mascotte, Fire Station
- Cypress Ridge Elem. Cafeteria, Clermont, FL

AMY MCDANIEL, ASID, NKBA
Interior Designer



EDUCATION
Seminole State College of Florida, Heathrow, Florida Bachelor of Applied Science Degree in Interior Design
Seminole State College of Florida, Heathrow, Florida Certificate in Kitchen and Bath Design
The Haverhill Institute of Staging and Design, Ontario, Canada Certificate in Staging

Amy McDaniel is our full-time Interior Designer. Amy has brought her exceptional creativity and design experience to GSC working closely with clients to achieve a safe, functional, and beautiful space. Amy holds a Bachelor of Arts degree in Interior Design from Seminole State College. In addition to her background in design she has a thorough understanding of fast paced space planning. Amy is also proficient in construction drawings, design presentations, product selections, cost estimates, purchase orders, and communicating with clients, consultants, along with project coordination.

Recent projects include:

- City of Groveland Public Safety Complex, Groveland, FL
- City of Mascotte Fire Station, Mascotte, FL
- City of Tavares Public Safety Complex, Tavares, FL
- Marriott Cypress Harbour, Pool Bar, Orlando, FL
- Fitness CF - Dr. Phillips Hydro Spa, Dr. Phillips, FL
- Fitness CF - Clermont Hydro Spa, Clermont, FL
- Fitness CF Glennbrook Commons Presale Suite, Davenport, FL
- Edward Waters Senior Living -Campus Towers
- Advanced Kidney Care of Central Florida, Clermont, FL
- Lake County Schools - Cypress Ridge Elementary Cafeteria, Clermont, FL

BILL GUIDRY
Construction Administration



EDUCATION

Hillsborough Community College, Tampa Campus
AS Degree-1988

Erwin Tech, Tampa Campus
AutoCAD/Adobe Certification-1990

Mercedes Benz Credit Corp.-Certified On the Job Trainer-1992

EXPERIENCE

GatorSkitch Corp.-Drawing Review, Draftsman, Value Engineering, Construction Administration, Field Coordination, GMP Negotiations and Contractor Review

DBYBS- Draftsman, Construction Administrator, Building Envelope Inspector, Construction Document Peer review

SchenkelShultz Architects
10 years, Draftsman, Construction Administrator, Close-out Specialist, CAD Standards and ADT Trainer

AFFILIATIONS

Habitat for Humanity since 1991

Pet Rescue by Judy since 2008

Guest Speaker at Erwin Technical Center, Annually since 2002

NRCA, National Roofing Contractors Association since 2010

Bill has worked in the design / construction industry for over 22 years with 10 years of experience in the Construction Administration of School projects. He has worked on projects for School Boards in Brevard, Orange, Osceola and Volusia counties in Florida and for the University of Florida and the University of Central Florida. Construction phase responsibilities have included quality control construction monitoring, building envelop inspections, field deficiency reports, payment application reviews, construction meeting minutes, response to Requests for Information, shop drawing and submittal review, processing of Substitution Requests, project closeout, substantial completion punch lists, preparation of as-built record documents and eleven-month warranty walkthroughs. He is also experienced in AutoCad drafting of Construction drawings, review of Contractor's schedules, bids and value engineering recommendations, and project management / coordination with code officials, owners, contractors, sub-contractors and manufacturers

Recent projects include:

- City of Tavares, Public Safety Complex, Tavares, FL
- City of Groveland, Public Safety Complex, Groveland, FL
- Brevard County Jail, Viera, FL
- Waterfront Pavilion, Clermont, FL
- Bay Lake Elementary School, Orange County School Board, Florida
- Ventura Elementary School, Orange County School Board, Florida
- Sebastian High School, Indian River County School Board, Florida
- Warehouse Remodel / Addition Lake County School Board, Florida
- Monarch Learning Academy, Orlando Florida
- Wesley Christian Academy, Clermont, Florida
- Tavares Public Safety Complex, Tavares, Florida
- Cloister Independent Living Tower, Orlando, Florida
- Marriott Cypress Harbor Resort, Orlando Florida
- Golds Gym, Clermont, Florida

GARY C. KRUEGER, PE, LEED AP BD+C, CM

Senior Structural Engineer

BACKGROUND

Gary Krueger serves as a Principal / Division Director of TLC Engineering Solutions, as well as Project Manager, Senior Structural Engineer, and Vice President. He joined TLC in 1988 with six years of prior experience and has risen through the firm to sit on the Board of Directors and become a Senior Principal Equity Partner.

Gary is among TLC's most senior and experienced structural engineers with expertise in structural analysis and design, 3-D computer modeling, structural system evaluation, and building and threshold inspections. Gary focuses on providing up-to-date, code compliant and sustainable design solutions for new and renovation projects specifically for local, state, and Federal governments. Having completed numerous Florida projects, Gary is knowledgeable in addressing salt corrosion, excessive humidity conditions, and hurricane force winds. Gary holds a Florida Special Inspectors license and is a certified manager as recognized by the Institute of Certified Professional Managers.

EXPERIENCE

Toho Water Authority Administrative Complex, Kissimmee, FL

Four-story administrative complex includes an integrated hardened emergency operations center to oversee District Water resources during emergency events. Certified LEED NC 2.2 Gold. \$11.7 million / 55,000 sf

City of Coconut Creek Public Works Building, Coconut Creek, FL

New two-story administration building includes EOC, Dispatch, 911 Call Center and emergency response administrative spaces. Certified LEED NC 2009 Silver. \$7 million / 22,000 sf

W.H. Stephenson Utilities / Warehouse, City of Cocoa, FL

New Transmission and Distribution facility combines the City of Cocoa Water and Purchasing Department functions as well as vehicle maintenance and shop repair facilities. Facility contains 14,500 sf of office space, including multi-media training spaces and back-up city IT services; 15,700 sf of repair shops, vehicle maintenance area, and general shop equipment; and 23,500 sf of warehouse storage. A 2-story addition provides 8,000-sf Water Quality lab for potable water testing. \$5 million

Hernando County Health Department, Spring Hill, FL

New 2-story facility serves the County with health and behavior related clinical services and programs. User interviews and programming were performed to enable proper integration among many departments and clinics. \$11.5 million / 48,310 sf

Gainesville Police Department Headquarters, Gainesville, FL

New 2-story building designed for 135 mph ultimate wind speed. Structural design consists of exterior load bearing masonry shear walls with brick veneer supporting steel framed floor and roof system. Steel tube columns throughout the interior provide support for floor and roof framing, while maintaining an open floor plan. Certified LEED NC 2009 Silver. \$11.6 million / 67,800 sf



EDUCATION

Michigan State University
M.S., Structural Engineering
1983
Michigan State University
B.S., Civil Engineering
1982

YEARS OF EXPERIENCE

TLC: 31 years
Prior: 6 years

REGISTRATIONS

PE FL 40788

CERTIFICATIONS

LEED AP BD+C, GBCI
Certified Manager, ICPM

PROFESSIONAL AFFILIATIONS

ACI, Member
AISC, Member
SAME, Member



Years with SGM: 21

Total Years Experience: 21

Certifications:

- Registered Professional Engineer, License #78419
- LEED Accredited Professional, Building Design and Construction
- Certified Commissioning Authority

Education:

- BS in Mechanical Engineering, University of Central Florida, 2006
- MBA, University of Central Florida, 2008

Professional Qualifications

- 21 years of experience providing Mechanical, Plumbing, and Fire Protection Engineering, Commissioning, and MEP Quality Control for local municipalities.
- Engineer of Record for over 650,00SF in public safety facilities throughout the state of Florida.
- Total of eight projects completed as a sub to Gatorsketch demonstrating a prior history working together.
- SGM Project Manager for Wildwood Police HQ in 2018.
- **Currently working with Gatorsketch on the City of Tavares Public Works Facilities.**

Relevant Project Experience

- **City of Tavares Public Works Facilities, Tavares, FL —**
Total SF: 45,000 Project Cost: \$6M
- **Wildwood Police Headquarters, Wildwood, FL —**
Total SF: 13,000 Project Cost: \$6.9M
- **Orange County Fire Station 67, Orlando, FL —**
Total SF: 8,600 Project Cost: \$3.5M
- **Orange County Courthouse Mechanical & Fire Protection Upgrades, Orlando, FL —**
Total SF: 1.2 Billion Project Cost: \$14.5M
- **Orange County Fire Station Prototype Contract, Orange County Area, FL —**
Total SF: 8,000 – 16,000SF Project Cost: \$26M
- **Hillsborough County Public Safety Complex, Tampa, FL —**
Total SF: 77,500 Project Cost: \$26M
- **City of Riviera Beach Public Safety Operations Center —**
Total SF: 3,600 Project Cost: \$3.3M
- **Eastern Florida State College Public Safety Institute, Melbourne, FL —**
Total SF: 67,000 Project Cost: \$13M
- **Orange County Fire Station 87, Orlando, FL —**
Total SF: 9,800 Project Cost: \$4.4M
- **Osceola County Fleet Maintenance, Kissimmee, FL —**
Total SF: 12,000 Project Cost: \$5.2M



Years with SGM: 11

Total Years Experience: 18

Certifications:

- Professional Engineer, Electrical, License #70700
- Registered Communications Distribution Designer

Education:

- BS in Electrical Engineering, University of Central Florida, 2004

Professional Qualifications

- 18 years' experience with project management, scheduling, manpower loading, field coordination, change order estimates, and closeouts
- 100+ previous public safety projects for over 20 municipalities in the state of Florida.
- RCDD certified as an expert in communications and security system design for EOC, police, and fire operations.

Relevant Project Experience

- **City of Tavares Public Works Facilities, Tavares, FL** — Total SF: 45,000 Project Cost: \$6M
- **Wildwood Police Headquarters, Wildwood, FL** — Total SF: 13,000 Project Cost: \$6.9M
- **Orange County Fire Station 67, Orlando, FL** — Total SF: 8,600 Project Cost: \$3.5M
- **MH47 Aviation Maintenance Hangar Fort Campbell, KY** — Total SF: 92,000 Project Cost: \$32M
- **Wildwood Police Headquarters, Wildwood, FL** — Total SF: 13,000 Project Cost: \$6.9M
- **Seminole County Fire Station 11, Altamonte Springs, FL** — Total SF: 8,200 Project Cost: \$3.5M
- **City of Titusville Fire Command Center, Titusville, FL** — Total SF: 15,500 Project Cost: \$6M
- **Miami Dade College School of Justice, Miami, FL** — Total SF: 112,000 Project Cost: \$26M
- **City of Fort Lauderdale Police Firing Range HVAC Replacement, Fort Lauderdale, FL** — Total SF: 8,500 Project Cost: \$350,000
- **Orlando Police Dept. Metrowest Substation, Orlando, FL** — Total SF: 3,000 Project Cost: \$1.2M
- **City of Maitland West Side Fire Station and Public Works Complex, Maitland, FL** — Total SF: 24,000 Project Cost: \$15.6M
- **Osceola County Fleet Maintenance, Kissimmee, FL** — Total SF: 12,000 Project Cost: \$5.2M

TLC & SGM LICENSES



FORM 3 LOCATION

1. Specify address of Prime Consultant's designated office where the majority of work on this project will be performed:

1000 E. Highway 50 Ste.201A, Clermont, FL 34711

100 %

2. Indicate percentage of total over-all project fees projected to be performed on this project by the Prime Consultant's office specified above. (Do not include percentage of fees anticipated to be performed on this project by sub-consultants)

65 %

3. Specify address of Prime Consultant's other office(s) where any part of the work on this project will be performed (if applicable):

N/A %

4. Indicate percentage of total over-all fees projected to be performed on this project by the office specified above. Do not include percentage of fees anticipated to be performed on this project by sub-consultants.

N/A %

5. Indicate percentage of total over-all fees projected to be performed on this project by firms located within the City including the prime consultant and sub-consultants, utilizing information supplied above and on **Form 2**.

N/A %

**FORM 4
PROFESSIONAL PERSONNEL FOR SIMILAR PROJECTS**

Work by firm or joint venture members which best illustrate current qualifications relevant to the city's project that have been/is being accomplished by personnel that shall be assigned to the city's project. **List no less than three (3) but no more than ten (10) projects.**

Project Name and Location City of Tavares Public Safety Complex Tavares, Florida Project Manager: Michael B. Latham		Project Owners Name and Address City of Tavares 201 East Main Street, Tavares, FL 32778
Completion Date (Actual or Estimated) completed September 2019		Project Owner's Contact Person, Title, and Telephone Number Chief Richard Keith 352-742-6391
Estimate Cost (In Thousands)		
Entire Project \$ 13,800,000	Work for which firm was/is responsible \$ 1,200,000	
<p>Scope of Entire Project (Please give quantitative indications wherever possible)</p> <p>A 38,527sf new Public Safety Complex including a fire station, police station and emergency operation center. The Fire Station features four drive through apparatus bays, a day room with kitchen and dining and second floor bunk and shower rooms. The Police Station includes a sally-port, fitness center and locker rooms shared with the fire department, administration offices, patrol room, detective unit, interrogation rooms, criminal investigation lab, indoor shooting range, evidence and records storage. The emergency operations center has a community meeting room and command center with overnight accommodations.</p>		
<p>Nature of Firm's Responsibility in Project (Please give quantitative indications wherever possible)</p> <ul style="list-style-type: none"> • Feasibility Study • Architectural Design • Interior Design • Landscape Architecture • Security/IT Design • FF&E Project Management • Bidding • Permitting • Construction Phase Services 		
<p>Firm's Personnel (Name/Project Assignment) That Worked on the Stated Project that Shall Be Assigned to the City's Project</p> <p align="center">Alex Busto, AIA, NCARB, Principal-in-Charge Michael B. Latham, AIBD, Project Manager Bret Dodd, AIA, NCARB, Project Architect Andrew Benavides, Architectural Designer Amy McDaniel, Interior Design Bill Guidry, Construction Administration</p>		

**FORM 4
PROFESSIONAL PERSONNEL FOR SIMILAR PROJECTS**

Work by firm or joint venture members which best illustrate current qualifications relevant to the city's project that have been/is being accomplished by personnel that shall be assigned to the city's project. *List no less than three (3) but no more than ten (10) projects.*

Project Name and Location City of Mascotte, Fire Station Mascotte, Florida Project Manager: Michael B. Latham		Project Owners Name and Address City of Mascotte 100 E. Myers Blvd. Mascotte, FL 34753	
Completion Date (Actual or Estimated) Project on Hold		Project Owner's Contact Person, Title, and Telephone Number Chief Randy Brasher 352-267-9514	
Estimate Cost (In Thousands)			
Entire Project \$ 3,800,000	Work for which firm was/is responsible \$ 190,000		
<p>Scope of Entire Project (Please give quantitative indications wherever possible)</p> <p>A 10,600 sf one story Fire Station and Fire Administration for the City of Mascotte. The Fire Station Features 3 bays for apparatus, training room for 40 occupants, fitness room, kitchen, day room, bunk rooms, and shower rooms. Future expansion will include the Police Department converting the facility into a full public safety complex.</p>			
<p>Nature of Firm's Responsibility in Project (Please give quantitative indications wherever possible)</p> <ul style="list-style-type: none"> • Feasibility Study • Architectural Design • Interior Design • Landscape Architecture • Security/IT Design • Bidding • Permitting • Construction Phase Services 			
<p>Firm's Personnel (Name/Project Assignment) That Worked on the Stated Project that Shall Be Assigned to the City's Project</p> <p align="center">Alex Busto, AIA, NCARB, Principal-in-Charge Michael B. Latham, AIBD, Project Manager Bret Dodd, AIA, NCARB, Project Architect Amy McDaniel, Interior Design</p>			

FORM 4
PROFESSIONAL PERSONNEL FOR SIMILAR PROJECTS

Work by firm or joint venture members which best illustrate current qualifications relevant to the city's project that have been/is being accomplished by personnel that shall be assigned to the city's project. *List no less than three (3) but no more than ten (10) projects.*

Project Name and Location Groveland Public Safety Complex Groveland, Florida Project Manager: Michael B. Latham		Project Owners Name and Address City of Groveland 156 South Lake Ave. Groveland, FL 34736	
Completion Date (Actual or Estimated) Expected Completion November 2020		Project Owner's Contact Person, Title, and Telephone Number Chief Willie Morgan 352-7267-3691	
Estimate Cost (In Thousands)			
Entire Project \$ 10,800,000	Work for which firm was/is responsible \$ 540,000		
Scope of Entire Project (Please give quantitative indications wherever possible) A 33,490 s.f. two story Public Safety Complex Including Fire Department operations for Station 95, Fire Administration and the Police Department for the City of Groveland. The Fire Station Features accommodations for Lake EMS services, 4 bays for apparatus, kitchen, day room, bunk room and shower rooms. Fire and Police Administration have offices on the second floor with Community Development Department which includes Planning / Zoning and the Building Department. The Police Department includes a 4 console dispatch center, Records with electronic scanning, secured intake with harden interview rooms, evidence department that includes high density storage, spaces for the CID and Patrols. On the First floor there is a training room for 60 people that also acts as the City's EOC.			
Nature of Firm's Responsibility in Project (Please give quantitative indications wherever possible) <ul style="list-style-type: none"> • Feasibility Study • Architectural Design • Interior Design • Landscape Architecture • Security/IT Design • FF&E Project Management • Bidding • Permitting • Construction Phase Services 			
Firm's Personnel (Name/Project Assignment) That Worked on the Stated Project that Shall Be Assigned to the City's Project Alex Busto, AIA, NCARB, Principal-in-Charge Michael B. Latham, AIBD, Project Manager Bret Dodd, AIA, NCARB, Project Architect Andrew Benavides, Architectural Designer Amy McDaniel, Interior Design Bill Guidry, Construction Administration			

**FORM 4
PROFESSIONAL PERSONNEL FOR SIMILAR PROJECTS**

Work by firm or joint venture members which best illustrate current qualifications relevant to the city's project that have been/is being accomplished by personnel that shall be assigned to the city's project. **List no less than three (3) but no more than ten (10) projects.**

Project Name and Location Temple Terrace Fire Station #1 Phase I - Project Conceptual Design for EOC Addition Project Manager: Michael B. Latham		Project Owners Name and Address City of Temple Terrace 124 Bullard Parkway Temple Terrace, FL 33617						
Completion Date (Actual or Estimated) Completed Spring 2019		Project Owner's Contact Person, Title, and Telephone Number Chief Ian Kemp 813-506-6700						
Estimate Cost (In Thousands)								
Entire Project \$ 3,100,000	Work for which firm was/is responsible \$ 12,000							
<p>Scope of Entire Project (Please give quantitative indications wherever possible)</p> <ul style="list-style-type: none"> • Define the needs for a new EOC Center. • Develop population projection models to determine the ten (10) and twenty (20) potential population of the City and define a planning model to evaluate conclusions of the staff and architectural space programming. • Complete staff projection modeling based upon the population projection modeling to define the potential future staff in five year increments to milestone dates of ten (10) and twenty (20) years. • Complete staff and architectural space programming to define your ten (10) and twenty (20) year needs. • Address the current Operations space needs and the anticipated NFPA regulations related to "Clean House, Dirty House" separations to improve the long term health of the fire fighters. • Develop a conceptual plans, diagrams and anticipated systems narratives to define the potential design direction of the project. • Establish a probable cost and total anticipated budget of the project including all hard construction and soft costs. 								
<p>Nature of Firm's Responsibility in Project (Please give quantitative indications wherever possible)</p> <ul style="list-style-type: none"> • Phase I Needs Assessment • Charette • Conceptual Design • Estimation of Project Costs 								
<p>Firm's Personnel (Name/Project Assignment) That Worked on the Stated Project that Shall Be Assigned to the City's Project</p> <table style="width: 100%; border: none;"> <tr> <td style="width: 50%; border: none;">Alex Busto, AIA, NCARB, Principal-in-Charge</td> <td style="width: 50%; border: none;">Andrew Benavides, Architectural Designer</td> </tr> <tr> <td style="border: none;">Michael B. Latham, AIBD, Project Manager</td> <td style="border: none;">Amy McDaniel, Interior Design</td> </tr> <tr> <td style="border: none;">Bret Dodd, AIA, NCARB, Project Architect</td> <td style="border: none;">Bill Guidry, Construction Administration</td> </tr> </table>			Alex Busto, AIA, NCARB, Principal-in-Charge	Andrew Benavides, Architectural Designer	Michael B. Latham, AIBD, Project Manager	Amy McDaniel, Interior Design	Bret Dodd, AIA, NCARB, Project Architect	Bill Guidry, Construction Administration
Alex Busto, AIA, NCARB, Principal-in-Charge	Andrew Benavides, Architectural Designer							
Michael B. Latham, AIBD, Project Manager	Amy McDaniel, Interior Design							
Bret Dodd, AIA, NCARB, Project Architect	Bill Guidry, Construction Administration							

**FORM 4
PROFESSIONAL PERSONNEL FOR SIMILAR PROJECTS**

Work by firm or joint venture members which best illustrate current qualifications relevant to the city's project that have been/is being accomplished by personnel that shall be assigned to the city's project. **List no less than three (3) but no more than ten (10) projects.**

Project Name and Location City of Tavares Solid Waste & Public Works Operations Compound Tavares, Florida Project Manager: Michael B. Latham		Project Owners Name and Address City of Tavares 100 N Disston Ave, Tavares, FL 32778				
Completion Date (Actual or Estimated) Estimated Completion Fall 2021		Project Owner's Contact Person, Title, and Telephone Number James Dillon, Director 352-742-6221				
Estimate Cost (In Thousands)						
Entire Project \$ 7,000,000	Work for which firm was/is responsible \$ 350,000					
Scope of Entire Project (Please give quantitative indications wherever possible)						
<p>Project Components: The Project consists of three major component groups and:</p> <table border="0"> <tr> <td style="vertical-align: top;"> <p>A. Finance Purchasing and Records Storage</p> <ul style="list-style-type: none"> • Purchasing Storage (Includes Administration) • Records Storage </td> <td style="vertical-align: top;"> <p>B. Lake Technical College:</p> <ul style="list-style-type: none"> • Administration • Automotive Progra • Diesel Program • Support Space </td> <td style="vertical-align: top;"> <p>C. Public Works</p> <ul style="list-style-type: none"> • Facilities Management • Fleet management • Parks management • Public Works Administration • Right of Way Management • Solid Waste Management • Streets Management • Support Space </td> </tr> </table> <p style="color: red; margin-left: 100px;">**See "Tab F" PP F-12-24 for City of Tavares detailed Phase 1 Report based on Study and Charrette.</p>				<p>A. Finance Purchasing and Records Storage</p> <ul style="list-style-type: none"> • Purchasing Storage (Includes Administration) • Records Storage 	<p>B. Lake Technical College:</p> <ul style="list-style-type: none"> • Administration • Automotive Progra • Diesel Program • Support Space 	<p>C. Public Works</p> <ul style="list-style-type: none"> • Facilities Management • Fleet management • Parks management • Public Works Administration • Right of Way Management • Solid Waste Management • Streets Management • Support Space
<p>A. Finance Purchasing and Records Storage</p> <ul style="list-style-type: none"> • Purchasing Storage (Includes Administration) • Records Storage 	<p>B. Lake Technical College:</p> <ul style="list-style-type: none"> • Administration • Automotive Progra • Diesel Program • Support Space 	<p>C. Public Works</p> <ul style="list-style-type: none"> • Facilities Management • Fleet management • Parks management • Public Works Administration • Right of Way Management • Solid Waste Management • Streets Management • Support Space 				
Nature of Firm's Responsibility in Project (Please give quantitative indications wherever possible)						
<table border="0"> <tr> <td style="vertical-align: top;"> <ul style="list-style-type: none"> • Feasibility Study • Architectural Design • Interior Design </td> <td style="vertical-align: top;"> <ul style="list-style-type: none"> • FF&E Project Management • Bidding </td> <td style="vertical-align: top;"> <ul style="list-style-type: none"> • Permitting • Construction Phase Services </td> </tr> </table>				<ul style="list-style-type: none"> • Feasibility Study • Architectural Design • Interior Design 	<ul style="list-style-type: none"> • FF&E Project Management • Bidding 	<ul style="list-style-type: none"> • Permitting • Construction Phase Services
<ul style="list-style-type: none"> • Feasibility Study • Architectural Design • Interior Design 	<ul style="list-style-type: none"> • FF&E Project Management • Bidding 	<ul style="list-style-type: none"> • Permitting • Construction Phase Services 				
Firm's Personnel (Name/Project Assignment) That Worked on the Stated Project that Shall Be Assigned to the City's Project						
<p>Alex Busto, AIA, NCARB, Principal-in-Charge Michael B. Latham, AIBD, Project Manager Bret Dodd, AIA, NCARB, Project Architect Andrew Benavides, Architectural Designer Amy McDaniel, Interior Design Bill Guidry, Construction Administration</p>						

**FORM 4
PROFESSIONAL PERSONNEL FOR SIMILAR PROJECTS**

Work by firm or joint venture members which best illustrate current qualifications relevant to the city's project that have been/is being accomplished by personnel that shall be assigned to the city's project. *List no less than three (3) but no more than ten (10) projects.*

Project Name and Location City of Kissimmee Public Works Kissimmee, Florida Project Manager: Michael B. Latham		Project Owners Name and Address City of Kissimmee 101 N. Church St. Ste. 301 Kissimmee, FL 34741
Completion Date (Actual or Estimated) Completed Spring 2011		Project Owner's Contact Person, Title, and Telephone Number David Derrick, Director of Public Works & Engineering 407-518-2170
Estimate Cost (In Thousands)		
Entire Project \$ 2,400,000	Work for which firm was/is responsible \$ 275,000	
<p>Scope of Entire Project (Please give quantitative indications wherever possible)</p> <p>This public works project consists of a variety of new buildings and an addition including a 3200 sf. sanitation building, a 5300 sf. welding/paint shop, a 1000 sf. sanitation warehouse, 3 covered parking structures (2700 sf. total) 2 hazardous materials buildings (500 sf.) a covered truck clean out area and a supervisor storage building at 2400 sf.</p>		
<p>Nature of Firm's Responsibility in Project (Please give quantitative indications wherever possible)</p> <ul style="list-style-type: none"> • Architectural Design • Interior Design • Landscape Architecture • Bidding • Permitting • Construction Phase Services 		
<p>Firm's Personnel (Name/Project Assignment) That Worked on the Stated Project that Shall Be Assigned to the City's Project</p> <p align="center">Alex Busto, AIA, NCARB, Principal-in-Charge Michael B. Latham, AIBD, Project Manager</p>		



July 1, 2020

James Dillon
Public Works Director
City of Tavares
100 North Disston Avenue
P.O. Box 1068
Tavares, Florida 32778

Re: Recommendation Letter in Support GatorSkitch Corporation

To Whom It May Concern:

I would like to take this opportunity to provide a letter of recommendation for GatorSkitch Corporation. GatorSkitch Corporation has provided the City of Tavares with design, engineering and construction services for over 10 years on multiple projects.

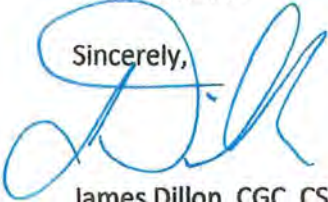
I have personally worked with the GatorSkitch Corporation team and find them to be responsive, professional, and provide a superior quality of work. The City of Tavares entered into a contractual agreement with GatorSkitch Corporation for the design, engineering and construction services of our Public Safety Complex which includes new Fire and Police Stations, Emergency Operations Center and Administrative Offices. Within our Public Safety Complex the Police Station includes briefing areas, road patrol touch down areas for report writing, CID, 2 lane tactical indoor firing range, evidence storage and lab. The Fire Department houses both Administration and Fire Operations with 7 bunkrooms, 3 shower rooms, commercial kitchen with 3 refrigerated pantries, watch office, day room, fire pole tower, hose drying tower and fitness area. Our Emergency Operations Center can accommodate any event that may arise with a central EOG-Training room where all agencies can be stationed with access to fully equipped technology connections for complete interoperability, meeting rooms and kitchen.

Project inception began with a Phase I study where GatorSkitch met with key personnel and provided an evaluation of our space and facility needs. From there a preliminary design was developed for review and then final construction documents and services were provided. The Public Safety Complex was completed in 2019 and opened for service.

GatorSkitch has started the same process with our new proposed Solid Waste and Public Works Operations Facility. A charrette was conducted in 2019 and we are in the early stages of design. We anticipate the opening of our new facility to be in 2021.

I highly recommend Michael B Latham, President of GatorSkitch Corporation Architects and Planners, and his entire team and am confident in the skills and services they can provide for your design and construction needs. If you have any questions, or require additional information, please do not hesitate to contact me.

Sincerely,



James Dillon, CGC, CSSYB
Public Works Director

'Propelli_ng Pu6Cic 'Wor 'lIroU{jh Inno'Vation'

City of Tavares Public Safety Complex, Tavares, Florida

COMMERCIAL ■ INSTITUTIONAL ■ MEDICAL ■ MUNICIPAL ■ RESIDENTIAL



Description:

A 38,527sf new Public Safety Complex including a fire station, police station and emergency operation center. The Fire Station features four drive through apparatus bays, a day room with kitchen and dining and second floor bunk and shower rooms. The Police Station includes a sally-port, fitness center and locker rooms shared with the fire department, administration offices, patrol room, detective unit, interrogation rooms, criminal investigation lab, indoor shooting range, evidence and records storage. The emergency operations center has a community meeting room and a command center with overnight accommodations. Completed September 2019.

Client:

Chief Richard Keith

City of Tavares, 201 East Main Street, Tavares, FL 32778
352-742-6391

Team:

Alex Busto, AIA, NCARB, Principal-in-Charge
Michael B. Latham, AIBD, Project Manager
Bret Dodd, AIA, NCARB, Project Architect
Bill Guidry, Construction Administration



America's Seaplane City"

May 8, 2020

To Whom It May Concern;

Having worked closely with GatorSkitch Architects & Planners for over 10 years, it is a great honor to recommend the GatorSkitch team to you for your project.

GatorSkitch, led by their executive leadership team of Michael Latham and Alexandro "Alex" Busto, designed a world-class Public Safety Complex for the City of Tavares, Florida, and continued to serve Tavares as the construction-management oversight team for the project.

This project saw the project completed, and the building occupied by the Tavares Police and Fire Departments in the fall of 2019. Ten years of preparation, design, and engineering preceded that completion, with project funding taking the vast majority of that time. Through that entire process, GatorSkitch never once waived in their commitment of excellence to Tavares, our Tavares citizens, and our project.

Today, the City of Tavares Fire and Police Departments enjoy working out of this amazing and beautiful building. The business processes that flow through this building are well thought out, expertly designed, and professionally executed. The incredible visual appeal of the building exterior exactly met the design criteria requested by our City Council during the design phase of the project, and today receives many compliments and accolades.

The City of Tavares is looking forward to the potential of using GatorSkitch Architects & Planners for future projects. I proudly recommend GatorSkitch to you for your design, engineering, and construction project needs.

Feel free to contact me for personal confirmation of this recommendation.

Your servant in safety/ I remain;

Richard D. Keith
Fire Chief and Project Manager
City of Tavares, Florida

GROVELAND PUBLIC SAFETY COMPLEX, Groveland, Florida

COMMERCIAL ■ INSTITUTIONAL ■ MEDICAL ■ MUNICIPAL ■ RESIDENTIAL



A 33,490 s.f. two story Public Safety Complex Including Fire Department operations for Station 95, Fire Administration and the Police Department for the City of Groveland. The Fire Station Features accommodations for Lake EMS services, 4 bays for apparatus, kitchen, day room, bunk room and shower rooms. Fire and Police Administration have offices on the second floor with Community Development Department which includes Planning / Zoning and the Building Department.

The Police Department includes a 4 console dispatch center, Records with electronic scanning, secured intake with harden interview rooms, evidence department that includes high density storage, spaces for the CID and Patrols. On the First floor there is a training room for 60 people that also acts as the City's EOC.

CLIENT

Chief Willie Morgan
City of Groveland
156 South Lake Ave.,
Groveland, FL 34736
352-267-3691

TEAM

Michael Latham, AIBD,
Project Manager

Alex Busto, AIA,
Principal in Charge

Brett Dodd, AIA,
Project Architect

Bill Guidry
Construction Administration



To Whom It May Concern:

The City of Groveland entered into a contractual agreement with GatorSkitch Corporation for the design, engineering, and construction services of our Public Safety Complex. This new Police Station and Administrative Offices for the City will include: road patrol, armory, CID, dispatch, and evidence storage and lab. This project will also provide a new fire station with administrative offices along with new Zoning and Permitting offices for the City. The construction cost of this project is currently forecast to be between nine and ten million dollars.

Project inception began with a Phase I study where GatorSkitch met with key personnel and provided an evaluation of our space and facility needs, preliminary design, and final construction documents. GatorSkitch has continued to lead us through this process, to the point where we have just begun construction of our project and we are excited to see our building taking shape.

It is my honor to recommend to you Michael B. Latham, President of GatorSkitch Corporation Architects and Planners, and his entire team for your design and construction needs.

Shawn Ramsey
Public Safety Director / Chief of Police
City of Groveland Florida
City of Natural Charm



Groveland Fire Department

██████████ Or ██████████ Sir ██████████
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Willie Morgan, Fire Chief



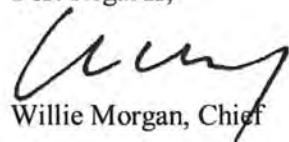
April 5, 2019

Re: Letter of Reference

To Whom it May Concern:

The City of Groveland is nearing the completion of the design phase for the construction of a new 33,000 square foot Public Safety Complex in Groveland. GatorSkтч was selected as the architect to design and oversee all aspects of the construction process. I have been highly impressed with Mike, Alex, and their team throughout the process. Their professionalism and knowledge of the project will undoubtedly leave us with a better finished project than I anticipated. They have been very accessible and responsive, oftentimes having to deal with unreasonable or difficult requests from the multiple City team members that have a stake in the project. I recommend GatorSkтч and think that you will be satisfied, as I have been, with any project they may undertake.

Best Regards,



Willie Morgan, Chief

CITY OF MASCOTTE, Fire Station, Mascotte, Florida

COMMERCIAL ■ INSTITUTIONAL ■ MEDICAL ■ MUNICIPAL ■ RESIDENTIAL



CLIENT

Chief Randy Brasher City of Mascotte
100 E. Myers Blvd.
Mascotte, Florida 34753
352-267-9514

TEAM

Michael Latham, AIBD,
Project Manager
Alex Busto, AIA, Principal
in Charge
Brett Dodd, AIA,
Project Architect
Bill Guidry
Construction Administration

A 10,600 s.f. one story Fire Station and Fire Administration for the City of Mascotte. The Fire Station Features 3 bays for apparatus, training room for 40 occupants, fitness room, kitchen, day room, bunk rooms, and shower rooms. Future expansion will include the Police Department converting the facility into a full public safety complex. Project on hold.



Mascotte Fire-Rescue

529 E. Myers Blvd. Mascotte, FL. 34753
Phone (352) 429-4766 Fax (352)429-0713
firechief@cityofmascotte.com



March 04,2020

Re: GatorSketch Corporation -Architects & Planners

To Whom it May Concern:

It is a pleasure that I provide a letter of recommendation for work done by GatorSketch Corporation on the design of our Fire Station.

Their high level of expertise in planning & design was shown throughout the process.

The staff was professional and on time with every phase of all their deliverables and showed a high level of dedication and concern to the project.

GatorSketch is very knowledgeable in Fire Station design and NFPA requirements that are needed to help keep our firefighters safe.

GatorSketch has a great team and I would recommend them for any future building project in our city and also would recommend GatorSketch to anyone needing their services.

If you have any additional questions regarding my interactions with Gatorsketch or their representatives, please don't hesitate to contact me.



Randy Brasher

Fire Chief

City of Mascotte

Office-352-557-8823

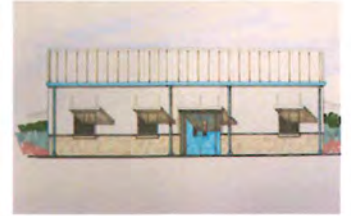
Cell- 352-267-9514

firechief@cityofmascotte.com

KISSIMMEE PUBLIC WORKS COMPOUND PROJECT

Kissimmee, Florida

COMMERCIAL ■ INSTITUTIONAL ■ MEDICAL ■ MUNICIPAL ■ RESIDENTIAL



CLIENT

CITY OF KISSIMMEE

Dave Derrick
Director of Public Works &
Eng.
101 N. Church Street Ste 301
Kissimmee, FL 34741
(407) 518-2170
dderrick@kissimmee.org

TEAM

Architect

GatorSketch Corporation
Roger A. Pierce, Principal
Mike Latham, Project Mgr.

MEP Engineer

KLG, LLC

Structural Engineer

SMADA Consultants, LLC

Site Engineer

B&H Consultants, Inc.



DESCRIPTION

This public works project consists of a variety of new buildings and an addition including a 3200 sf. sanitation building, a 5300 sf. welding/paint shop, a 1000 sf. sanitation warehouse, 3 covered parking structures (2700 sf. total) 2 hazardous materials buildings (500 sf.) a covered truck clean out area and a supervisor storage building at 2400 sf.

CONSTRUCTION COST

Estimated to be \$2.4 million.

1000 E. Hwy 50, Ste. 201A., Clermont, FL 34711 407.608.5677 office • 888.599.4814 fax
gatorsktch.com Registered Architects: AA26002310



November 7, 2012

Michael B. Latham A.I.B.D.
President
GatorSkitch Corporation
1295 West Hwy 50, Suite B
Clermont, FL 34711

To Whom It May Concern:

The City of Kissimmee awarded a \$270,000 project to GatorSkitch Corp. to provide architectural and engineering services for our new 3200 s.f. Sanitation Division Building along with other associated improvements at our Public Works Service Center Complex.

- 1000 s.f. renovation to Building I " Supervisor Storage building"
- 1200 s.f. addition to Building I " new water lab and storage"
- 2100 s.f. new industrial paint booth Building C
- 6067 s.f. remodel of Building B "Weld Shop, hydraulic shop, machine shop and offices.
- 1600 s.f. of equipment parking areas at Building H
- 3670 s.f. ware house building for Sanitation and Traffic divisions
- Two 128 s.f. hazardous material buildings
- Two 1200 s.f. equipment parking areas, Buildings G2 and G3

To date, they have been very responsive and, still on schedule despite numerous changes and modifications due to the site conditions and FAA requirements. Communication between parties has been excellent.

I would recommend them for any similar projects you may have. If you have any additional questions or would like to discuss this in more detail, please feel free to contact me directly either by email: dderrick@kissimmee.org or by phone: 407.518.2164.

Sincerely,

A handwritten signature in cursive script that reads "Derrick".

David L. Derrick
Public Works & Engineering Director

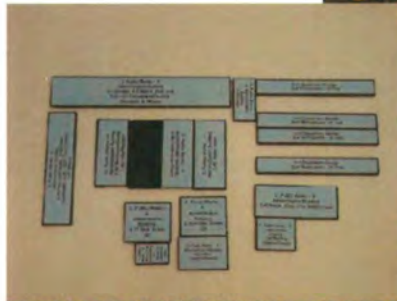
Public Works & Engineering

City of Kissimmee • 101 N. Church Street, Suite 301 • Kissimmee, FL 34741 • Phone 407.518.2170 • Fax 407.518.2165

****City of Tavares Phase 1 Report based on Study and Charrette**

City of Tavares Public Works Complex

Phase 1: Project Definition



Final Report
Date: 8/5/2019

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Executive Summary

1. Project Definition Phase Goals and Objectives:

- **Goals:**
 - Define a Design Direction for the City of Tavares Public Works Complex including Probable Cost and Implementation/Phasing Plan(s) to address your current and future staff, space and facility needs.
- **Objectives:**
 - Obtain Data/Information Components.
 - Complete Strategic Planning to define historical and future influences/trends that define how you do business.
 - *Analytics and Projection Modeling*
 - Complete Staff and Architectural Space Programming to define your 10 and 20 year needs.
 - *Staff and Architectural Space Program*
 - *Parking Projections and Partially Enclosed/Surface Lot Vehicle and Equipment Parking*
 - Define a means to address the established needs, Probable Cost and Implementation Plan
 - *Charrette and Post-Charrette*
 - *Statement of Probable Cost*
 - *Implementation/Phasing Plan*

2. Project Components:

The Project consists of three major component groups and

- **A. Finance Purchasing and Records Storage**
 - *Purchasing Storage (Includes Administration)*
 - *Records Storage*
- **B. Lake Technical College:**
 - *Administration*
 - *Automotive Program*
 - *Diesel Program*
 - *Support Space*
- **C. Public Works**
 - *Facilities Management*
 - *Fleet management*
 - *Parks management*
 - *Public Works Administration*
 - *Right of Way Management*
 - *Solid Waste Management*
 - *Streets Management*
 - *Support Space*

3. Approach and Methodology (Appendix A):

Phase 1 – Project Definition utilized a four step approach and methodology to achieve the goals and objectives of the project. This process progressively evolved the information and incorporated inherent checks and balances to confirm the major conclusions of each step:

STEP 1: STRATEGIC PLANNING & PROGRAMMING	Development/Issuance of Information/Data Request and Questionnaires. Draft Staff and Architectural Space Programs. Projection Modeling. Development of Space Standards. Draft Parking Projections.
STEP 2: PRE-CHARRETTE	Development of Charrette Strategy, Creation of Charrette Tools and Power Point.
STEP 3: CHARRETTE	Conduct Charrette with the Three User Groups. Confirm Projection Modeling, Staff/Space Programs. Development of Building and Site Options utilizing Space Blocks.
STEP 4: POST CHARRETTE/ CONCEPTUAL DESIGN	Revise Charrette Information/Documents. Develop Conceptual Building and Site Diagrams. Draft and Final Statement of Probable Cost. Establish Implementation/Phasing Plan. Draft/Final Project Definition Phase reports and presentations.

4. Projection Modeling (Appendix B):

Projection Modeling included defining a potential population of the City of Tavares, as well as the potential staff and space needs in ten (2029) and twenty (2039) year increments. The population projections were based upon two methods, Historic Data (Census0 and BEBR (Bureau of Economic and Business Research – University of Florida). Each method utilized a progression and four algorithms (Linear, Exponential, Power and Logarithmic) to establish potential growth scenarios. A Planning Model (BEBR Progressive) was established for each milestone date. This Planning Model established a perspective tool to evaluate the Staff and Architectural Space Programming:

City of Tavares Population Projections - BEBR Pro2ressive						
Estimated 2019	2029			2039		
	Low	High	Planning Model	Low	High	Planning Model
16,939	26,992	33,487	30,038	29,884	38,553	38,553

Projection Modeling Summary:

2019 Staff and Space Program	Population	Staff	DGSF
• Finance Purchasing/Records	16,939	0	17,148
• Lake Technical College		8	41,420
• Public Works		32	27,683
Total		40	86,251
2029 Planning Model	30,038		
• Finance Purchasing/Records		0	31,081
• Lake Technical College		23	99,757
• Public Works		108	63,562
Total		131	194,400
2039 Planning Model	38,553		
• Finance Purchasing/Records		0	39,891
• Lake Technical College		30	128,036
• Public Works		139	81,581
Total		169	249,508

• Does not include Streets Management added during Step 4 - Post Charrette

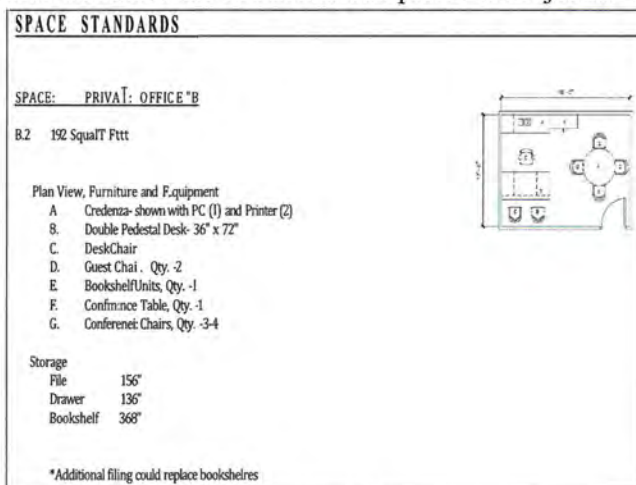
5. Space Terminology:

Abbreviations are utilized by the Projection Modeling and Architectural Space Program to define specific types of space:

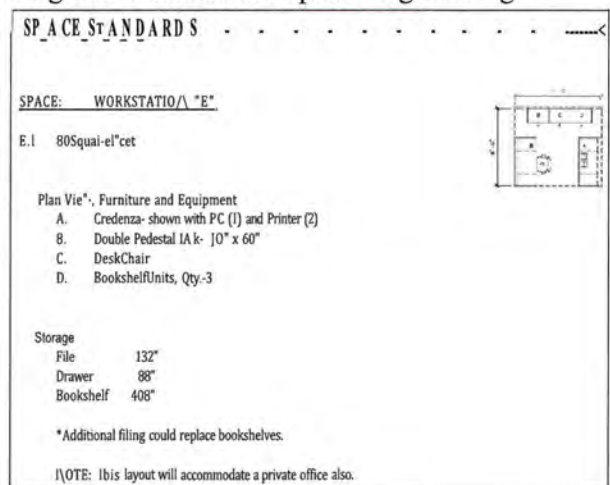
- **Net Square Feet (NSF)** = Area defining the interior dimension of a space.
- **Department Gross Square Feet (DGSF)** = NSF + Walls defining the spaces and internal circulation within a department to access each space.
- **Building Gross Square Feet (BGSF)** = DGSF + General Circulation to access each Department and the width of exterior walls.
- **Grossing Factor:** a multiplier applied to the NSF to determine a DGSF planning area and to DGSF to define the BGSF.

6. Space Standards (Appendix C):

Space standards define the size of each space necessary to efficiently and effectively perform a task or function. Diagrams associated with each space standard assist with user with understanding the capabilities of the space. These standards are utilized to complete the Projection Modeling and Architectural Space Programming.



Example Office Space Standard Diagram



Example Workstation Space Standard Diagram

7. Staff and Architectural Space Program (Appendix D):

The architectural space program defines the anticipated space that may be needed in ten (2028) and twenty (2038) years:

Component	2019		2029		2039		Notes
	Staff	DGSF	Staff	DGSF	Staff	DGSF	
Finance Purchasing/Records	4	18,417	4	18,606	4	18,759	1
Lake Technical College	8	42,320	10	51,566	13	63,365	2
Public Works	35	28,974	55	30,346	65	31,146	
Total Staff/DGSF	47	89,711	69	100,518	82	113,270	

General Notes:

1. 2019 Based upon questionnaire responses, and subsequent confirmation.
2. Does not include Streets Management added during Step 4 - Post Charrette

Table Notes:

1. Assumes fixed storage except records and that frequency of purchasing will increase. No Questionnaire Received, Staff added during Charrette.
2. Assumes Emergency Vehicle Tech. will share space with Automotive and Diesel Programs

8. Existing, Projected and Programmed Evaluation:

An evaluation of the existing 2019 staff and space, projection modeling and the staff/architectural space programs was conducted to evaluate the conclusions of the staff and space programming:

Component	2029 Planning Model		2039 Planning Model		2029 Staff and Space Program		2039 Staff and Space Program	
	Staff	DGSF	Staff	DGSF	Staff	DGSF	Staff	DGSF
Finance Purchasing/Records	0	31,081	0	39,891	4	18,606	4	18,759
Lake Technical College	23	99,757	30	128,036	10	51,566	13	63,365
Public Works	108	63,562	139	81,581	55	30,346	65	31,146
Total Staff/DGSF	131	194,400	169	249,508	69	100,518	82	113,270
Total BGSF		204,120		261,983		92,230		108,886

- Does not include Streets Management added during Step 4 - Post Charrette

Deviations between the projection modeling and programmed are atypical and extreme. The projection modeling assumes a growth ratio consistent with population. The staff and architectural space programs focus on the specific details of each department/division based upon information received from the questionnaires. Discussions with the User Groups during the Charrette concluded that Staff and Space Programs were substantially accurate, with modifications discussed during the Charrette and that the planning and design should consider future additions to address staff and space needs that may occur over the life cycle of the facilities.

9. Parking Projections (Appendix E):

Parking projections are based upon the 2039 staff program and include parking spaces for staff, visitors and special events. A non-concurrent use factor (NCUF) is applied assuming that not all spaces will be required at any one time. This factor adjusts the total number of spaces at each anticipated facility to that recommended:

Component	Subtotal	NCUF	2038	Notes
Finance Purchasing/Records	9	61%	6 - 10	
Lake Technical College	158	75%	90-100	
Public Works	129	75%	90-100	(1).
Total	290	64%-72%	186-210	

Table Notes:

1. Fully and partially enclosed, surface lot parking and other site amenities required by Public Works are included in Vehicle and Equipment Requirements.

10. Partially Enclosed and Surface Lot Vehicle and Equipment Parking (Appendix F):

Public Works required additional parking considerations including partially enclosed and surface lot areas for vehicles and equipment parking. A table to document the type of vehicle/equipment, sizes and type of enclosure was issued to Public Works. The received information was translated into the type and size of area required for parking:


Public Works On Site Parking Spaces							
Component	No. of Spaces	Size of Parking Space		Total Length	Grossing Factor	Adjusted Length	Parking Space Notes:
		Length	Width				
Garbage/Claw Truck	11	36	14	352	30%	396	1. Grossing Factor to allow for walking space between stacked vehicles/equipment.
Surface Lot	46	48	12	1,715	30%	2,230	2. Surface lot space length based upon largest vehicle/equipment
Partial Enclosure	12	24	12	220	30%	286	
Total Parking Spaces	69 - 71			2,287		2,912	3. Adjusted surface lot spaces: 48
Other Site Amenities							
Component	No. of Spaces	Size of Space		Total Area SF	Other Site Amenities Notes:		
		Length	Width				
Bulk Stor. Bins	0	20	20	0	1. Bulk storage to remain at remote site		
Green Houses	3	100	30	1,200	2. Green Houses requested by Parks		
Total	8			1,200			

11. Charrette (Appendix K):

A Charrette was conducted on April 30th, 2019 with each of the three User Groups. The Charrette philosophy, goals and objectives can be summarized as follows:

- **Charrette Philosophy:**
 - There are No dumb ideas!
 - Everyone has a say.
 - Leave no stone unturned.
 - Build Consensus for Conclusions.
 - Everyone will know the What, Why and When.
- **Charrette Goals and Objectives:**
 - Establish Critical Adjacencies.
 - Define a General Building and Site Organization.
 - Build Consensus for Conclusions.

The major conclusions of the Charrette can be summarized as follows:

User Group: Lake Technical College	
	<ul style="list-style-type: none"> - Staff and Space Program <ul style="list-style-type: none"> ▪ Utilize 2019 Staff and Space Program due to anticipated project budget ▪ Add the following spaces and/or program components: <ul style="list-style-type: none"> o Breakroom - 400 NSF o 2 tier student lockers o Server Room o Centralized Audio/Visual - Remotes in each classroom o Emergency Shower to serve each group of bays o 1 Classroom to be a Computer Room for 20 to 30 o Student Toilet Rooms
Preferred Building Option	



Preferred Site Option

- o Staff Toilet - Unisex
- o Eliminate 2,500 NSF Bay Classroom
- o All bays to be 20' wide x 30' long
- **General**
 - Eave height in bays to be 22' above finished floor.
 - Add a transaction window form the Admin. Assist to the Lobby
 - Possible use of skylights in bays
 - Green houses will be donated to the Public Works
 - Diesel and Automotive Collision programs/bays can be group together.
 - Automotive Mechanics to be separated from Auto Collision and Diesel Programs.
 - Centralize Support spaces and classrooms between the program wings.
 - Define a separate structure for the semi-truck wash and Sand blasting with access to each program wing thereafter

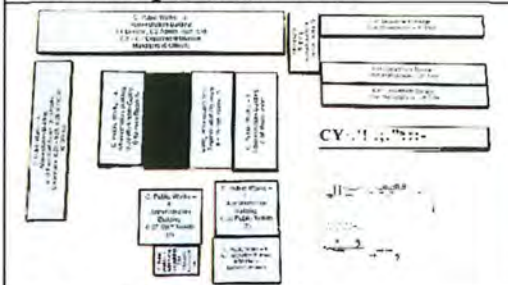
User Group: Finance Purchasing and Records Storage



Preferred Site Option




- **Staff and Space Program**
 - Add Office Components
 - o 1 Purchasing Manager Office
 - o 1 Buyer's Office
 - o 2 Clerical Workstations with one dedicated to the Warehouse Foreman
 - o Small Lobby
 - o Workroom/Galley to also serve as Storage
 - o 1 Small Conference Room to also serve as a Breakroom
 - o 1 small Files Room
 - Confirm space for receiving prior to storage distribution
 - Confirm space for items distribution via a motorized pallet lift (No Forklift Anticipated)
- Items will be delivered by a variety of means including a semi-tractor/trailer, straight truck and van.
- Provide loading dock and overhead door receiving - 8' wide x 10' high
- Delivery, Receipt, Distribution and Receipt Scenario:
 - All deliveries will report to the office.
 - The Warehouse Foreman will meet the delivery driver and monitor delivery to warehouse.
 - The Warehouse Foreman will distribute the items to the appropriate storage locations.
 - Items to be obtained for the warehouse:
 - o A purchase order will be presented at the office.
 - o The Warehouse Foreman will retrieve the item from the warehouse.
 - o The requestor will obtain the item at the warehouse overhead door.
- Fertilizer, pipes and other similar items will be delivered directly to the user and not stored at the warehouse.

User Group: Public Works



Preferred Building Option - Administration

- **Staff and Space Program**
 - Add or delete the following spaces and/or program components:
 - o Delete the administration storage for each department
 - o Move all the Fleet Services Staff to the Fleet Services Building
 - o Server Room
 - o Centralized Audio/Visual - Remotes in each classroom
 - o Emergency Shower to serve each group of bays
 - o 1 Classroom to be a Computer Room for 20 to 30

	<ul style="list-style-type: none"> o Student Toilet Rooms o Staff Toilet- Unisex o Eliminate 2,500 NSF Bay Classroom o All bays to be 20' wide x 70' long
<p>Preferred Building Option - Fleet Services</p>	<p>- General Planning</p>
	<ul style="list-style-type: none"> ▪ Eave height in Fleet Services Building bays to be 22' above finished floor. ▪ Add a transaction window from the Assistant(s) to the Lobby, assistants to be located adjacent to lobby. <ul style="list-style-type: none"> o Administrative assistants to be grouped together. ▪ Administration Public Toilets are to be adjacent to the conference room/lobby.
<p>Preferred Building Option - Physical Environment Services</p>	<ul style="list-style-type: none"> • Add second conference room adjacent to the programmed conference room with operable partition and total seating for up to 40.
	<ul style="list-style-type: none"> ▪ Add Sign Shop to Physical Environment Services Building. ▪ No oil change pit in Fleet Services Building. ▪ Add 2 bays for a total of 8 bays initially with 2 bays as alternate in Fleet Services Building. ▪ Security fence around perimeter of site. ▪ Bulk Storage is to remain at remote site.
<p>Preferred Site Option</p>	

12. Post Charrette/Conceptual Design (Appendix H):

The Post-Charrette step was initiated with the development of a Statement of Probable Cost based upon the information developed by Step 1 as modified by during the Charrette. This initial total project budget included the following components:

A. Finance Purchasing Storage and Records, Public Works Storage

Total Project Budget Component	Total Project Budget Range of Probable Cost		
	Low	Mean	High
Lake Technical College			
<i>Hard Construction Cost</i>	\$10,043,484	\$10,857,821	\$11,672,158
<i>Soft Cost Construction Related</i>	\$2,404,963	\$2,599,960	\$2,794,957
<i>Soft Cost Occupancy Related</i>	\$1,331,439	\$1,439,393	\$1,547,348
Subtotal	\$13,779,886	\$14,897,174	\$16,014,462
Finance Purchasing Records and Storage, Public Works			
<i>Hard Construction Cost</i>	\$8,756,089	\$9,466,042	\$10,175,995
<i>Soft Cost Construction Related</i>	\$2,116,296	\$2,287,888	\$2,459,479
<i>Soft Cost Occupancy Related</i>	\$928,951	\$1,004,271	\$1,079,592
Subtotal	\$11,801,336	\$12,758,201	\$13,715,066
Total Project Budget			
Subtotal All	\$25,581,222	\$27,655,375	\$29,729,528
Owner Project Contingency (5%)	\$1,279,061	\$1,382,769	\$1,486,476
Total Project Budget	\$26,860,283	\$29,038,144	\$31,216,005

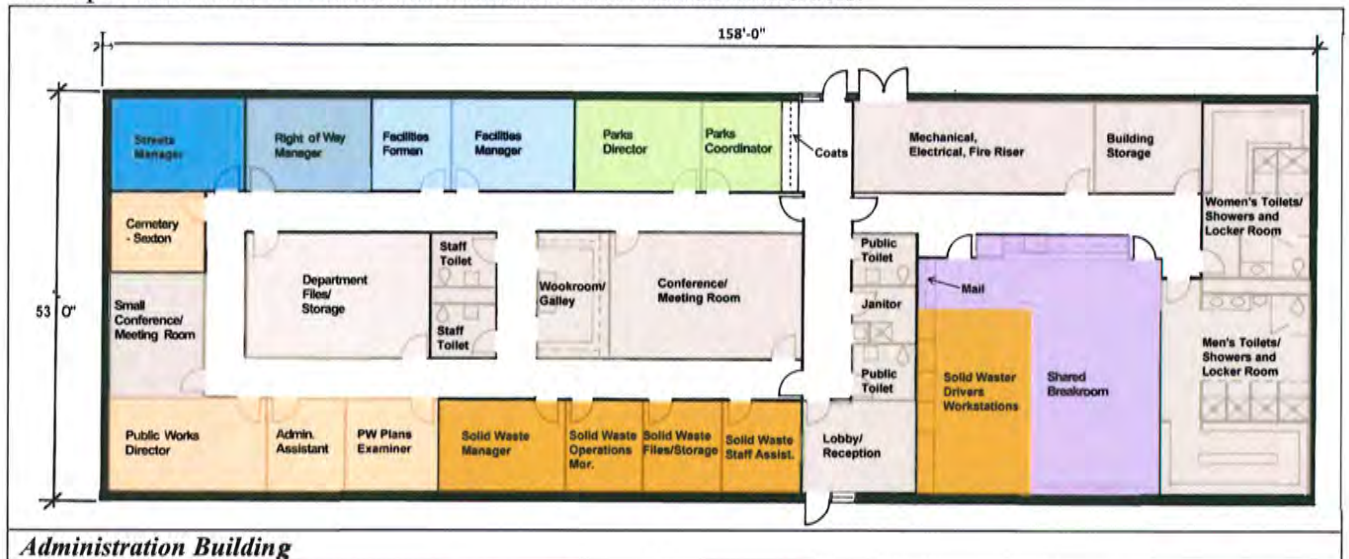
Review of the Total Project Budget concluded that the *Hard Construction Cost* greatly exceeded the available funding of approximately \$4,000,000 for Lake Technical College and approximately \$6,000,000 for Finance Purchasing Records/Storage and Public Works. Consequently it was determined to implement the project in phases as follows:

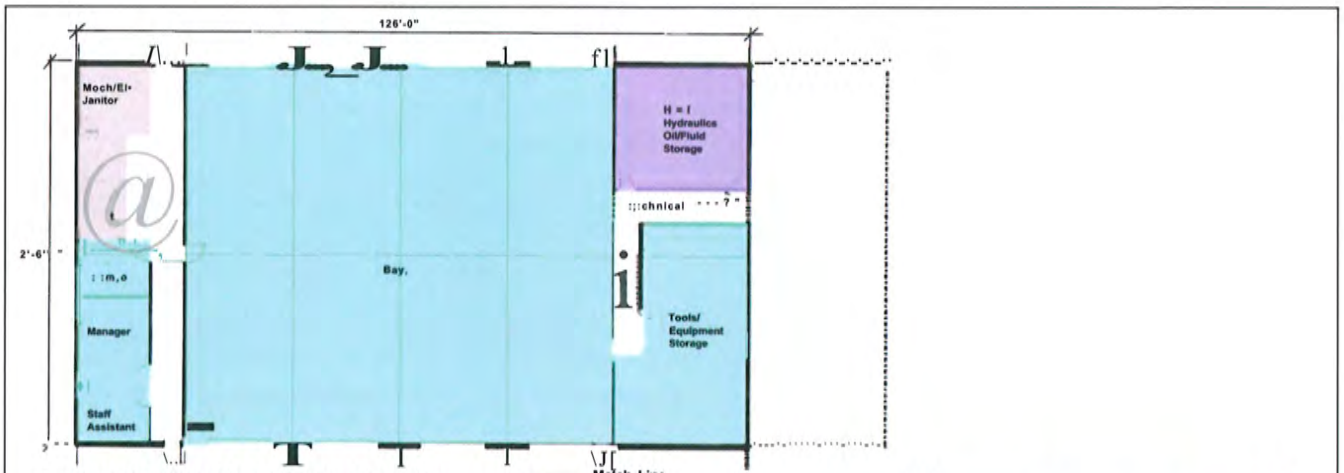
- Phase 1:
 - Lake Technical College Diesel Program Only to be combined with the Public Works Fleet Maintenance and define shared spaces to reduce the facility square footage.
 - Public Works Storage only of the Finance Purchasing Records and Storage Component. Finance Purchasing Records and Storage is anticipate to be accommodated in an existing building at the Wastewater Treatment Facility to the greatest extent possible and records storage is anticipate to remain at its current location.
 - Public Works facilities:
 - Administration
 - Fleet Maintenance
 - Physical Environment Services
 - Partially Enclosed Vehicle and Equipment Storage and Parking
 - Surface Lot Vehicle and Equipment Storage and Parking
 - Related Infrastructure Improvements
- Future Phases:
 - Lake Technical Administration, Automotive and Collision Programs
 - Greenhouses
 - Bulk Storage Bins
 - Related Infrastructure Improvements

Furthermore, the Architectural Space Program was re-evaluated to reduce space and define the Phase 1 square footage:

Component	2019		2029		2039	
	Staff	DGSF	Staff	DGSF	Staff	DGSF
Public Works Storage	0	10,026	0	10,026	0	10,026
Lake Technical College	3	10,631	3	10,631	3	10,631
Public Works	34	23,186	34	23,706	34	24,052
Total Staff/DGSF	37	43,843	37	44,363	37	44,709

Once the scope of work was more constantly aligned with the available funding, conceptual design diagrams were developed and issued for review and comments to the users/stakeholders:





Conceptual Fleet Maintenance Floor Plan Diagram

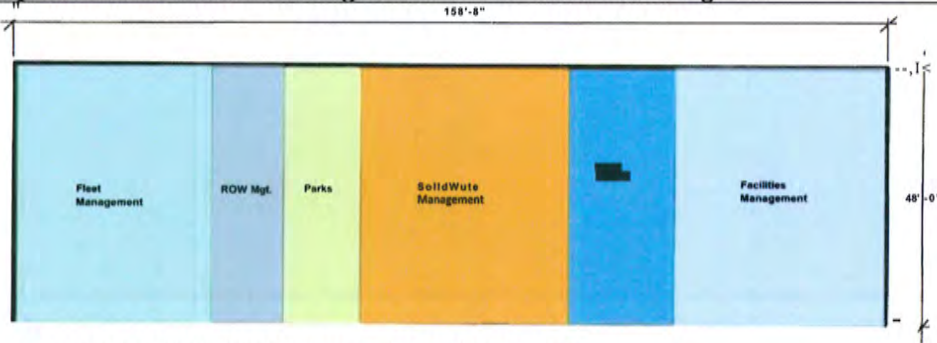
Scale: 1/8" = 1'-0"



Conceptual Lake Technical College Floor Plan Diagram

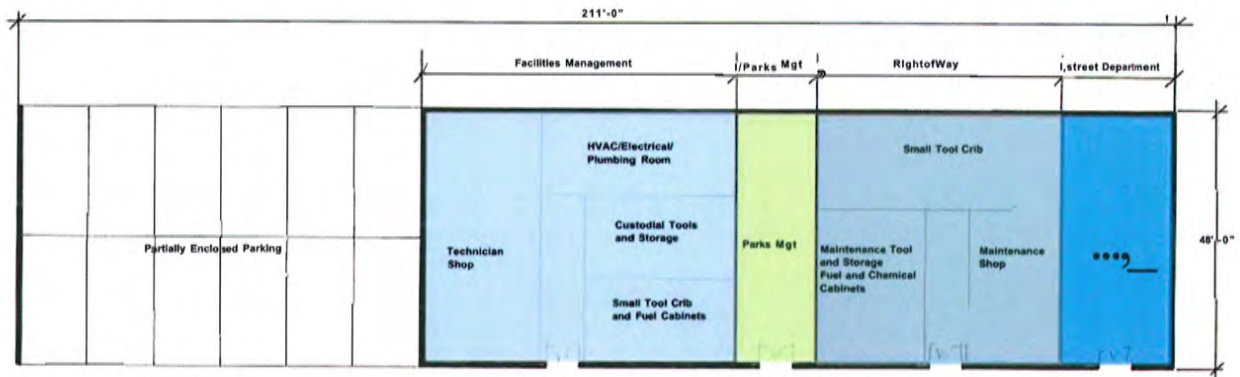
Scale: 1/8" = 1'-0"

Top: Fleet Maintenance Building. Bottom: Lake Technical College



Conceptual Public Works Storage Floor Plan Diagram

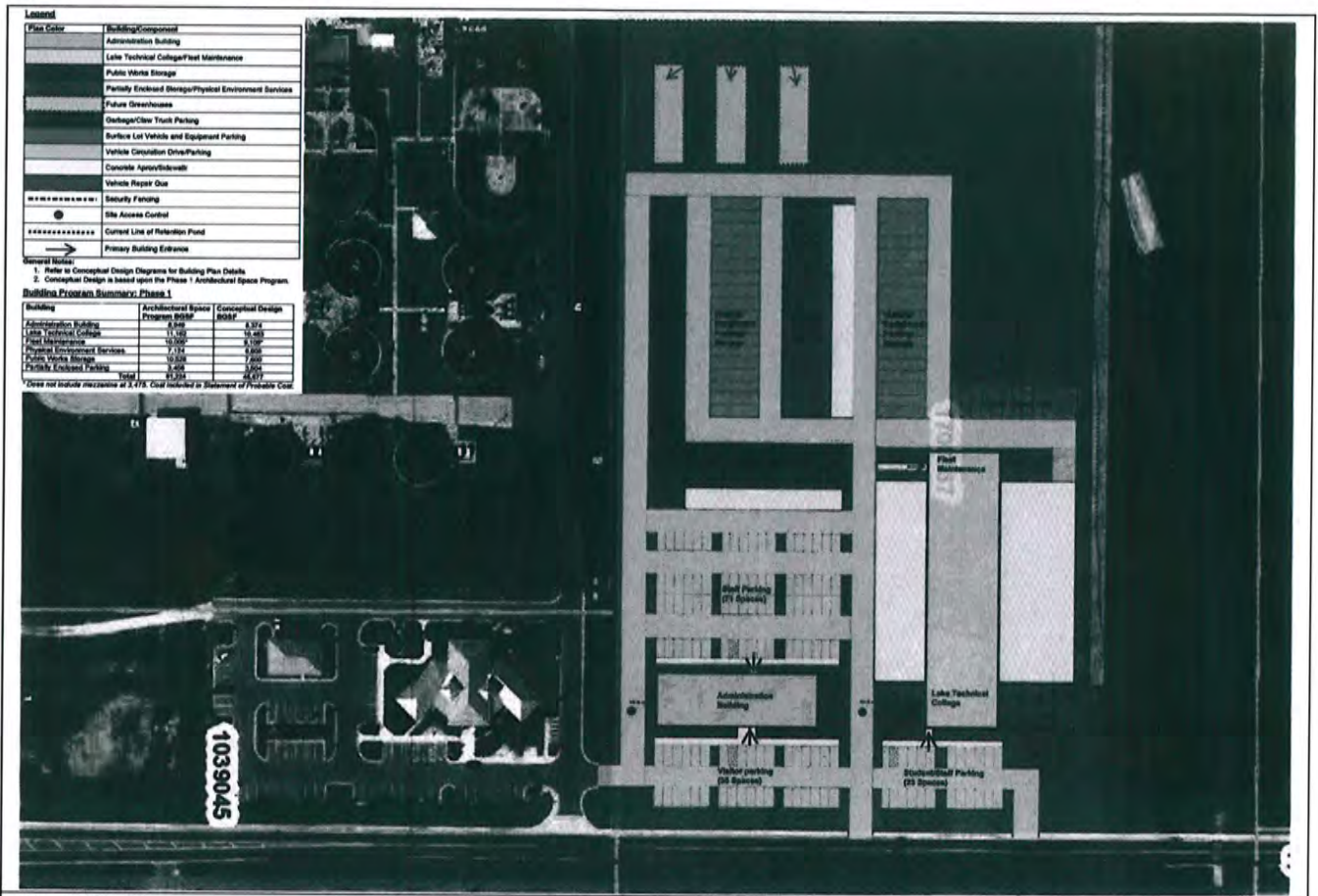
Scale: 1/8" = 1'-0"



Conceptual Partially Enclosed Storage and Physical Environment Services Floor Plan Diagram

Scale: 1/8" = 1'-0"

Top: Public Works Storage. Bottom: Partially Enclosed Storage and Physical Environment Services



Site Plan Diagram

The Conceptual Design Diagrams realized additional square footage reductions due to beneficial relationships and reduction of the architectural space program grossing factors associated with the design efficiency:

Buildings	Architectural Space Program BGSF	Conceptual Design BGSF
Administration Building	8,949	8,374
Lake Technical College	11,162	10,483
Fleet Maintenance	10,005*	9,108*
Physical Environment Services	7,124	6,608
Public Works Storage	10,528	7,600
Partially Enclosed Parking	3,456	3,504
Total	51,224	45,677

* Does not include mezzanine at 3,475. Cost included in Statement of Probable Cost.

Comments received from the Users/Stakeholders based upon the Conceptual Design Diagrams will be addressed by the next design phase. Comments received can be summarized as follows:

- **Administration Building - James Dillon**
 - Area designated as coats will be used for uniforms.
- **Solid Waste - Jeff Henderson**
 - Require a Post Trip area near Fleet Maintenance.
 - o Should be a pull off area
 - o Need access to water, air and fluids
 - 20 year parking need is 16 trucks
 - On Sheet A103 - Solid Waste storage will need side walls, pallet rack, and 6' fence and double gate at front
 - There department has paper storage requirements in filing cabinets
 - In break room at the driver touch down area, they will need Dry erase board for assignments
- **Streets - John Russo**
 - Vehicle inventory checks out based on inventory document

- o Future vehicles requiring parking - Patch Truck & f350 Truck
- As staff is added they will need to use touch down area in breakroom
- It would be nice to have a work space for a foreman.
- The Sign shop will have to be under air and will need a work station with data.
- **Right A Way - Wendell Hunt**
 - The fleet inventory list and all is accurate.
 - o These vehicles need to be under cover and are not marked as such: 126, 138, and 477.
 - Vehicles that are parked at another facility and will not be on Public Works compound: 114,429, and 437.
 - Wendell requested to have his foreman in a work space near him.
- **Parks - Traci Anderson**
 - Fleet inventory and parking is accurate.
 - Kubota tractors are at other location 429 & 437
 - Green houses are to be placed together with shared gutter. Green houses will require natural gas for heating and water.
 - Locate the green houses to plan north, east comer so not to interfere with future expansions.
- **Facilities - Jerad Pervis**
 - Fleet inventory and parking is accurate.
 - Vehicle PW3 is to be added to Facilities vehicle inventory
 - Future Vehicles will be added for Custodial group 4 vans
 - Future Vehicles will be added for Building group 3 Trucks
 - Two bucket trucks need to be under cover
 - Fork lift needs to be under cover as well as the loader 128 and the dumb truck 129.
 - The facilities team will need workstations and a plan table and place to store the City's as-built drawings
 - The Facilities storage area there needs to be defined by walls or a 6" fence and gates, and need ventilation.
 - Facilities will need a workstation in their shop.
- **Fleet - Charlie Pell**
 - Charlie and his team went over the fleet inventory: Add 4 vehicles added in the future.
 - At the Garbage truck parking the spaces need to be sloped to a trench drain with an oil separator.
 - Tire change/ Welding space needs to switch with Hydraulic/oil/ antifreeze space, and then it needs to mirror so Tire change space is closes to the Fleet Maintenance storage building. Tire change space needs to have a roll up door to the exterior.
 - Fleet Maintenance storage space needs to switch positions with Facilities Management.
 - The Hydraulic Hose work bench station will be located in the tools equipment storage room
 - The hydraulic/oil/ antifreeze storage space will have used and new fluid stored. There needs to be double doors to the outside for vendors to remove and add fluids.

13 tanks at 275 gals for new oil- 250 !Gals, 8,000labs	IL 7'-8"	IW 3'-9.5"	IH 3'-3"
--	----------	------------	----------

 - o 1 tank for DefBlue for Diesel trucks
 - o 3 tanks for waste oil 500 gallons ea.
 - o 1 tank for waste Anti-Freeze 275 gallons.
 - Eve height of the building is to be a minimum 22'
 - There needs to be a space for all the techs to study manuals 120 sqft
 - Welding Station needs 240 v and a roll up door to the exterior
 - A portion of the Hydraulic / oil / antifreeze space needs to be split off and become a compressor room.
 - Tire inventory kept in the bays is a two tier rack, truck tires on bottom and car tires on top, at 4' depth and 40' long
 - Add a storage space on the building at the north west comer of Fleet Maintenance for solid waste trucks post trip check out.

- **Site**
 - Locate the greenhouses to allow for future expansion of the Physical Environmental Services Building and construct them adjacent to each other.
 - Increase the width of the vehicle circulation aisle between the Physical Environmental Services Building and Vehicle Equipment/Parking to allow for backing in of trailers.

13. Historic Cost Data (Appendix I):

Design is an evolutionary process that begins with establishing a Project Definition (Current Phase). Details necessary for bidding and construction are developed during the subsequent design phases. Since this phase of the project is primarily and no detailed design has been completed, the most applicable and recent historic cost data available is utilized to define square foot costs. In this case, cost data from the recently bid and currently under construction City of Fort Walton Beach Public Works Complex was utilized. The information provided by the Architect and Construction Manager was reviewed, structured and adjusted to be consistent with the anticipated City of Tavares proposed project.

14. Phase 1 Statement of Probable Cost and Project Implementation/Phasing Plan (Appendix J):

The Statement of Probable Cost is defined by three major components and inflationary factors as required to adjust 2019 costs to the anticipated bid/construction start date:

- **Hard Construction Cost:** Also known as "Bricks and Mortar", these costs include the actual cost of construction, renovation and/or additions and the related site improvements.
- **Soft Costs Construction Related:** These costs are related to design, bidding, permitting and financing the project. Included in this cost group are things like soil borings, surveys, design fees, as well as financing, permitting, attorney fees, etc.
- **Soft Costs Occupancy Related:** These costs are associated with occupying the building and include furniture, equipment, audio/visual, as well as information technology, telephone, etc.
- **Inflationary Factor:** Inflationary Factors adjust the 2019 Hard Construction Costs to the anticipated start date of the proposed implementation phase and consider additional inflationary costs that may be incurred as part of the phase duration.

Costs are based upon historical hard construction square foot cost data and include contingencies appropriate for the level of design completed. The aggregate sum of these costs equals the Total Project Budget. Also, a range of the Total Project Budget for each component has been established to account for potential variables in the bidding, labor and material climate costs. The general goal is to be prepared for the Mean cost, design to accomplish the Low cost, but be prepared for the High cost:

Phase 1 Total Project Budget Component	Total Project Budget Range of Probable Cost		
	Low	Mean	High
Lake Technical College			
<i>Hard Construction Cost</i>	\$ 2,369,382	\$ 2,561,494	\$ 2,753,606
<i>Soft Cost Construction Related</i>	\$ 578,202	\$ 625,084	\$ 671,965
<i>Soft Cost Occupancy Related</i>	\$ 314,103	\$ 339,571	\$ 365,038
Subtotal	\$ 3,261,687	\$ 3,526,148	\$ 3,790,609
Owner Project Contingency (5%)	\$ 163,084	\$ 176,307	\$ 189,530
Total Lake Technical College Project Budget	\$ 3,424,771	\$ 3,702,455	\$ 3,980,139
Public Works			
<i>Hard Construction Cost</i>	\$ 5,492,343	\$ 5,937,668	\$ 6,382,993
<i>Soft Cost Construction Related</i>	\$ 1,375,127	\$ 1,486,623	\$ 1,598,120
<i>Soft Cost Occupancy Related</i>	\$ 941,060	\$ 1,017,362	\$ 1,093,664
Subtotal	\$ 7,808,530	\$ 8,441,654	\$ 9,074,778
Owner Project Contingency (5%)	\$ 390,427	\$ 422,083	\$ 453,739
Total Public Works Project Budget	\$ 8,198,957	\$ 8,863,737	\$ 9,528,517
Total Project Budget			
Total Project Budget	\$ 11,623,728	\$ 12,566,192	\$ 13,508,656

CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)

2/27/2020

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must have ADDITIONAL INSURED provisions or be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer any rights to the certificate holder in lieu of such endorsement(s).

PRODUCER: USI Insurance Services, LLC, 2502 N Rocky Point Drive, Suite 400, Tampa, FL 33607. CONTACT NAME: USI Insurance Services, LLC. PHONE (A/C, No, Ext): 813 321-7500. FAX (A/C, No): 813 321-7525. INSURER(S) AFFORDING COVERAGE: INSURER A: Sentinel Insurance Company Ltd. (NAIC # 11000), INSURER B: Travelers Casualty and Surety Company (NAIC # 19038), INSURER C: XL Specialty Insurance Company (NAIC # 37885).

COVERAGES CERTIFICATE NUMBER: REVISION NUMBER:

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

Table with columns: NSR LTR, TYPE OF INSURANCE, ADDL INSR, SUBR WVD, POLICY NUMBER, POLICY EFF (MM/DD/YYYY), POLICY EXP (MM/DD/YYYY), LIMITS. Rows include Commercial General Liability, Automobile Liability, Umbrella Liability, Workers Compensation and Employers' Liability, and Professional Liability.

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required) Professional Liability coverage is written on a claims-made basis. Specific Client Excess: \$2,000,000 per claim, \$2,000,000 aggregate.

CERTIFICATE HOLDER: For Proposal Purposes. CANCELLATION: SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS. AUTHORIZED REPRESENTATIVE.

QUESTIONS AND ANSWERS

Request for Qualifications 2020-01 – Professional Architectural Services

Question: *Does page 1 of the RFQ document serve as the cover sheet?*

Answer: Yes.

Question: *And does this count towards the 50-page limitation?*

Answer: Yes.

Question: *Due to the page limitation, would the city allow proposers to redesign the forms if all required information is still included?*

Answer: The forms may be reconfigured provided that all information still remains and provided that the other restrictions in the RFQ are maintained, as stated below:

Page Limitation, Size, and Format – Responses are limited to a total page count not to exceed 50 pages. This count includes all response content to include completed City Forms 1A, and 1 through 5. Page size shall be 8.5 x 11 inches, not including foldouts. Pages may be single-spaced. The text size should be 11 point or larger. Use at least one (1) inch margins on the top and bottom and three-quarter (3/4) inch side margins. Pages shall be numbered sequentially by section. Legible tables, charts, graphs, and figures shall be used wherever practical to depict organizations, systems and layouts, implementation schedules, plans, etc. These displays shall be uncomplicated, legible and shall not exceed eleven (11) by seventeen (17) inches in size. Foldout pages shall fold entirely within the section, and count as a single page. Foldout pages may only be used for large tables, charts, graphs, diagrams, and schematics, and not for pages of text.

Question: *Will the city be requiring an electronic copy of the submittal as well?*

Answer: The City expects and requires hard copies, specifically the number delineated in the RFQ to be submitted in a sealed envelope. You may if you desire include an electronic copy it is not required.

Question: *Does the City have an established budget for RFQ No. 2020-01 for Professional Architectural Services?*

Answer: No.

Question: *Are subconsultants allowed to submit projects for "Form 4 – Professional Personnel for Similar Projects"? We are submitting as a sub consultant to the Architect, but I wanted to confirm if these projects are only for the Prime/JV, or if sub consultants can also submit projects for Form 4.*

Answer: Both can submit. They should indicate the projects related to the architect versus the subconsultant.

June 30, 2020

<https://www.fruitlandpark.org/citymanager/page/professional-architectural-services>



GatorSkitch
ARCHITECTS & PLANNERS
gatorskitch.com

**CITY OF FRUITLAND PARK
REVIEW COMMITTEE**

July 16, 2020

City Hall Commission Chambers
506 W. Berckman Street
Fruitland Park, FL 34731

2:00 p.m.

The City of Fruitland Park Review Committee on Notice of Request for Qualifications (RFQ) Number 2020-01 for professional architectural services was held on Thursday, July 16, 2020 at 2:00 p.m. with the following members present:

City Manager Gary La Venia, City Treasurer Jeannine Racine, and Community Development Director Tracy Kelley

Mr. La Venia convened the review committee meeting at 2:00 p.m.

By unanimous consent, the committee recessed its meeting to the 2:00 p.m. Request for Qualifications 2020-02 Professional Grant Writing Services Bid Opening and reconvened the review committee for RFQ 2020-01 at 2:02 p.m.

The review committee reviewed and ranked the following firms with the total points (copies of the ranking sheets are filed with the supplemental papers to the minutes of these proceedings):

- | | | |
|----|---|------------------------|
| 1. | Architects Design Group, Winter Park | 200 points |
| 2. | Blaise, Fiebach and Associates PA, Leesburg | 210 points, and |
| 3. | GatorSketch Corporation, Architects and Planners, Clermont | 245 points |

Upon Mr. La Venia's suggestion and **by unanimous consent, the Review Committee recommended that the city commission consider the firms' presentations at its July 23, 2020 regular meeting.**

The proceedings concluded at 2:07 p.m.

This synopsis represents the city clerk's record of the proceedings. Any misunderstandings or incorrect statements, please notify this office within five (5) days of receipt. If no corrections are received within this period, this document will be considered to be an accurate account of the events.

Attest:



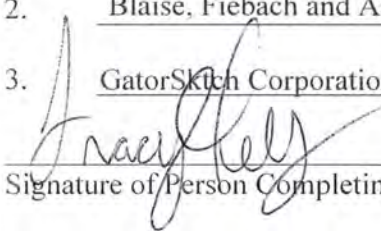
Esther Coulson, City Clerk, MMC



4. Ability to Complete Projects Within Budget - 15 Points - 10 Points - 0 Points	15	15	15
5. Current and Projected Workloads - 10 Points - 5 Points - 0 Points	5	10	0
6. Location of Local Office - 10 Points – (Office Established Within Lake County) - 5 Points - Office Located Outside Lake County – within 40 Miles of Fruitland Park - 0 Points - Office Located More than 40 Miles from Fruitland Park	0	10	10

Note: The responses received by the deadline that contain all the required information of this RFQ will be reviewed by city staff and/or other individuals, agencies, and elected officials. This process will culminate with the identification of those considered to be the best qualified.

TOTAL	CM	SR
3 1. Architects Design Group 70 points	(75) 2	(60)
2 2. Blaise, Fiebach and Associates, PA 60 points	(80) 1A	(70)
1 3. GatorSketch Corporation 65 points	(80) 1B	(85)


Signature of Person Completing Ranking Form

CITY OF FRUITLAND PARK
REQUEST FOR QUALIFICATIONS
 2020-01 Professional Architectural Services

PS 11,000
 PD 5,000
 Fire 6,000

RANKING SHEET

PW 7,200

Firms Submitting Proposals:

1. Architects Design Group Winter Park 2. Blaise, Fiebach and Associates PA Leesburg
 3. GatorSkch Corporation Clermont 26.6m 4. _____

RANKING CRITERIA	Firm #1	Firm #2	Firm #3
1. Ability of Professional Personnel (include past performance and experience) - 40 points - 30 points - 20 points - 10 points	Team - 3 Subs - 6 Specialized (30)	Team - 1 Subs - 1 Work with BESH Signature (25)	36 Fire Stations Team - 6 Subs - 2 Simlr Pjts - 6 (35)
2. Past Performance and Experience – Firm - 10 points - 5 points - 0 points	Top Bid Orlando PD Clermont PD Dover NH PD Winter Park PS Sanford PS Mt Dora PS (5)	Ocala 7th Responders Fire + PD Village PS + Fire FP Wtr Plant Mt Dora Wtr Plant Salvation Army Golf Cart (5)	Tavares PWS Braveland PS Mascotte Fire Kissimmee PW Ltrs of Remd (10) Serall Pjts
3. Ability to Complete Projects on Time - 15 points - 10 Points - 0 Points	10	10	10

4. Ability to Complete Projects Within Budget - 15 Points - 10 Points - 0 Points	10	<i>Ability to complete projects 15 is proposed</i>	10
5. Current and Projected Workloads - 10 Points - 5 Points - 0 Points	5	10	5
6. Location of Local Office - 10 Points – (Office Established Within Lake County) - 5 Points - Office Located Outside Lake County – within 40 Miles of Fruitland Park - 0 Points - Office Located More than 40 Miles from Fruitland Park	0	10	10

Note: The responses received by the deadline that contain all the required information of this RFQ will be reviewed by city staff and/or other individuals, agencies, and elected officials. This process will culminate with the identification of those considered to be the best qualified.

TOTAL

1. 75 / Large / Thousands. Workload / Multiple projects / various assignments
2. 80 / small, has a workload with both 5.5 & 5.0
3. 85 This firm is experienced and well thought out.

Signature of Person Completing Ranking Form

CITY OF FRUITLAND PARK BID OPENING

July 16, 2020

City Hall Commission Chambers
506 W. Berckman Street
Fruitland Park, FL 34731

2:00 p.m.

The advertised Notice of Request for Qualifications (RFQ) Number 2020-02 for professional grant writing services for the City of Fruitland Park was held on Thursday, July 16, 2020 at 2:00 p.m. with the following Review Committee Members present:

City Manager Gary La Venia, City Treasurer Jeannine Racine and Parks and Recreation Director Michelle Yoder.

At 2:00 p.m., no qualification bid packages were received.

Mr. La Venia determined that the RFQ 2020-02 will be re-advertised (to include the Florida League of Cities and trade journals) and 30 days from re-advertisement, the bid opening will reassemble to determine vendor submittals.

The proceedings concluded at 2:02 p.m.

This synopsis represents the city clerk's record of the proceedings. Any misunderstandings or incorrect statements, please notify this office within five (5) days of receipt. If no corrections are received within this period, this document will be considered to be an accurate account of the events.

Attest:



Esther Coulson, City Clerk, MMC



CITY OF FRUITLAND PARK
AGENDA ITEM SUMMARY SHEET
Item Number: 6b

ITEM TITLE:	Gardenia Park Phase III Florida Recreation Development Assistance Program (FRDAP) Grant (Skate Park)
For the Meeting of:	July 23, 2020
Submitted by:	City Manager/Parks and Recreation Director
Date Submitted:	July 17, 2020
Funds Required:	Yes
Account Number:	
Amount Required:	
Balance Remaining:	
Attachments:	Bay to Bay Construction Company Proposal
Item Description: sources description.	Gardenia Skate Park amenities and funding
Action to be Taken:	Approval
Staff's Recommendation:	Approval
Additional Comments:	(Postponed from the June 11, 2020 regular meeting and addressed at the June 25 and July 9, 2020 regular meetings.)
City Manager Review:	Yes
Mayor Authorization:	Yes

Bay To Bay Construction Company

PROPOSAL NO.

SHEET NO.

DATE

PROPOSAL SUBMITTED TO:

WORK TO BE PERFORMED AT:

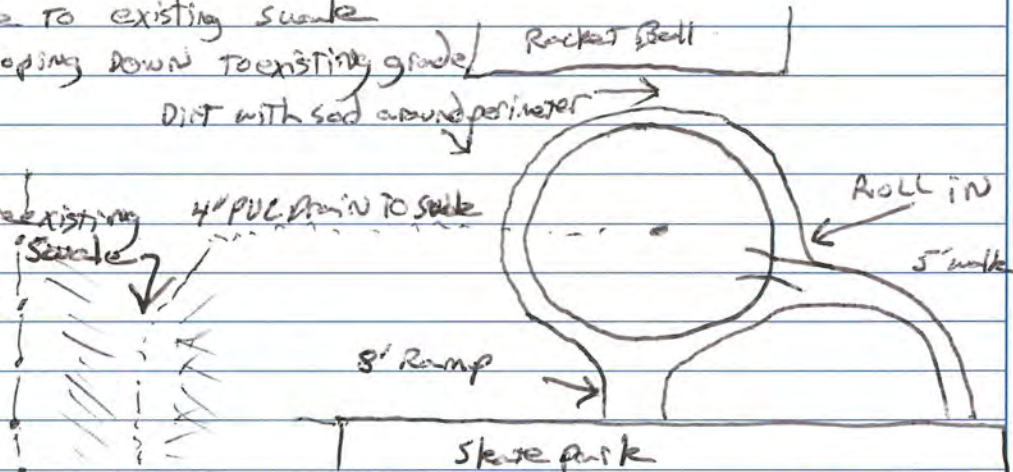
NAME City of Fruitland park	ADDRESS Gardena park
ADDRESS	skate park
PHONE NO.	ARCHITECT

We hereby propose to furnish the materials and perform the labor necessary for the completion of

20' Skate Bowl 4'6" Deep with 2" Loping on top edge
 Includes: 5' Ramp from skate park to top of Bowl with roll in entrance
 4' Flat area around top edge
 8' Ramp back to skate park
 Drain to slope to existing swale
 DIRT & sod sloping down to existing grade

Also Includes:

Engineering for concrete structure existing
 one year warranty on workman ship & materials



All material is guaranteed to be as specified, and the above work to be performed in accordance with the drawings and specifications submitted for above work and completed in a substantial workmanlike manner for the sum of

Dollars (\$ 47,800.00) with payments to be made as follows.

Any alteration or deviation from above specifications involving extra costs will be executed only upon written order, and will become an extra charge over and above the estimate. All agreements contingent upon strikes, accidents, or delays beyond our control.

Respectfully submitted

Michael S. Bailey

Per

Bay To Bay CONST.

Note — this proposal may be withdrawn by us if not accepted within _____ days.

ACCEPTANCE OF PROPOSAL

The above prices, specifications, and conditions are satisfactory and are hereby accepted. You are authorized to do the work as specified. Payments will be made as outlined above.

Signature _____

Signature _____

Date _____

**CITY OF FRUITLAND PARK
AGENDA ITEM SUMMARY SHEET
Item Number: 6c**

ITEM TITLE:	Resolution 2020-035 CardKnox CentralSquare Contract
For the Meeting of:	July 23, 2020
Submitted by:	City Attorney/City Manager/Community Development Director
Date Submitted:	July 14, 2020
Funds Required:	No
Attachments:	Merchant processing application, agreement with prefilled data, account application, and confirmation program guide.
Item Description:	Resolution 2020-035 approving Cardknox payment system for online building permitting services.
Action to be Taken:	Adopt Resolution 2020-035
Staff's Recommendation:	Approval
Additional Comments:	None
City Manager Review:	Yes
Mayor Authorization:	Yes

RESOLUTION 2020-035

A RESOLUTION OF THE CITY COMMISSION OF THE CITY OF FRUITLAND PARK, FLORIDA, APPROVING CONFIRMATION PAGE, PROGRAM GUIDE AND ASSOCIATED DOCUMENTS FROM CARDKNOX TO ALLOW FOR THE CITY TO ACCEPT CREDIT CARD PAYMENTS ASSOCIATED WITH CENTRALSQUARE TECHNOLOGIES SOFTWARE UTILIZED BY THE BUILDING DEPARTMENT; AUTHORIZING THE MAYOR TO EXECUTE THE CONFIRMATION PAGE; PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the City of Fruitland Park has an existing with CentralSquare Technologies for its building department software; and

WHEREAS, the City's existing myflorida.com payment system is not compatible with the new building department software portal; and

WHEREAS, Cardknox, a Fidelity Payment Service, is compatible with CentralSquare Technologies software; and

WHEREAS, the City Commission of the City of Fruitland Park, Florida finds it serves a municipal purpose and will be a benefit to the City to obtain the services provided for in the confirmation page and program guide.

NOW, THEREFORE, BE IT RESOLVED AS FOLLOWS:

Section 1. The Cardknox confirmation page, program guide and associated documents, **a copy of which is attached hereto**, is approved.

Section 2. The Commission authorizes the Mayor to execute the confirmation page and any other necessary documents.

Section 3. This resolution shall take effect immediately upon its final adoption by the City Commission of the City of Fruitland Park, Florida.

PASSED AND RESOLVED this ____ day of _____, 2020, by the City Commission of the City of Fruitland Park, Florida.

SEAL

**CITY COMMISSION OF THE CITY OF
FRUITLAND PARK, FLORIDA**

CHRIS CHESHIRE, MAYOR

ATTEST:

ESTHER COULSON, CITY CLERK, MMC

Mayor Cheshire	_____	(Yes),	_____	(No),	_____	(Abstained),	_____	(Absent)
Vice Mayor Gunter	_____	(Yes),	_____	(No),	_____	(Abstained),	_____	(Absent)
Commissioner Bell	_____	(Yes),	_____	(No),	_____	(Abstained),	_____	(Absent)
Commissioner DeGrave	_____	(Yes),	_____	(No),	_____	(Abstained),	_____	(Absent)
Commissioner Mobilian	_____	(Yes),	_____	(No),	_____	(Abstained),	_____	(Absent)

Approved as to form:

Anita Geraci-Carver, City Attorney

Sales Office Fidelity Payment Services Print Sales Rep Name Josh Lieberman Sales ID# 0277
 Merchant Number _____ Sales Rep. Signature _____ Phone #: _____

I. BUSINESS INFORMATION

Page 1 of 6

Client's Business Name (Doing Business As):			Client's Corporate/Legal Name (Use Also For Headquarter's Information):		
Business Address:			Billing Address (If Different Than Location Address):		
City:	State:	Zip:	City:	State:	Zip:
Location Phone #:	Location Fax #:		Contact Name:		
Business E-mail Address:			Contact Fax # / E-mail Address:		
Business Website Address:			Contact Phone #:		
Customer Service Phone #:	Customer Service E-mail Address:		Send Retrieval Requests to: <input type="checkbox"/> Business Location <input type="checkbox"/> Corp/Legal Location		
			Send Merchant Monthly Statement to: <input type="checkbox"/> Business Location <input type="checkbox"/> Corp/Legal Location		
Date Business Started:					
<input type="checkbox"/> INDIVIDUAL/SOLE PROPRIETORSHIP: State in which Certificate of Assumed Name Filed: _____ State: _____		<input type="checkbox"/> TAX EXEMPT ORGANIZATION (501C) State: _____		<input type="checkbox"/> GOVERNMENT (Federal, State, Local)	
<input type="checkbox"/> CORPORATION - CHAPTER S, C State: _____		<input type="checkbox"/> INTERNATIONAL ORGANIZATION Location Filed: _____		<input type="checkbox"/> LIMITED LIABILITY COMPANY State Filed: _____	
<input type="checkbox"/> MEDICAL OR LEGAL CORPORATION State: _____		<input type="checkbox"/> ASSOCIATION/ESTATE/TRUST State Filed: _____		<input type="checkbox"/> PARTNERSHIP State Filed: _____	
Name (as it appears on your income tax return)		FEDERAL TAX ID # (as it appears on your income tax return)		<input type="checkbox"/> I certify that I am a foreign entity/nonresident alien. (If checked, please attach IRS Form W-8.)	

NOTE: Failure to provide accurate information may result in a withholding of merchant funding per IRS regulations. (See Part IV, Section A.4 of your Program Guide for further information.)

*SIC/MCC: _____ IATA/ARC: _____ (MCC 4722 Only)

Note: *If your business is classified as High Risk and assigned (or is later assigned based upon your business activity) any of the following Merchant Category Codes (MCC): 5966, 5967 and 7841¹, then registration is required with Visa and/or MasterCard within 30 days from when your account becomes active. An Annual Registration Fee of \$500 may apply for Visa and/or MasterCard (total registration fees could be \$1,000.00). Failure to register could result in fines in excess of \$10,000.00 for violating Visa and/or MasterCard regulations.²

¹Registration for MCC 7841 is only required for non-face-to-face adult content.

²Information herein, including applicable MCCs, is subject to change.

Detailed Explanation of Type of Merchandise, Products or Services Sold:

2. ADDITIONAL CREDIT / SITE SURVEY INFORMATION - ALL MERCHANTS

<p>1. Zone: <input type="checkbox"/> Business District <input type="checkbox"/> Industrial <input type="checkbox"/> Residential</p> <p>2. Location: <input type="checkbox"/> Mall <input type="checkbox"/> Office <input type="checkbox"/> Home <input type="checkbox"/> Shopping Area <input type="checkbox"/> Apartment <input type="checkbox"/> Isolated <input type="checkbox"/> Door-to-Door <input type="checkbox"/> Flea Market <input type="checkbox"/> Other</p> <p>3. How many employees: _____</p> <p>4. How many registers/Terminals: _____</p> <p>5. Is proper license visible? <input type="checkbox"/> Yes <input type="checkbox"/> No, explain: _____</p> <p>6. Where is the merchant name displayed at the site? <input type="checkbox"/> Window <input type="checkbox"/> Door <input type="checkbox"/> Store Front</p> <p>7. Merchant Occupies: <input type="checkbox"/> Ground Floor <input type="checkbox"/> Other: _____</p> <p>8. # of Floors/Levels: <input type="checkbox"/> 1 <input type="checkbox"/> 2-4 <input type="checkbox"/> 5-10 <input type="checkbox"/> 11+</p> <p>9. Remaining Floor(s) Occupied by: <input type="checkbox"/> Residential <input type="checkbox"/> Commercial <input type="checkbox"/> Combination <input type="checkbox"/> None</p> <p>10. Approximate Square Footage: <input type="checkbox"/> 0-250 <input type="checkbox"/> 251-500 <input type="checkbox"/> 501-2,000 <input type="checkbox"/> 2,001 plus</p> <p>11. Are customers required to leave a deposit? <input type="checkbox"/> No <input type="checkbox"/> Yes If Yes, % of deposit required: _____%</p> <p>12. Return Policy: <input type="checkbox"/> Full Refund <input type="checkbox"/> Exchange Only <input type="checkbox"/> None</p>	<p>13. Do you have a refund policy for MC/Visa/ Discover® Network-PayPal/American Express OptBlue® Sales? <input type="checkbox"/> Yes <input type="checkbox"/> No If yes, check one: <input type="checkbox"/> Exchange <input type="checkbox"/> MC/Visa/Discover Network-PayPal/ <input type="checkbox"/> Store Credit American Express OptBlue® Credit</p> <p>If MC/V/Discover Network-PayPal/American Express OptBlue® Credit, within how many days do you submit credit transactions? <input type="checkbox"/> 0-3 <input type="checkbox"/> 4-7 <input type="checkbox"/> 8-14 <input type="checkbox"/> Over 14</p> <p>14. Advertising Method (Attach at least one): <input type="checkbox"/> Catalog <input type="checkbox"/> Brochure <input type="checkbox"/> Direct Mail <input type="checkbox"/> TV/Radio <input type="checkbox"/> Internet <input type="checkbox"/> Phone <input type="checkbox"/> Newspaper/Journals <input type="checkbox"/> Other</p> <p>Marketing Materials required for Mail Order, B to B, Internet over \$1 Million in annual volume. Attach Web Page for Internet Merchant.</p> <p>15. Previous Processor: _____</p> <p>16. Check Reason For Leaving: <input type="checkbox"/> Rate <input type="checkbox"/> Service <input type="checkbox"/> Terminated <input type="checkbox"/> Other: _____</p> <p style="text-align: center;">Mail/Telephone Order/Business to Business/Internet Information (All Questions must be Answered)</p> <p>1. What is the time frame from transaction to delivery? (% of orders delivered in): 0-7 days _____% + 8-14 days _____% + 15-30 days _____% + over 30 days _____% = 100%</p> <p>2. MC/Visa/Discover Network-PayPal/American Express OptBlue® sales are deposited (check one): <input type="checkbox"/> Date of order <input type="checkbox"/> Date of delivery <input type="checkbox"/> Other (specify): _____</p> <p>3. Does any of your cardholder billing involve automatic renewals or recurring transactions (i.e., cardholder authorizes initial sale only)? <input type="checkbox"/> Yes <input type="checkbox"/> No</p>
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Merchant Initials: _____

OmahaWF2004		3. OWNERS / PARTNERS / OFFICERS						OmahaWF2004(ia)			
OWNER / PARTNER / OFFICER 1					OWNER / PARTNER / OFFICER 2						
Name: (First, MI, Last)				% Ownership:	Name: (First, MI, Last)				% Ownership:		
Title:					Title:						
Home Address: (No P.O. Box)					Home Address: (No P.O. Box)						
City:		State:	Zip:		Country:	City:		State:	Zip:		Country:
Telephone #:			Social Security #:			Telephone #:			Social Security #:		
D.O.B.:		DL #:		State:	D.O.B.:		DL #:		State:		

4. SETTLEMENT INFORMATION

Deposit Bank: _____

Transit/ABA #: _____ Deposit Account #: _____

ACH Detail Flag: Individual Combined Separate (defaults to Combined if option not selected)

5. TRANSACTION INFORMATION

FINANCIAL DATA				WHERE IS SALE TRANSACTED? (Must = 100%)	
Gross YEARLY Sales Volume (Cash + Credit + Debit + Check)	\$ _____	Avg. MC/Visa/Discover Network- PayPal Ticket (Estimate If Never Processed In Past)	\$ _____	Store Front/Swiped	_____ %
Average YEARLY MC/Visa Volume	\$ _____	Avg. American Express OptBlue* Ticket (Estimate If Never Processed In Past)	\$ _____	Internet	_____ %
Average YEARLY Discover Network- PayPal Volume	\$ _____	Highest Ticket Amount	\$ _____	Mall Order	_____ %
Average YEARLY American Express OptBlue* Volume	\$ _____			Telephone Order	_____ %
Seasonal? <input type="checkbox"/> No <input type="checkbox"/> Yes	High Volume Months Open: _____			Total	100%

6. GRID INFORMATION - INTERNAL USE ONLY

AUTHORIZATION GRID ID#: _____ USER DEFINED GRID ID#: _____ MFC GRID ID: _____ 8-pos. Alpha/Numeric

MC TIERED GRID ID _____ 8-pos. Alpha/Numeric	VISA TIERED GRID ID _____ 8-pos. Alpha/Numeric	DISCOVER NETWORK - PayPal TIERED GRID ID _____ 8-pos. Alpha/Numeric	AMERICAN EXPRESS OptBlue* TIERED GRID ID _____ 8-pos. Alpha/Numeric
MC CREDIT MPG ID _____ 8-pos. Alpha/Numeric	VISA CREDIT MPG ID _____ 8-pos. Alpha/Numeric	DISCOVER NETWORK - PayPal CREDIT MPG ID _____ 8-pos. Alpha/Numeric	
MC DEBIT MPG ID _____ 8-pos. Alpha/Numeric	VISA DEBIT MPG ID _____ 8-pos. Alpha/Numeric	DISCOVER NETWORK DEBIT MPG ID _____ 8-pos. Alpha/Numeric	AMERICAN EXPRESS OptBlue* CREDIT MPG ID _____ 8-pos. Alpha/Numeric

7. SERVICE FEE SCHEDULE

Accept all MasterCard, Visa, Discover Network and American Express OptBlue* Transactions (presumed, unless any selections below are checked)

MasterCard <input type="checkbox"/> MC Credit Transactions <input type="checkbox"/> MC Non-PIN Debit Trans.	Visa <input type="checkbox"/> Visa Credit Transactions <input type="checkbox"/> Visa Non-PIN Debit Trans.	Discover Network <input type="checkbox"/> Discover Network Credit Transactions <input type="checkbox"/> Discover Network Non-PIN Debit Trans.	American Express OptBlue* <input type="checkbox"/> American Express Credit Transactions
<input checked="" type="checkbox"/> Discount Collected <input type="checkbox"/> Daily <input checked="" type="checkbox"/> Monthly		Discover Network - PayPal <input type="checkbox"/> Discover Network-PayPal Credit Transactions	

Tiered Discount Fees (Based on Gross Sales Volume)

	Discount	MPG TXN Fee		Discount	MPG TXN Fee		Discount	MPG TXN Fee		Discount	MPG TXN Fee
MC Qual Credit	%	\$	Visa Qual Credit	%	\$	Discover Network-PayPal Qual Credit	%	\$	American Express OptBlue* Qual Credit	%	\$
MC Mid-Qual Credit	%	\$	Visa Mid-Qual Credit	%	\$	Discover Network-PayPal Mid-Qual Credit	%	\$	American Express OptBlue* Mid-Qual Credit	%	\$
MC Non-Qual Credit	%	\$	Visa Non-Qual Credit	%	\$	Discover Network-PayPal Non-Qual Credit	%	\$	American Express OptBlue* Non-Qual Credit	%	\$
MC Worldcard Qual	%	\$	Visa Rewards 1	%	\$						
MC Worldcard Mid-Qual	%	\$	Visa Rewards 2	%	\$						
MC Worldcard Non-Qual	%	\$									
MC Qual Debit	%	\$	Visa Qual Debit	%	\$	Discover Network Qual Debit	%	\$			
MC Mid-Qual Debit	%	\$	Visa Mid-Qual Debit	%	\$	Discover Network Mid-Qual Debit	%	\$			
MC Non-Qual Debit	%	\$	Visa Non-Qual Debit	%	\$	Discover Network Non-Qual Debit	%	\$			
MC Regulated Debit Discount	%	\$	Visa Regulated Debit Discount	%	\$	Discover Network Regulated Debit Disc't	%	\$			

OmahaWF2004		7. SERVICE FEE SCHEDULE (cont'd)										OmahaWF2004(ia)		
ERR														
	Discount	Non-Qual Fees		Discount	Non-Qual Fees		Discount	Non-Qual Fees		Discount	Non-Qual Fees		Discount	Non-Qual Fees
MC Qual Credit	3.20 %	0.00 %	Visa Qual Credit	3.20 %	0.00 %	Discover Network - PayPal Qual Credit	3.20 %	0.00 %	American Express OptBlue® Qual Credit	3.20 %	0.00 %			
MC Qual Debit	3.20 %	0.00 %	Visa Qual Debit	3.20 %	0.00 %	Discover Network Qual Debit	3.20 %	0.00 %						
Pass Through Interchange														
<input type="checkbox"/> Net Only - Includes Dues and Assessments <input type="checkbox"/> Gross Only - Includes Dues and Assessments														
	Discount (Based on Gross Sales Vol.)		Discount (Based on Gross Sales Vol.)		Discount (Based on Gross Sales Vol.)		Discount (Based on Gross Sales Vol.)		Discount (Based on Gross Sales Vol.)		Discount (Based on Gross Sales Vol.)		Discount (Based on Gross Sales Vol.)	
MC Qual Credit	%	Visa Qual Credit	%	Discover Network - PayPal Qual Credit	%	American Express OptBlue® Qual Credit	%							
MC Qual Debit	%	Visa Qual Debit	%	Discover Network Qual Debit	%	American Express OptBlue® has Program Pricing and not Interchange and are subject to change.								
Other Item Rate														
MC Credit	\$	0.00	Visa Credit	\$	0.00	Discover Network - PayPal Credit	\$	0.00	American Express OptBlue® Credit	\$	0.00			
MC Debit	\$	0.00	Visa Debit	\$	0.00	Discover Network Debit	\$	0.00						
Other Volume %														
MC Credit		0.00 %	Visa Credit		0.00 %	Discover Network - PayPal Credit		0.00 %	American Express OptBlue® Credit		0.00 %			
MC Debit		0.00 %	Visa Debit		0.00 %	Discover Network Debit		0.00 %						
PIN Debit														
<input type="checkbox"/> Pass Through Debit Network Fees Other Item Rate \$ _____ (per item) Other Volume Percent _____ % (per item)														
Fleet														
WEX: Other Item Rate \$ _____ (per item) Voyager: Qual _____ % Other Item Rate \$ _____ (per item)														
TeleCheck														
<input type="checkbox"/> ECA Warranty <input type="checkbox"/> Mail Order Warranty <input type="checkbox"/> Single Hold Check Warranty <input type="checkbox"/> Multiple Hold Check Warranty <input type="checkbox"/> Paper Warranty <input type="checkbox"/> C.O.D. Warranty SE # _____														
Inquiry Rate _____ % Per TXN Fee \$ _____ Stmt/Processing Fee \$ 5.00 ECA Chargeback Fee \$ 5.00														
Dec. Risk Surcharge -10% Monthly Minimum Fee \$ _____ (Per Location) Customer Requested Operator Call (CROC) \$ 2.50														
Miscellaneous Fees														
<input type="checkbox"/> Dues and Assessments		V/MC Chargeback Fee (Per Item) \$ 0		V/MC Retrieval Fee (12B Letter) (Per Item) \$ 0		Return Trans. Fee (Per Item) \$ 0.00								
Sales Transaction Fee (Per Item) \$ 0.00		Batch Fee (Per Item) \$ 0.00		Early Termination Fee (One Time Fee) \$ 295		eIDS Access Fee (Flat Rate) \$ 0.00								
EBT - Food Stamps (Per Item) \$ n/a #: _____		EBT - Cash Benefits (Per Item) \$ n/a		Other: \$ 0.00										
Minimum Monthly Fee \$ 0		Monthly Statement Fee (Acct on File) \$ 0		ACH Reject Fee (Per Item) \$ 0		Pass Visa Trans Integrity Fee <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No								
MC License Fee (Per Sales Item) \$ 0.00		(Sales Volume) _____ %		(Flat Rate) \$ _____		<input type="checkbox"/> Monthly <input type="checkbox"/> Annually in December								
Visa Proc Fee (Per Item) \$ 0.00		MC Proc Fee (Per Item) \$ 0.00		Visa BIN Fee (Per Item) \$ 0.00		MC ICA Fee (Per Item) \$ 0.00								
Pass Visa Fixed Acquirer Network Fee (FANF) <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No		Visa FANF Card Present Surcharge (Flat Rate) \$ 0.00		Visa FANF Card Not Present Surcharge (Flat Rate) \$ 0.00										
Pass Visa Acquirer Processing Fee <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No		Pass Visa Misuse of Auth Fee <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No		Pass Visa Zero Floor Limit Fee <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No		Pass Visa Int'l Acquirer Fee <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No								
Pass MC Acquirer Support Fee <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No		Pass MC Cross Border Fee <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No		Pass Discover Data Usage Charge <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No		Pass Visa Acq ISA Fee <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No								
Pass MC Proc Integrity Fee <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No		Pass Discover Int'l Proc Fee <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No		Pass Discover Int'l Service Fee <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No		Pass MC Nat'l Acquirer Brand Usage (NABU) Fee <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No								
Authorization & Capture Transaction Fees							First Data Payeezy™ Gateway Services							
MC/Visa Auth & Capture Fee: \$ 0 (per item)							<input type="checkbox"/> Payeezy Gateway Participation Payeezy Gateway Effective Date: _____ Payeezy Gateway One Time Setup Fee \$ _____ (one time) Payeezy Gateway Monthly Fee \$ _____ (monthly) Payeezy Gateway Auth Fee \$ _____ (per item) Payeezy Gateway AVS Fee \$ _____ (per item) Payeezy PayPal Auth Fee \$ _____ (per item) Payeezy PayPal Sale Fee \$ _____ (per item) Payeezy PayPal Return Fee \$ _____ (per item)							
Discover Network PayPal Auth & Capture Fee: \$ 0 (per item)														
American Express OptBlue® Auth & Capture Fee: \$ 0 (per item)														
American Express Pass Through (existing) SE #: _____														
Voice Authorization \$ NA (per item)														
Electronic AVS Fee \$ 0.00 (per item)														
Voice AVS Fee \$ NA (per item)														
ARU Fee \$ n/a (per item)														
First Data Payeezy™ Gateway Services Telecheck														
Payeezy Gateway TeleCheck Auth Fee \$ _____ (per item)				Payeezy Gateway TeleCheck Deposit Fee \$ _____ (per item)				Payeezy Gateway TeleCheck Adjustment Fee \$ _____ (per item)						

OmahaWF2004		7. SERVICE FEE SCHEDULE (cont'd)		OmahaWF2004(ia)	
User Defined Grid Fees			TIN/TFN & Regulatory Product Fees		
Wireless Monthly Service Fee	\$ 0.00	AccessOne Fee	\$ 0.00	Reg. Product Fee	(Monthly) \$ n/a
Customer Service Fee	\$ 0.00	Debit Access Fee	\$ 0.00	TIN/TFN Invalid	(Monthly) \$ n/a
Supplies: _____	\$ 0.00	Other: _____	\$ _____	Website Usage	(Per Item) \$ n/a
Merchant Fee Control Grid Fees					
Annual Fee	\$0.00	Other: _____	\$ _____	Other: _____	\$ _____
Month	n/a	<input type="checkbox"/> Per Item <input type="checkbox"/> Monthly <input type="checkbox"/> Annually	Month _____	<input type="checkbox"/> Per Item <input type="checkbox"/> Monthly <input type="checkbox"/> Annually	Month _____
Pass Visa Account Verification Fee	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	Visa Account Verification Fee Surcharge	(Per Item) \$ _____		
Pass VISA BIN/ICA Fee <i>(Note: this fee can only be used for Shared Systems Only)</i>	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	VISA BIN/ICA Fee Surcharge	(Per Item) \$ _____		
Pass Visa Staged Digital Wallet Fee	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	Visa Staged Digital Wallet Fee Surcharge	(Per Item) \$ _____		
Pass Visa B2B Virtual Payments Fee	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	Visa B2B Virtual Payments Fee Surcharge	(Sales Volume) _____%		
Pass Visa File Transmission Fee	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	Visa File Transmission Transaction Fee Surcharge	(Per Item) \$ _____		
Pass Visa Acquirer Credit Voucher Data Processing Fee	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	Visa Acquirer Credit Voucher Data Processing Fee Surcharge	(Per Item) \$ _____		
Pass Visa AFD Non Participation Fee	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	Visa AFD Non Participation Fee Surcharge	(Per Item) \$ _____		
Pass Discover Card Account Verification Fee	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	Discover Card Account Verification Fee Surcharge	(Per Item) \$ _____		
Pass Discover Network Auth Fee	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	Discover Network Auth Fee Surcharge	(Flat Rate) \$ _____ or (Per Item) \$ _____		
Discover Dispute Fee	(Per Item) \$ _____ 0	Discover Retrieval Fee	(Per Item) \$ _____ 0		
Pass PayPal Participation Authorization Fee	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	PayPal Participation Authorization Fee Surcharge	(Sales Volume) _____%		
Pass American Express OptBlue® Access Fee	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No				
Pass American Express OptBlue® Network Fee	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	American Express OptBlue® Network Fee Surcharge	(Sales Volume) _____%		
American Express Dispute Fee	(Per Item) \$ _____ 0	American Express Retrieval Fee	(Per Item) \$ _____ 0		
Pass MasterCard Processing Integrity Fee Pre Auth	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	MasterCard Processing Integrity Fee Pre Auth Surcharge	(Per Item) \$ _____		
Pass MasterCard Processing Integrity Fee Undefined Auth	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	MasterCard Processing Integrity Fee Undefined Auth Surcharge	(Per Item) \$ _____		
Pass MasterCard Processing Integrity Fee Final Auth	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	MasterCard Processing Integrity Fee Final Auth Surcharge	(Per Item) \$ _____		
Pass MasterCard BIN/ICA Fee <i>(Note: this fee can only be used for Shared Systems Only)</i>	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	MasterCard BIN/ICA Fee Surcharge	(Per Item) \$ _____		
Pass MasterCard Account Status Fee	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	MasterCard Account Status Fee Surcharge	(Per Item) \$ _____		
Pass MasterCard Kilobyte Fee	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	MasterCard Kilobyte Fee Surcharge	(Flat Rate) \$ _____ or (Per Item) \$ _____		
Pass MasterCard CVC2 Fee	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	MasterCard CVC2 Fee Surcharge	(Flat Rate) \$ _____ or (Per Item) \$ _____		
Pass MasterCard ICA AVS Fee	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	MasterCard ICA AVS Fee Surcharge	(Per Item) \$ _____		
Pass MasterCard Digital Enablement Fee	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	MasterCard Digital Enablement Fee Surcharge	(Sales Volume) _____%		
Pass MasterCard Business to Business US	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	MasterCard Business to Business US Surcharge	(Sales Volume) _____%		
Pass MasterCard SecureCode Transaction Fee	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	MasterCard SecureCode Transaction Fee Surcharge	(Flat Rate) \$ _____		
Pass MasterCard Location Fee	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	MasterCard Location Fee Surcharge	(Flat Rate) \$ _____		
Pass STAR Debit Network Annual Fee	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	STAR Debit Network Annual Fee Surcharge	(Flat Rate) \$ _____		
Pass Pulse Debit Network Annual Fee	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	Pulse Debit Network Annual Fee Surcharge	(Flat Rate) \$ _____		
Pass Jeanie Debit Network Annual Fee	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	Jeanie Debit Network Annual Fee Surcharge	(Flat Rate) \$ _____		
Pass NYCE Debit Network Annual Fee	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	NYCE Debit Network Annual Fee Surcharge	(Flat Rate) \$ _____		
Pass Accel Debit Network Annual Fee	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	Accel Debit Network Annual Fee Surcharge	(Flat Rate) \$ _____		

Merchant Initials: _____

OmahaWF2004	7. SERVICE FEE SCHEDULE (cont'd)	OmahaWF2004(ia)
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Merchant Fee Control Grid Fees (cont'd)

TransArmor Data Protection Fee (Flat Rate) \$ <u>0.00</u>	TransArmor Terminal Fee (Flat Rate) \$ <u>0.00</u>
Clover Security Plus Fee (Flat Rate) \$ <u>0.00</u>	PCI Rapid Comply (Flat Rate) \$ <u>0.00</u>
Clover Security Non Clover Fee (Flat Rate) \$ <u>0.00</u>	Clover Security for Clover Fee (Flat Rate) \$ <u>0.00</u>
Clover Security Plus w/o TransArmor Data Protection (Flat Rate) \$ <u>0.00</u>	Clover Service Fee Monthly (per station) (Flat Rate) \$ <u>0.00</u>
Wireless Monthly Service Fee (Per Item) \$ <u>0.00</u>	Wireless Activation Fee (Flat Rate) \$ <u>0.00</u>
Clover Go Monthly Fee (per MID) (Flat Rate) \$ <u>0.00</u>	Clover Insights Fee (per MID) (Flat Rate) \$ <u>0.00</u>
Payeezy Webstore Solution Monthly Fee (per webstore) (Flat Rate) \$ <u>0.00</u>	
Perka Solution Monthly Fee (per MID) (Flat Rate) \$ <u>0.00</u>	<i>(For the Perka Solution, you will be provided with registration instructions and will be asked to electronically agree to Perka Inc.'s terms and conditions)</i>
DCC Chargeback Fee Per Chargeback \$ <u>n/a</u>	DCC Retrieval Fee Per Retrieval \$ <u>n/a</u>
	DCC Transaction Fee Per Settlement \$ <u>n/a</u>

8. EQUIPMENT/THIRD PARTY INFORMATION

Network (Front End): Omaha North Nashville Bypass

Do you use any third party to store, process or transmit cardholder data? Yes No

If yes, identify the Third Party Processor used: 00 None 01 Yahoo 02 Authorize.net 03 Cybersource 04 Verifone 05 Merchant Link 06 Shift 4
 07 Apriva 08 FIS 09 Six Payment Services Corp 10 Verisign 99 Other (please specify) _____

INTERNET GATEWAY: First Data Global Gateway Other: _____

Wireless Network: _____

PC/Internet Software _____	Quantity _____	<input type="checkbox"/> New <input type="checkbox"/> Rent <input type="checkbox"/> Lease <input type="checkbox"/> Existing
Terminal Model _____	Quantity _____	<input type="checkbox"/> New <input type="checkbox"/> Rent <input type="checkbox"/> Lease <input type="checkbox"/> Existing
Printer Model _____	Quantity _____	<input type="checkbox"/> New <input type="checkbox"/> Rent <input type="checkbox"/> Lease <input type="checkbox"/> Existing
PIN Pad _____	Quantity _____	<input type="checkbox"/> New <input type="checkbox"/> Rent <input type="checkbox"/> Lease <input type="checkbox"/> Existing

LEASE COMPANY: (04) First Data Global Leasing **Annual Tax Handling Fee:**

Lease Term: _____ Mos.

AL, AR, CA, CT, GA, IN, KY, LA, MS, MO, NE, NV, NM, NC, OK, OR, RI, SC, TN, TX, VT, VA, WA, WV, WI, WY 30.20 All other States 10.20

Total Monthly Lease Charge: \$ _____ Total Cost To Lease (without tax): \$ _____

(w/o taxes, late fees, or other charges that may apply - See Lease Agreement in Program Guide for details. This is a non-cancelable lease for the full term indicated.)

Option to purchase: If you wish to buyout the equipment, please contact 1-877-257-2094 to obtain the cost.

Address	City	State	Zip	Attention:
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OmahaWF2004	9. SIGNATURE(S)	OmahaWF2004(ia)
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Client certifies that all information set forth in this completed Merchant Processing Application is true and correct and that Client has received a copy of the Program Guide and Confirmation Page, which is part of this Merchant Processing Application (consisting of Sections 1-9), and by this reference incorporated herein. Client acknowledges and agrees that we, our Affiliates and our third party subcontractors and/or agents may use automatic telephone dialing systems to contact Client at the telephone number(s) Client has provided in this Merchant Processing Application and/or may leave a detailed voice message in the event that Client is unable to be reached, even if the number provided is a cellular or wireless number or if Client has previously registered on a Do Not Call list or requested not to be contacted Client for solicitation purposes. Client hereby consents to receiving commercial electronic mail messages from us, our Affiliates and our third party subcontractors and/or agents from time to time. Client further agrees that Client will not accept more than 20% of its card transactions via mail, telephone or Internet order. However, if your Application is approved based upon contrary information stated in Section 8, Transaction Information section above, you are authorized to accept transactions in accordance with the percentages indicated in that section. This signature page also serves as a signature page to the Equipment Lease Agreement, and the TeleCheck Services Agreement appearing in the Third Party Section of the Program Guide, if selected, the undersigned Client being the "Lessee" for purposes of such Equipment Lease Agreement and/or "You" and "Your" for the purposes of the TeleCheck Services Agreement.

By signing below, each of the undersigned authorizes us, our Affiliates and our third party subcontractors and/or agents to verify the information contained in this Application and to request and obtain from any consumer reporting agency and other sources, including bank references, personal and business consumer reports and other information and to disclose such information amongst each other for any purpose permitted by law. If the Application is approved, each of the undersigned also authorizes us, our Affiliates and our third party subcontractors and/or agents to obtain subsequent consumer reports and other information from other sources, including bank references, in connection with the review, maintenance, updating, renewal or extension of the Agreement or for any other purpose permitted by law and disclose such information amongst each other. Each of the undersigned furthermore agrees that all references, including banks and consumer reporting agencies, may release any and all personal and business credit financial information to us, our Affiliates and our third party subcontractors and/or agents. Each of the undersigned authorizes us, our Affiliates and our third party subcontractors and/or agents to provide amongst each other the information contained in this Merchant Processing Application and Agreement and any information received subsequent thereto from all references, including banks and consumer reporting agencies for any purpose permitted by law. It is our policy to obtain certain information in order to verify your identity while processing your account application.

As part of our approval, processing services, continuing fraud prevention and account review processes, the undersigned consents to the use of information gathered online or that you submit to us, and/or automated electronic computer security screening, by us or our third party vendors.

Client authorizes FDMS and Bank and their affiliates to debit Client's designated bank account via Automated Clearing House (ACH) for costs associated with equipment hardware, software and shipping.

You further acknowledge and agree that you will not use your merchant account and/or the Services for illegal transactions, for example, those prohibited by the Unlawful Internet Gambling Enforcement Act, 31 U.S.C. Section 5361 et seq, as may be amended from time to time, or processing and acceptance of transactions in certain jurisdictions pursuant to 31 CFR Part 500 et seq, and other laws enforced by the Office of Foreign Assets Control (OFAC).

Client certifies, under penalties of perjury, that the federal taxpayer identification number and corresponding filing name provided herein are correct.

Client agrees to all the terms of this Merchant Processing Application and Agreement. This Merchant Processing Application and Agreement shall not take effect until Client has been approved and this Agreement has been accepted by FDMS and Bank.

Client's Business Principal/Officer:

Signature **X** _____ Title _____

Print Name of Signer _____ Date _____

Signature **X** _____ Title _____

Print Name of Signer _____ Date _____

Signature **X** _____ Title _____

Print Name of Signer _____ Date _____

(Servicers): For First Data Merchant Services LLC and Wells Fargo Bank, N.A., (a member of Visa USA, Inc. and MasterCard International, Inc.)

X Signature _____

TELECHECK ACH AUTHORIZATION

~~**ACH Debit and Credit Authorization:** Client authorizes its Financial Institution to pay and charge to its account the amount(s) due TeleCheck under this TeleCheck Agreement and to accept all credits and debits made to its account by TeleCheck via electronic funds transfer in connection with TeleCheck's services under this TeleCheck Agreement. This authorization shall remain in effect until (30) thirty days after revoked in writing.~~

~~Signature **X** _____ Print Name/Title: _____ Date _____~~

~~Authorized Signature on TeleCheck Account for ACH~~

~~**Personal Guarantee:** In exchange for First Data Merchant Services LLC, Wells Fargo Bank, N.A., (a member of Visa USA, Inc. and MasterCard International, Inc.), and TeleCheck Services, Inc. (the Guaranteed Parties) acceptance of, as applicable, the Agreement, and/or the Equipment Lease Agreement and/or the TeleCheck/TRS Services Agreement, the undersigned unconditionally and irrevocably guarantees the full payment and performance of Client's obligations under the foregoing agreements, as applicable, as they now exist or as modified from time to time, whether before or after termination or expiration of such agreements and whether or not the undersigned has received notice of any amendment of such agreements. The undersigned waives notice of default by Client and agrees to indemnify the Guaranteed Parties for any and all amounts due from Client under the foregoing agreements. The Guaranteed Parties shall not be required to first proceed against Client to enforce any remedy before proceeding against the undersigned. This is a continuing personal guaranty and shall not be discharged or affected for any reason. The undersigned understands that this is a Personal Guaranty of payment and not of collection and that the Guaranteed Parties are relying upon this Personal Guaranty in entering into the foregoing agreements, as applicable.~~

~~Personal Guarantee Signature **X** _____ Print Name: _____ Date _____~~

~~Personal Guarantee Signature **X** _____ Print Name: _____ Date _____~~

MERCHANT PROCESSING APPLICATION

Agent Name: _____

NEW ACCOUNT ADDITIONAL LOCATION - Existing MID #: _____

BUSINESS INFORMATION:

Business Corporate Name _____

Business DBA _____

Location Address _____

City _____ | State _____ | Zip _____

Mailing Address _____

City _____ | State _____ | Zip _____

Phone # _____ | Fax # _____ | TollFree # _____

Website Address _____ | Email address _____

Ownership Type: Corporation Partnership Sole Proprietor

Business Start Date _____ | Tax ID # (9 digits)

Account DDA # _____ | Bank Routing # _____ Voided check submitted

Description of Goods/Services Sold _____

Average days between transaction and delivery _____

Do you drop ship? yes no For how many days is your refund policy? _____

SIGNER INFORMATION:

Signer Name _____ Title _____

Signer Home Address _____

City _____ | State _____ | Zip _____

Signer Home Phone # _____ | Cell # _____

Social Security # _____ | Date of Birth _____

Do you currently accept AMEX?

Yes Existing American Express Account Number: _____

No Would you like to apply for a new AMEX account? yes no

Additional Services

- ACH
- Check21
- Gift/Loyalty Cards

Do you accept EBT? yes no please provide EBT # _____

CREDIT CHECK CONSENT: BY SIGNING BELOW, I THE UNDERSIGNED REPRESENT THAT I HAVE READ AND AM AUTHORIZED TO SIGN AND SUBMIT THIS APPLICATION ON BEHALF OF THE BUSINESS IDENTIFIED ABOVE AND ALL INFORMATION I HAVE PROVIDED HEREIN IS TRUE, COMPLETE, AND ACCURATE. I AUTHORIZE FIDELITY PAYMENT SERVICES TO COLLECT, STORE AND DISCLOSE THE INFORMATION IN THIS APPLICATION AND INFORMATION ABOUT ME PERSONALLY, INCLUDING BY REQUESTING REPORTS FROM CONSUMER REPORTING AGENCIES IN ORDER TO ASSESS THIS APPLICATION AND ITS ONGOING RELATIONSHIP WITH MY BUSINESS.

IMPRINTER: I UNDERSTAND THAT AS PER THE CARD ASSOCIATION REGULATIONS, IF I ACCEPT CREDIT CARDS IN A "CARD PRESENT" ENVIRONMENT, I AM REQUIRED TO HAVE A MANUAL IMPRINTER FOR INSTANCES WHERE A CARD WILL NOT SWIPE AND THE CARD DETAILS HAVE TO BE KEYED IN. I AM ALSO AWARE THAT I CAN OBTAIN AN IMPRINTER FROM FIDELITY PAYMENT SERVICES AND IT IS MY RESPONSIBILITY TO REQUEST ONE IF NEEDED.

ACH CONSENT: BY SIGNING BELOW, I AUTHORIZE FIDELITY PAYMENT SERVICES TO DEBIT VIA ACH THE DESIGNATED ACCOUNT, AS SPECIFIED ELSEWHERE IN THIS APPLICATION, OR ANY OTHER ACCOUNT MY BUSINESS OR I HAVE AT THE BANK SPECIFIED ELSEWHERE IN THIS APPLICATION OR AT ANY OTHER FINANCIAL INSTITUTION FOR ANY AMOUNT I OWE FIDELITY PAYMENT SERVICES UNDER THIS AGREEMENT OR UNDER ANY OTHER CONTRACT, NOTE, GUARANTY, INSTRUMENT OR DEALING OF ANY KIND NOW EXISTING OR LATER ENTERED INTO BETWEEN MY BUSINESS OR MYSELF AND FIDELITY PAYMENT SERVICES, WHETHER SUCH OBLIGATION IS DIRECT, INDIRECT, PRIMARY, SECONDARY, FIXED, CONTINGENT, JOINT OR SEVERAL. IN THE EVENT FIDELITY PAYMENT SERVICES DEMANDS SUMS DUE OR SUCH ACH DOES NOT FULLY REIMBURSE FIDELITY PAYMENT SERVICES FOR THE AMOUNT OWED, I WILL IMMEDIATELY PAY FIDELITY PAYMENT SERVICES SUCH AMOUNT.

TERMS AND CONDITIONS: I HAVE READ, UNDERSTOOD AND AGREE TO THE TERMS AND CONDITIONS APPLICABLE TO A MERCHANT POSTED TODAY AT THE FIDELITY PAYMENT SERVICES WEB SITE WWW.FIDELITYPAYMENT.COM/TERMSANDCONDITIONS - A PAPER COPY OF SUCH TERMS AND CONDITIONS IS AVAILABLE TO YOU UPON REQUEST.

Signature:  _____ | Date: _____

Print Name: _____

Merchant
Services

Program
Terms and
Conditions
(Program Guide)

PREFACE

Thank you for selecting us for your payment processing needs. Accepting numerous payment options provides a convenience to your customers, increases your customers' ability to make purchases at your establishment, and helps speed payment to your account.

Your Merchant Processing Application will indicate the types of payments and Services you have elected to accept. These Program Terms and Conditions (“**the Program Guide**”) presents terms governing the acceptance of Visa[®], MasterCard[®], and Discover[®] Network Credit Card and Non-PIN Debit Card payments, PayPal[®] in-store Card payments, American Express[®] Card transactions and applicable Non-Bank Services.

This Program Guide, your Merchant Processing Application and the schedules thereto (collectively, the “Agreement”), including, without limitation, the Interchange Qualification Matrix and American Express Program Pricing and one of the Interchange Schedules, as applicable to your pricing method as set forth in the Merchant Processing Application, contains the terms and conditions under which Processor and/or Bank and/or other third parties, will provide services. We will not accept any alterations or strike-outs to the Agreement and, if made, any such alterations or strike-outs shall not apply. Please read this Program Guide completely.

You acknowledge that certain Services referenced in the Agreement may not be available to you.

IMPORTANT INFORMATION ABOUT BANK’S RESPONSIBILITIES:

Discover Network Card Transactions, PayPal in-store Card Transactions, American Express Card Transactions and other Non-Bank Services are not provided to you by Bank, but are provided by Processor and/or third parties.

The provisions of this Agreement regarding Discover Network Card Transactions, PayPal in-store Card Transactions, American Express Card Transactions and other Non-Bank Services constitute an agreement solely between you and Processor and/or third parties. Bank is not a party to this Agreement insofar as it relates to Discover Network Card Transactions, PayPal in-store Card Transactions, American Express Card Transactions and other Non-Bank Services, and Bank is not responsible, and shall have no liability, to you in any way with respect to Discover Network Card Transactions, PayPal in-store Card Transactions, American Express Card Transactions and Non-Bank Services.

OTHER IMPORTANT INFORMATION:

Cards present risks of loss and non-payment that are different than those with other payment systems. In deciding to accept Cards, you should be aware that you are also accepting these risks.

Visa U.S.A., Inc. (“**Visa**”) MasterCard Worldwide (“**MasterCard**”), DFS Services LLC (“**Discover Network**”), PayPal, Inc. (“**PayPal**”) and American Express Company, Inc. (“**American Express**”) are payment card networks that electronically exchange Sales Drafts and Chargebacks for Card sales and Credits. Sales Drafts are electronically transferred from banks (in the case of MasterCard and Visa transactions) or network acquirers (in the case of Discover Network and PayPal in-store Card transactions) that acquire them from merchants such as yourself through the appropriate Card Organization, to the Issuers. These Issuers then bill their Cardholders for the transactions. The Card Organizations charge the Acquirers interchange fees, pricing and/or assessments for submitting transactions into their systems. A substantial portion of the Discount Rate or Transaction Fees that you pay will go toward these interchange fees, pricing and assessments.

In order to speed up the payment process, the Issuer transfers the funds back through the Card Organization to the Acquirer at approximately the same time that the Issuer receives the electronic Sales Drafts. Even though the payments under this system are made simultaneously, all payments made through the Card Organizations are conditional and subject to reversals and adjustments.

Each Card Organization has developed Card Organization Rules that govern their Acquirers and Issuers and the procedures, responsibilities and allocation of risk for this process. Merchants are also bound by Card Organization Rules and applicable laws and regulations. The Card Organization Rules and applicable laws and regulations give Cardholders and Issuers certain rights to dispute transactions, long after payment has been made to the merchant, including Chargeback rights.

We do not decide what transactions are charged back and we do not control the ultimate resolution of the Chargeback. While we can attempt to reverse a Chargeback to the Issuer, we can only do so if the Issuer agrees to accept it or the Card Organization requires the Issuer to do so after a formal appeal process. Sometimes, your customer may be able to successfully charge back a Card transaction even though you have provided your goods or services and are otherwise legally entitled to payment from your customer. While you may still be able to pursue claims directly against that customer, neither we nor the Issuer will be responsible for such transactions.

You will be responsible for all Chargebacks and adjustments associated with the transactions that you submit for processing.

Please refer to the Glossary for certain capitalized terms used in the Agreement, including this Preface (if not defined above).

Capitalized terms not otherwise defined in the Agreement may be found in the Card Organization Rules.

PROCESSOR INFORMATION: Name: First Data Merchant Services LLC
 Address: 4000 Coral Ridge Drive, Coral Springs, FL 33065
 URL: _____ Customer Service #: 1-800-858-1166

Please read the Program Guide in its entirety. It describes the terms under which we will provide merchant processing Services to you.

From time to time you may have questions regarding the contents of your Agreement with Bank and/or Processor or the contents of your Agreement with TeleCheck. The following information summarizes portions of your Agreement in order to assist you in answering some of the questions we are most commonly asked.

1. **Your Discount Rates are assessed** on transactions that qualify for certain reduced interchange rates imposed by MasterCard, Visa, Discover and PayPal. Any transactions that fail to qualify for these reduced rates will be charged an additional fee (see Section 25 of the Program Guide).
2. **We may debit your bank account** (also referred to as your Settlement Account) from time to time for amounts owed to us under the Agreement.
3. **There are many reasons why a Chargeback may occur.** When they occur we will debit your settlement funds or Settlement Account. For a more detailed discussion regarding Chargebacks see Section 14 of the Your Payments Acceptance Guide or see the applicable provisions of the TeleCheck Solutions Agreement.
4. **If you dispute any charge or funding,** you must notify us within 60 days of the date of the statement where the charge or funding appears for Card Processing or within 30 days of the date of a TeleCheck transaction.
5. **The Agreement limits our liability to you.** For a detailed description of the limitation of liability see Section 27, 37.3, and 39.10 of the Card General Terms; or Section 17 of the TeleCheck Solutions Agreement.
6. **We have assumed certain risks** by agreeing to provide you with Card processing or check services. Accordingly, we may take certain actions to mitigate our risk, including termination of the Agreement, and/or hold monies otherwise payable to you (see Card Processing General Terms in Section 30, Term; Events of Default and Section 31, Reserve Account; Security Interest), (see TeleCheck Solutions Agreement in Section 7), under certain circumstances.
7. **By executing this Agreement with us** you are authorizing us and our Affiliates to obtain financial and credit information regarding your business and the signers and guarantors of the Agreement until all your obligations to us and our Affiliates are satisfied.
8. **The Agreement contains a provision** that in the event you terminate the Agreement prior to the expiration of your initial three (3) year term, you will be responsible for the payment of an early termination fee as set forth in Part IV, A.3 under "Additional Fee Information" and Section 16.2 of the TeleCheck Solutions Agreement.
9. **If you lease equipment from Processor,** it is important that you review Section 1 in Third Party Agreements. Bank is not a party to this Agreement. THIS IS A NON-CANCELABLE LEASE FOR THE FULL TERM INDICATED.

10. Card Organization Disclosure

Visa and MasterCard Member Bank Information: Wells Fargo Bank N.A.

The Bank's mailing address is P.O. Box 6079, Concord, CA 94524, and its phone number is 1-844-284-6834.

Important Member Bank Responsibilities:

- a) The Bank is the only entity approved to extend acceptance of Visa and MasterCard products directly to a merchant.
- b) The Bank must be a principal (signer) to the Agreement.
- c) The Bank is responsible for educating merchants on pertinent Visa and MasterCard rules with which merchants must comply; but this information may be provided to you by Processor.
- d) The Bank is responsible for and must provide settlement funds to the merchant.
- e) The Bank is responsible for all funds held in reserve that are derived from settlement.
- f) The Bank is the ultimate authority should a merchant have any problems with Visa or MasterCard products (however, Processor also will assist you with any such problems).

Important Merchant Responsibilities:

- a) Ensure compliance with Cardholder data security and storage requirements.
- b) Maintain fraud and Chargebacks below Card Organization thresholds.
- c) Review and understand the terms of the Merchant Agreement.
- d) Comply with Card Organization Rules and applicable law and regulations.
- e) Retain a signed copy of this Disclosure Page.
- f) You may download "Visa Regulations" from Visa's website at: <https://usa.visa.com/support/merchant.html>.
- g) You may download "MasterCard Regulations" from MasterCard's website at: <http://www.mastercard.com/us/merchant/support/rules.html>.
- h) You may download "American Express Merchant Operating Guide" from American Express' website at: www.americanexpress.com/merchanttopguide.

Print Client's Business Legal Name: _____

By its signature below, Client acknowledges that it has received the Merchant Processing Application, Program Terms and Conditions [version OmahaWF2201(ia)] consisting of 46 pages [including this Confirmation Page and the applicable Third Party Agreement(s)].

Client further acknowledges reading and agreeing to all terms in the Program Terms and Conditions. Upon receipt of a signed facsimile or original of this Confirmation Page by us, Client's Application will be processed.

NO ALTERATIONS OR STRIKE-OUTS TO THE PROGRAM TERMS AND CONDITIONS WILL BE ACCEPTED.

Client's Business Principal:

Signature (Please sign below):

X _____ Title _____ Date _____

Please Print Name of Signer

PROCESSOR INFORMATION: Name: First Data Merchant Services LLC
 Address: 4000 Coral Ridge Drive, Coral Springs, FL 33065
 URL: _____ Customer Service #: 1-800-858-1166

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3. **There are many reasons why a Chargeback may occur.** When they occur we will debit your settlement funds or Settlement Account. For a more detailed discussion regarding Chargebacks see Section 14 of the Your Payments Acceptance Guide or see the applicable provisions of the TeleCheck Solutions Agreement.
4. **If you dispute any charge or funding,** you must notify us within 60 days of the date of the statement where the charge or funding appears for Card Processing or within 30 days of the date of a TeleCheck transaction.
5. **The Agreement limits our liability to you.** For a detailed description of the limitation of liability see Section 27, 37.3, and 39.10 of the Card General Terms; or Section 17 of the TeleCheck Solutions Agreement.
6. **We have assumed certain risks** by agreeing to provide you with Card processing or check services. Accordingly, we may take certain actions to mitigate our risk, including termination of the Agreement, and/or hold monies otherwise payable to you (see Card Processing General Terms in Section 30, Term; Events of Default and Section 31, Reserve Account; Security Interest), (see TeleCheck Solutions Agreement in Section 7), under certain circumstances.
7. **By executing this Agreement with us** you are authorizing us and our Affiliates to obtain financial and credit information regarding your business and the signers and guarantors of the Agreement until all your obligations to us and our Affiliates are satisfied.
8. **The Agreement contains a provision** that in the event you terminate the Agreement prior to the expiration of your initial three (3) year term, you will be responsible for the payment of an early termination fee as set forth in Part IV, A.3 under "Additional Fee Information" and Section 16.2 of the TeleCheck Solutions Agreement.
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- c) The Bank is responsible for educating merchants on pertinent Visa and MasterCard rules with which merchants must comply; but this information may be provided to you by Processor.
- d) The Bank is responsible for and must provide settlement funds to the merchant.
- e) The Bank is responsible for all funds held in reserve that are derived from settlement.
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Important Merchant Responsibilities:

- a) Ensure compliance with Cardholder data security and storage requirements.
- b) Maintain fraud and Chargebacks below Card Organization thresholds.
- c) Review and understand the terms of the Merchant Agreement.
- d) Comply with Card Organization Rules and applicable law and regulations.
- e) Retain a signed copy of this Disclosure Page.
- f) You may download "Visa Regulations" from Visa's website at: <https://usa.visa.com/support/merchant.html>.
- g) You may download "MasterCard Regulations" from MasterCard's website at: <http://www.mastercard.com/us/merchant/support/rules.html>.
- h) You may download "American Express Merchant Operating Guide" from American Express' website at: www.americanexpress.com/merchanttopguide.

Print Client's Business Legal Name: _____

By its signature below, Client acknowledges that it has received the Merchant Processing Application, Program Terms and Conditions [version OmahaWF2201(ia)] consisting of 46 pages [including this Confirmation Page and the applicable Third Party Agreement(s)].

Client further acknowledges reading and agreeing to all terms in the Program Terms and Conditions. Upon receipt of a signed facsimile or original of this Confirmation Page by us, Client's Application will be processed.

NO ALTERATIONS OR STRIKE-OUTS TO THE PROGRAM TERMS AND CONDITIONS WILL BE ACCEPTED.

Client's Business Principal:

Signature (Please sign below):

X _____

_____ Title

_____ Date

_____ Please Print Name of Signer

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A. YOUR PAYMENTS ACCEPTANCE GUIDE

Payment acceptance solutions are an essential part of your business, and we want to make accepting payments as simple as possible for you.

This part of the Program Guide (through Appendix 4), is the Your Payments Acceptance Guide. It's your quick reference to some guidelines for initiating transactions and accepting payments. You'll also find recommendations and tips to help you prevent fraud, reduce chargebacks, and properly handle payments, refunds, exchanges, and most other situations you'll encounter in your day-to-day-business. To help you navigate more easily and find the information you need when you need it, we've organized this Section into three parts. At the end of the Section, you'll also find information specific to processing WEX®, USBank®, Voyager®, American Express®, Discover® and PayPal® cards payments. Keep in mind, though, these guidelines highlight only some of the Card Organization Rules that apply to your acceptance of payments. Please carefully read the Card Organization Rules for each Card brand you accept.

If you have questions about initiating transactions, accepting payments or any of your other business services, please contact Customer Service at the number listed on your merchant services statement. Your Customer Service team is here to make things easier so let us know what we can do to help.

American Express

www.americanexpress.com

Discover Financial Services

www.discovernetwork.com/en-us/

MasterCard Worldwide

www.mastercard.com/us/merchant/support/rules.html

Visa Inc.

<https://usa.visa.com>

PayPal™

<https://www.paypal.com/us/webapps/mpp/accept-payments-online>

Part I

The first step of a transaction actually begins before a customer even decides to make a purchase. This part of Your Payments Acceptance Guide reviews steps you'll need to take to ensure customers are informed of their payment options and understand the terms of sale. You'll also find tips and important reminders for validating cards in order to reduce the risk of fraud. Finally, specific procedures for accepting debit and EBT payments are outlined. If you have questions about anything discussed in this guide, please contact Customer Service at the number located on your merchant services statement.

I. Use of Payments Organizations' Brands**DO'S**

- do prominently display relevant trademarks of the payments organizations at each of your locations, in catalogs, on websites and on other promotional material.
- do only use the official trademarks of ours and of the payments organizations in the official format.

DON'TS

- don't indicate that we or any payments organization endorses your goods or services.
- don't use the trademarks of any payments organization after: your right to accept the cards of that payment organization has ended; or that payment organization has notified you to stop using their trademarks.
- don't use the trademarks of ours or of the payments organizations in any way that injures or diminishes the goodwill associated with the trademarks.
- don't use our trademarks or the trademarks of the payments organizations in any manner, including in any advertisements, displays, or press releases, without our prior written consent.

For special rules applying to the treatment of the American Express brand, please refer to Appendix 2.

2. Point of Sale (POS) Reminders**Do clearly and conspicuously:**

- disclose all material terms of sale prior to obtaining an authorization;
- at all points of interaction inform cardholders which entity is making the sales offer, so that the cardholders can clearly distinguish you from any other party involved in the interaction; and
- disclose any discount/incentive for customers to pay with cash, check, credit card or debit card and so on. Any such discount/incentive must be offered to all customers with no special treatment for any card brand or card issuing bank.

If you accept orders via the Internet, your website must include the following information in a prominent manner:

- a complete description of the goods or services offered;
- details of your (i) delivery policy; (ii) consumer data privacy policy; (iii) cancellation policy; and (iv) returns policy;

- the transaction currency (US dollars, unless permission is otherwise received from Servicers);
- the customer service contact, including email address and telephone number;
- your address, including country;
- the transaction security used on your website;
- any applicable export or legal restrictions;
- your identity at all points of interaction with the cardholder; and
- the date on which any free trial period ends.

If you limit refund/exchange terms or impose other specific conditions for card sales, you must clearly print (in 1/4" letters) the words "No Exchange, No Refund," etc. on the sales draft near or above the cardholder's signature, both on the cardholder's copy and your copy.

During a liquidation or closure of any of your outlets, locations or businesses, you must post signs clearly visible to customers stating that "All Sales Are Final," and stamp the sales draft with a notice that "All Sales Are Final."

3. Validating the Cards**Transactions where the cardholder is present - 'Card Present' transactions**

You must check the card if the cardholder is present at the point of sale;

- verify that the card is legitimate and valid;
- verify that the card is not visibly altered or mutilated;
- capture card data using the POS device by inserting the card (chip card), swiping the card (magnetic stripe), or tapping/waving the card (contactless).
- ensure that the cardholder either enters their PIN using the keypad or provides their signature;
- verify that the signature is identical to the name and signature on the card (if a signature is provided);
- verify the card's valid from date (if applicable) and the expiration date;
- verify that the card number and expiration date on the card are the same as on the transaction receipt and the number displayed on the POS device;
- verify that the name on the transaction receipt is the same as the name on the front of the card (if applicable); and
- ensure that the cardholder appears to be the person shown in the photograph (for cards with a photograph of the cardholder).

If the signature panel on the card is blank, you must:

- review positive identification bearing the cardholder's signature (for example, a current passport or driver's license) to validate the cardholder's identity;
- require the cardholder to sign the signature panel of the card prior to completing the transaction;

Transactions where the cardholder is not present - 'Card Not Present' transactions

This section applies to any transaction where the cardholder is not present, such as mail, telephone, Internet and E-commerce.

You may only conduct Internet transactions if you have notified us in advance and received approval.

DO'S

- do obtain the card account number, name as it appears on the card, expiration date of the card, and the cardholder's statement address.
- do use the Address Verification Service (AVS). If you do not have AVS, contact Customer Service immediately.
- do clearly print the following on the sales draft, and provide a copy to the cardholder at the time of delivery:
 - the last four digits of the cardholder's account number;
 - the date of transaction;
 - a description of the goods and services;
 - the amount of the transaction (including shipping, handling, insurance, etc.);
 - the cardholder's name, billing address and shipping address;
 - the authorization code;
 - your name and address (city and state required); and
 - for mail orders write "MO" and for telephone orders write "TO" on the cardholder's signature line.
- do obtain proof of delivery of the goods or services to the address designated by the cardholder or, if the cardholder collects the goods or services in person, obtain an imprint of the card and the cardholder's signature.
- do notify the cardholder of delivery time frames and special handling or cancellation policies.
- do ship goods within 7 days from the date on which authorization was obtained. If delays are incurred (for example, out of stock) after the order has been taken, notify the cardholder and obtain fresh authorization of the transaction.

- do use any separate merchant identification numbers provided to you for Internet orders in all your requests for authorization and submission of charges.
- do provide at least 1 month's prior written notice to your acquirer of any change in your Internet address.

DON'TS

- don't exceed the percentage of your total payment card volume for Card Not Present sales, as set out in your application.
- don't submit a transaction for processing until after the goods have been shipped or the service has been provided to the cardholder - the only exception to this is where the goods have been manufactured to the cardholder's specifications and the cardholder has been advised of the billing details.
- don't accept card account numbers by electronic mail.
- don't require a cardholder to complete a postcard or other document that displays the cardholder's account number in clear view when mailed or send any mailing to a cardholder that displays personal information in clear view.

It is also recommended that, if feasible, you obtain and keep a copy on file of the cardholder's signature authorizing you to submit telephone and mail order transactions.

Address Verification Service (AVS) (and other fraud mitigation tools such as Verified by Visa®, MasterCard® Secure Code, Discover Protect Buy®, American Express® SafeKey, Card Validation Codes and Card Identification) does not guarantee against chargebacks; but, if used properly, they assist you in reducing the risk of fraud by confirming whether certain elements of the billing address provided by your customer match the billing address maintained by the card issuing bank. AVS also may help you avoid incurring additional interchange expenses. AVS is a separate process from obtaining an authorization and will provide a separate response. A transaction may be authorized regardless of the AVS response. It is your responsibility to monitor the AVS responses and use the information provided to avoid accepting high-risk transactions.

If a disputed charge arises for a transaction conducted over the Internet or electronically, a chargeback may be exercised for the full amount.

For Discover Network transactions, please refer to Appendix 3 for the Discover Network protocol for Internet transactions.

Customer - activated terminals and self-service terminals

Transactions processed at customer-activated terminals and self-service terminals have specific requirements for processing. You must contact Customer Service for approval and further instructions before conducting customer- activated terminal transactions or self-service terminal transactions.

4. Transaction Guidelines

DO'S

- do only present for payment valid charges that arise from a transaction with a bona fide cardholder.

DON'TS

- don't set a minimum transaction amount of more than \$10 for any credit cards or of any amount for debit cards.
- don't set a maximum transaction amount for any credit cards.
- don't establish any special conditions for accepting a card.
- don't make any cash disbursements or cash advances to a cardholder as part of a transaction with the exception of the Discover Network Cash Over service.
- don't accept any direct payments from cardholders for goods or services which have been included on a sales draft;
- don't require a cardholder to supply any personal information for a transaction (for example, phone number, address, driver's license number) unless (i) instructed by the Voice Authorization Center; (ii) presented an unsigned card; or (iii) processing a Card Not Present transaction don't submit any transaction representing the refinance or transfer of an existing cardholder obligation which is deemed uncollectible, for example, a transaction that has been previously charged back, or to cover a dishonored check.
- don't submit sales drafts or credit drafts transacted on the personal card of an owner, partner, officer or employee of your business establishment or of a guarantor who signed your application form, unless such transaction arises from a bona fide purchase of goods or services in the ordinary course of your business.
- don't carry out factoring, that is, the submission of authorization requests or sales drafts for card transactions transacted by another business.

5. Security

You are responsible for maintaining the security of your POS devices and for instituting appropriate controls to prevent employees or others from submitting credits that do not reflect bona fide returns or reimbursements of earlier transactions.

Please comply with the data security requirements shown below:

DO'S

- do install and maintain a secure firewall configuration to protect data.
- do protect stored data, and do encrypt transmissions of data sent across open/public networks, using methods indicated in the Payment Card Industry Data Security Standard (PCI DSS) which is available at: www.pcisecuritystandards.org.

- do use and regularly update anti-virus software and keep security patches up-to-date.
- do restrict access to data by business "need to know". Assign a unique ID to each person with computer access to data and track access to data by unique ID.
- do regularly test security systems and processes.
- do maintain a policy that addresses information security for employees and contractors.
- do restrict physical access to cardholder information.
- do destroy or purge all media containing obsolete transaction data with cardholder information.
- do keep all systems and media containing card account, cardholder, or transaction information (whether physical or electronic) in a secure manner so as to prevent access by, or disclosure to any unauthorized party.
- do use only those services and devices that have been certified as PCI-DSS compliant by the payment organizations.

DON'TS

- don't use vendor-supplied defaults for system passwords and other security parameters.
- don't transmit cardholder account numbers to cardholders for Internet transactions.
- don't store or retain card verification codes (three digit codes printed in the signature panel of most cards and a four digit code printed on the front of an American Express card) after final transaction authorization.
- don't store or retain magnetic stripe data, PIN data, chip data or AVS data - only cardholder account number, cardholder name and cardholder expiration date may be retained subsequent to transaction authorization.

For Internet transactions, copies of the transaction records may be delivered to cardholders in either electronic or paper format.

6. TransArmor Services

If you are receiving TransArmor services from us, the important DOs and DON'Ts listed below apply to you:

DO'S

- do comply with the payments organization rules, including PCI DSS.
- do demonstrate and maintain your current PCI DSS compliance certification. Compliance must be validated either by a Qualified Security Assessor (QSA) with corresponding Report on Compliance (ROC) or by successful completion of the applicable PCI DSS Self-Assessment Questionnaire (SAQ) or Report on Compliance (ROC), as applicable, and if applicable to your business, passing quarterly network scans performed by an Approved Scan Vendor, all in accordance with payments organization rules and PCI DSS.
- do ensure that all third parties and software that you use for payment processing comply with the PCI DSS.
- do deploy the data protection solution (including implementing any upgrades to such service within a commercially reasonable period of time after receipt of such upgrades) throughout your systems including replacing existing card numbers on your systems with tokens.
- do use the token instead of card numbers for ALL activities after you receive the authorization response, including settlement processing, retrieval processing, chargeback and adjustment processing, and transaction reviews.
- do ensure that any POS device, gateway or VAR is certified by us for use with the data protection solution. If you are uncertain whether your equipment is compliant, contact a customer service representative at 866-359-0978.
- if you send or receive batch files containing completed card transaction information to/from us, do use the service we provide to enable the files to contain only tokens or truncated information.
- do use truncated report viewing and data extract creation within reporting tools provided by us.
- do follow rules or procedures we give you periodically regarding your use of the data protection solution.
- do promptly notify us of a breach of any these terms.

DON'TS

- don't retain full card numbers, whether in electronic form or hard copy.
- don't use altered version(s) of the data protection solution.
- don't use, operate or combine the data protection solution or any related software, materials or documentation, or any derivative works thereof with other products, materials or services in a manner inconsistent with the uses contemplated in this section.

7. Debit Cards

When accepting debit cards, you'll need to follow the specific requirements for each debit network, as well as, the general requirements set out in this section.

DO'S

- do read the account number electronically from the magnetic stripe/chip for transactions authenticated with a PIN. If the magnetic stripe/chip is unreadable, you must request another form of payment from the cardholder.
- do obtain a signature if PIN authentication is not supported or available.

DON'TS

- don't process a credit card transaction in order to provide a refund on a debit card transaction.
- don't complete a debit card transaction without:
 - entry of the PIN by the cardholder (and no one else); or
 - signature by the cardholder (and no one else)Unless the transaction is a "no-signature" signature debit transaction or a "PINless" PIN debit transaction specifically supported by the debit network.
- don't accept the PIN from the cardholder verbally or in written form.
- don't manually enter the account number for PIN debit transactions. Signature debit transactions may be key entered if you are unable to swipe the card.

The debit network used to process your debit transaction will depend upon, among other things, our own business considerations, the availability of the debit network at the time of the transaction, and whether a particular debit card is enabled for a particular debit network.

The debit network used to route your transaction may or may not be the lowest cost network available. We may in our sole discretion:

- use any debit network available to us for a given transaction (including any of our affiliated PIN debit networks); and
- add or remove debit networks available to you based on a variety of factors including availability, features, functionality and our own business considerations.

YOU ARE RESPONSIBLE FOR SECURING YOUR POS DEVICES AND FOR IMPLEMENTING APPROPRIATE CONTROLS TO PREVENT EMPLOYEES OR OTHERS FROM SUBMITTING CREDITS AND VOIDS THAT DO NOT REFLECT BONA FIDE RETURNS OR REIMBURSEMENTS OF PRIOR TRANSACTIONS.

You may offer cash back to your customers when they make a PIN debit card purchase. You may set a minimum and maximum amount of cash back that you will allow. If you are not currently offering this service, your POS device may require additional programming to begin offering cash back as long as it is supported by the debit network.

You must reconcile your accounts for each location daily and notify us within 24 hours of any issues.

An adjustment is a transaction that is initiated to correct a debit card transaction that has been processed in error. For signature debit transactions (including "no-signature" signature debit transactions), both the cardholder and the card issuing bank have the right to question or dispute a transaction. If these questions or disputes are not resolved, a chargeback may occur. You are responsible for all adjustment and chargeback fees that may be charged by a debit network.

An adjustment may be initiated for many reasons, including:

- the cardholder was charged an incorrect amount, whether too little or too much;
- the cardholder was charged more than once for the same transaction;
- a processing error may have occurred that caused the cardholder to be charged even though the transaction did not complete normally at the point of sale; or
- a cardholder is disputing the goods or services provided.

All parties involved in processing adjustments and chargebacks are regulated by timeframes that are specified in the operating rules of the applicable debit network, the Electronic Funds Transfer Act, Regulation E, and other applicable law.

8. Electronic Benefit Transfer (EBT) Transactions

We offer electronic interfaces to Electronic Benefit Transfer (EBT) networks for the processing, settlement and switching of EBT transactions initiated through the use of a state-issued EBT card at your point of sale terminal(s) so that EBT recipients may receive EBT benefits.

EBT benefits may comprise:

- United States Department of Agriculture, Food and Nutrition Service (FNS),
- Supplemental Nutrition Assistance Program (SNAP),
- Women, Infants and Children Benefits (WIC Benefits), or
- Government delivered cash

If you accept EBT transactions or provide EBT benefits:

DO'S

- do provide EBT benefits to EBT recipients in accordance with applicable law and the procedures set out in the Quest rules, in the amount authorized through your terminal, upon presentation by an EBT recipient of an EBT card and such EBT recipient's entry of a valid PIN.
- do use POS Terminals, PIN pad and printer or other equipment that meet required standards (including those set out in the Quest rules) during your normal business hours and in a manner consistent with your normal business practices.
- do comply with the procedures set out in the Quest rules for authorization of EBT benefits if your terminal fails to print EBT benefit issuance information as approved and validated as a legitimate transaction.
- do provide a receipt for each EBT transaction to the applicable EBT recipient.
- do provide EBT benefits for EBT recipients from all states.

- do notify us promptly if you plan to stop accepting EBT cards and providing EBT benefits or if you are unable to comply with this section or the Quest rules.
- do adequately display any applicable state's service marks or other licensed marks, including the Quest marks, and other materials supplied by us in accordance with the standards set by the applicable state.
- do use any marks only to indicate that EBT benefits are issued at your location(s).
- do maintain adequate cash on hand to issue EBT service provider authorized cash benefits.
- do issue cash benefits to EBT recipients in the same manner and to the same extent cash is provided to your other customers.

DON'TS

- don't accept EBT cards or provide EBT benefits at any time other than in compliance with this section or the Quest rules.
- don't designate and direct EBT recipients to special checkout lanes restricted to use by EBT recipients unless you also designate and direct other customers to special checkout lanes for debit cards, credit cards or other payment methods such as checks other than cash.
- don't resubmit any EBT card transaction except as specifically permitted by the applicable Quest rules and procedures.
- don't accept any EBT card for any purpose other than providing EBT benefits, including accepting an EBT card as security for repayment of any EBT recipient obligation to you. If you violate this requirement, you will be obligated to reimburse the state or us for any EBT benefits unlawfully received by either you or an EBT recipient to the extent permitted by law.
- don't dispense cash for FNS, SNAP and WIC Benefits.
- don't disclose individually identifiable information relating to an EBT recipient or applicant for EBT benefits without prior written approval of the applicable state.
- don't use the marks of any EBT service provider without prior written approval from such EBT service provider.
- don't indicate that we, any state, or its EBT service provider endorse your goods or services.
- don't require, or in your advertising suggest, that any EBT recipient must purchase goods or services from you as a condition to receiving cash benefits, unless such condition applies to other customers as well.

You must take sole responsibility for the provision of any EBT benefits other than in accordance with authorizations received from the EBT service provider.

If an authorized terminal is not working or the EBT system is not available:

DO'S

- do manually accept EBT cards and manually provide EBT benefits in the amount authorized through the applicable EBT service provider to the EBT recipients at no cost to the EBT recipients upon presentation by an EBT recipient of their EBT card.
- do obtain an authorization number for the amount of the purchase from the applicable EBT service provider while the respective EBT recipient is present and before you provide the EBT recipient with any FNS, SNAP and WIC benefits, or cash benefits, as applicable.
- do properly and legibly enter the specified EBT recipient, clerk and sales information, including the telephone authorization number, on the manual sales draft.
- do clear all manual vouchers authorizations on your point of sale terminal within 14 days after the date of applicable voice authorization. If a voucher expires before it has been cleared by your terminal for payment, no further action can be taken to obtain payment for the voucher.

DON'TS

- don't attempt to voice authorize a manual EBT transaction if the EBT recipient is not present to sign the voucher. The EBT recipient must sign the voucher. You must give a copy of the voucher to the EBT recipient at the time of authorization and retain one copy for your records.
- don't re-submit a manual sales draft for payment for a transaction if you have not received an authorization number.
- don't mail vouchers requesting payment.

You must take sole responsibility for (and you will not be reimbursed in respect of) a manual transaction if you fail to obtain an authorization number from the applicable EBT service provider in accordance with this section or otherwise fail to process the manual transaction in accordance with the Quest rules, except as specifically provided in the Quest rules.

This part of Your Payments Acceptance Guide reviews essential elements of a transaction, including authorizations, issuing refunds and exchanges, and handling special transactions like recurring payments. You'll also find information about chargebacks and processes to put in place to avoid chargebacks. Feel free to contact Customer Service with any questions that arise as you review this information.

9. Authorizations

General

- You must obtain an authorization approval code from us for all transactions.
- A positive authorization response remains valid for the timeframe set out in section 19.
- An authorization approval code only indicates the availability of funds on an account at the time the authorization is requested. It does not indicate that the person presenting the card is the rightful cardholder, nor is it a promise or guarantee that you will not be subject to a chargeback or adjustment.
- You must not attempt to obtain an authorization approval code from anyone other than us, unless we have authorized you to use a third party authorization system as set out in section 9. An authorization approval code from any other source may not be valid.
- If you use Address Verification Services (AVS), you must review the AVS response separately from the authorization response and make your own decision about whether to accept the transaction. A transaction may receive an authorization approval code from the card issuing bank even if AVS is unavailable or reflects that the address provided to you does not match the billing address on file at the card issuing bank.
- If you receive a referral response to an attempted authorization, for American Express transactions you must not:
 - submit the transaction without calling for and receiving a voice authorization; and
 - attempt another authorization on the same card through your POS device.
- You must not attempt to obtain multiple authorizations for a single transaction. If a sale is declined, do not take alternative measures with the same card to obtain an approval of the sale from other authorization sources. Instead, request another form of payment.
- If you fail to obtain an authorization approval code or if you submit a card transaction after receiving a decline (even if a subsequent authorization attempt results in an authorization approval code), your transaction may result in a chargeback and it may be assessed fines or fees by the payments organizations for which you will be responsible. Fees currently range from \$25 to \$150 per transaction.
- You will be charged for a request for an authorization approval code (where applicable), whether or not the transaction is approved.
- For card present transactions, it is highly recommended that you use your electronic authorization device to swipe (magnetic stripe), tap/wave (contactless) or insert (chip) cards.

Card Not Present transactions

It is highly recommended that you obtain the three digit card verification code on the back of the card (or the four digit verification code on the front of American Express cards) and that you include this code with each card not present authorization request unless the transaction is a recurring transaction.

For recurring transactions, submit the card verification code only with the first authorization request and not with subsequent authorization requests.

For American Express Card Not Present transactions, please also refer to Appendix 2.

For Discover Network Card Not Present transactions, please also refer to Appendix 3.

PayPal does not allow Card Not Present transactions.

Authorization via telephone (other than terminal/electronic device users)

- You must call your designated Voice Authorization Toll Free Number and enter the authorization information into the VRU using a touch tone phone or hold for an authorization representative.
- If the Voice Authorization Center asks you to obtain identification from the cardholder before issuing an approval code, you must clearly write the appropriate identification source and numbers in the space provided on the sales draft.
- If the Voice Authorization Center asks you to confiscate a card, do not take any action that will alarm or embarrass the card presenter, and send the card to Rewards Department, P.O. Box 5019, Hagerstown, MD 21740. You may be paid a reward for the return of the card.
- If the sale is declined, please remember that our operators are only relaying a message from the card issuing bank. The fact that a sale has been declined must not be interpreted as a reflection of the cardholder's creditworthiness. You must instruct the cardholder to call the card issuing bank.

Authorization via electronic devices

- If you use an electronic terminal to obtain authorization approval codes, you must obtain the authorization approval codes for all sales through this equipment.
- If your terminal malfunctions, please refer to your Quick Reference Guide or call the POS Help Desk. Please remember to check your terminal periodically because most terminal problems are temporary in nature and are quickly corrected.

- If a terminal is moved or if wires are disconnected, causing malfunction, call the POS Help Desk immediately and follow their instructions. You may be responsible for any service charges incurred for reactivation of the terminal.
- Until the terminal becomes operable, you must call your designated Voice Authorization Toll Free Number and enter authorization information into the VRU using a touchtone phone. During this time, each transaction must be imprinted using a manual Imprinter machine.

Third party authorization systems

If you have contracted to use one of our authorization services, you must not use another third party authorization system without notifying Customer Service. Otherwise, we will be unable to successfully research and defend any authorization related chargebacks on your behalf. This delay will significantly decrease your time to research and provide proof of authorization, thus reducing your opportunity to reverse a chargeback.

If you use another authorization network:

- you will be responsible for the downgrade of any transactions to a higher cost interchange that result from any mismatch of information to our systems and those of third party authorization networks.
- liability resulting from discrepancies with that network must be resolved between you and that network. We will not research chargebacks resulting from authorization approval codes obtained from another authorization service organization. Such chargebacks will be passed through to you for resolution. If an authorization provided by a third party authorization system is challenged in a chargeback, you must obtain proof (for example, third party authorization logs) from the authorization source and submit it to us within the time frame specified on the chargeback documentation.

Call the following for other card types, each of which is available 24 hours/day; 7 days/week:

American Express Direct	1-800-528-2121
JCB, International (For YEN and CAD currency only)	1-800-522-9345
TeleCheck	1-800-366-5010
Voyager	1-800-987-6589
WEX	1-800-842-0071

You must enter manually all approved sales that have been authorized in this manner as "post authorization" transactions into the terminal, once the terminal becomes operational. You must enter all credit transactions into the terminal for data capture. If you receive a referral and subsequently receive an approval, you may be subject to a chargeback. You must imprint the card using a manual imprinter machine to reduce the risk of such a chargeback. For specific procedures on electronic data capture, refer to the Terminal Operating Instructions/Users Guide. If the terminal malfunctions for more than 24 hours, contact Customer Service for further instructions on processing your transactions.

Automated dispensing machines

You must produce records for all transactions originating with automated dispensing machines or limited amount terminals. Such records must include the last four digits of the cardholder account number, merchant's name, terminal location, transaction date, identification of transaction currency, transaction type (purchase), authorization code, and amount.

For Discover Network transactions, please refer to Appendix 3 for instructions on how to cancel an authorization.

For PayPal transactions, please refer to Appendix 4 instructions on how to cancel an authorization.

Partial authorization and authorization reversal

Partial authorization provides an alternative to a declined transaction by permitting a card issuing bank to return an authorization approval for a partial amount. This amount is less than the transaction amount requested because the available card balance is not sufficient to approve the transaction in full. The cardholder is able to use the funds remaining on the card to pay for a portion of the purchase and select another form of payment (in other words, another payment card, cash, check) for the remaining balance of the transaction.

- for MasterCard transactions, partial authorization is optional for batch authorized e-commerce transactions, mail order, telephone order transactions and recurring payment transactions.
- for Discover transactions, partial authorization support is optional for Card Not Present transactions. If you support partial authorizations, a partial authorization indicator must be included in each authorization request.

You must submit an authorization reversal if the authorization is no longer needed, a partial amount of the total authorized is submitted for the settled transaction, or the cardholder elects not to complete the purchase. The transaction sent for settlement must be no more than the amount approved in the partial authorization response. If you wish to support partial authorization functionality, you must contact Customer Service for additional rules and requirements.

10. Special Types of Transactions

Payment by installments

If a cardholder makes a deposit toward the full amount of the sale price and pays the balance on delivery, please follow the procedures set out in this section.

DO'S

- do execute two separate sales drafts and obtain an authorization for each sales draft on each transaction date;
- do indicate on each sales draft:
 - whether it is for the deposit or the balance of payment; and
 - the authorization date and approval code.
- do submit and seek authorization of each delayed delivery transaction under the same merchant identification number and treat deposits on the card no differently than you treat deposits on all other payment products.
- do complete Address Verification for each "balance" authorization.
- do obtain proof of delivery upon delivery of the services/merchandise purchased.

DON'TS

- don't submit sales data to us relating to the "balance" until the goods have been completely delivered or the services fully provided.

If delivery occurs after the timeframes set out in section 19, you must obtain a new authorization for the unprocessed portion of the transaction prior to delivery. If the transaction is declined, contact the cardholder and request another form of payment.

For example: On January 1, a cardholder orders \$2,200 worth of furniture and you receive an authorization for the full amount; however, only a \$200 deposit is processed leaving a \$2,000 balance remaining on the furniture. An authorization reversal must be processed for \$2,000. When the goods are available to ship, the \$2,000 transaction balance must be reauthorized.

Advance payment charges

If you permit or require cardholders to make advance payment charges for the following types of goods or services, please follow the procedures set out in this section:

- custom orders (for example, orders for goods to be manufactured to a customer's specifications);
- ticketing for events or entertainment (for example, sporting events, or concerts);
- tuition, room, board, and other mandatory fees (for example, library or other students services fees at universities);
- tickets for airlines, rail lines, cruise lines, lodging, and other travel-related services (for example, tours or guided expeditions); and
- vehicle rentals; or
- in store merchandise not immediately available (for example, merchandise pre-purchased for an upcoming sale event or merchandise on layaway)

For all advance payment transactions:

- do state your full cancellation and refund policies;
- do clearly disclose your intention to receive advance payment;
- before you request an authorization, do obtain written consent from the cardholder to bill the card for an advance payment charge;

The cardholder's consent must include (1) a detailed description of the goods or services to be provided, and (2) his or her agreement to all of the terms of the sale (including price, any cancellation or refund policies), and the expected delivery date of the goods or services;

- do obtain an authorization approval;
- do complete a sales draft: and
- if you cannot deliver the goods or services (for example, because custom-ordered merchandise cannot be fulfilled) and cannot make other arrangements, do immediately issue a credit for the full amount of the advance payment charge.

For Card Not Present transactions involving an advance payment:

- do ensure that the sales draft contains the words "Advance Payment,"; and
- within 24 hours of the advance charge being authorized, do provide the cardholder with written confirmation (for example, by email or facsimile) that advance payment charge has been made, the written confirmation must include (1) a detailed description of the goods or services to be provided; (2) the amount of the charge; (3) the confirmation number (if applicable); (4) the details of any cancellation or refund policies; and (5) the expected delivery date of the goods or services.

Recurring transactions

If you process recurring transactions and charge a cardholder's account periodically for recurring goods or services (for example, yearly subscriptions and annual membership fees, etc.), please follow the procedures set out in this section.

DO'S

- do obtain cardholder approval for such goods or services to be charged on an ongoing basis to the cardholder's account. Approval must at least specify:
 - the cardholder's name, address, account number and expiration date,
 - the transaction amounts,
 - the timing or frequency of recurring charges,
 - the duration of time for which the cardholder's approval is granted, and for Discover Network and PayPal transactions, the total amount of recurring charges to be billed to the cardholder's account, (including taxes and tips) and your merchant identification number,

- do obtain an authorization for each transaction.
- do include the recurring payment indicator in each authorization request, and as applicable, each batch submission entry.
- do indicate on the sales draft "Recurring Transaction" (or "P.O." for MasterCard transactions) in lieu of the cardholder's signature.
- for Discover Network and PayPal recurring transactions, do include a toll-free customer service number that the cardholder can call to cancel his/her approval for the recurring transaction or to obtain other assistance relating to the recurring transaction.

DON'TS

- don't include partial payments for goods or services purchased in a single transaction.
- don't impose a finance charge in connection with the recurring transaction or preauthorized order.
- don't complete a recurring transaction after receiving a cancellation notice from the cardholder or card issuing bank or after a request for authorization has been denied.

It is highly recommended that you obtain the three digit card verification code on the back of the card (or the four digit verification code on the front of American Express cards), include the number with the first authorization request. This is not required for subsequent authorization requests.

A positive authorization response for one recurring transaction is not a guarantee that any future recurring transaction authorization request will be approved or paid.

If the recurring transaction is renewed, you must obtain from the cardholder a new written request for the continuation of such goods or services to be charged to the cardholder's account.

If you or we have terminated your right to accept cards, you must not submit authorization requests or sales data for recurring transactions that are due after the date of such termination.

For American Express transactions please also see Appendix 2.

Stored payment credentials

If you store information (including, but not limited to, an account number or payment token) to process future purchases on behalf of the cardholder, follow the procedures set out in this section.

DO'S

- do include the appropriate data values when a payment credential is being stored for the first time.
- do include the appropriate data values when a payment credential is being used to initiate a stored credential transaction.
- do include the appropriate data values when a payment credential is being used to identify an unscheduled credentials on file transaction.
- do submit a valid authorization if an amount is due at the time the payment credential is being stored.
- do submit an authorization verification if no payment is due at the time the payment credential is being stored.

DON'TS

- don't store a payment credential if either the first payment transaction or account verification is declined.

Card checks

If you accept card checks, you must treat checks from all the payment organizations that you accept equally (for example, if you accept MasterCard and American Express, your check acceptance policy must treat checks for both of these payment organizations equally). You should handle these card checks like any other personal check drawn upon a bank in the United States.

11. Sales Drafts

DO'S

- do prepare a sales draft for each transaction and provide a copy of the sales draft or transaction receipt to the cardholder at the time the card transaction is completed. An exception is eligible transactions participating in any of the 'no signature required' programs.
- do only collect transaction data provided directly to you by the cardholder.
- do include all of the following information on a single page document constituting the sales draft:
 - the cardholder's account number;
 - cardholder's signature, unless you participate in any of the 'no signature required' programs Mastercard, Discover, and American Express do not require you to obtain signatures at the point-of-sale for credit or debit transactions unless required by law
 - date of the transaction;
 - the total amount of the transaction, including any taxes to be collected, in the approved currency of the sale;
 - description of the goods or services involved in the transaction—if there are too many items, combine them into one description; (for example, "clothing") to ensure that all information is contained on a single page;

- description of your merchandise return and credit/refund policy;
- a valid authorization code;
- Merchant's Doing Business As ("D/B/A") name and location (city and state required) and merchant identification number. The merchant identification number is optional but if provided for Discover, include only the last four digits; and
- if the card has a magnetic stripe and the POS device fails to read the magnetic stripe, or if you are required to obtain a voice authorization, you must also use a manual imprinting machine to make a clear impression of the card on the same side of the signed sales draft. If you work in the face-to-face sales environment, you may include the card verification code in the authorization request for US domestic key-entered transactions in lieu of taking a manual card imprint, except for Discover

DON'TS

- don't include the card expiration date or any more than the last four digits of the card number in the copy of the sales draft which you provide to the cardholder.
- when imprinting sales drafts, you must not alter the cardholder account number, circle or underline any information on the sales draft or alter a sales draft in any way after the transaction has been completed and signed. Stray marks and other alterations on a sales draft may result in it becoming unreadable or illegible.

If you participate in the Visa Easy Payment Service ("VEPS") (Visa's 'no signature required' program), Quick Payment Service or Small Ticket, you are only required to provide the cardholder with the completed sales draft when requested by the cardholder.

If you are operating under certain merchant category codes ("MCC") approved by a payment organization, you are not required to:

- provide a transaction receipt, unless requested by the cardholder; and
- obtain the cardholder's signature provided that you transmit the full track data in the authorization request and the sale amount is below the applicable program floor limit:
 - STAR - \$50 or less; and
 - Visa - \$25 or less, with the exception of grocery stores (MCC 5411) and discount stores (MCC 5310) for which the floor limit is \$50.

12. Refunds

DO'S

- do provide clear instructions to your customers regarding returns, including the following:
 - customer service telephone number;
 - reference number for the return;
 - expected processing time for the credit;
 - return address, preferably on a pre-formatted shipping label (if applicable).
- do document your cancellation policy and terms and conditions on the contract the cardholder signs, or on your website, as applicable.
- do create a credit draft containing the following information for every refund:
 - the account number;
 - the cardholder's name;
 - your name, city, state and merchant identification number. Merchant identification number is optional but if provided for Discover only include the last 4 digits
 - transaction type;
 - a description of the goods or services;
 - the transaction date of the credit; the total amount of the credit; and
 - for Discover Network transactions, the approved currency used and the signature of your authorized representative or employee.
 - for PayPal transactions, the approved currency used and the signature of your authorized representative or employee.
- do submit all credit drafts to us within the timeframes set out in section 19;
- do submit each credit under the establishment where the credit originated;
- do provide full refunds for the exact dollar amount of the original transaction including tax, handling charges, etc., and in no circumstances provide a refund amount for more than the original card sale amount;
- do write clearly all amounts and other handwritten information - stray marks on the credit draft will render it illegible.
- if the card cannot be swiped for any reason, do imprint the credit draft with the same card used by the cardholder to make the original purchase when applicable.
- do ensure that the cardholder signs the credit draft, give the cardholder the appropriate copy, and deposit the credit draft immediately.
- do include the last 4 digits of the merchant identification number for Discover transactions.

DON'TS

- don't circle or underline any information on the credit draft.
- don't credit an account that differs from the account used for the original transaction.
- don't include the card expiration date or any more than the last four digits of the card number in the copy of the credit draft which you provide to the cardholder.

- don't give cash, check credit refunds or other consideration for card sales, with the exception of the following type of Visa transactions only:
 - Visa Easy Payment Service Transaction (Visa's 'no signature required' program);
 - the recipient of the gift is not the cardholder; or
 - Visa prepaid card transaction if the cardholder states that the Visa prepaid card has been discarded.
- don't intentionally submit a sale and an offsetting credit at a later date solely for the purpose of debiting and crediting your own or a customer's account;
- don't process a credit transaction after a chargeback has been received.

Authorization is not required for credits.

Your website must communicate your refund policy to your customers and require your customers to select a "click-to-accept" or other affirmative button to acknowledge the policy. The terms and conditions of the purchase must be displayed on the same screen view as the checkout screen that presents the total purchase amount, or within the sequence of website pages the cardholder accesses during the checkout process.

For American Express transactions, please also refer to Appendix 2.

13. Exchanges

For an even exchange, no additional paperwork is necessary and you may simply follow your standard company policy.

For an uneven exchange, you must complete a credit draft, and follow the procedures outlined in section 11 for the total amount of the goods returned. The cardholder's account will be credited for that amount. Then, complete a new sales draft for the total amount of any new goods purchased.

14. Chargebacks, Retrievals and Other Debits

Chargebacks

Both the cardholder and the card issuing bank have the right to question or dispute a transaction. If such questions or disputes are not resolved, a chargeback may occur. You are responsible for all chargebacks, our chargeback fees and related costs arising from your transactions. As a result, we will debit your settlement account or settlement funds for the amount of each chargeback.

Due to the short time frames and the supporting documentation necessary to successfully (and permanently) reverse a chargeback in your favor, we strongly recommend that:

- you adhere to the guidelines and procedures outlined in this guide;
- if you do receive a chargeback, investigate, and if you dispute the chargeback, submit the appropriate documentation within the required time frame;
- whenever possible, contact the cardholder directly to resolve the dispute (except with respect to a Discover Network cardholder with whom direct contact regarding the dispute is prohibited by Discover Network Card Organization Rules); and
- if you have any questions, call Customer Service.

You must not process a credit transaction once a chargeback is received, even with cardholder authorization, as the credits may not be recoverable and you may be financially responsible for the credit as well as the chargeback. Instead, the card issuing bank will credit the cardholder's account.

Chargeback process

If the card issuing bank submits a chargeback, we will send you a chargeback notification, which may also include a request for transaction documentation. Due to the short time requirements imposed by the payments organizations, it is important that you respond to a chargeback notification and transaction documentation request within the time frame set out in the notification.

Upon receipt of a transaction documentation request, you must immediately retrieve the requested sales draft(s) using the following guidelines:

- make a legible copy, centered on 8-1/2 x 11-inch paper (only 1 sales draft per page);
- write the 'case number' from the request for transaction documentation on each copy/page;
- if applicable, make copies of a hotel folio, car rental agreement, mail/phone/Internet order form, or other form of receipt;
- if a credit transaction has been processed, make a copy of the credit draft;
- letters are not acceptable substitutes for sales drafts;
- fax or mail legible copies of the sales draft(s) and credit drafts, if applicable, to the fax number or mail address provided on the request form;
- if you fax your response, please (i) set your fax machine to print your fax number and name on the documents that you send, and (ii) set the scan resolution on your fax machine to the highest setting. We can use this information to help determine where the documentation received originated from if additional research is required, and the higher resolution setting improves the clarity of characters and graphics on the documentation transmitted and helps reduce the number of illegible fulfillments and chargebacks.

We strongly recommend that you also include a detailed rebuttal letter along with all pertinent documents when responding to a transaction request or a chargeback notification (for example, rental agreement, imprinted portion of the invoice or sales draft; the portion

signed by the cardholder; and the area where the authorization codes, with amounts and dates, are located).

If the information you provide is both timely and, in our sole discretion, sufficient to warrant a re-presentation of the transaction or reversal of the chargeback, we will do so on your behalf. However, a re-presentation or reversal is ultimately contingent upon the card issuing bank and/or cardholder accepting the transaction under applicable payment organization guidelines. Re-presentation or reversal is not a guarantee that the chargeback has been resolved in your favor.

If we do not receive a clear, legible and complete copy of the transaction documentation within the timeframe specified on the request, you may be subject to a chargeback for “non-receipt” for which there is no recourse.

If you do not dispute the chargeback within the time limits set by the payments organization rules and regulations, you will forfeit your reversal rights. Our only alternative, which is available for Visa and MasterCard transactions only, is to attempt a “good faith collection” to the card issuing bank on your behalf for non-fraud chargeback reason codes. This process can take up to 6 months and must meet the card issuing bank’s criteria (for example, at or above a set dollar amount). Good faith collection attempts are not a guarantee that any funds will be collected on your behalf. Card issuing banks normally charge good faith collection fees, which are deducted from the transaction amount if accepted in addition to any processing fees that are charged by us.

The card issuing bank may charge a handling fee which will be debited from your settlement account or settlement funds if a transaction documentation request results from a discrepancy between the sales draft and the transmitted record regarding any of the following:

- the name of your business;
- the city, state, or country listed for your business;
- the transaction date.

Visa: If we reverse the chargeback and re-present the transaction to the card issuing bank, the card issuing bank, at its sole discretion, may elect to submit the matter for arbitration before Visa. Visa currently charges a \$250 filing fee and a \$250 review fee. Whether or not a decision is made in your favor, you will be responsible for all such fees and charges and any other applicable fees and charges imposed by Visa. Such fees and charges will be debited from your settlement account or settlement funds, in addition to the chargeback.

STAR®: If we reverse the chargeback and re-present the transaction to the card issuing bank, the card issuing bank, at its sole discretion, may elect to submit the matter for arbitration before STAR. Whether or not a decision is made in your favor, you will be responsible for all fees and charges relating to that arbitration and any other applicable fees and charges imposed by STAR. Such fees and charges will be debited from your settlement account or settlement funds, in addition to the chargeback.

MasterCard: If we reverse the chargeback and re-present the transaction to the card issuing bank, the card issuing bank, at its sole discretion, may elect to resubmit the chargeback. In such event, at our discretion, we will debit your settlement account or settlement funds for the chargeback. However, if you feel strongly that it is an invalid chargeback, we may, on your behalf and at your request, submit the matter for arbitration before MasterCard. MasterCard currently charges a \$150 filing fee and a \$250 review fee. Whether or not a decision is made in your favor, you will be responsible for all such fees and charges, and any other charges imposed by MasterCard. Such fees and charges will be debited from your settlement account or settlement funds, in addition to the chargeback.

Discover Network: If Discover Network rejects our re-presentation request and you feel strongly that the chargeback is invalid, we may, at our discretion and on your behalf and at your request, submit the matter for dispute arbitration before Discover Network. Discover Network charges Acquirers fees for re-presentation requests and matters submitted to Discover Network for arbitration. We, in turn, may charge you fees for these items.

PayPal: If PayPal rejects our re-presentation request and you feel strongly that the chargeback is invalid, we may, at our discretion and on your behalf and at your request, submit the matter for dispute arbitration before PayPal. PayPal charges Acquirers fees for re-presentation requests and matters submitted to PayPal for arbitration. We, in turn may charge you fees for these items.

American Express: You may request a chargeback reversal if the chargeback was applied in error, provided that (i) you have responded to the original inquiry within the specified timeframe set out in your dispute notification, and (ii) you have provided all supporting documentation to substantiate the error.

Chargeback reasons

The following section outlines the most common types of chargebacks. This list is not exhaustive. Within each group, we have included recommendations on how to reduce the risk of chargebacks. These are recommendations only, and do not guarantee that you will eliminate chargebacks.

Chargebacks due to authorization

Description

Proper authorization procedures were not followed and valid authorization was not obtained.

Likely scenario

- authorization not obtained.

- authorization was declined.
- transaction processed with an expired card and authorization was not obtained.
- transaction processed with an invalid account number and authorization was not obtained.
- Card Recovery Bulletin (CRB) or Exception File was not checked (transactions below floor limit).

Recommendations to reduce risk of chargeback

- obtain valid authorization on the day of the transaction.
- if you receive the following responses:
 - decline - request another form of payment from the cardholder;
 - referral - follow the voice procedures to obtain a valid authorization and obtain an imprint of the card;
 - “Pick-up” - this means that the card issuing bank is asking for the card to be returned - you must not accept the card for payment and, in addition, you may retain the card and send it to us so that we can arrange for its return to the card issuing bank.
- you must not exceed any predetermined thresholds for specific POS device types as specified by each payments organization.
- you must ship goods within the timeframe set out in section 19, after you have obtained authorization.

Chargebacks due to cancellation and returns

Description

Credit was not processed properly or the cardholder has canceled or returned items.

Likely scenario

- Cardholder received damaged or defective merchandise.
- Cardholder continued to be billed for canceled recurring transaction.
- Credit transaction was not processed.

Recommendations to reduce risk of chargeback

- issue credit to the cardholder on the same account as the purchase in a timely manner.
- do not issue credit to the cardholder in the form of cash, check or in-store/merchandise credit as we may not be able to recoup your funds if the transaction is charged back.
- for recurring transactions ensure customers are fully aware of the conditions:
 - cancel recurring transactions as soon as notification is received from the cardholder or as a chargeback, and issue the appropriate credit as needed to the cardholder in a timely manner; and
 - notify the cardholder within 10 days (domestic) and 15 days (international) in advance of each billing, to allow the cardholder time to cancel the transaction.
- provide proper disclosure of your refund policy for returned/canceled merchandise, or services to the cardholder at the time of transaction. Card present, cardholder signed the sales draft containing disclosure.
- if applicable, the words “NO EXCHANGE, NO REFUND,” etc. must be clearly printed in 1/4-inch lettering on the sales draft near or above the cardholder signature:
 - Ecommerce, provide disclosure on your website on the same page as check out. Require the cardholder to click to accept prior to completion.
 - Card Not Present, provide the cancellation policy at the time of the transaction.
- for any Travel & Entertainment (T&E) transaction, provide cancellation numbers to cardholders when the services are canceled.
- ensure delivery of the merchandise or services ordered to the cardholder.
- participate in recommended fraud mitigation tools.

Chargebacks due to fraud

Description

Transactions that the cardholder claims are unauthorized; the account number is no longer in use or is fictitious, or the merchant was identified as “high risk.”

NOTE: For Visa transactions, to ensure that you preserve your chargeback rights, you must:

- complete a retrieval request and provide a sales slip that contains all required data elements; and
- respond to all retrieval requests with a clear legible copy of the transaction document that contains all required data elements within the specified timeframe.

Likely scenario

- multiple transactions were completed with a single card without the cardholder’s permission.
- a counterfeit card was used and proper acceptance procedures were not followed.
- authorization was obtained; however, full track data was not transmitted.
- the cardholder states that they did not authorize or participate in the transaction.

Recommendations to reduce the risk of chargeback Card Present Transactions:

- obtain an authorization for all transactions.
- for recurring transactions ensure customers are fully aware of the conditions:

- cancel recurring transactions as soon as notification is received from the cardholder or as a chargeback, and issue the appropriate credit as needed to the cardholder in a timely manner; and
- notify the cardholder within 10 days (domestic) and 15 days (international) in advance of each billing, allowing the cardholder time to cancel the transaction.
- American Express customers have the option to receive written notification of the recurring transaction at least (10) days prior to submitting, or any time the charge amount exceeds a maximum amount that has been set by the cardholder.
- if you are utilizing an electronic device to capture card data, swipe, dip or wave all card transactions through your electronic authorization device to capture cardholder information. When applicable, ensure the displayed cardholder number matches the number on the card.
- You should avoid keying the card data into your electronic authorization device unless you are unable to capture the card data through one of the above methods. If you do key the card data into your electronic authorization device, it is highly recommended that you also key in the three or four digit verification code. Otherwise, you should, imprint the card using a valid imprinting device that will capture the embossed card and merchant information. You must write on the manually imprinted draft all pertinent information relating to the transaction (transaction date, dollar amount, authorization code and merchandise description) and obtain the cardholder signature. Do not alter the imprint on the draft in any way. You are not protected from this type of chargeback by manually entering the information into the POS device.

NOTE: Do not imprint on the back of a signed sales draft. The imprint must be on the transaction document that contains all transaction elements to prove the card was present at the time of the transaction.

- Obtain the cardholder signature for all transactions; ensure the signature on the sales draft matches the signature on the back of the card.
- Process all transactions one time and do not batch out transactions multiple times.
- Educate staff on procedures to eliminate point of sale (POS) fraud.

Card Not Present Transactions:

- Ensure delivery of the merchandise or services ordered to the cardholder.
- Participate in recommended fraud mitigation tools:
 - Verified by Visa Program
 - MasterCard SecureCode
 - Address Verification Services (AVS)
 - Use of card verification code

NOTE: While transactions utilizing these tools may still be disputed, the service may assist you with your decision to accept certain cards for payment.

- ensure you ship to the AVS confirmed address (bill to and ship to must match).
- obtain authorization for all transactions.
- ensure merchant descriptor matches the name of the business and is displayed correctly on the cardholder statement.
- ensure descriptor includes correct business address and a valid customer service number.
- please refer to Appendix 2 for American Express fraud mitigation tools.

Chargebacks due to cardholder disputes

Description

Goods or services not received by the cardholder, Merchandise defective or not as described.

Likely scenario

- Services were not provided or merchandise was not received by the cardholder.
- Cardholder was charged prior to merchandise being shipped or merchandise was not received by agreed upon delivery date or location.
- Cardholder received merchandise that was defective, damaged, or unsuited for the purpose sold, or did not match the description on the transaction documentation/verbal description presented at the time of purchase.
- Cardholder paid with an alternate means and their card was also billed for the same transaction.
- Cardholder canceled service or merchandise and their card was billed.
- Cardholder billed for a transaction that was not part of the original transaction document.
- Cardholder claims to have been sold counterfeit goods.
- Cardholder claims the merchant misrepresented the terms of sale.

Recommendations to reduce such risk of chargeback

- provide Services or Merchandise as agreed upon and described to the cardholder; clearly indicate the expected delivery date on the sales receipt or invoice.
- contact the cardholder in writing if the merchandise or service cannot be provided or is delayed, and offer the cardholder the option to cancel if your internal policies allow.
- if the cardholder received defective merchandise or the merchandise received was not as described; resolve the issue with the cardholder at first contact.
- if the merchandise is being picked up by the cardholder, have them sign for the merchandise after inspecting that it was received in good condition.

- do not charge the cardholder until the merchandise has been shipped, according to the agreed upon terms, and a signed Proof of Delivery from the cardholder is obtained.
- if unable to provide services or merchandise, issue a credit to the cardholder in a timely manner.
- accept only one form of payment per transaction. Ensure the cardholder is only billed once per transaction.
- do not bill cardholder for loss, theft or damages unless authorized by the cardholder.
- ensure that a description of the service or merchandise provided is clearly defined.

Chargebacks due to processing errors

Description

Error was made when transaction was processed or it was billed incorrectly.

Likely scenario

- the transaction was not deposited within the payments organization specified timeframe.
- the cardholder was issued a credit draft. However, the transaction was processed as a sale.
- the transaction was to be processed in a currency other than the currency used to settle the transaction.
- the account number or transaction amount used in the transaction was incorrectly entered.
- a single transaction was processed more than once to the cardholder's account.
- the cardholder initially presented the card as payment for the transaction. However, the cardholder decided to use an alternate form of payment.
- a limited amount or self-service terminal transaction was processed for an amount over the pre-determined limit.

Recommendations to reduce risk of chargeback

- process all transactions within the payments organization specified timeframes.
- ensure all transactions are processed accurately and only one time .
- if a transaction was processed more than once, immediately issue voids, transaction reversals or credits.
- ensure that credit transaction receipts are processed as credits and sale transaction receipts are processed as sales.
- ensure all transactions received a valid authorization approval code prior to processing the transaction. Also obtain a legible magnetic swipe or imprinted sales draft that is signed.
- do not alter transaction documentation or make any adjustments unless the cardholder has been contacted and agrees to modifications of the transaction amount.
- ensure limited amount, self-service and automated fuel dispenser terminals are set properly to conform to the predetermined limits.

Chargebacks due to non-receipt of information

Description

Failure to respond to a retrieval request or the cardholder does not recognize the transaction.

Likely scenario

- the transaction documentation was not provided to fulfill the retrieval request.
- the retrieval request was fulfilled with an illegible sales draft or was an invalid fulfillment (incorrect sales draft or the sales draft did not contain required information that may include signature).
- the cardholder does not recognize or is unfamiliar with the transaction due to the merchant name or location not matching the name or location where the transaction took place.

Recommendations to reduce such risk of chargeback

- provide a clear and legible copy of the sales draft that contains all required data elements within the required timeframe that is specified on the retrieval request.
- ensure that the most recognizable merchant name, location and customer service phone number is provided on all transactions.
- retain copies of all transaction documentation for the required timeframe that is specified by each payments organization.
- develop efficient methods to retrieve transaction documentation to maximize ability to fulfill requests.

15. Suspect/Fraudulent Transactions

If the card being presented or the behavior of the person presenting the card appears to be suspicious or you otherwise suspect fraud, you must immediately call the Voice Authorization Center and ask to speak to a Code 10 operator. Answer all their questions and follow their instructions.

While not proof that a transaction is fraudulent, the following are some suggestions to assist you in preventing fraudulent transactions that could result in a chargeback:

Does the cardholder:

- appear nervous/agitated/hurried?
- appear to be making indiscriminate purchases (for example, does not care how much an item costs, the size, etc.)?

- make purchases substantially greater than your usual customer (for example, your average transaction is \$60, but this transaction is for \$360)?
- insist on taking the merchandise immediately (for example, no matter how difficult it is to handle, is not interested in free delivery, alterations, etc.)?
- appear to be purchasing an unusual amount of expensive items or the same items?
- take an unusual amount of time to sign the sales draft, or look at the back of the card as he signs?
- talk fast or carry on a conversation to distract you from checking the signature?
- take the card from a pocket instead of a wallet?
- repeatedly come back, in a short amount of time or right before closing time, to make additional purchases?
- cause an unusual, sudden increase in the number and average sales transactions over a one-to three-day period?
- tell you he has been having some problems with his card issuing bank and request that you call a number (that he provides) for a “special” handling or authorization?
- have a previous history of disputed charges?
- place orders to be shipped to an address other than the billing address, or use anonymous/free email domains?
- place orders sent to zip codes or countries where you show a history of fraudulent claims?

Does the card:

- have characters the same size, height, style and all within alignment?
- appear to be re-embossed (the original numbers or letters may be detected on the back of the card)?
- have a damaged hologram?
- have a Magnetic Stripe on the back on the card?
- have an altered signature panel (for example, appear discolored, glued or painted, or show erasure marks on the surface)?
- have “valid from” (effective) and “valid thru” (expiration) dates consistent with the sale date?

We also recommend that you are vigilant for any cardholder who behaves as follows, specifically in relation to prepaid cards:

- frequently makes purchases and then returns the goods for cash;
- uses prepaid cards to purchase other prepaid cards;
- uses large numbers of prepaid cards to make purchases.

Gift Cards, jewelry, video, stereo, computer and camera equipment, shoes and men’s clothing are typically fraud-prone because they can easily be resold. Also be suspicious of high dollar amounts and transactions with more than one fraudprone item, (for example, two laptops, three gold chains, etc).

Part III

In this part of the guide you’ll find helpful information about what to do if a card is left at your business, how long you must retain copies of records, how to return equipment and important transaction timeframes. This is also where you’ll find additional guidelines for specific industries including:

- Lodging
- Vending machines
- Travel & Entertainment
- Telecommunications
- Restaurants
- Petroleum

If you’d like additional information about anything you’ve read in Your Payments Acceptance Guide, please contact Customer Service.

16. Lost/Recovered Cards

If a card is left behind and remains unclaimed, you should call the appropriate payment organization’s Customer Service team via the number below and they will instruct you on how to handle it:

Visa	1-800-336-8472
MasterCard	1-800-826-2181
Discover	1-800-DISCOVER (1-800-347-2683)
AMEX	1-800-992-3404
PayPal	1-877-569-1113

17. Retention of Records

You must securely retain legible copies of all sales drafts and credit drafts or any other transaction records for the following periods:

MasterCard, Visa, and STAR: 13 months from the transaction date. 5 years for healthcare sales drafts and credit drafts.

Discover Network: the longer of (i) 365 days or (ii) the resolution of any pending or threatened disputes, claims, disagreements or litigation involving the card transaction. You must also keep images or other copies of sales drafts for no less than 3 years from the date of the Discover Network transaction.

PayPal: the longer of (i) (A) 1 year from the transaction date, or (B) if the transaction date was subject to dispute, 2 years from the transaction date or (ii) the time period required by applicable law.

American Express: 24 months from the date on which you submitted the sales draft or credit draft to us. You must provide all sales drafts and credit drafts or other transaction records requested by us within the shortest time limits established by payment organization rules.

18. Return of Equipment

To return point of sale (POS) equipment that you do not own, you must call Customer Service for the address of the location to send the device.

You must include the following information in the shipping box:

- your name, address and phone number;
- the name of the person to contact if there are any questions;
- your merchant identification number;
- the lease number (if applicable); and
- the serial number of the POS device (found on the underside of the POS device).

You must return the POS device in a manner that can be tracked. Reference the lease number (if applicable) on the return packaging.

19. Timeframes

Authorizations

A positive (approved) authorization response remains valid for:

- seven (7) days for MasterCard electronic processed transactions;
- ten (10) days for Visa, Discover, and STAR electronic processed transactions subject to the following exception:
 - thirty (30) days for Visa, Discover and PayPal, twenty (20) days for STAR for the following Industries:
 - car rental;
 - airline and passenger railway;
 - lodging;
 - other Travel & Entertainment (T&E) categories.
- seven (7) days for American Express electronic processed transaction subject to the following exception:
 - thirty (30) days for the Travel & Entertainment (T&E) industries.

Delayed deliveries

If delivery is more than:

- 7 days (MasterCard, Visa, American Express, and STAR transactions); or
- 10 days (Discover Network and PayPal transactions);
- After the initial authorization request, you must reverse the authorization for the unprocessed portion and obtain a new authorization for the remaining amount before delivery.

Refunds

You must submit all credit transactions to us within 5 days of determining that a credit is due.

20. Additional Provisions for Specific Industries

Merchants in the lodging industry

There are additional rules and requirements that apply to merchants in the lodging industry for practices including guaranteed reservations and charges for no shows, advance deposits, overbookings, and priority checkout. If you are a lodging merchant and wish to participate in the payment organization lodging services programs, please contact your sales representative or relationship manager for details and the appropriate payments organization requirements.

You must provide the cardholder with written confirmation of a guaranteed reservation. The confirmation must contain:

- cardholder’s name as it appears on the card, if present;
- card number, truncated where required by applicable law to you or us and card expiration date if present, unless prohibited by applicable law to you or us;
- reservation confirmation number;
- anticipated arrival date and length of stay;
- the cancellation policy in its entirety, inclusive of the date and time the cancellation privileges expire; and
- any other pertinent details related to the reserved accommodations.

If a cardholder requests a cancellation in accordance with your cancellation policy and specified time frames, you must provide the cardholder with a cancellation number and instructions to retain a record of it.

If a cardholder requests a written confirmation of the cancellation, you must provide this confirmation to the cardholder within 3 business days of such request. For the purposes of this section, a “business day” means Monday through Friday, excluding Bank holidays.

The cancellation confirmation must contain:

- the cardholder's reference that charges were placed on the card, if applicable, or a guarantee that a "no-show" charge will not be placed on the card;
- the cardholder's name as it appears on the card, if present;
- the card number, truncated as required by applicable law to you or us;
- the card expiration date, if present, unless prohibited by applicable law to you or us;
- the reservation cancellation number;
- the date of cancellation;
- the name of your employee that processed the cancellation; and
- any other pertinent information related to the reserved accommodations.

Pre-authorization for Travel & Entertainment (T&E) and restaurant merchants

If you are a business engaged in providing travel and entertainment services (for example, car rentals, hotels, motels, etc.) or a restaurant business, and engage in the practice of "pre-authorization" you must comply with the following general procedures:

- a hotel, motel, or car rental merchant may obtain an estimated authorization at the time of check-in.
- restaurants must not add an estimated tip amount to the authorization request beyond the value of the goods provided, or services rendered, plus any applicable tax.
- you must notify the cardholder of the dollar amount you intend to "Pre-Authorize".
- if the customer decides to use another form of payment (for example, cash, check, etc.) you must promptly call the Voice authorization Response Unit to delete the authorization hold. Provide the cardholder's account number, original dollar amount and date of the transaction, and the authorization code. If a new transaction takes place, a new imprinted and signed sales draft for the exact amount and a new authorization code for that amount must be obtained.
- VEHICLE RENTAL PROVIDERS MAY NOT INCLUDE POTENTIAL VEHICLE DAMAGE OR INSURANCE DEDUCTIBLES IN ANY PREAUTHORIZATIONS.
- if you receive a decline on a transaction, you must wait 24 hours before attempting to reauthorize. If you reauthorize prior to this time frame and receive an approval, you may be subject to a chargeback and a fine imposed by the payments organizations.
- hotels, motels, and car rental merchants are allowed up to a 15% variance above the amount authorized. If the final amount charged to the cardholder exceeds the original estimate by more than 15% above the preauthorization, you must authorize any additional amounts, and all incremental authorization codes must be written in the authorization area along with the date of authorization and the amount authorized.
- pre-authorization for certain establishments services, are allowed up to a 20% (instead of 15%) variance above the amount authorized. If the final amount exceeds the amount "preauthorized" by more than 20%, you must authorize the additional amount. Estimating the authorization amount to include a tip is prohibited. The authorization request must include only the amount associated with the bill presented to your customer.
- you must obtain an authorization for the initial estimated charges and then monitor the charges to ensure that the actual charges made do not exceed the estimated charges. If the actual charges exceed the amount of the initial estimated authorization (and any subsequent estimated authorizations), then you must secure a positive authorization for the additional amount. Subsequent authorizations must only be for the additional amount of total charges, and must not include any amounts already authorized.
- the estimated amount of any pre-authorization for lodging accommodations must be based on (i) the intended length of stay; (ii) the room rate; (iii) applicable taxes and service charges; and (iv) other miscellaneous charges as dictated by experience.
- if an authorization request is declined, no charges occurring after that date will be accepted for that cardholder.
- you do not need to obtain a final authorization if the total sum of charges (the final amount) does not exceed 20% of the previously authorized charges. You must record the dates, authorized amounts, and their respective authorization approval codes on the sales draft(s).

Merchants operating vending machines

For MasterCard, if you are operating vending machines under MCC 5499 (Miscellaneous Food Stores-Convenience Stores, Markets, Specialty Stores), you need not provide a receipt at the time a transaction is conducted. However, if a vending machine cannot provide a printed receipt, you must disclose and post instructions advising cardholders how a receipt may be obtained.

Telecommunication service providers

You must contact Customer Service for approval and further instructions, rules and requirements before conducting telecommunication transactions.

Telecommunication card sales occur when a telephone service provider is paid directly using a card for individual local or long-distance telephone calls, with the exception that prepaid telephone service cards are not and do not give rise to telecommunication card sales.

The petroleum industry

For Visa, MasterCard, STAR, American Express, Discover, and PayPal transactions, merchants operating in the petroleum industry that conduct card sales at Automated Fuel Dispensers (AFDs), may submit an authorization request for \$1 to verify the validity of the card presented. Under such circumstances, you must submit an authorization advice

message for the actual amount of the card sale within 60 minutes of completion of fuel delivery regardless of whether you previously received a partial authorization response or a positive authorization response for any other amount. If you do not complete the card sale following receipt of an approved authorization response for any amount, a request to cancel the authorization request must be submitted within 60 minutes of the completion of fuel delivery.

APPENDICES

APPENDIX I ADDITIONAL PROVISIONS FOR WEX AND VOYAGER

WEX cards

If you participate in the WEX Full Service Program, the following terms and conditions will apply:

DO'S

- do provide, at your own expense, all equipment necessary to permit the electronic acceptance of the WEX cards, including the operation and maintenance of the equipment, telecommunication link, and provision of all networking services.
- do include in any request for authorization the following information:
 - WEX cardholder account number,
 - vehicle number,
 - card expiration date,
 - driver identification number,
 - the amount of the transaction,
 - the date and time of the transaction,
 - the quantity of goods sold, unit price, and product code (the "authorization Request Data"),
 - an authorization number or other approval code from WEX for all manual WEX card sales (in other words, sales facilitated by a card imprinter).
- do ensure that the product detail of each transaction is accurate including:
 - the type of goods sold,
 - quantity of goods sold,
 - unit price/price per gallon (if applicable),
 - taxes, and
 - any coupons presented.
- do ensure that the product detail outlined equals the total amount of the sale when calculated (in other words, product quantity x unit price must equal the product amount. The sum of all product amounts including taxes minus any coupons must equal the total transaction amount).
- do complete a WEX card sale only upon the receipt of an authorization approval message.
- do provide a copy of the receipt for a WEX card sales, upon the request of the cardholder, to the extent permitted by applicable law. The receipt must not include the full account number or driver identification number.
- do require the cardholder to sign a receipt when a WEX card sale is not completed by an island card reader.
- do take all commercially reasonable efforts to protect manual WEX card sales data from fraud or misuse.
- do securely maintain a record of all WEX card sales (including the authorization request data) for a period of one year. You must produce such records upon the reasonable request of WEX.
- do notify us of any errors contained in a settlement report within 45 days of receipt of such report. We will not accept reprocessing requests for WEX transactions older than 90 days.
- do allow WEX to audit records, upon reasonable advance notice, related to the WEX Full Service.
- do retransmit WEX card sales data when reasonably requested to do so.

DON'TS

- Don't submit a WEX card sale for processing unless a WEX card is presented at the time of the sale.
- Don't accept a WEX card if an expired card / decline message is received.
- Don't submit a WEX card sale for processing until the goods have been delivered or services performed.
- Don't accept a WEX card if it appears to be invalid or expired or there is reasonable belief that the WEX card is counterfeit or stolen.
- Don't divide the price of goods and services purchased in a single WEX card sale among two or more sales receipts.
- Don't permit a WEX card sale when only partial payment is made by use of the WEX card and the balance is paid with another bank card.
- Don't remove fuel tax at the point of sale is not permitted. For all payment system product codes that are taxable, the transaction dollar amount and price per gallon (PPG) must

contain the sum of the fuel cost and PPG inclusive of all applicable Federal, State, County, Local and other fuel taxes.

You acknowledge and agree that your sole remedies with respect to the WEX Full Acquiring services will be against us and not WEX, except to the extent that WEX knows of any fraud related to the WEX cards and fails to provide notice of such fraud or WEX commits fraud in respect to the WEX Full Acquiring Services.

Voyager cards

- You must check Fleet Cards for any printed restrictions at the point of sale.
- You must establish a fair policy for the exchange and return of merchandise.
- You must promptly submit credits to us for any returns that are to be credited to a Voyager cardholder's account.
- You must not give any cash refunds to any Voyager card holder in connection with a sale, unless required by law.

In addition to the information set out in Section 11 (Sales Drafts), you must include the following information on a single page document constituting the sales draft for Voyager transactions:

- all authorization request data for Voyager card sales must include the following:
 - Voyager cardholder account number,
 - card expiration date,
 - driver identification number; and
 - the amount of the transaction, date and time of the transaction,
 - quantity of goods sold, unit price, and product code (the "Authorization Request Data").
- all manual Voyager card sales (in other words, sales facilitated by a card imprinter) must include:
 - the Authorization Request Data,
 - an authorization number or other approval code from Voyager,
 - the type of goods sold, quantity of goods sold, unit price/price per gallon (if applicable), taxes, and
 - any coupons presented within the product.
- the product detail outlined must equal the total amount of the sale when calculated, in other words:
 - product quantity x unit price must equal product amount.
 - the sum of all product amounts including taxes minus any coupons must equal the total transaction amount.

You must not remove fuel tax at the point of sale. For all payment system product codes that are taxable, transaction dollar amount and price per gallon (PPG) must contain the sum of the fuel cost and PPG inclusive of all applicable Federal, State, County, Local and other fuel taxes.

If there is an increase of 15% or more compared to the previous month in the number of Voyager transaction authorization calls that are not due to our or Voyager system outages, we may, at our discretion, deduct telephone charges from the settlement of your Voyager transactions. Fees will not exceed \$0.25 per call.

Settlement of Voyager transactions will generally occur by the fourth banking day after we process the applicable card transactions. We will reimburse you for the dollar amount of sales you submit for a given day, reduced by the amount of chargebacks, tax exemptions, discounts, credits, and the fees set out in the Agreement. You must notify us of any errors contained with the settlement reports within 30 calendar days of receipt of such report. Neither we nor Voyager will be required to reimburse you for sales submitted more than 60 calendar days from the date of purchase.

For daily transmission of sales data, you must securely maintain true and complete records for a period of not less than 36 months from the date of the generation of the data. You may store records on electronic media, if secure. You are responsible for the expense of retaining sales data records and sales drafts.

APPENDIX 2

ADDITIONAL PROVISIONS FOR AMERICAN EXPRESS TRANSACTIONS

For merchants participating in the American Express OptBlue® Program, you should review the operating guide made available to you at www.americanexpress.com/merchantopguide.

Treatment of the American Express marks

Whenever payment methods are communicated to customers, or when customers ask what payments are accepted, you must indicate your acceptance of the American Express card and display the American Express marks (including any card application forms provided to you) as prominently and in the same manner as any other payment products.

You must not use the American Express marks in any way that injures or diminishes the goodwill associated with the mark, nor (without our prior written consent) indicate that American Express endorses your goods or services.

You must only use the American Express marks as permitted. You must cease using the American Express marks upon termination of your acceptance of American Express cards.

For additional guidelines on the use of the American Express marks, please contact Customer Service.

Treatment of American Express cardholder Information

Any and all cardholder information is confidential and the sole property of the card issuing bank, American Express or its affiliates. Except as otherwise specified, you must not disclose cardholder information, nor use nor store it, other than to facilitate transactions at your establishments in accordance with the terms on which you are authorized to accept American Express cards.

Authorization for Card Not Present transactions

If you process a Card Not Present transaction you must obtain the following information:

- the card number;
- the card expiration date;
- the cardholder's name as it appears on the card;
- the cardholder's billing address; and
- the delivery address if different from the billing address. In addition, for Internet transactions you must:
 - use any separate merchant identification numbers (Seller ID) established for your Internet orders in all of your requests for authorization and Submission of charges;
 - provide us with at least one (1) month's prior written notice of any change in your Internet address; and
 - comply with any additional requirements that American Express provides from time to time.

American Express has the right to chargeback for any Card Not Present transaction that the cardholder denies making or authorizing. However, American Express will not chargeback for any Card Not Present transaction based solely upon a claim by a cardholder that he or she did not receive the disputed goods if you have:

- verified the address to which the goods were shipped was the cardholder's full billing address; and
- provided proof of delivery signed by the cardholder or an authorized signer of the card indicating the delivery of the goods or services to the cardholder's full billing address.

American Express will not be liable for actual or alleged fraudulent transactions over the Internet and will have the right to chargeback for those charges.

If a disputed transaction arises involving a card not present transaction that is an Internet electronic delivery transaction, American Express may exercise a chargeback for the full amount of the transaction and place you in any of its chargeback programs.

Charge records (also known as 'sales drafts')

For each transaction submitted:

- electronically - you must create an electronically reproducible charge record; and
- on paper - you must create a charge record containing all of the following required data:
 - full card number and expiration date, and if available, cardholder name;
 - the date the transaction was incurred;
 - the amount of the transaction, which must be the total price for the purchase of goods and services (plus applicable taxes and gratuities) purchased on the card;
 - the authorization approval;
 - a clear description of the goods and services purchased by the cardholder;
 - an imprint or other descriptor of your name, address, merchant identification number and, if applicable, store number;
 - the words "No Refunds" if you have a no refund policy, and your return and cancellation policies; and
 - the cardholder's signature (if a Card Present transaction), or the words "telephone order," "mail order," "Internet Order," or "signature on file," as applicable (if a Card Not Present transaction).

In the charge record (and a copy of the customer's receipt) you must:

- include your return and cancellation policies; and
- mask truncated card number digits with replacement characters such as "x," "*" or "#," and not blank spaces or numbers.

If the cardholder wants to use more than one card for payment of a purchase, you may create a separate charge record for each card used. However, if the cardholder is using a single card for payment of a purchase, you must not divide the purchase into more than one transaction, and you must not create more than one charge record.

Refunds

To issue a refund you must:

- compare the last four digits on the charge record against the card presented (when applicable);
- issue the credit in the currency in which the original transaction was submitted to us; and
- issue the credit to the card used to make the original purchase. If the credit is for the return of a gift by someone other than the cardholder who made the original purchase, you must apply your usual refund policy.

If the cardholder indicates that the card on which the purchase was originally made is no longer active or available:

• for all cards except prepaid cards - advise the cardholder that you must issue the credit to that card; and if the cardholder has questions, advise him or her to call the customer service number on the back of the card in question; and

• for prepaid cards, do apply your usual refund policy for returns.

In the credit draft delivered to the cardholder you must mask truncated card number digits with replacement characters such as “x,” “*” or “#,” and not blank spaces or numbers.

Your refund policy for card transactions must be at least as favorable as your refund policy for purchases made with other payment products or other payment methods.

If you issue a credit, American Express will not refund the discount or any other fees or assessments previously applied on the corresponding transaction. The discount on chargebacks will not be refunded.

Fraud mitigation tools

American Express offers fraud mitigation tools for both Card Present and Card Not Present transactions to help verify that a transaction is valid. These tools help you mitigate the risk of fraud at the point of sale, but are not a guarantee that a transaction is in fact valid or bona fide, or that you will not be subject to a chargeback. For optimal use of the tools, please visit American Express' Fraud Prevention Information at: www.americanexpress.com/fraudinfo.

Recurring transactions

For recurring transactions you must offer the cardholder the option to receive written notification for the recurring transaction(s) at least (10) ten days prior to submitting, or any time the transaction amount exceeds a maximum amount that has been set by the cardholder. You must clearly and conspicuously disclose all material terms of the option, including, if applicable, the fact that recurring billing will continue until the option is canceled by the cardholder. If the material terms of the option change after submission of the first recurring transaction, you must promptly notify the cardholder in writing of such change and obtain the cardholder's express written consent to the new terms prior to submitting another recurring transaction.

For recurring transactions you must:

- periodically verify with cardholders that their information (for example, card number, expiration date, billing address) is still accurate. This will improve the likelihood of obtaining an approval to an authorization request;
- retain evidence of consent to receive updated card account information from the card issuing bank for 24 months from the date you submit the last recurring transaction.
- ensure that your process for cancellation of recurring transactions is simple and expeditious; and
- within 24 hours of incurring the first recurring billing transaction, provide the cardholder written confirmation (for example, email or facsimile) of such transaction, including all material terms of the option and details of your cancellation/refund policy.

If your recurring transaction amounts vary, you must offer the cardholder the right to receive written notification of the amount and date of each recurring transaction:

- at least ten (10) days before submitting each transaction; or
- whenever the amount of the transaction exceeds a maximum recurring transaction amount specified by the cardholder.

For more information about processing prepaid cards:

- call the customer service number on the back of the card in question; or
- see American Express Card Organization Rules regarding “additional authorization requirements.”

No Signature Program

You may participate in the No Signature Program under which you are not required to request a signature from cardholders on the transaction record provided that:

- your business is classified in an industry that accepts in-person charges, with the exception of the following categories:
 - Merchants who do not conduct in-person charges (in other words, Internet, mail order or telephone order).
 - prohibited merchants or prohibited transactions (or both) as defined in American Express Card Organization Rules regarding “risk evaluation.”
 - high-risk Merchants (for example, Internet electronic services or nightclubs/lounges) as defined in American Express Card Organization Rules regarding “high risk merchants.
 - Merchants placed in our Fraud Full Recourse Program. See American Express Card Organization Rules regarding “chargeback programs”.
- in relation to the transaction:
 - the transaction amount must meet the threshold established in American Express' country specific policy.
 - the transaction must include the appropriate indicator to reflect that the card and the Cardholder were present at the point of sale.
 - the transaction must include a valid approval.

Under the American Express No Signature Program, chargebacks will not be exercised for such charges based solely on your failure to obtain the cardholder's signature at the point of sale.

If a disproportionate number of disputed charges under the No Signature Program occur, you must cooperate to reduce the number of disputed charges. If such efforts fail, you may

be placed in American Express chargeback programs, or your participation in the No Signature Program may be modified or terminated.

Travelers cheques

Travelers cheques are available in various denominations and currencies. The denominations in US dollars range from \$20 to \$1000.

You must exercise caution when presented with a travelers cheque in a denomination of \$500 or greater. The higher denominated travelers cheques are rarely sold, and so more likely to be counterfeit.

To accept a travelers cheque, watch your customer countersign in the lower left corner of the travelers cheque, and compare the countersignature to the signature in the upper left corner of the travelers cheque.

- if the signature and countersignature are a reasonable match (they look alike, but may not be identical), you may accept the cheque and there is no need to obtain any identification.
- if you suspect that the countersignature may be false, or you did not watch the customer countersign, ask your customer to turn the cheque over and sign again across the left-hand side (in the same manner one typically endorses a check); then take the cheque and fold up the bottom right-hand corner so that you can compare the original signature with the new one.
- if the signatures are not the same, or you have any questions regarding the validity of the cheque, call Customer Service.
- if you suspect that the travelers cheque may be fraudulent, verify that the cheque is authentic by:
 - performing the smudge test. Turn the cheque over (non-signature side). Wipe a moistened finger across the denomination.
 - on the right side of the cheque, the ink should not smudge.
 - on the left side of the cheque, the ink should smudge.
 - obtaining online Authorization at www.americanexpress.com/verifyamextc.

You are not required to obtain authorization before accepting a travelers cheque.

High CV Merchants

You acknowledge that you will be converted from the American Express US Enhanced Acquisition Program to a direct card acceptance relationship with American Express if and when you become a 'High CV Merchant' in accordance with the American Express Card Organization Rules. As part of this acknowledgment you agree that upon conversion: (i) you will be bound by American Express' then-current agreement for card acceptance; and (ii) American Express will set pricing and other fees payable by you for card acceptance.

A “High CV Merchant” is a Program Merchant with Estimated Annual Charge Volume (ECV) of greater than (i) United States currency (USD) \$1,000,000 in the United States excluding Puerto Rico and the U.S. Virgin Islands or (ii) USD \$1,000,000 in Puerto Rico and the U.S. Virgin Islands. Where a Program Merchant Prospect has more than one Establishment, then the ECV of (i) all Establishments operated under the same tax identification number (TIN) in a region shall be aggregated or (ii) all Establishments operated under different TINs but as a unified business enterprise in a region shall be aggregated. For clarification purposes, a 'unified business enterprise' shall include Establishments that are owned, operated, or affiliated to a single business entity.

Marketing opt-outs

You agree that when providing your contact information to us that you may receive messages from American Express, including important information about American Express products, services, and resources available to your business. These messages may be sent to the mailing address, phone numbers, email addresses or fax numbers that you provide. If you provide a wireless phone number, you agree that you may be contacted at that number and the communications sent may include autodialed short message service (SMS or “text”) messages or automated or pre-recorded calls. If you provide a fax number, you agree that you may be sent fax communications. American Express may otherwise use and share your information for business purposes and as permitted by applicable law. American Express uses reasonable administrative, technical and physical security measures to protect your information consistent with the sensitivity of the information.

You may opt out of newsletters or messages about products, services and resources for different forms of communications by contacting us, via inbound telephone, email, facsimile, website and any other means identified by us, or by exercising the opt-out options that may be described or offered in emails, SMS messages, faxes or other communications. If you opt out, you may still receive messages from American Express regarding services and programs designed to enhance the value of the American Express Network.

Protecting American Express Card Member Information

These merchant data security requirements apply to all of your equipment, systems, and networks on which encryption keys, cardholder data and/or sensitive authentication data are stored, processed, or transmitted.

Standards for protection of cardholder data and sensitive authentication data

You must, and you must ensure that all of your employees, agents, representatives, subcontractors, processors, service providers, providers of point-of-sale equipment or systems or payment processing solutions, and any other party to whom you may provide card member information access, will:

- store American Express cardholder data only to facilitate transactions for your acceptance of American Express cards;
- comply with the current version of the PCI DSS, no later than the effective date for implementing that version; and
- use, when deploying new or replacement PIN entry devices or payment applications (or both), only those that are PCI-approved.

You must protect all charge records and credit records retained in accordance with these data security provisions.

You must use these records only for purposes of your acceptance of American Express cards and you must safeguard the records accordingly.

Data incidents

If you discover a data incident, you must:

- notify us immediately and in no case later than 24 hours after such discovery;
- conduct a thorough forensic investigation of each data incident; this must be conducted by a PCI forensic investigator (PFI) if the data incident involves 10,000 or more unique card numbers (or otherwise at our request);
- promptly provide to us all compromised card numbers and the forensic investigation report of the data incident;
- work with us to rectify any issues arising from the data incident, including consulting with us about your communications to card members affected by the data incident and providing (and obtaining any waivers necessary to provide) to us all relevant information to verify your ability to prevent future data incidents; and
- at our request, provide validation by a qualified security assessor (QSA) that the deficiencies have been remediated.

Forensic investigation reports must:

- include forensic reviews, reports on compliance, and all other information related to the data incident;
- identify the cause of the data incident;
- confirm whether or not you were in compliance with the PCI DSS at the time of the data incident; and
- verify your ability to prevent future data incidents by providing a plan for remediating all PCI DSS deficiencies.

American Express has the right to disclose information about any data incident to card members, issuers, other participants on the American Express network, and the general public as required by applicable law, by judicial, administrative, or regulatory order, decree, subpoena, request, or other process; in order to mitigate the risk of fraud or other harm; or otherwise to the extent appropriate to operate the American Express network.

Periodic validation of your systems

You must take steps to validate under PCI DSS annually and quarterly the status of your equipment, systems and networks (and their components) on which cardholder data and sensitive authentication data are stored, processed or transmitted.

Step 1 - Enroll in a compliance program

You must submit applicable periodic validation documentation to us. Please contact us for more information regarding data security compliance requirements.

Step 2 - Determine merchant level and validation requirements

Most merchant levels are based on the volume of transactions submitted by establishments. You will fall into one of the merchant levels specified in the following table:

Merchant Level	Definition	Validation documentation	Requirement
1	2.5 million transactions or more per year; or any merchant that American Express otherwise deems a level 1 merchant	Annual on-site security assessment report and quarterly network scan	Mandatory
2	50,000 to 2.5 million transactions per year	Annual self-assessment questionnaire (SAQ) and quarterly network scan	Mandatory
3	Less than 50,000 transactions per year	Annual SAQ and quarterly network scan	Strongly recommended
3-	Less than 50,000 transactions per year and designated a level 3 merchant by American Express	Annual SAQ and quarterly network scan	Mandatory

- As designated by American Express.

American Express may require certain level 3 merchants to enroll in American Express' compliance program. Such merchants must enroll no later than ninety (90) days following receipt of such notice from us. All other level 3 merchants need not submit validation documentation, but must comply with all other provisions of these data security provisions.

The validation documentation which you must send to us is as follows:

Annual onsite security	Annual self-assessment	Quarterly network scans
<p>This is a detailed onsite examination of your equipment, systems, and networks (and their components) where cardholder data or sensitive authentication data (or both) are stored, processed, or transmitted.</p> <p>YOU MUST:</p> <ul style="list-style-type: none"> -ensure that the annual onsite security assessment is performed by (i) a QSA, or (ii) you and certified by your chief executive officer, chief financial officer, chief information security officer or principal; -submit the AOC section of the SAQ annually to us, and include copies of the full SAQ upon request; and -ensure that the AOC certifies compliance with all requirements of the PCI DSS. 	<p>This is a process using the PCI DSS self-assessment questionnaire (SAQ) that allows self-examination of your equipment, systems, and networks (and their components) where cardholder data or sensitive authentication data (or both) are stored, processed, or transmitted.</p> <p>YOU MUST:</p> <ul style="list-style-type: none"> -ensure that the SAQ is performed by you and certified by your chief executive officer, chief financial officer, chief information security officer or principal; -submit the AOC section of the SAQ annually to us, and include copies of the full SAQ upon request; and -ensure that the AOC of the SAQ certifies compliance with all requirements of the PCI DSS. 	<p>The quarterly network scan is a process that remotely tests your internet-connected computer networks and web servers for potential weaknesses and vulnerabilities.</p> <p>YOU MUST:</p> <ul style="list-style-type: none"> -ensure that the quarterly network scan is performed by an approved scanning vendor (ASV); -complete and submit the ASV scan report attestation of scan compliance (AOSC) or executive summary of findings of the scan (and copies of the full scan, on request) quarterly to us; -ensure that the AOSC or executive summary certifies that (i) the results satisfy the PCI DSS scanning procedures, (ii) no high risk issues are identified, and (iii) the scan is passing or compliant.

Step 3 - Send the validation documentation to Participant

Compliance and validation are completed at your expense. By submitting validation documentation to us, you represent and warrant to us that you are authorized to disclose the information contained in it and are providing the validation documentation without violating any other party's rights.

Merchants not compliant with PCI DSS

If you are not compliant with the PCI DSS, then you must:

- complete and submit an AOC including "Part 4. Action Plan for Non-Compliant Status" to us;
- designate a remediation date, not to exceed twelve (12) months following the date of the AOC, for achieving compliance; and
- provide us with periodic updates of your progress toward remediation under the "Action Plan for Non-Compliant Status."

Non-validation fees and termination of right to accept cards

We have the right to impose non-validation fees on you and terminate your right to accept cards if you do not fulfill these requirements or fails to provide the mandatory validation documentation to us by the applicable deadline.

We will notify you separately of the applicable deadline for each annual and quarterly reporting period. If we do not receive your mandatory validation documentation, then we have the right to terminate your right to accept cards and to impose non-validation fees on you.

Periodic validation of level EMV merchants

Your merchant level may be classified as EMV if you submit 50,000 (or more) American Express card transactions per year, of which at least 75% are made by the card member with the physical card present at a point of sale system compliant with EMV specifications and capable of processing contact and contactless transactions on a chip-enabled device.

If you are classified as merchant level EMV, you may submit the annual EMV attestation (AEA) instead of other validation documentation, in which case you must submit the AEA annually to us. Even if you fall into merchant level 1 or 2, if you are classified as merchant level EMV, you only need to submit the AEA, and not the other merchant level 1 and 2 validation documentation.

The AEA involves a process using PCI DSS requirements that allows self-examination of your equipment, systems, and networks (and their components) where cardholder data or sensitive authentication data (or both) are stored, processed or transmitted.

The AEA must:

- be performed by you;
- be certified by your chief executive officer, chief financial officer, chief information security officer, or principal; and
- certify that you meet the requirements for merchant level EMV.

DISCOVER NETWORK PROTOCOL FOR INTERNET TRANSACTIONS

Each Internet Discover Network card transaction accepted by you and submitted to us shall comply with Discover Network standards, including Discover Network standards governing the formatting, transmission and encryption of data, referred to as the “designated protocol”.

You shall accept only those Internet Discover Network card transactions that are encrypted in accordance with the designated protocol. As of the date of these procedures, the designated protocol for the encryption of data is Secure Socket Layer (SSL).

We may, at our discretion, withhold Settlement until security standards can be verified. However, the designated protocol, including any specifications with respect to data encryption, may change at any time upon 30 days advance written notice. You shall not accept any Internet Discover Network card transaction unless the transaction is sent by means of a browser that supports the designated protocol.

AUTHORIZATIONS

Card Not Present Transactions

For Discover Network Card Not Present transactions, you must also verify the name and billing address of the Discover Network cardholder using the Address Verification System (AVS).

Discover Network procedure for request for cancellation of authorization

If a Discover Network or PayPal card sale is canceled or the amount of the transaction changes following your receipt of authorization for the sale, you must process an authorization reversal via your POS Device or, for voice-approved authorizations, call your Authorization Center directly and request a cancellation of the authorization. An authorization may be canceled at any time within 10 days of your receipt of the authorization, but must be canceled before the sales data relating to the transaction is submitted to us, after which the authorization cannot be changed. For an authorization cancellation, you must provide us with the following information, in this order:

- the Discover Network Merchant Number used in the authorization;
- the card number;
- the original amount of the authorization being canceled;
- the new amount of the total transaction (if any);
- the original authorization code for the authorization being canceled;
- the expiration date of the card; and
- a brief reason for the authorization cancellation.

Discover Network Cash Over Transactions

Cash over transactions are only available for Discover Network.

You may issue cash over in connection with a Discover Network card sale, provided that you comply with the terms on which you are authorized to accept cards, including the following requirements:

- you must deliver to us a single authorization request for the aggregate total of the goods/ services purchase amount and the cash over amount of the card sale. You may not submit separate authorization requests for the purchase amount and the cash over amount;
- the sales draft must include both the purchase amount and the cash over amount, and you may not use separate sales drafts for the purchase amount and cash over amount;
- cash over may only be offered with a Card Present card sale that includes a purchase of goods or services by the cardholder. You must not issue cash over as a stand-alone transaction. If you offer cash over, you may require the total amount of a card sale with a credit product, including cash over, to meet a minimum transaction amount of up to \$10. You must not assess or charge fees of any type or amount, including any surcharges, on cash over transactions. You must not include in cash over transactions any of the fees or charges applicable to cash advances;
- cash over may not be dispensed in connection with credits, cash advances, or any card sale for which you are unable to electronically capture Track Data using the POS device; and
- the maximum amount of cash that you may issue as cash over is \$100.

Cash over may not be available in certain markets. Contact us for further information.

PAYPAL DOES NOT PERMIT THE FOLLOWING TRANSACTION TYPES:

PayPal does not permit internet (ecommerce), mail order, manually key-entered, cash type transactions (including, cash over, cash advance or quasi cash transactions), or international/non-U.S. currency transactions. Contact us for further information related to these transaction types.

AUTHORIZATIONS

PayPal procedure for request for cancellation of authorization

If a PayPal card sale is canceled or the amount of the transaction changes following your receipt of authorization for the sale, you must process an authorization reversal via your POS Device.

PayPal Sublicense to Use PayPal Marks.

You are prohibited from using the PayPal Marks, as defined below, other than as expressly authorized in writing by us. “PayPal Marks” means the brands, emblems, trademarks, or logos that identify PayPal acceptance. You may use the PayPal Marks only to promote PayPal products, offers, services, processing and/acceptance. Your use of the PayPal Marks is restricted to the display of decals, signage, advertising, and marketing materials provided or approved by PayPal in writing pursuant to the process set forth in the PayPal Card Organization Rules. You are not permitted to use the PayPal Marks in such a way that PayPal Account Holders could believe that the products or services offered by you are sponsored or guaranteed by the owners of the PayPal Marks. You recognize that you have no ownership rights in the PayPal Marks.

You are not permitted to assign to any third party any of the rights to use the PayPal Marks. You are prohibited from using the PayPal Marks, not permitted above, unless expressly authorized in writing by PayPal.

B. CARD GENERAL TERMS

In addition to the preceding Your Payments Acceptance Guide, our Agreement with you includes the following General Terms. If you fail to follow any of the provisions of the Your Payments Acceptance Guide Procedures or General Terms, you may incur certain liabilities and we may terminate our Agreement.

21. Services

Subject to Card Organization Rules, Services may be performed by us, our Affiliates, our agents, or other third parties we may designate from time to time in connection with this Agreement.

22. Your Payments Acceptance Guide; Card Organization Rules and Compliance

You agree to follow all requirements of this Agreement in connection with each Card transaction and to comply with all applicable Card Organization Rules, including without limitation, the data security requirements described in Part I, Section 5. From time to time, we may amend the General Terms, by providing you with at least 20 days' prior written notice, and those provisions will be deemed incorporated into this Agreement. However, for changes in the Card Organization Rules or for security reasons, certain changes in Card procedures may become effective on shorter notice. If there are any inconsistencies between the General Terms and Your Payments Acceptance Guide, the General Terms will govern. You are responsible for staying apprised of all applicable changes to the Card Organization Rules and maintaining compliance with the Card Organization Rules. Card Organization Rules may be available on web sites such as

<http://usa.visa.com/merchants/merchant-support/international-operating-regulations.jsp> and <http://www.mastercard.com/us/merchant/support/rules.html>.

These links may change from time to time.

23. Settlement of Card Transactions

23.1. We will only be required to settle Card transactions for Card types specified in your Application. Promptly after presentation of Sales Drafts pursuant to Your Payments Acceptance Guide, we will initiate a transfer of the applicable settlement funds to you.

23.2. Unless otherwise agreed to in writing to the contrary, all discount fees are deducted daily. All settlements for Visa, MasterCard, Discover Network, PayPal and American Express Card transactions will be net of Credits, Summary Adjustments, applicable discount fees when due, Chargebacks and any other amounts then due from you. We may also set off from any payments otherwise due, any amounts owed to any of our respective Affiliates, whether or not arising out of or related to this Agreement.

23.3. All credits to your Settlement Account or other payments to you are provisional and are subject to, among other things, our right to deduct our fees, our final audit, Chargebacks (including our related losses), and fees, fines and any other charge imposed on us by the Card Organizations as a result of your acts or omissions. You agree that we may debit or credit your Settlement Account for any deficiencies, overages, fees, pending Chargebacks and any other amounts owed to us or any of our respective Affiliates, or we may deduct such amounts from settlement funds or other amounts due to you from us, or our respective Affiliates. You further agree we can offset any amounts owed to us or our Affiliates related to activity in other accounts maintained in the name of or guaranteed by you, any of your principals, guarantors or authorized signors. Alternatively, we may elect to invoice you for any such amounts, net due 30 days after the invoice date or on such earlier date as may be specified.

23.4. We will not be liable for any delays in receipt of funds or errors in debit and credit entries caused by you or any Person.

23.5. In addition to any other remedies available to us under this Agreement, you agree that should any Event of Default (see Section 30.4) occur, we may, with ~~or without~~ notice, change processing or payment terms and/or suspend credits or other payments of any and all funds, money and amounts now due or hereafter to become due to you pursuant to the terms of this Agreement, until we have had reasonable opportunity to investigate such event.

23.6. You acknowledge and agree that transfers to and from the Settlement Account shall be based on the account number and routing number supplied by you. We are not responsible for detecting errors in any Settlement Account information you provide, including the account numbers and routing numbers, even if any of those numbers do not correspond to the actual account or financial institution identified by name.

23.7. This Agreement is a contract whereby we are extending financial accommodations to you within the meaning of Section 365(c) of the U.S. bankruptcy code. Your right to receive any amounts due or to become due from us is expressly subject and subordinate to Chargeback, setoff, lien, security interest and our rights to withhold settlement funds under this Agreement, without regard to whether such Chargeback, setoff, lien, security interest and the withholding of settlement funds rights are being applied to claims that are liquidated, unliquidated, fixed, contingent, matured or unmatured.

24. Exclusivity

During the term of this Agreement, you shall use us as your exclusive provider of all Services.

25. Fees; Adjustments; Collection of Amounts Due

25.1. In consideration of the Services provided by us, you shall be charged, and hereby agree to pay us any and all fees set forth in this Agreement (for the purposes of clarity, this includes the Application and any additional pricing supplements or subsequent communications), all of which shall be calculated and payable pursuant to the terms of this Agreement and any additional pricing supplements or subsequent communications.

If a transaction fails to qualify for your anticipated interchange levels or you inadvertently or intentionally accept a transaction other than the type anticipated for your account (including a different Card type), then, as applicable to your pricing method, you will be charged a higher interchange, Discount Rate or Non-Qualified Interchange Fee, as well as any applicable surcharge for that transaction, all as further described in Section A.3 of Part IV of this Agreement and in the Application. With respect to inadvertent or intentional acceptance of a transaction other than the type anticipated for your account (including a different Card type), you will also be subject to payment to us of our then-current transaction fee(s) with respect to such Card and/or transaction and be liable, obligated and responsible under this Agreement for any such transaction to the same extent as you would be if it was of a Card type elected and approved.

For more information on Visa's and MasterCard's interchange rates, please go to www.visa.com and www.mastercard.com.

25.2. All authorization fees will be charged for each transaction that you attempt to authorize. All capture fees will be charged for each transaction that you transmit to us for settlement. If you are being billed a combined fee for both the authorization and capture of a transaction, the authorization and capture must be submitted as a single transaction, otherwise the authorization and the capture will each be charged separately. You are responsible for utilizing software or services that will correctly submit these transactions to achieve the combined billing.

25.3. The fees for Services set forth in this Agreement are based upon assumptions associated with the anticipated annual volume and average transaction size for all Services as set forth in this Agreement and your method of doing business. If the actual volume or average transaction size are not as expected or if you significantly alter your method of doing business, we may adjust your discount fee and transaction fees without prior notice.

25.4. The fees for Services set forth in this Agreement may be adjusted to reflect increases, or new fees imposed by Card Organizations, including without limitation, interchange, assessments and other Card Organization fees, or to pass through increases or new fees charged to us by other Persons related to the Services. All such adjustments shall be your responsibility to pay and shall become effective upon the date any such change or addition is implemented by the applicable Card Organization or other Person as specified in our notice to you.

25.5. Subject to Section 30.3, we may also increase our fees or add new fees for Services for any reason at any time, by notifying you thirty (30) days' prior to the effective date of any such change or addition.

25.6. If you receive settlement funds by wire transfer, we may charge a wire transfer fee per wire.

25.7. To the extent the Automated Clearing House ("ACH") settlement process is used to effect debits or credits to your Settlement Account, you agree to be bound by the terms of the operating rules of the National Automated Clearing House Association, as in effect from time to time. You hereby authorize us to initiate credit and debit entries and adjustments to your account through the ACH network and/or through direct instructions to the financial institution where your Settlement Account is maintained for amounts due under this Agreement and under any agreements with us or our respective Affiliates for any products or services, as well as for any credit entries in error. You hereby authorize the financial institution where your Settlement Account is maintained to effect all such debits and credits to your account. This authority will remain in full force and effect until we have given written notice to the financial institution where your Settlement Account is maintained that all monies due under this Agreement and under any other agreements with us or our respective Affiliates for any products or services have been paid in full. You are solely responsible to inform us in writing if you want any fees or other adjustments to be debited from an account other than your Settlement Account.

25.8. You agree to pay any fines imposed on us by any Card Organization resulting from Chargebacks and all fees, fines and other charges imposed on us by a Card Organization with respect to your acts or omissions. You are also responsible for all fees, fines, and other charges imposed on us as a result of acts or omissions by your agents or third parties.

25.9. If your Chargeback percentage for any line of business exceeds the estimated industry Chargeback percentage, you shall, in addition to the Chargeback fees and any applicable Chargeback handling fees or fines, pay us an excessive Chargeback fee for all Chargebacks occurring in such month in such line(s) of business. Each estimated industry Chargeback percentage is subject to change from time to time by us in order to reflect changes in the industry Chargeback percentages reported by Visa, MasterCard, American Express, Discover Network, or PayPal. Your Chargeback Percentage will be calculated as the larger of (a) the total Visa, MasterCard, American Express, Discover Network and PayPal Chargeback items in any line of business in any calendar month divided by the number of Visa, MasterCard, American Express, Discover Network and PayPal transactions in that line of business submitted that month, or (b) the total dollar amount of Visa, MasterCard, American

Express, Discover Network and PayPal Chargebacks in any line of business received in any calendar month divided by the total dollar amount of your Visa, MasterCard, American Express, Discover Network and PayPal transactions in that line of business submitted in that month.

25.10. You agree to promptly and carefully review your merchants statements or other documents provided or made available to you (physically, electronically or otherwise provided by Us or others) reflecting Card transaction activity, including, activity in your Settlement Account. If you believe any adjustments should be made with respect to your Settlement Account, you must notify us in writing within sixty (60) days after any debit or credit is or should have been effected or such shorter period as provided in the terms and conditions that govern such account. If you notify us after sixty (60) days, we shall have no obligation to investigate or effect any adjustments. Any voluntary efforts by us to assist you in investigating such matters shall not create any obligation to continue such investigation or any future investigation.

25.11. If you do not pay us all fees and any other amounts due under this Agreement within thirty (30) days of the date of our merchant statement or other statement setting forth the amount due, then we may, in our sole discretion, charge you interest, for such time that the amount and all accrued interest remain outstanding at the lesser of (i) 12% APR, or (ii) the maximum rate permitted by applicable law.

25.12. Other Debits. We may also debit your Settlement Account or your settlement funds in the event we are required to pay Card Organization fees, charges, fines, penalties or other assessments as a consequence of your sales activities. Such debits shall not be subject to any limitations of time specified elsewhere in the Agreement, including, without limitation the following, which we may add to or delete from this list as changes occur in the Card Organization Rules or our Your Payments Acceptance Guide pursuant to Section 22:

- Card Organization fees, charges, fines, penalties, registration fees, or other assessments including any fees levied against us or any amount for which you are obligated to indemnify us.

- Currency conversion was incorrectly calculated.

NOTE: For Discover Network transactions, you are not permitted to convert from your local Discover Network approved currency into another currency, nor may you quote the price of a transaction in U.S. Dollars if completed in another approved currency.

- Discount Rate not previously charged.

- Reversal of deposit posted to your account in error.

- Debit for Summary Adjustment not previously posted.

- Reversal of Credit for deposit previously posted.

- Debit for Chargeback never posted to your account.

- Debit for EDC Batch error fee.

- Card Organization Merchant Chargeback/fraud monitoring fees – excessive Chargeback handling fees.

- Failure of transaction to meet Member Controller Authorization Service (“MCAS”) – Cardholder account number on exception file.

- Original transaction currency (foreign) not provided.

- Travel Voucher exceeds maximum value.

- Debit and/or fee for investigation and/or Chargeback costs related to this Agreement, or for costs related to our collection activities in an amount no less than \$100.00.

- Costs arising from replacement or damage to equipment rented.

- Payment of current or past due amounts for any equipment purchase, rental or lease.

- Incorrect merchant descriptor (name and/or city, state) submitted.

- Incorrect transaction date submitted.

- Shipping and handling fees.

- Costs or expenses associated with responding to any subpoena, garnishment, levy or other legal process associated with your account in an amount no less than \$150.00.

26. Chargebacks

26.1. You shall be responsible for reimbursing us for all transactions you submit that are charged back. See Your Payments Acceptance Guide for additional information regarding Chargebacks and Chargeback procedures.

26.2. You shall reimburse us for any Chargebacks, return items, or other losses resulting from your failure to produce a Card transaction record requested by us within the applicable time limits.

27. Representations; Warranties; Covenants; Limitations on Liability; Exclusion of Consequential Damages

27.1. Without limiting any other warranties hereunder, you represent, warrant to and covenant with, us, and with the submission of each Sales Draft reaffirm, the following representations, warranties and/or covenants:

27.1.1. each Card transaction is genuine and arises from a bona fide transaction permissible under the Card Organization Rules by the Cardholder directly with you, represents a valid obligation for the amount shown on the Sales Draft, preauthorized order, or Credit Draft, and does not involve the use of a Card for any other purpose;

27.1.2. each Card transaction represents an obligation of the related Cardholder for the amount of the Card transaction;

27.1.3. the amount charged for each Card transaction is not subject to any dispute, setoff or counterclaim;

27.1.4. each Card transaction amount is only for respective merchandise or services (including taxes, but without any surcharge) sold, leased or rented by you pursuant to your business as indicated on the application and, except for any delayed delivery or advance deposit Card transactions expressly authorized by this Agreement, that merchandise or service was actually delivered to or performed for the Cardholder entering into that Card transaction simultaneously upon your accepting and submitting that Card transaction for processing;

27.1.5. with respect to each Card transaction, you have no knowledge or notice of any fact, circumstance or defense which would indicate that such Card transaction is fraudulent or not authorized by the related Cardholder or which would otherwise impair the validity or collectability of that Cardholder's obligation arising from that Card transaction or relieve that Cardholder from liability with respect thereto;

27.1.6. each Card transaction is made in accordance with these General Terms, Card Organization Rules and Your Payments Acceptance Guide;

27.1.7. each Sales Draft is free of any alternation not authorized by the related Cardholder;

27.1.8. you have completed one Card transaction per sale; or one Card transaction per shipment of goods for which the Cardholder has agreed to partial shipments;

27.1.9. you are validly existing, in good standing and free to enter into this Agreement;

27.1.10. each statement made on the Application or other information provided to us in support of this Agreement is true and correct;

27.1.11. you are not doing business under a name or style not previously disclosed to us;

27.1.12. you have not changed the nature of your business, Card acceptance practices, delivery methods, return policies, or types of products or services sold requiring a different MCC under Card Organization Rules, in a way not previously disclosed to us;

27.1.13. you will use the Services only for your own proper business purposes and will not resell, directly or indirectly, any part of the Services to any Person; (**NOTE:** Factoring is prohibited.)

27.1.14. you have not filed a bankruptcy petition not previously disclosed to us;

27.1.15. you own and control the Settlement Account, and no third party security interest or lien of any type exists regarding the Settlement Account or any Card transaction.

27.1.16. you will not at any time during the term of this Agreement, or until all amounts due under this Agreement have been paid in full, grant or pledge any security interest or lien in the Reserve Account, Settlement Account or transaction proceeds to any Person without our consent;

27.2. THIS AGREEMENT IS A SERVICE AGREEMENT. WE DISCLAIM ALL REPRESENTATIONS OR WARRANTIES, EXPRESS OR IMPLIED, MADE TO YOU OR ANY OTHER PERSON, INCLUDING WITHOUT LIMITATION, ANY WARRANTIES REGARDING QUALITY, SUITABILITY, MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT OR OTHERWISE OF ANY SERVICES OR ANY GOODS PROVIDED INCIDENTAL TO THE SERVICES PROVIDED UNDER THIS AGREEMENT, INCLUDING WITHOUT LIMITATION, ANY SERVICES OR ANY GOODS PROVIDED BY A THIRD PARTY.

27.3. IN NO EVENT SHALL WE OR OUR AFFILIATES OR ANY OF OUR OR THEIR RESPECTIVE DIRECTORS, OFFICERS, EMPLOYEES, AGENTS OR SUBCONTRACTORS, BE LIABLE UNDER ANY THEORY OF TORT, CONTRACT, STRICT LIABILITY OR OTHER LEGAL THEORY FOR LOST PROFITS, LOST REVENUES, LOST BUSINESS OPPORTUNITIES, EXEMPLARY, PUNITIVE, SPECIAL, INCIDENTAL, INDIRECT OR CONSEQUENTIAL DAMAGES, EACH OF WHICH IS HEREBY EXCLUDED BY AGREEMENT OF THE PARTIES, REGARDLESS OF WHETHER SUCH DAMAGES WERE FORESEEABLE OR WHETHER ANY PARTY OR ANY ENTITY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. CLIENT ACKNOWLEDGES AND AGREES THAT PAYMENT OF ANY EARLY TERMINATION FEE OR LIQUIDATED DAMAGES AS PROVIDED ELSEWHERE IN THIS AGREEMENT SHALL NOT BE PROHIBITED BY THIS PARAGRAPH.

27.4. NOTWITHSTANDING ANYTHING IN THIS AGREEMENT TO THE CONTRARY (INCLUDING BUT NOT LIMITED TO SECTIONS 33 or 28.5), OUR CUMULATIVE LIABILITY FOR ALL LOSSES, CLAIMS, SUITS, CONTROVERSIES, BREACHES OR DAMAGES FOR ANY CAUSE WHATSOEVER (INCLUDING, BUT NOT LIMITED TO, THOSE ARISING OUT OF OR RELATED TO THIS AGREEMENT), **REGARDLESS OF THE FORM OF ACTION OR LEGAL THEORY, SHALL NOT EXCEED, (I) \$50,000; OR (II) THE AMOUNT OF FEES RECEIVED BY US PURSUANT TO THIS AGREEMENT FOR SERVICES PERFORMED IN THE IMMEDIATELY PRECEDING 12 MONTHS, WHICHEVER IS LESS.**

27.5. NOTWITHSTANDING ANYTHING IN THIS AGREEMENT TO THE CONTRARY (INCLUDING BUT NOT LIMITED TO SECTION 30), OUR LIABILITY FOR ANY DELAY IN FUNDING TRANSACTIONS TO YOU FOR ANY REASON, OTHER THAN FOR ANY REASON DESCRIBED IN SECTIONS 23.4 AND 23.6, WILL BE LIMITED TO INTEREST COMPUTED FROM THE DATE THAT YOU SUBMIT THE TRANSACTION TO THE DATE THAT WE FUND THE TRANSACTION AT THE RATE OF THE FEDERAL FUNDS AS SET BY THE FEDERAL RESERVE BANK OF NEW YORK, NEW YORK, FROM TIME TO TIME, LESS ONE PERCENT (1%).

27.6. NOTWITHSTANDING ANYTHING IN THIS AGREEMENT TO THE CONTRARY, BANK IS NOT RESPONSIBLE, AND SHALL HAVE NO LIABILITY, TO YOU IN ANY WAY WITH RESPECT TO NON-BANK SERVICES.

28. Confidentiality

28.1. Unless you obtain written consents from us and each applicable Card Organization, Issuer and Cardholder, you must not use, disclose, store, sell or disseminate any Cardholder information obtained in connection with a Card transaction (including the names, addresses and Card account numbers of Cardholders) except for purposes of authorizing, completing and settling Card transactions and resolving any Chargebacks, Retrieval Requests or similar issues involving Card transactions, other than pursuant to a court or governmental agency request, subpoena or order. You shall use proper controls for and limit access to, and render unreadable prior to discarding, all records containing Cardholder account numbers and Card imprints. You may not retain or store Magnetic Stripe data or Card Validation Codes after a transaction has been authorized. If you store any electronically captured signature of a Cardholder, you may not reproduce such signature except upon our specific request.

28.2. You acknowledge that you will not obtain ownership rights in any information relating to and derived from Card transactions. Cardholder account numbers, personal information and other Card transaction information, including any databases containing such information, may not be sold or disclosed to a Person as an asset upon a bankruptcy, insolvency or failure of Client's business. Upon a bankruptcy, insolvency or failure of Client's business, all Card transaction information must be returned to Servicers or acceptable proof of the destruction of all Card transaction information must be provided to Servicers.

28.3. You will treat this Agreement, the Card Organization Rules and any information supplied or otherwise made accessible by us or our agents as confidential, including without limitation, (i) information about the products, services, operations, procedures, customers, suppliers, sales, pricing, business plans and marketing strategies of Servicers, their respective Affiliates and the customers, clients and suppliers of any of them; (ii) any scientific or technical information, design, process, procedure, formula, or improvement that is commercially valuable and secret in the sense that its confidentiality affords Servicers a competitive advantage over its competitors; and (iii) all confidential or proprietary concepts, documentation, reports, data, specifications, computer software, source code, object code, flow charts, databases, inventions, know-how, show-how and trade secrets, whether or not patentable or copyrightable and will not disclose the same to any third parties, provided, however, that these restrictions do not apply to information: (a) rightfully obtained on a non-confidential basis from a Person and your agents and representatives, which Person was not subject to a duty of confidentiality, (b) rightfully and independently known by you on a non-confidential basis prior to its disclosure or (c) generally available to the public other than through any disclosure by or fault of you, your agents or representatives.

28.3.1. Our confidential information shall be used by you only to exercise your rights and to perform your obligations hereunder. Client shall receive our confidential information in confidence and not disclose the confidential information to any third party, except as may be agreed upon in writing by us. Client shall safeguard all of our confidential information using a reasonable degree of care, but not less than that degree of care used by it in safeguarding its own similar information or material. Upon request by us or upon termination of this Agreement, Client shall return to us or destroy all of our confidential information in its possession or control.

28.3.2. The obligations of confidentiality and restrictions on use in this Section shall not apply to any confidential information that: (i) was in the public domain prior to the date of the Agreement or subsequently came into the public domain through no fault of Client; (ii) was received from a third party free of any obligation of confidence of Client to the third party and which third party, to Client's knowledge, was not under an obligation to keep the information confidential; (iii) was already in Client's possession prior to receipt from us; (iv) is required to be disclosed by law, regulation or court order after giving us as much advance notice as practical of the possibility of disclosure; or (v) is subsequently and independently developed by Client's employees, consultants or agents without use of or reference to our confidential information.

28.3.3. Except as specifically provided for herein, this Section does not confer any right, license, interest or title in, to or under our confidential information to Client. Except as specifically provided for herein, no license is hereby granted to Client under any patent, trademark, copyright, trade secret or other proprietary rights of ours.

28.3.4. Client acknowledges that breach of the restrictions on use or disclosure of any our confidential information would result in immediate and irreparable harm to us, and money damages would be inadequate to compensate for that harm. We shall be entitled to equitable relief, in addition to all other available remedies, to redress any breach.

28.4. We may use data collected as part of performing payment processing or other transaction-related services for you ("Transaction Data") for the purpose of providing additional products and services to you, other merchants, or third parties. This includes collecting, using, and de-identifying cardholder information, dates, amounts, and other Transaction Data to provide you with analytic products and services as well as collecting and using Transaction Data anonymized and aggregated with other merchants' transaction data to provide you, other merchants, and third parties with analytic products and services.

28.5. You shall not assign to any Person, the rights to use the Marks of Servicers, our agents or the Card Organizations.

28.6. All rights, title, and interest in and to all intellectual property related to the Services (including without limitation, the content of any materials, web screens, layouts, processing techniques, procedures, algorithms, and methods), owned, developed or licensed by us prior to, during the term of, or after the Agreement, or employed by us in connection with the Services and any updates, changes, alterations, or modifications to or derivative works from such intellectual property, shall be and remain, as among the Parties, our exclusive property.

28.7. Client agrees that we may obtain relevant information from any applicable telecommunications provider utilized by Client, as necessary to investigate any allegation of fraud, suspected fraud or other actual or alleged wrongful act by Client in connection with the Services.

29. Assignments

29.1. Any transfer or assignment of this Agreement by you, without our prior written consent, by operation of law or otherwise, is voidable by us. Any transfer of voting control of you or your parent shall be considered an assignment or transfer of this Agreement. Furthermore, you shall indemnify and hold us harmless from all liabilities, Chargebacks, expenses, costs, fees and fines arising from such transferee's or assignee's Submission of Card transactions to us for processing. For purposes of this Section 29, any transfer of voting control shall be considered an assignment or transfer of this Agreement.

29.2. The payment Services provided by us require access to a single bank account in which we may initiate both credits and debits. You may not enter into any agreement that would require, in any circumstance or event, the transfer of any payments or proceeds from Card transactions covered by this Agreement to the custody or control of any Person. You may not assign any rights, including the right of payment under this Agreement, to any other person. In the event that you make an assignment (or provide a security interest) of receivables covered by this Agreement, then we may, at our option, elect to (a) refuse to acknowledge such assignment unless accompanied by an Authorization to both initiate debits or credits to the bank account of the assignee, (b) terminate this Agreement immediately, or (c) charge for any transfers that we are called upon to make manually to fulfill such an assignment at the rate of \$100 per transfer.

29.3. Another Visa and MasterCard member may be substituted for Bank under whose sponsorship this Agreement is performed with respect to Visa and MasterCard transactions. Upon substitution, such other Visa and MasterCard member shall be responsible for all obligations required of Bank for Visa and MasterCard transactions, including without limitation, full responsibility for its Card program and such other obligations as may be expressly required by applicable Card Organization Rules.

Subject to Card Organization Rules, we may assign or transfer this Agreement and our rights, duties and obligations hereunder and/or may delegate or subcontract our rights, duties and obligations hereunder, in whole or in part, to any Person, whether in connection with a change in sponsorship, as set forth in the preceding paragraph, or otherwise, without notice to you or your consent.

29.4. Except as set forth elsewhere in this Section and as provided in the following sentence, this Agreement shall be binding upon successors and assigns and shall inure to the benefit of the parties and their respective permitted successors and assigns. No assignee for the benefit of creditors, custodian, receiver, trustee in bankruptcy, debtor in possession, or other person charged with taking custody of a party's assets or business, shall have any right to continue, assume or assign this Agreement.

30. Term; Events of Default

30.1. This Agreement shall become effective upon the date this Agreement is approved by our Credit Department. You acknowledge that our Credit Department maintains a list of business types that are unqualified for our Services. We reserve the right to immediately terminate your account if it has been inadvertently boarded notwithstanding such Credit policies.

30.2. The initial term of this Agreement shall commence and shall continue in force for three years after it becomes effective. Thereafter, it shall continue until we or you terminate this Agreement upon written notice to the other, or as otherwise authorized by this Agreement. Should you fail to notify us in writing of your request to terminate you acknowledge and agree you will continue to be charged fees pursuant to this Agreement notwithstanding non-use of your account. If you have an equipment lease, termination of the Agreement will not terminate your lease or change any of your obligations under that lease (including your obligation to make monthly lease payments).

30.3. Notwithstanding the above or any other provisions of this Agreement, we may terminate this Agreement at any time and for any reason by providing 30 days' advance notice to you. We may terminate this Agreement immediately or with shorter notice upon an Event of Default as provided under Section 30.4 of this Agreement. In the event we provide notice to you of any new fees or increases in existing fees for Services, pursuant to Section 25.5, you may terminate this Agreement without further cause or penalty by notifying us that you are terminating this Agreement prior to the effective date of such new fees or increases. However, maintaining your merchant account, or your continued use of the Services after the effective date of any such fee changes shall be deemed your acceptance of such fee changes for the Services, throughout the term of this Agreement.

30.4. If any of the following events shall occur (each an "Event of Default"):

30.4.1. a material adverse change in your business, financial condition, or business prospects; or

30.4.2. any assignment or transfer of voting control of you or your parent; or

30.4.3. a sale of all or a substantial portion of your assets; or

30.4.4. irregular Card sales by you, excessive Chargebacks, noncompliance with any applicable data security standards, as determined by Servicers, or any Card Organization, or any other Person, or an actual or suspected data security breach, or any other circumstances which, in our sole discretion, may increase our exposure for your Chargebacks or otherwise present a financial or security risk to us; or

30.4.5. any of your representations, warranties or covenants in this Agreement are breached in any respect; or

30.4.6. you default in any material respect in the performance or observance of any term, condition or agreement contained in this Agreement, including, without limitation, the establishment or maintenance of funds in a Reserve Account, as detailed in Section 25; or

30.4.7. you default in any material respect in the performance or observance of any term, covenant or condition contained in any agreement with any of our respective Affiliates; or

30.4.8. you default in the payment when due, of any material indebtedness for borrowed money; or

30.4.9. you file a petition or have a petition filed by another party under the U.S. bankruptcy code or any other laws relating to bankruptcy, insolvency or similar arrangement for adjustment of debts; consent to or fail to contest in a timely and appropriate manner any petition filed against you in an involuntary case under such laws; apply for or consent to, or fail to contest in a timely and appropriate manner, the appointment of, or the taking of possession by, a receiver, custodian, trustee or liquidator of you or of a substantial part of your property; or make a general assignment for the benefit of creditors; or take any action for the purpose of authorizing any of the foregoing; or

30.4.10. your independent certified accountants shall refuse to deliver an unqualified opinion with respect to your annual financial statements and your consolidated subsidiaries; or

30.4.11. a violation by you of any applicable law or Card Organization Rule or our reasonable belief that termination of this Agreement or suspension of Services is necessary to comply with any law including without limitation the rules and regulations promulgated by the Office of Foreign Assets Control of the U.S. Department of the Treasury or your breach, as determined by Servicers, of Section 39.2 ("Compliance with Laws"), then, upon the occurrence of (1) an Event of Default specified in subsections 30.4.4, 30.4.9 or 30.4.11, we may consider this Agreement to be terminated immediately, without notice, and all amounts payable hereunder shall be immediately due and payable in full without demand or other notice of any kind, all of which are expressly waived by you, and (2) any other Event of Default, this Agreement may be terminated by us giving not less than 10 days' notice to you, and upon such notice all amounts payable hereunder shall be due and payable on demand.

30.5. Neither the expiration nor termination of this Agreement shall terminate the obligations and rights of the parties pursuant to provisions of this Agreement which by their terms are intended to survive or be perpetual or irrevocable. Such provisions shall survive the expiration or termination of this Agreement. All obligations by you to pay or reimburse us for any obligations associated with transactions you have submitted to us will survive termination of this Agreement until finally and irrevocably paid in full and settled.

30.6. If any Event of Default occurs, ~~regardless of whether such Event of Default has been cured~~, we may, in our sole discretion, exercise all of our rights and remedies under applicable law, and this Agreement including, without limitation, exercising our rights under Section 31.

30.7. In the event you file for protection under the U.S. bankruptcy code or any other laws relating to bankruptcy, insolvency, assignment for the benefit of creditors or similar laws, and you continue to use our Services, it is your responsibility to open new accounts to distinguish pre and post filing obligations. You acknowledge that as long as you utilize the accounts you established prior to such filing, we will not be able to systematically segregate your post-filing transactions or prevent set-off of the pre-existing obligations. In that event, you will be responsible for submitting an accounting supporting any adjustments that you may claim.

30.8. The Card Organizations often maintain merchant lists such as the Member Alert To Control High-risk (Merchants) ("MATCH") who have had their merchant agreements or Card Acceptance rights terminated for cause. If this Agreement is terminated for cause, you acknowledge that we may be required to report your business name and the names and other information regarding its principals to the Card Organizations for inclusion on such list(s). You expressly agree and consent to such reporting if you are terminated as a result of the occurrence of an Event of Default or for any reason specified as cause by Visa, MasterCard, Discover Network, PayPal or American Express. Furthermore, you agree to waive and hold us harmless from and against any and all claims which you may have as a result of such reporting.

30.9. After termination of this Agreement for any reason whatsoever, you shall continue to bear total responsibility for all Chargebacks, fees, Card Organization fines imposed on us as a result of your acts or omissions, Credits and adjustments resulting from Card transactions processed pursuant to this Agreement and all other amounts then due or which thereafter may become due under this Agreement.

31. Reserve Account; Security Interest

31.1. You expressly authorize us to establish a Reserve Account pursuant to the terms and conditions set forth in this Section 31. The amount of such Reserve Account shall be set by us, in our sole discretion, based upon your processing history and the potential risk of loss to us as we may determine from time to time.

31.2. The Reserve Account shall be fully funded upon three (3) days' notice to you, or in instances of fraud or suspected fraud or an Event of Default, Reserve Account funding may be immediate. Such Reserve Account may be funded by all or any combination of the following: (i) one or more debits to your Settlement Account or any other accounts held by Bank or any of its Affiliates, at any financial institution maintained in the name of Client, any of its principals, or any of its guarantors, or if any of same are authorized signers on such account; (ii) any payments otherwise due to you, including any amount due from TeleCheck; (iii) your delivery to us of a letter of credit; or (iv) if we so agree, your pledge to us of a freely transferable and negotiable certificate of deposit. Any such letter of credit or certificate of deposit shall be issued or established by a financial institution acceptable to us and shall be in a form satisfactory to us. In the event of termination of this Agreement by any party, an immediate Reserve Account may be established without notice in the manner provided above. Any Reserve Account will be held by us for the greater of ten (10) months after termination of this Agreement or for such longer period of time as is consistent with our liability for your Card transactions and Chargebacks in accordance with Card Organization Rules. We will hold funds pursuant to this Section 31 in master account(s) with your funds allocated to separate sub accounts. Unless specifically required by law, you shall not be entitled to interest on any funds held by us in a Reserve Account.

31.3. If your funds in the Reserve Account are not sufficient to cover the Chargebacks, adjustments, fees and other charges and amounts due from you, or if the funds in the Reserve Account have been released, you agree to promptly pay us such sums upon request.

31.4.1. To secure your obligations to us and our respective Affiliates under this Agreement and any other agreement for the provision of equipment, products or services (including any obligations for which payments on account of such obligations are subsequently invalidated, declared to be fraudulent or preferential, set aside or required to be repaid to a trustee, receiver or any other party under any bankruptcy act, state or federal law, common law or equitable cause), you grant to us a first priority lien and security interest in and to (i) the Reserve Account and (ii) any of your funds pertaining to the Card transactions contemplated by this Agreement now or hereafter in our possession, whether now or hereafter due or to become due to you from us. Any such funds, money or amounts now or hereafter in our possession may be commingled with other funds of ours, or, in the case of any funds held pursuant to the foregoing paragraphs, with any other funds of other customers of ours. In addition to any rights now or hereafter granted under applicable law and not by way of limitation of any such rights, we are hereby authorized by you at any time and from time to time, without notice or demand to you or to any other Person (any such notice and demand being hereby expressly waived), to set off, recoup and to appropriate and to apply any and all such funds against and on account of your obligations to us and our respective Affiliates under this Agreement and any other agreement with us our respective Affiliates for any related equipment or related services (including any check services), whether such obligations are liquidated, unliquidated, fixed, contingent, matured or unmatured. You agree to duly execute and deliver to us such instruments and documents as we may reasonably request to perfect and confirm the lien, security interest, right of set off, recoupment and subordination set forth in this Agreement.

31.4.2. For sake of clarification and notwithstanding anything in the Agreement to the contrary, in the event Servicers deduct, holdback, suspend, off set or set off any settlement monies or amounts otherwise due you pursuant to the terms of this Agreement (collectively "Set Off Funds"), you acknowledge that such Set Off Funds will be held in a commingled Reserve Account(s) of Servicers.

31.4.3. If in replacement of or in addition to the first priority lien and security interest in the Reserve Account, you grant to Servicers a first priority lien and security interest in and to one or more certificates of deposit, the certificates of deposit shall be unencumbered and shall be subject to an Acknowledgement of Pledge of Certificate of Deposit and Control Agreement (the "Certificate of Deposit Control Agreement") by, between and among Customers, Servicers and the financial institution that has established and issued the certificate of deposit. The form of the Certificate of Deposit Control Agreement and the financial institution that will establish and issue the certificate of deposit shall be satisfactory and acceptable to Servicers.

32. Financial and Other Information

32.1. Upon request, you will provide us and our Affiliates, quarterly financial statements within 45 days after the end of each fiscal quarter and annual audited financial statements within 90 days after the end of each fiscal year. Such financial statements shall be prepared in accordance with generally accepted accounting principles. You will also provide such other financial statements and other information concerning your business and your compliance with the terms and provisions of this Agreement as we may reasonably request. You authorize us and our Affiliates to obtain from third parties financial and credit information relating to you in connection with our determination whether to accept this Agreement and our continuing evaluation of your financial and credit status. We may also access and use information which you have provided to Bank for any other reason. Upon request, you shall provide, and/or cause to be provided, to us and our Affiliates, or our representatives or regulators (as well as those of the Card Organizations) reasonable access

to your or your providers' facilities and records for the purpose of performing any inspection and/or copying of books and/or records deemed appropriate. In such event, you shall pay the costs incurred by us or our Affiliates for such inspection, including, but not limited to, costs incurred for airfare and hotel accommodations.

32.2. You will provide us with written notice of any judgment, writ, warrant of attachment, execution or levy against any substantial part (25% or more in value) of your total assets not later than three (3) days after you become aware of same.

33. Indemnification

33.1. You agree to indemnify and hold us and the Card Organizations harmless from and against all losses, liabilities, damages and expenses: (a) resulting from the inaccuracy or untruthfulness of any representation or warranty, breach of any covenant or agreement or any misrepresentation by you under this Agreement; (b) arising out of your or your employees' or your agents' negligence or willful misconduct, in connection with Card transactions or otherwise arising from your provision of goods and services to Cardholders; (c) arising out of your use of the Services; or (d) arising out of any third party indemnifications we are obligated to make as a result of your actions (including indemnification of any Card Organization or Issuer).

33.2. Subject to the limitations set forth in Section 27.4, we agree to indemnify and hold you harmless from and against all losses, liabilities, damages and expenses resulting from any breach of any warranty, covenant or agreement or any misrepresentation by us under this Agreement or arising out of our or our employees' gross negligence or willful misconduct in connection with this Agreement; provided that this indemnity obligation shall not apply to Bank with respect to Non-Bank Services.

34. Special Provisions Regarding Non-Bank Cards

34.1. Non-Bank Card transactions are provided to you by Processor and not by Bank and include transactions made using Discover Network, PayPal, American Express, Voyager and WEX Card types. The Services provided, transactions processed and other matters contemplated under this Section 34 are subject to the rest of this Agreement, as applicable, except to the extent the terms of this Section 34 directly conflict with another provision of this Agreement, in which case the terms of this Section 34 will control; provided, however, that (i) Bank is not a party to this Agreement insofar as it relates to Non-Bank Card services, and Bank is not liable to you in any way with respect to such Services and (ii) you agree to pay Processor any per item processing, authorization and other fees described in the Application for any non-acquired transaction services you receive from Processor. For the purposes of this section, the words "we," "our" and "us" refer only to the Processor and not to the Bank. You authorize us to share information from your Application with American Express, Discover Network, PayPal and any other Non-Bank Card Organization.

34.2. If you accept American Express, you understand that if, based upon your anticipated Card transaction volume you do not qualify for our full service program but have otherwise been approved for accepting American Express transactions, your authorizations will be obtained from and funded by American Express. American Express will provide you with its own agreement that governs those transactions. You understand and agree that we are not responsible and assume absolutely no liability with regard to any such transactions, including but not limited to the funding and settlement of American Express transactions, and that American Express will charge additional fees for the services they provide.

34.3. If you accept Discover but do not qualify for our Discover full service program, Discover will provide you with its own agreement that governs those transactions. You understand and agree that we are not responsible and assume absolutely no liability with regard to any such transactions, including but not limited to the authorization, funding, and settlement of Discover transactions, and that Discover may charge additional fees for the services they provide.

34.4. If you accept PayPal Cards you understand that the following requirements apply to PayPal Card transactions in addition to the information required in this Agreement:

- Only in-store, Card present transactions are eligible for processing under this Agreement. Card not present/online, cash over, cash advance, quasi cash transactions, international transactions or manually entered transactions are not eligible for processing. You must contact us or PayPal for information related to services that are not covered in this Agreement.
- You will provide us with information about the Card transactions you conduct; including, data related to your Authorization requests, Card transactions, and transaction dispute responses.
- You will provide us with aggregate and individual information about the Card transactions you accept; including, the number, type and kind of transactions you conduct, your disputes, your business operations, your merchant category code information, and any other information you are required to provide under this Agreement.
- You will not use, store, retain or otherwise disclose any of PayPal's confidential information, Cardholder data, magnetic stripe track data, or PayPal Card transaction data (other than as necessary to complete a transaction).
- You will not use PayPal Cardholder's personal information for marketing and/or other purposes without explicit consent from the Cardholder.

34.5. If you accept JCB, Diners Club International, UnionPay, BCard, and Dinacard, you agree to be bound by the Discover Network provisions of this Agreement. You also acknowledge and agree that JCB, Diners Club International, UnionPay, BCard, and

Dinacard transactions will be processed under and subject to Discover Network Card Organization Rules.

34.6. If you accept Voyager and/or WEX Cards, you agree to be bound by the WEX and/or Voyager rules. You also agree to be bound by all other provisions of this Agreement which are applicable to WEX and/or Voyager.

34.7. If you execute a separate WEX Merchant Agreement (WEX Non Full Service Program), you understand that we will provide such agreement to WEX, but that neither we nor WEX shall have any obligation whatsoever to you with respect to processing WEX Cards unless and until WEX executes your WEX Merchant Agreement. If WEX executes your WEX Merchant Agreement and you accept WEX Cards, you understand that WEX transactions are processed, authorized and funded by WEX. You understand that WEX is solely responsible for all agreements that govern WEX transactions and that we are not responsible and assume absolutely no liability with regard to any such agreements or WEX transactions, including but not limited to the funding and settlement of WEX transactions. You understand that WEX will charge additional fees for the services that it provides.

34.8. In addition to the information stated in Part I, Appendix I of the Your Payments Acceptance Guide regarding Voyager Cards, the following terms apply

- Under Section 27 (Representations; Warranties; Covenants; Limitations of Liability; Exclusion of Consequential Damages) of the General Terms, in no event shall our cumulative liability to you for losses, claims, suits, controversies, breaches or damages for any cause whatsoever in connection with Voyager transactions exceed the lesser of \$10,000.00 or the Voyager transaction fees paid by you to us for the two months prior to the action giving rise to the claim.
- Notwithstanding anything in this Agreement to the contrary, our obligation to provide services to you relating to any Fleet Card will terminate automatically without penalty to us or the related Card Organization upon the earlier of (i) the termination or expiration of our agreement with such Card Organization, (ii) at least twenty (20) days prior written notice by us to you; (iii) your failure to comply with material terms relating to such Fleet Card transactions, or (iv) written notice, if a Card Organization discontinues its Card

35. Special Provisions for Debit Card

The special provisions outlined in this Section 35 apply only to those Debit Card transactions that are processed by a Cardholder entering a PIN unless the transaction is a network supported PINless transaction. A PINless transaction is a Debit card transaction that a merchant submits to us for settlement/funding transactions with neither a PIN nor Signature. The Services provided, transactions processed and other matters contemplated under this Section 35 are subject to the rest of this Agreement, as applicable, except to the extent the terms of this Section 35 directly conflict with another provision of this Agreement, in which case the terms of this Section 35 will control.

35.1. Debit Card Acceptance. Most, but not all, ATM Cards (Debit Cards) can be accepted at the point of sale at participating locations. Examine the back of the Debit Card to determine if the Card participates in a PIN Debit network that you are authorized to accept. PIN Debit network Mark(s) are usually printed on the back of the Card. If the Debit Card is valid and issued by a financial institution Issuer participating in a PIN Debit network, you must comply with the following general requirements for all participating PIN Debit networks, in addition to the specific requirements of that PIN Debit network:

- You must honor all valid Debit Cards when presented that bear authorized PIN Debit network Marks.
- You must treat transactions by Cardholders from all Issuers in the same manner.
- You may not establish a minimum or maximum transaction amount for Debit Card acceptance.
- You may not require additional information, besides the PIN, for the completion of the transaction unless the circumstances appear suspicious. A signature is not required for Debit Card transactions.
- You shall not disclose transaction related information to any party other than your agent, a PIN Debit network, or Issuer and then only for the purpose of settlement or error resolution.

35.2. Transaction Processing. The following general requirements apply to all Debit Card transactions:

- All Debit Card transactions must be authorized and processed electronically. There is no Voice Authorization or Imprinter procedure for Debit Card transactions.
- You may not complete a Debit Card transaction that has not been authorized. If you cannot obtain an Authorization at the time of sale, you should request another form of payment from the Cardholder or process the transaction as a Store and Forward or Resubmission, in which case you assume the risk that the transaction fails to authorize or otherwise declines. The Cardholder should be instructed to contact the Issuer to find out why a transaction has been declined.
- The Debit network used to process your debit transaction will depend upon, among other things, our own business considerations, the availability of the Debit network at the time of the transaction and whether a particular Debit Card is enabled for a particular Debit network. The Debit network used to route your transaction may or may not be the lowest cost network available. We may, in our sole discretion (i) use any Debit network available to us for a given transaction (including any of our affiliated PIN Debit networks) and (ii) add and/or remove Debit networks available to you based on a variety of factors including availability, features, functionality and our own business considerations.

- You must issue a receipt to the Cardholder upon successful completion of a transaction and effect PAN Truncation on it.
- You may not manually enter the account number for PIN Debit transactions. Signature Debit transaction may be key entered if you are unable to swipe the Card. The account number must be read electronically from the Magnetic Stripe/chip for transactions authenticated with a PIN. If the Magnetic Stripe/chip is unreadable, you must request another form of payment from the Cardholder. Do obtain a signature if PIN authentication is not supported or available.
- Any applicable tax must be included in the total transaction amount for which Authorization is requested. Tax may not be collected separately in cash.
- **YOU ARE RESPONSIBLE FOR SECURING YOUR POS DEVICES AND FOR IMPLEMENTING APPROPRIATE CONTROLS TO PREVENT EMPLOYEES OR OTHERS FROM SUBMITTING CREDITS AND VOIDS THAT DO NOT REFLECT BONA FIDE RETURNS OR REIMBURSEMENTS OF PRIOR TRANSACTIONS.**

35.3. Cash Back From Purchase. You may offer cash back to your customers when they make a PIN Debit Card purchase. You may set a minimum and maximum amount of cash back that you will allow. If you are not currently offering this service, your POS device may require additional programming to begin offering cash back as long as it is supported by the Debit Network.

35.4. Settlement. You must reconcile your accounts for each location daily and notify us within 24 hours of any issues.

35.5. Adjustments. An adjustment is a transaction that is initiated to correct a Debit Card transaction that has been processed in error. For signature debit transactions (including “no signature” signature debit transactions), both the Cardholder and the card issuing bank have the right to question or dispute a transaction. If these questions or disputes are not resolved, a chargeback may occur. You are responsible for all adjustment and chargeback fees that may be charged by a Debit network. **There are several reasons for adjustments being initiated:**

- The Cardholder was charged an incorrect amount, whether too little or too much.
- The Cardholder was charged more than once for the same transaction.
- A processing error may have occurred that caused the Cardholder to be charged even though the transaction did not complete normally at the point of sale.
- A Cardholder is disputing the goods or services provided.

All parties involved in processing adjustments and Chargebacks are regulated by time frames that are specified in the operating rules of the applicable Debit network, The Electronic Funds Transfer Act, Regulation E, and other applicable law.

36. Special Provisions Regarding EBT Transactions

If you elect to accept EBT Cards and engage in EBT transactions, the terms and conditions of this Section 36 shall apply.

EBT transactions are provided to you by Processor and not by Bank. The Services provided, transactions processed and other matters contemplated under this Section 30 are subject to the rest of this Agreement, as applicable, except to the extent the terms of this Section 30 directly conflict with another section of this Agreement, in which case the terms of this Section 30 will control; provided, however, that Bank is not a party to this Agreement insofar as it relates to EBT transactions, and Bank is not liable to you in any way with respect to such Services. For the purposes of this section, the words “we,” “our” and “us” refer only to the Processor and not to the Bank.

We offer electronic interfaces to EBT networks for the processing, settlement and switching of EBT transactions initiated through the use of a state-issued EBT card (“EBT Card”) at your POS Terminal(s) for the provision of United States Department of Agriculture, Food and Nutrition Service (“FNS”), Supplemental Nutrition Assistance Program (“SNAP”) and Women, Infants and Children Benefits (“WIC Benefits”) and/or government delivered Cash Benefits (Cash Benefits, together with FNS, SNAP and WIC Benefits, collectively are referred to as the “EBT benefits”) to EBT benefit recipients (“EBT customers”), subject to the terms below.

36.1. Acceptance of EBT Benefits. You agree to accept EBT Cards and provide EBT benefits to EBT customers through the use of a POS Terminals, PIN pad and printer or other equipment that meet standards as set forth in the EBT Rules (“Authorized Terminal”) applicable to such EBT benefits during your normal business hours, in a manner consistent with your normal business practices and in accordance with the EBT Rules.

You will provide EBT benefits to EBT customers, in accordance with the procedures set forth in the EBT Rules, in the amount authorized through your Authorized Terminal upon presentation by an EBT customer of an EBT Card and such EBT customer’s entry of a valid PIN. The “EBT Rules” means (i) all procedures that we establish and provide to you from time-to-time regarding your acceptance of EBT Cards and provision of EBT benefits to EBT customers; (ii) the Quest Rules, as amended from time-to-time, issued by the National Automated Clearing House Association and as approved by the Financial Management Service of the U.S. Treasury Department, as necessary (and any rules that succeed or replace the Quest Rules); and (iii) other such laws, rules, regulations and procedures that are applicable to the acceptance of EBT Cards and the provision of EBT benefits by you under this Section 30, including without limitation, laws pertaining to delivery of services to EBT customers and EBT customer confidentiality, the federal Civil Rights Act of 1964, Rehabilitation Act of 1973, Americans with Disabilities Act of 1990, Clean Air Act, Clean

Water Act, Energy Policy and Conservation Act, Immigration Reform and Control Act of 1986, regulations issued by the Department of Agriculture pertaining to Food Stamp Program, and, any additional procedures specified by the state regarding lost EBT Cards, forgotten PINs, discrepancies in benefits authorized and similar matters by providing EBT customers with information such as telephone numbers and addresses of the state or other appropriate agencies. The “Food Stamp Program” is the government benefits program operated under the authority of the Food Stamp Act of 1964.

If the Authorized Terminal fails to print EBT benefit issuance information as approved and validated as a legitimate transaction, you will comply with the procedures set forth in the EBT Rules for authorization of EBT benefits in such instance. You are solely responsible for your provision of EBT benefits other than in accordance with authorizations timely received from EBT service provider. You will not resubmit any EBT Card transaction except as specifically permitted by the EBT Rules and procedures applicable to such EBT Card transaction. You must provide a receipt for each EBT transaction to the applicable EBT customer.

You will not accept any EBT Card for any purpose other than providing EBT Benefits, including without limitation accepting an EBT Card as security for repayment of any EBT customer obligation to you. In the event of any violation of this provision, you will be obligated to reimburse the state or us for any EBT benefits unlawfully received by either you or an EBT customer to the extent permitted by law. Cash should never be dispensed for FNS, SNAP and WIC Benefits.

36.2. Manual EBT Vouchers. In accordance with the procedures set forth in this Section 30 and the EBT Rules, you will manually accept EBT Cards during periods of time when your Authorized Terminal is not working or the EBT system is not available; you will manually provide EBT benefits in the amount authorized through the applicable EBT service provider to the EBT customers at no cost to the EBT customers upon presentation by an EBT customer of his/her EBT Card. All manual voucher authorizations must be cleared on your POS terminal for payment of voucher to be made to you. In addition to any procedures set forth in the EBT Rules, the following limitations will apply to manual issuance of FS Benefits by merchant:

- An authorization number for the amount of the purchase must be received by you from the applicable EBT service provider while the respective EBT customer is present and before you provide such EBT customer with any FNS, SNAP and WIC Benefits, or Cash Benefits, as applicable. You must not attempt to voice authorize a manual EBT transaction if the EBT customer is not present to sign the voucher. The EBT customer must sign the voucher. A copy of the voucher should be given to the EBT customer at the time of authorization and you should retain one copy for your records.
- Specified EBT customer, clerk and sales information, including the telephone authorization number, must be entered properly and legibly on the manual sales draft.
- All manual voucher authorizations must be cleared on your Authorized Terminal before payment of voucher will be made to you. Vouchers must be cleared within 10 Business Days after the date of applicable voice authorization. Vouchers cannot be cleared by any manner except by your Authorized Terminal therefore you should never mail vouchers requesting payment. If a voucher expires before it has been cleared by your Authorized Terminal for payment, no further action can be taken to obtain payment for the voucher.
- In the event that, due to EBT host failure, EBT benefit availability for an EBT customer cannot be determined at the time you request authorization, the maximum authorized manual transaction and benefit encumbrance will be \$40.00 or such other state specific floor limit as set forth in the most current version of the applicable EBT Rules.
- Except as specifically provided in the applicable EBT Rules, you will not be reimbursed and will be solely responsible for a manual transaction when you fail to obtain an authorization number from the applicable EBT service provider as set forth in this Section 36 or otherwise fail to process the manual transaction in accordance with the EBT Rules.
- If you have not received an authorization number in accordance with paragraph 36.1 above, you may not “re-submit” a manual sales draft for payment for the same transaction.

36.3. Acceptance of Cash Benefits. If you agree to accept EBT Cards and to provide Cash Benefits, you agree to maintain adequate cash on hand to issue EBT service provider authorized Cash Benefits and will issue such Cash Benefits to EBT customers in the same manner and to the same extent cash is provided to your other customers. You may not require, and may not in your advertising suggest, that any EBT customers must purchase goods or services from you as a condition to receiving Cash Benefits, unless such condition applies to other customers as well. You may not designate and direct EBT customers to special checkout lanes restricted to use by EBT customers unless you also designate and direct other customers to special checkout lanes for Debit Cards or Credit Cards and/or other payment methods such as checks other than cash.

36.4. Interoperability. If you accept EBT Cards and provide EBT benefits (FNS, SNAP and WIC Benefits and/or Cash Benefits), you must do so for EBT customers from all states.

36.5. Required Licenses. If you provide FNS, SNAP and WIC Benefits under this Agreement, you represent and warrant to us that you are a FNS authorized merchant and are not currently disqualified or withdrawn from redeeming food stamp coupons or otherwise disqualified or withdrawn by FNS. You agree to secure and maintain at your own expense all necessary licenses, permits, franchises, or other authorities required to lawfully effect the issuance and distribution of EBT benefits under this Agreement, including without limitation, any applicable franchise tax certificate and non-governmental contractor’s certificate, and covenant that you will not accept EBT Cards or provide EBT

benefits at any time during which you are not in compliance with the requirements of any EBT Rules.

36.6. Term and Termination. If you are disqualified or withdrawn from the Food Stamp Program, your authority to issue benefits will be terminated concurrently therewith. Such disqualification or withdrawal will be deemed a breach of this Agreement with respect to your authority to issue Cash Benefits and, in the event of such disqualification, we have the right to immediately terminate the provision of service under this Section 36 or the Agreement in its entirety. With respect to the issuance of Cash Benefits only, your authority to issue Cash Benefits may be suspended or terminated immediately at the sole discretion of us, the state or its EBT service provider, effective upon delivery of a notice of suspension or termination specifying the reasons for such suspension or termination if there will be (i) any suspension, injunction, cessation, or termination of the EBT service provider's authority to provide EBT services to the state; (ii) failure by you, upon not less than thirty (30) days' prior written notice, to cure any breach by you of these terms and conditions, including without limitation, your failure to support the issuance of EBT benefits during your normal business hours consistent with your normal business practices, your failure to comply with EBT benefit issuance procedures, your impermissible acceptance of an EBT Card, or your disqualification or withdrawal from the Food Stamp Program; or (iii) based on a state's or its EBT service provider's investigation of the relevant facts, evidence that you or any of your agents or employees are committing, participating in, or have knowledge of fraud or theft in connection with the dispensing of EBT benefits. If you fail to cure any breach as set forth above, you may appeal such suspension of termination to the applicable state for determination in its sole discretion.

In the event that your authority to accept benefits is suspended or terminated by a state or its EBT service provider, and you successfully appeal such suspension or termination to the state or its EBT service provider, we shall be under no obligation to reinstate the services previously provided under this Section 36 or the Agreement, as applicable.

The provision of services under this Section 36 shall terminate automatically if our agreement or our service provider's agreement with any applicable state's EBT service provider terminates for any reason.

You will give prompt notice to us if you plan to stop accepting EBT Cards and providing EBT benefits or if you are unable to comply with the terms of this Section 36.

36.7. Confidentiality of EBT System Information. All information related to EBT customers and/or the issuance of EBT benefits shall be considered confidential information. Individually identifiable information relating to an EBT customer or applicant for EBT benefits will be held confidential and will not be disclosed by you or your directors, officers, employees or agents, without prior written approval of the applicable state.

You will: (a) implement appropriate measures designed to: (1) ensure the security and confidentiality of all non-public personal information or materials regarding customers ("NPPI"); (2) protect against any anticipated threats or hazards to the security or integrity of NPPI; (3) protect against unauthorized access to or use of NPPI that could result in substantial harm or inconvenience to any customer and (4) ensure the proper disposal of NPPI; and (b) take appropriate actions to address incidents of unauthorized access to NPPI, including notification to us as soon as possible.

The use of information obtained by you in the performance of your duties under this Section 36 will be limited to purposes directly connected with such duties.

36.8. EBT Service Marks. You will adequately display any applicable state's service Marks or other licensed marks, including the Quest Marks, and other materials supplied by us (collectively the "Protected Marks") in accordance with the standards set by the applicable state. You will use the Protected Marks only to indicate that EBT benefits are issued at your location(s) and will not indicate that we, any state or its EBT service provider endorse your goods or services. Your right to use such Protected Marks pursuant to this Agreement will continue only so long as this Section 36 remains in effect or until you are notified by us, any state or its EBT service provider to cease their use or display. You will not use the Marks of any EBT service provider without prior written approval from such EBT service provider.

36.9. Miscellaneous.

36.9.1. Errors. You will fully cooperate with us and any other participants in the EBT system in the resolution of errors and disputes regarding EBT transactions processed pursuant to this Section 36. You will promptly notify us of any such errors or disputes.

36.9.2. Issuance Records.

i. You agree to make available such informational materials as may be required by the state, its EBT service provider or any applicable regulations pertaining to the issuance of Benefits.

ii. You will retain all EBT-related records (including but not limited to manual sales drafts or vouchers) in the manner required by the EBT Rules or otherwise reasonably requested by us for three (3) years following the date of the applicable EBT transaction, or for such additional period as may be required by the EBT Rules. Records involving matters in litigation will be kept by you for a period of not less than three (3) years following the termination of the applicable litigation. Copies of any documents in media other than paper (e.g., microfilm, etc.) related to this Section 36 may be substituted for the originals to the extent permitted under applicable EBT Rules and provided that legible paper copies can be reproduced within a reasonable time after such records are requested.

iii. You will make all EBT-related records available for audit upon request to representatives of the state or its EBT service provider, or other authorized state or federal government agency during normal business hours.

iv. To assure compliance with this Agreement, including without limitation this Section 36, the state, its EBT service provider, or other authorized state or federal government agency, will at all times, upon advance notice except in the case of suspected fraud or other similar activity, have the right to enter, during normal business hours, your premises to inspect or evaluate any work performed under this Agreement, or to obtain any other information required to be provided by you or otherwise related to this Agreement.

36.9.3. Training. You will train and permit your employees to receive training regarding the issuance of EBT benefits.

36.9.4. Amendments. Notwithstanding anything to the contrary in this Agreement, if any of these terms and conditions are found to conflict with the EBT Rules or federal or state policy, these terms and conditions are subject to reasonable amendment by us, a state or its EBT service provider to address such conflict upon written notice to you and such amendment shall become effective upon such notice.

36.9.5. State Action. Nothing contained herein shall preclude a state from commencing appropriate administrative or legal action against you or for making any referral for such action to any appropriate federal, state, or local agency.

36.9.6. Reference to State. Any references to state herein will mean the state in which you accept EBT benefits pursuant to this Section 36. If you accept EBT benefit in more than one state pursuant this Section 36, then the reference will mean each such state severally, not jointly.

36.9.7. Third Party Beneficiaries. These terms and conditions, do not create, and will not be construed as creating, any rights enforceable by any person not having any rights directly under this Agreement, except that the state and its Issuer, as defined in the Quest Rules, will be deemed third party beneficiaries of the representations, warranties, covenants and agreements made by you under the Agreement, including without limitation this Section 36.

37. Special Provisions Regarding Wireless Service

If you elect to purchase the Wireless Services from us as indicated on the Application, then the following terms and conditions of this Section 37, referred to as the "**Wireless Services Terms**," shall apply. THE WIRELESS SERVICES ARE BEING SOLD TO YOU FOR USE IN BUSINESS AND ARE NOT BEING SOLD TO YOU FOR HOUSEHOLD OR PERSONAL USE. Sale of Wireless Services is made by Processor and not the Bank. The Services provided, transactions processed and other matters contemplated under this Section 37 are subject to the rest of this Agreement, as applicable, except to the extent the terms of this Section 37 directly conflict with another section of this Agreement, in which case the terms of this Section 37 will control; provided, however, that Bank is not a party to this Agreement insofar as it relates to Wireless Services, and Bank is not liable to you in any way with respect to such services. For the purposes of this section, the words "we," "our" and "us" refer only to the Processor and not to the Bank.

Through one or more third party vendors ("Wireless Vendor(s)") selected by us in our sole discretion, we have acquired the right to resell certain wireless data communication services that use radio base stations and switching offered by certain cellular telephone and data networks throughout the country (the "Wireless Networks") in order to allow you to capture and transmit to Processor and Bank certain wireless Card Authorization transactions or to transmit other communications to our system ("Wireless Services").

If you elect to purchase voice and/or data services directly from a third party provider for use with the Wireless Equipment as permitted by Processor, you acknowledge and agree that this Agreement does not address or govern those voice and/or data services or your relationship with that third party provider, and Services are in no way responsible for providing, maintaining, servicing or supporting such third party voice and/or data services.

37.1. Purchase of Wireless Services. The prices that you will pay for the Wireless Services are set forth on the Application. In connection with your purchase of Wireless Services, you will receive access to a certain Wireless Network(s).

- Licenses. You agree to obtain any and all licenses, permits or other authorizations required by the Federal Communications Commission ("FCC") or any other regulatory authority, if any, for the lawful operation of Wireless Equipment used by you in connection with your receipt of Wireless Services. You will promptly provide us with all such information as we may reasonably request with respect to matters relating to the rules and regulations of the FCC.

- Wireless Equipment. You agree that in order to access the Wireless Services, you must use wireless POS Terminals and accessories approved for use with the Wireless Services by Processor from time to time in its sole discretion (the "Wireless Equipment"). If Wireless Equipment is purchased by you from us as indicated on the Application, then the terms of this Agreement apply to your use of such Wireless Equipment.

- Improvements/General Administration. We and the Wireless Vendor(s) reserve the right to make changes, from time to time, in the configuration of the Wireless Services, Wireless Networks, Wireless Equipment, Wireless Software, rules of operation, accessibility periods, identification procedures, type and location of equipment, allocation and quantity of resources utilized, programming languages, administrative and operational algorithms and designation of the control center serving you at the particular address. In

addition, we reserve the right to schedule, from time to time, interruptions of service for maintenance activities.

- **Suspension of Wireless Services.** We or a Wireless Network may suspend the Wireless Services to: (a) prevent damages to, or degradation of, our or a Wireless Network's network integrity that may be caused by a third party; (b) comply with any law, regulation, court order or other governmental request which requires immediate action; or (c) otherwise protect us or a Wireless Network from potential legal liability. To the extent commercially reasonable, we shall give notice to you before suspending the Wireless Services to you. If not commercially reasonable to give prior notice, we will give notice to you as soon as commercially practicable thereafter. Availability of the Wireless Services may vary due to events beyond the control of us or our Wireless Vendors. In the event of a suspension of the Wireless Services, we or the applicable Wireless Vendor will promptly restore the Wireless Services after the event giving rise to the suspension has been resolved.

37.2. Software Licenses. Processor hereby grants to you a non-exclusive, non-transferable, revocable limited sublicense to use any wireless software (including any documentation relating to or describing the wireless software) downloaded by you or your designee from Processor's systems onto the Wireless Equipment in connection with your purchase and use of the Wireless Services in accordance with the terms of this Agreement, including this Section 37. Anything in this Agreement to the contrary notwithstanding, we or certain third parties retain all ownership and copyright interest in and to all Wireless Software, related documentation, technology, know-how and processes embodied in or provided in connection with the Wireless Software, and you shall have only a nonexclusive, non-transferable license to use the Wireless Software in your operation of the Wireless Equipment for the purposes set forth in this Agreement. Nothing in this Agreement confers any title or ownership of any such Wireless Software to you or shall be construed as a sale of any rights in any such Wireless Software to you. You agree to accept, agree to and be bound by all applicable terms and conditions of use and other license terms applicable to such Wireless Software. You shall not reverse engineer, disassemble or decompile the Wireless Software. You shall not give any Person access to the Wireless Software without our prior written consent. Your obligations under this Section 37.2 shall survive the termination of this Agreement. You acknowledge that the only right you obtain to the Wireless Software is the right to use the Wireless Software in accordance with the terms in this Section.

37.3. Limitation on Liability. We shall have no liability for any warranties by any party with respect to uninterrupted Wireless Services, as set forth in Section 37.10, or for any Person's unauthorized access to Client's data transmitted through either the Wireless Equipment or Wireless Services (including the Wireless Software), or Wireless Networks, regardless of the form of action (whether in contract, tort (including negligence), strict liability or otherwise). The foregoing notwithstanding, for any other liability arising out of or in any way connected with these Wireless Services terms, including liability resulting solely from loss or damage caused by partial or total failure, delay or nonperformance of the Wireless Services or relating to or arising from your use of or inability to use the Wireless Services, Processor's, Bank's, and Wireless Vendor(s)' liability shall be limited to your direct damages, if any, and, in any event, shall not exceed the lesser of the amount paid by you for the particular Wireless Services during any period of failure, delay, or nonperformance of the Wireless Services or \$50,000.00. In no event shall Servicers, Wireless Vendor(s) or our respective Affiliates be liable for any indirect incidental, special, consequential or punitive damages. The remedies available to you under these Wireless Services Terms will be your sole and exclusive remedies with respect to the Wireless Services.

37.4. Indemnification. In addition to any other indemnifications as set forth in this Agreement, you will indemnify and hold Servicers, Wireless Vendor(s) and our respective officers, directors, employees, and Affiliates harmless from and against any and all losses, claims, liabilities, damages, costs or expenses arising from or related to: (a) the purchase, delivery, acceptance, rejection, ownership, possession, use condition, liens against, or return of the Wireless Equipment or the Wireless Equipment (including the Wireless Software), as applicable; (b) your negligent acts or omissions; (c) any breach by you of any of your obligations under this Section 37; or (d) any Person's unauthorized access to Client's data and/or unauthorized financial activity occurring on your Merchant Identification Number hereunder, except to the extent any losses, liabilities, damages or expenses result from our gross negligence or willful misconduct.

37.5. Confidentiality. All information or materials which could reasonably be considered confidential or competitively sensitive that you access from or relate to either Wireless Vendor(s) or Servicers related to the subject matter of these Wireless Services Terms will be considered confidential information. You will safeguard our confidential information with at least the same degree of care and security that you use for your confidential information, but not less than reasonable care.

37.6. Termination. In addition to any other provision in this Agreement, the Wireless Services being provided under this Section 37 may terminate:

- a) Immediately upon termination of the agreement between us (or our Affiliates) and Wireless Vendor(s), provided that we will notify you promptly upon our notice or knowledge of termination of such agreement, provided further that if Wireless Vendor(s) loses its authority to operate less than all of the Wireless Services or if the suspension of any authority or non-renewal of any license relates to less than all of the Wireless Services, then these Wireless Services Terms will terminate only as to the portion of the Wireless Services affected by such loss of authority, suspension or non-renewal; or

- b) Immediately if either we or our Affiliates or Wireless Vendor(s) are prevented from providing the Wireless Services by any law, regulation, requirement, ruling or notice issued in any form whatsoever by judicial or governmental authority (including without limitation the FCC).

37.7. Effect of Termination. Upon termination of these Wireless Services Terms for any reason, you will immediately pay to us all fees due and owing to us hereunder. If these Wireless Services terms terminate due to a termination of the agreement between us or our Affiliates and Wireless Vendor(s), then we may, in our sole discretion, continue to provide the Wireless Services through Wireless Vendor(s) to you for a period of time to be determined as long as you continue to make timely payment of fees due under these Wireless Services Terms.

37.8. Third Party Beneficiaries. Wireless Vendor(s) are third party beneficiaries of these Wireless Services Terms and may enforce its provisions as if a party hereto.

37.9. Other Applicable Provisions. You also agree to be bound by all other terms and conditions of this Agreement.

37.10. Disclaimer. Wireless Services use radio transmissions, so Wireless Services can't be provided unless your Wireless Equipment is in the range of one of the available Wireless Networks' transmission sites and there is sufficient network capacity available at that moment. There are places, particularly in remote areas, with no service at all. Weather, topography, buildings, your Wireless Equipment, and other conditions we don't control may also cause failed transmissions or other problems. PROCESSOR, BANK, AND WIRELESS VENDOR(S) DISCLAIM ALL REPRESENTATIONS AND WARRANTIES RELATING TO WIRELESS SERVICES. WE CANNOT PROMISE UNINTERRUPTED OR ERROR-FREE WIRELESS SERVICE AND DO NOT AUTHORIZE ANYONE TO MAKE ANY WARRANTIES ON OUR BEHALF.

38. Special Provisions Regarding Clover Security Plus

Clover Security Plus consists of a POS security monitor, the TransArmor Data Protection service, and tools that you can use to help you meet your PCI DSS compliance obligations. Each of these services is described in more detail below. Clover Security Plus is provided to you by Processor and not by Bank. Clover Security Plus is available only for Level 3 and Level 4 merchants, as defined by the Payments Organizations. Clover Security Plus is not available for Level 1 or Level 2 merchants.

38.1. The POS security monitor offers you monitoring, scanning, and anti-virus software services for your point of sale computer systems. The TransArmor Data Protection service is described in Sections 38.14 and 38.15.

38.2. Scanning Authority; Scanning Obligations. You represent and warrant that you have full right, power, and authority to consent for Clover Security Plus to scan for vulnerabilities in the IP address and/or URL and/or domain names identified to us by you for scanning, whether electronically or by any other means, whether during initial enrollment or thereafter. If applicable, you shall obtain all consents and authorizations from any third parties necessary for us or our vendors to perform the Clover Security Plus services, including, without limitation, third party data centers, co-locations and hosts. We will not be required to execute agreements with any such third parties. You agree to defend, indemnify and hold us and our vendors harmless from any third party claim that such access was not authorized. You may use Clover Security Plus and portals only to scan IP addresses, URLs and domain names owned by and registered to you. You understand that your failure to provide a complete list of and complete access to your IP addresses will significantly impair the scanning services and may result in incomplete or inaccurate results. You agree that the Clover Security Plus services hereunder, including without limitation their functionality and contents, constitute confidential information, and your use and/or access to the Clover Security Plus is subject to the terms of confidentiality set forth in this Agreement.

38.3. Data Collection. In the course of providing the Clover Security Plus, we may collect information relating to activities on your network (the "Data") including, but not limited to: network configuration, TCP/IP packet headers and contents, log files, malicious codes, and Trojan horses. We retain the right to use the Data or aggregations thereof for any reasonable purpose.

38.4. Data Protection; Responsibilities of Client. Data Protection applies only to card transactions sent from you to us for authorization and settlement pursuant to the Agreement, and specifically excludes electronic check transactions. You are responsible to comply with the following regarding your use of Data Protection:

- (a) Data Protection can only be used with an eligible POS device, gateway, interactive voice response system, or similar system or equipment sale device, gateway, that is certified by us for use with Data Protection. If you are uncertain whether your equipment is eligible or certified, please contact us. It is your responsibility to ensure that you have eligible equipment in order to use Data Protection.
- (b) You must demonstrate and maintain your current PCI DSS compliance certification. Compliance must be validated either by a Qualified Security Assessor (QSA) with corresponding Report on Compliance (ROC) or by successful completion of the applicable PCI DSS Self-Assessment Questionnaire (SAQ) or Report on Compliance (ROC), as applicable, and if applicable to your business, passing quarterly network scans performed by an Approved Scan Vendor, all in accordance with card organization rules and PCI DSS. Use of the Data Protection will not, on its own, cause you to be compliant or eliminate your obligations to comply with PCI DSS or any other Card

Organization Rule. You must also ensure that all third parties and software that you use for payment processing comply with the PCI DSS.

- (c) You must deploy Data Protection (including implementing any upgrades to such service within a commercially reasonable period of time after receipt of such upgrades) throughout your systems including replacing existing Card numbers on your systems with Tokens. Full Card numbers must never be retained, whether in electronic form or hard copy.
- (d) You must use the Token in lieu of the Card number for ALL activities subsequent to receipt of the authorization response including, settlement processing, retrieval processing, chargeback and adjustment processing and transaction reviews.
- (e) If you send or receive batch files containing completed Card transaction information to/from us, you must use the service provided by us to enable such files to contain only Tokens or truncated information.
- (f) You must use truncated report viewing and data extract creation within reporting tools provided by us.
- (g) You are required to follow rules or procedures we may provide to you from time to time regarding your use of Data Protection. We will provide you with advance written notice of any such rules or procedures or changes to such rules or procedures.
- (h) You will use only unaltered version(s) of Data Protection and will not use, operate or combine Data Protection or any related software, materials or documentation, or any derivative works thereof with other products, materials or services in a manner inconsistent with the uses contemplated in this section.
- (i) You will promptly notify us of a breach of any these terms.

38.5. Tokenization Limited Warranty. Subject to the terms of this Agreement, we (i) warrant that each token returned to you through Data Protection cannot be used to initiate a financial sale transaction by an unauthorized entity/person outside your point of sale systems and facilities where you process and/or store transaction data (the "Limited Warranty"); and (ii) agree to indemnify and hold you harmless from direct damages, including third party claims, resulting from our breach of the Limited Warranty. This express remedy for our breach of the Limited Warranty constitutes our entire liability and your sole and exclusive remedy for our breach of the Limited Warranty.

The Limited Warranty is void if (a) you use Data Protection in a manner not contemplated by, or you are otherwise in violation of, this Agreement or any other agreement relating to Cards eligible for Data Protection; (b) you are grossly negligent or engage in intentional misconduct; or (c) you no longer have a processing relationship with us.

38.6. Disclaimer; Clover Security Plus Does Not Guarantee Compliance or Security.

38.6.1. USE OF CLOVER SECURITY PLUS, SOFTWARE OR ANY EQUIPMENT (INCLUDING ANY SERVICES, SOFTWARE OR EQUIPMENT PROVIDED BY OR THROUGH A THIRD PARTY) IS AT YOUR OWN RISK AND TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW THE CLOVER SECURITY PLUS, EQUIPMENT AND ANY SOFTWARE IS PROVIDED "AS IS" AND WE DISCLAIM ALL REPRESENTATIONS OR WARRANTIES, EXPRESS OR IMPLIED, MADE TO YOU OR ANY OTHER PERSON, INCLUDING ANY WARRANTIES REGARDING QUALITY, SUITABILITY, MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE OR THAT THE CLOVER SECURITY PLUS, EQUIPMENT OR ANY SOFTWARE WILL OPERATE UNINTERRUPTED OR ERROR FREE OR THAT THE CLOVER SECURITY PLUS, EQUIPMENT OR SOFTWARE ARE SECURE, FREE OF VIRUSES OR OTHER HARMFUL COMPONENTS, OR DO NOT INFRINGE THE RIGHTS OF ANY PERSON.

38.6.2. YOU MUST COMPLY WITH ALL RULES OR PROCEDURES RELATING TO CLOVER SECURITY PLUS (OR ANY COMPONENT OF CLOVER SECURITY PLUS) THAT WE GIVE YOU FROM TIME TO TIME. YOU MUST ALSO IMPLEMENT ALL UPDATES TO CLOVER SECURITY PLUS WITHIN A REASONABLE PERIOD OF TIME AFTER YOU RECEIVE THEM. YOU ARE SOLELY RESPONSIBLE FOR BACKING UP AND/OR OTHERWISE PROTECTING YOUR DATA, SYSTEMS, AND SERVICE.

38.6.3. Use of Clover Security Plus does not (a) guarantee compliance with any laws, Rules, or applicable standards (including the PCI DSS), (b) affect your obligation to comply with laws, Rules, and applicable standards (including the PCI DSS), or (c) guarantee protection against a Data Incident. Your use of Clover Security Plus involves inherent risks, including system performance, availability, and data corruption. We make no promise, and disclaim all warranties of any kind, that the use of Clover Security Plus will detect all vulnerabilities on your system, or that our vulnerability assessments, suggested solutions, information, or advice is error-free or complete.

38.7. Intellectual Property Rights.

38.7.1. All right, title, and interest in and to all confidential information and intellectual property related to the Clover Security Plus (including the Marks, all Software, the content of any materials, web screens, layouts, processing techniques, procedures, algorithms, and methods and any updates, changes, alterations, or modifications to or derivative works from such intellectual property), owned, developed or licensed by us prior to, during the term of, or after this Agreement, or employed by us in connection with the Clover Security Plus, shall be and remain, as among the Parties or our Affiliates', our vendors' or our licensors' (as applicable) sole and exclusive property, and all right, title and interest associated with the Clover Security Plus, Equipment and Software not expressly granted by us in this Agreement are deemed withheld. You may not use our Marks in any manner, including in any advertisements, displays, or press releases, without our prior written consent.

38.7.2. You may not, nor may you permit any third party to do any of the following: (a) decompile, disassemble, reverse engineer, or otherwise attempt to reconstruct or discover by any means any source code, underlying ideas or algorithms of the Clover Security Plus, Software or Equipment (or any part), except to the extent that such restriction is expressly prohibited by law; (b) modify, translate, or alter in any manner, the Clover Security Plus, Software or Equipment (or any part) or the Marks; (c) create derivative works of or based on the Clover Security Plus (or any part), Software or the Marks; (d) except for backup and archival purposes, directly or indirectly copy the Clover Security Plus or any Software (or any part); (e) republish, upload, post, transmit, disclose, or distribute (in any format) the Clover Security Plus or Software (or any part) except as permitted in this Agreement; or (f) remove, relocate, or otherwise alter any proprietary rights notices from the Clover Security Plus, Software or Documentation (or any part) or the Marks.

38.7.3. If we provide you with copies of or access to any Software or Documentation, unless otherwise expressly stated in writing, that Software and Documentation is provided on a personal, non-exclusive, non-transferable, non-assignable, revocable limited license for the period of your subscription to the applicable Clover Security Plus service and solely for you to access and use the Software and Documentation to receive the relevant Clover Security Plus service for its intended purpose on systems owned or licensed by you. Software can only be used with certain computer operating systems and it is your responsibility to ensure that you have the appropriate hardware and software to use the Software.

38.7.4. You shall not take any action inconsistent with the stated title and ownership in this Section 38. You will not file any action, in any forum that challenges the ownership of any part of the Clover Security Plus or any software, materials or Documentation. Failure to comply with this provision will constitute a material breach of this Agreement. We have the right to immediately terminate your access to and use of the Clover Security Plus in the event of a challenge by you.

38.7.5. If you are acquiring any of the Clover Security Plus services on behalf of any part of the United States Government (Government): any use, duplication, or disclosure by the Government is subject to the restrictions set forth in subparagraphs (a) through (d) of the Commercial Computer Software-Restricted Rights clause at FAR 52.227-19 when applicable, or in subparagraph (c)(1)(ii) of the Rights in Technical Data and Computer Software clause at DFARS 252.227-7013, and in similar clauses in the NASA FAR Supplement; (b) we are the contractor/manufacturer, with the address set forth in this Agreement; and (c) any use, modification, reproduction, release, performance, display or disclosure of Clover Security Plus and/or the accompanying documentation by the Government or any of its agencies shall be governed solely by the terms of this Agreement and shall be prohibited except to the extent expressly permitted by this Agreement.

38.8. Software Updates, Maintenance and Changes.

38.8.1. We may perform maintenance on Software or Clover Security Plus which may result in service interruptions, delays, or errors. We will not be liable for any such interruptions, delays, errors, or bugs. You agree that we may contact you in order to assist you with the Software or Services and obtain information needed to identify and fix any errors. We may, at our discretion, release enhancements, improvements or other updates to any Software, or otherwise make any changes to the Clover Security Plus (or any part).

38.8.2. You acknowledge and understand that certain Software can automatically install, download, and/or deploy updated and/or new components, which may include a new version of the Software itself. You shall not, in any event or in any manner, impede the update process. You agree to assume full responsibility and indemnify us for all damages and losses, of any nature, for all adverse results or third party claims arising from your impeding the update process.

38.9. Accessing Services via the Internet or third parties. You agree that we shall not be liable to you for any claims, damages, losses, obligations, costs or expenses or other liability arising directly or indirectly from or otherwise concerning (a) any termination, suspension, delay or disruption of service (including billing for a service) by the internet, any common carrier or any third party service provider; (b) any failure, disruption or malfunction of the Clover Security Plus, the Internet, or any communications network, facility or equipment beyond our or a third party's reasonable control, whether or not attributable to one or more common carriers; or (d) any failure to transmit, obtain or collect data or for human, machine or software errors or faulty or erroneous input by you.

38.10. Access and Use of Services.

38.10.1. Unless we otherwise agree in writing, the Clover Security Plus shall be for your internal business use in the United States and US territories or possessions only.

38.10.2. You shall not and shall not permit any third party to: (a) access or attempt to access any of the Clover Security Plus service that is not intended to be available to you; (b) access or use (in any format) the Clover Security Plus (or any part) through any time-sharing service, service bureau, network, consortium, or other means; (c) without our advanced written consent, use, ship or access TransArmor (or any part) outside of or from outside of the United States; (d) perform or attempt to perform any actions that would interfere with the proper working of any part of the Clover Security Plus, prevent access to or use of any of the Clover Security Plus by other users, or in our reasonable judgment, impose a large load on our infrastructure, network capability or bandwidth; or (e) use the Clover Security Plus (or any part) except as permitted in this Agreement.

38.10.3. We have the right to rely on user names, password and other sign on credentials/access controls for the Clover Security Plus or any Software (including

Federated Single Sign-on credentials) provided or approved by us to authenticate access to, and use of, the Services and any Software.

38.11. Indemnification. In addition to other indemnifications provided in this Agreement, you agree to indemnify and hold us, our Affiliates and third party service providers harmless from and against all losses, liabilities, damages and expenses arising from (a) your use of the Clover Security Plus, including any Software or Equipment provided under this Agreement; or (b) any other person's authorized or unauthorized access and/or use of the Clover Security Plus (or any part), Software or Equipment, whether or not using your unique username, password, or other security features.

38.12. Liability Waiver.

38.12.1. Subject to your subscribing to the entire Clover Security Plus bundle and to the terms of this Agreement, we agree to waive liability that you have to us under this Agreement for Security Event Expenses resulting from a Data Incident first discovered by you or us while you are receiving and utilizing the Clover Security Plus (the "Liability Waiver").

38.12.2. The maximum amount of Liability Waiver for all Data Incident Expenses arising out of or relating to your Data Security Events first discovered during any Program Year regardless of the number of such Data Security Events is as follows:

- a) \$100,000.00 maximum per each MID you have; and
- b) \$500,000 aggregate maximum for all of your MID's.

38.12.3. In addition to Section 38.11.2., the maximum amount of Liability Waiver during any TransArmor Program Year for EMV Upgrade Costs is further limited as follows:

- a) \$10,000 maximum per each MID you have; and
- b) \$25,000.00 aggregate maximum for all of your MID's.

These limitations apply during each twelve-month period from June 1 through May 31 regardless of the number of Data Incidents you may experience.

38.12.4. All Data Incident Expenses resulting from the same, continuous, related or repeated event or facts will be deemed to arise out of one Data Incident for purposes of these limits. The Liability Waiver is available only while you are using and paying for Clover Security Plus.

38.12.5. The Liability Waiver will not apply to any of the following: (a) any Data Incident that began before you started using Clover Security Plus or that is reported to us after you stopped using Clover Security Plus; (b) any fines or assessments against you that are not the direct result of a Data Incident; (c) any repeated Data Incidents, unless between the repeated events a qualified security assessor certified you as PCI-compliant; (d) any routine or recurring expenses for security assessments, regulatory examinations, or compliance activities; (e) any Data Incident that occurs during any period of time that (1) a Payments Organization has categorized you as a Level 1 or Level 2 merchant, or (2) you have processed more than 6 million transactions during the 12-month period before the Data Incident; (f) any expenses (other than Data Incident Expenses) incurred to bring you into compliance with the PCI DSS or a similar security standard; or (g) any Data Incident Expenses that arise out of an uncontrollable event or any intentional, reckless, or grossly negligent misconduct on your part.

38.13. Export Compliance

38.13.1. You agree not to export or re-export any Software or Equipment or any underlying information except in full compliance with all applicable laws and regulations.

38.13.2. None of the Software or Equipment or any underlying information may be downloaded or otherwise exported or re-exported (a) to any country to which the United States has embargoed goods (or any national or resident thereof); (b) to anyone on the United States Treasury Department's list of Specially Designated Nationals or the United States Commerce Department's Table of Deny Orders; or (c) in any manner not in full compliance with the requirements of the United States Bureau of Industry and Security and all applicable Export Administration Regulations.

38.13.3. If you have rightfully obtained Software or Equipment or any underlying information outside of the United States, you agree not to re-export the same except as permitted by the laws and regulations of the United States and the laws and regulations of the jurisdiction in which you obtained it. You warrant that you are not located in, under the control of, or a national or resident of any such country or on any such list.

38.14. Definitions:

- (a) **Card Organization Assessment** means a monetary assessment, fee, fine or penalty levied against you or us by a Card Organization as the result of (i) a Data Security Event or (ii) a security assessment conducted as the result of a Data Security Event; provided, that The Card Organization Assessment shall not exceed the maximum monetary assessment, fee, fine or penalty permitted upon the occurrence of a Data Security Event by the applicable rules or agreement in effect as of the inception date of this Agreement for such Card Organization;
- (b) **Cardholder Information** means the data contained on a Card, or otherwise provided to Client, that is required by the Card Organization or us in order to process, approve and/or settle a Card transaction;
- (c) **Card Replacement Expenses** means the costs that the we or you are required to pay by the Card Organization to replace compromised Cards as the result of (i) a Data Security Event or (ii) a security assessment conducted as the result of a Data Security Event;

- (d) **Data Protection** is a Clover Security Plus service that provides encryption of cardholder data at your payment environment and replaces the data with a token or randomly generated number;
- (e) **Clover Security Plus** is the suite of security services provided by us and known as TransArmor.
- (f) **Data Security Event** means the actual or suspected unauthorized access to or use of Cardholder Information, arising out of your possession of or access to such Cardholder Information, which has been reported (i) to a Card Organization by you or us or (ii) to you or us by a Card Organization. All Security Event Expenses and Post Event Services Expenses resulting from the same, continuous, related or repeated event or which arise from the same, related or common nexus of facts, will be deemed to arise out of one Data Security Event;
- (g) **Documentation** means any documents, instructions, web screen, layouts or any other materials provided by us relating to the Software or the Clover Security Plus;
- (h) **Equipment** means equipment rented to or purchased by you under this Agreement and any documents setting out additional terms on which Equipment is rented to or purchased by you;
- (i) **EMV Upgrade Costs** means cost to upgrade payment acceptance and processing hardware and software to enable you to accept and process EMV-enabled Card in a manner compliant with PCI Data Security Standards;
- (j) **Forensic Audit Expenses** means the costs of a security assessment conducted by a qualified security assessor approved by a Card Organization or PCI Security Standards Council to determine the cause and extent of a Data Security Event;
- (k) **Liability Waiver** has the meaning as set forth in Section 38.11.1 above;
- (l) **Marks** means the names, logos, emblems, brands, service marks, trademarks, trade names, tag lines or other proprietary designations;
- (m) **Post Event Services Expenses** means reasonable fees and expenses incurred by us or you with our prior written consent, for any service specifically approved by us in writing, including, without limitation, identity theft education and assistance and credit file monitoring. Such services must be provided by or on behalf of us or you within one (1) year following discovery of a Data Security Event to a Cardholder whose Cardholder Information is the subject of that Data Security Event for the primary purpose of mitigating the effects of such Data Security Event;
- (n) **Program Year** means the period from November 1st through October 31st of each year;
- (o) **Security Event Expenses** means Card Organization Assessments, Forensic Audit Expenses and Card Replacement Expenses. Security Event Expenses also includes EMV Upgrade Costs you agree to incur in lieu of a Card Organization Assessment;
- (p) **Software** means all software, computer programs, related documentation, technology, know-how and processes embodied in the Equipment (i.e. firmware) or otherwise provided to you under this Agreement. For the avoidance of doubt, the term Software shall not include any third party software available as part of a service provided from someone other than us or our vendors or which may be obtained by you separately from the Clover Security Plus (e.g. any applications downloaded by you through an application marketplace);
- (q) **TransArmor PCI** is a Clover Security Plus service that provides access to online PCI DSS Self-Assessment Questionnaires (SAQ) to validate PCI data standards; and

TransArmor Data Protection Service

38.15. The TransArmor Data Protection service encrypts cardholder data at the point of transaction and replaces it with a unique identifier (a token) that is returned with the authorization response. You must use the token you receive with the authorization response instead of the card number for all other activities associated with the transaction, including settlement, retrieval, chargeback, or adjustment processing as well as transaction reviews. If you fully deploy and use the TransArmor Data Protection service, the token returned to you with the authorization response cannot be used to initiate a financial sale transaction by an unauthorized person outside your point of sale systems or the systems where you store your transaction data. The TransArmor Data Protection service can only be used with a point of sale device, gateway, or service that we have certified as being eligible for the TransArmor Data Protection service. The TransArmor Data Protection Service is provided to you by Processor and not by Bank.

38.16. Use of the TransArmor Data Protection Service does not (a) guarantee compliance with any laws, Rules, or applicable standards (including the PCI DSS), (b) affect your obligation to comply with laws, Rules, and applicable standards (including the PCI DSS), or (c) guarantee protection against a Data Incident.

39. Special Provisions Regarding PayeezySM Gateway Services

If you elect to utilize the Payeezy Gateway Services, the following additional terms and conditions of this Section 39 shall apply.

The Payeezy Gateway Services are provided to you by Processor and not Bank. Bank is not a party to this Agreement insofar as it applies to the Payeezy Gateway Services, and Bank is not liable to you in any way with respect to such services. For the purposes of this Section 39, the words "we," "our" and "us" refer only to the Processor and not the Bank.

The Payeezy Gateway Services provided and other matters contemplated under this Section 39 are subject to the rest of this Agreement, as applicable, except to the extent the terms of this Section 39 directly conflict with another provision of this Agreement, in which case the terms of this Section 39 will control.

39.1. Definitions. Capitalized terms used in this Section 39 shall have the meaning given as defined in this Section or as defined in the Glossary or elsewhere in this Agreement.

Claim means any arbitration award, assessment, charge, citation, claim, damage, demand, directive, expense, fine, interest, joint or several liability, lawsuit or other litigation, notice, infringement or misappropriation of any Intellectual Property Right or violation of any law, and any consequential, indirect, special, incidental or punitive damages and any attorney's fees and expenses incurred in connection therewith. For purposes of the foregoing Claim definition, a Claim shall be considered to exist even though it may be conditional, contingent, indirect, potential, secondary, unaccrued, unasserted, unknown, unliquidated, or unmaturred.

Confidential Information means the Payeezy Gateway Services, Documentation, operational procedures, the terms and conditions of this Section 33 (including any schedule, exhibit or addendum), pricing or other proprietary business information, and any other information provided to you by us, whether or not such information is marked as confidential; provided, however, that Confidential Information will not include information that: (a) is or becomes generally known to the public through no fault of yours; (b) was lawfully obtained by you from a third party free of any obligation of confidentiality; (c) was already in your lawful possession prior to receipt thereof, directly or indirectly, from the disclosing party; (d) is independently developed by you without the use of the Confidential Information; (e) is disclosed with our express written permission; or (f) is disclosed pursuant to a lawful court or governmental order, provided you provide us with prompt prior written notice of any proceeding that may involve such an order, and an opportunity to contest any disclosure at such proceeding.

Customer means your customer who would like to provide payment for your goods or services.

Documentation means any and all manuals and other written materials in any form provided for use with the Software, as amended by us from time to time, the terms of which are incorporated in this Section 39 as if fully set forth herein.

Intellectual Property Rights means any and all patents, copyrights, trademarks, trade secrets, service marks, and any other intellectual property rights, and any applications for any of the foregoing, in all countries in the world.

Merchant Account shall mean an account set up for a merchant that requires a card processor, bank, merchant ID, terminal ID, merchant identification number, or otherwise named unique merchant number. Multiple physical or virtual storefronts that process transactions under the same unique merchant number shall be deemed as one (1) Merchant Account.

Payeezy Gateway Services or Services means the products or services offered through the Platform including, but, not limited to payment processing services such as authorization of transactions to the appropriate payment processing network or third party service provider, transaction responses (approved, declined), and the detailed reporting of those transactions, and all related and applicable Software.

Platform means our operated, or approved, electronic payment platform(s) and/or gateway(s) (also referred to as the "Payeezy Gateway") through which the payment Services contemplated under this Section 39 are provided.

Software means all applications, protocols, software components and other interfaces and software provided by us to you pursuant to this Section 39, and any and all Updates.

Updates means an embodiment of the Software that provides enhancements and/or improvements.

Your Systems means any web site(s) or interfaces to the Services that are operated or maintained by you or on your behalf through which transactions are submitted for processing, and all your other associated systems.

39.2. Fees. Client shall pay Processor the fees for the Payeezy Gateway Services as set forth on the Application. A separate account with us for Payeezy Gateway Services shall be required for each separate Merchant Account held by you.

39.3. Term; Termination. The Payeezy Gateway Services shall commence as of the effective date of this Agreement and shall remain in effect until terminated by either party as provided herein. Either party may terminate these Services upon giving the other party at least thirty (30) days prior written notice. We may suspend or terminate your access to the Services without prior notice, with or without cause. Regardless of the reason for termination, you shall be responsible for the payment of all fees due up to and including the effective date of termination.

39.4. License Grant.

39.4.1. License. Subject to the terms and conditions of this Agreement (including additional rights and licenses granted in the Documentation), we hereby grant you and you hereby accept a nonsublicensable, royalty free, non-exclusive, nontransferable, revocable limited license to use the Services, during the term of this Agreement, for the sole and limited purpose of submitting payment transactions to us for processing, and otherwise using our Services as set forth herein. For clarity, all references to Services in this Agreement shall include the applicable Software.

39.4.2. Documentation License. Subject to the terms and conditions of this Agreement, we hereby grant, and you hereby accept, a nonsublicensable, royalty free, non-exclusive, non-transferable, revocable limited license to use the Documentation during the term of this Agreement for the sole and limited purpose of supporting your use of the Services. You shall strictly follow all Documentation provided to you, as it may be amended from time to time by us, in our discretion. To the extent that there is any conflict between the Documentation and the terms of Agreement, the terms of this Section 39 shall govern and control.

39.4.3. Use Restrictions. You acknowledge that the Services and Documentation constitute our intellectual property, therefore, you shall not, and shall not cause or permit any third party to: (i) use the Services in any way, other than in accordance with this Agreement or the Documentation or as otherwise instructed by us in writing; (ii) use the Services or Documentation, either directly or indirectly, for benchmarking purposes or to develop any product or service that competes with the products and services provided under this Section 39; (iii) disassemble, decompile, decrypt, extract, reverse engineer or modify the Services, or otherwise apply any procedure or process to the Services in order to ascertain, derive, and/or appropriate for any reason or purpose, the source code or source listings for the Services or any algorithm, process, procedure or other information contained in the Services, except as otherwise specifically authorized in accordance with this Section 39; (iv) provide the Services or Documentation to any third party, other than to your authorized employees and contractors who are subject to a written confidentiality agreement, the terms of which are no less restrictive than the confidentiality provisions of the Agreement; (v) use, modify, adapt, reformat, copy or reproduce the Services or Documentation or any portion thereof, except as is incidental to the purposes of this Section 39, or for archival purposes (any copies made hereunder shall contain all appropriate proprietary notices); (vi) rent, lease, upload, assign, sublicense, transfer, distribute, allow access to, or time share the Services or Documentation; (vii) circumvent or attempt to circumvent any applicable security measures of the Services; (viii) attempt to access or actually access portions of the Platform or Services not authorized for your use; and/or (ix) use the Services in any unlawful manner or for any unlawful purpose.

39.4.4. Updates. From time to time we may, at our discretion, release Updates or modify the Software. In the event we notify you of any such Update, you shall integrate and install such Update into Your Systems within thirty (30) days of your receipt of such notice. You acknowledge that failure to install Updates in a timely fashion may impair the functionality of the Platform or any of our Services provided hereunder. We will have no liability for your failure to properly install the most current version of the Software or any Update, and we will have no obligation to provide support or Services for any outdated versions.

39.4.5. Licensors. The licenses granted hereunder may be subject to other licenses currently held by us or our subcontractors. Should any license held by us to certain technology or software be terminated or suspended, the corresponding license(s) granted to you hereunder may also be terminated or suspended in our sole and absolute discretion. You acknowledge and agree to such potential termination or suspension and hereby waive any and all damages, whether actual, incidental or consequential resulting therefrom.

39.4.6. Export Compliance. You agree not to export or re-export the Software or any underlying information or technology except in full compliance with all applicable laws and regulations. In particular, but without limitation, none of the Software or underlying information or technology may be downloaded or otherwise exported or re-exported (i) to any country to which the United States has embargoed goods (or any national or resident thereof); (ii) to anyone on the United States Treasury Department's list of Specially Designated Nationals or the United States Commerce Department's Table of Deny Orders; or (iii) in any manner not in full compliance with the requirements of the United States Bureau of Industry and Security and all applicable Export Administration Regulations. If you have rightfully obtained the Software outside of the United States, you agree not to re-export the Software except as permitted by the laws and regulations of the United States and the laws and regulations of the jurisdiction in which you obtained the Software. You warrant that you are not located in, under the control of, or a national or resident of any such country or on any such list.

39.4.7. Federal Acquisition Regulations. If you are acquiring the Software on behalf of any part of the United States Government (the "Government"), the following provisions apply: Any use, duplication, or disclosure by the Government is subject to the restrictions set forth in subparagraphs (a) through (d) of the Commercial Computer Software-Restricted Rights clause at FAR 52.227-19 when applicable, or in subparagraph (c)(1)(ii) of the Rights in Technical Data and Computer Software clause at DFARS 252.227-7013, and in similar clauses in the NASA FAR Supplement. We are the contractor/manufacturer, with the address set forth below. Any use, modification, reproduction, release, performance, display or disclosure of the Software and/or the accompanying documentation by the Government or any of its agencies shall be governed solely by the terms of this Agreement and shall be prohibited except to the extent expressly permitted by the terms of this Section 39.

39.4.8. Return/Destruction. Upon termination or expiration of this Agreement, all licenses granted hereunder shall immediately terminate, and within five (5) days thereof, you shall either return to us or destroy the Software and the Documentation, and shall so certify to us in writing.

39.4.9. No other Licenses. Except as expressly provided above, no license for any patents, copyrights, trademarks, trade secrets or any other Intellectual Property Rights, express or implied, are granted hereunder.

39.4.10. Use of Transaction Data. As permitted by applicable law and regulations, we reserve the right to copy and distribute to third parties, any information associated with your use of the Services or your activities on the Platform.

39.5. Platform Matters

39.5.1. Integration with Your Systems. While we provide Software to you, you acknowledge that the Software itself is insufficient to allow Your Systems to function with the Platform. Programming, development and maintenance of Your Systems and their functionality are your sole responsibility. You have the sole responsibility to select and employ any competent programming agent(s) to accomplish the programming required to make Your Systems function correctly with the Platform and the payment services contemplated hereunder ("Integration"). You shall be responsible for all technical support for Your Systems and Integration related issues. You agree that you will use commercially reasonable efforts to complete the Integration as soon as possible. You will be responsible for all of your own development and implementation costs associated with such Integration. Notwithstanding any other provision of this Section 39, you acknowledge that unless and until you complete the Integration, no Services need be provided by us to you pursuant to this Agreement, except as otherwise specifically provided in Section 39.5.2 below. In addition, you acknowledge and agree that, even if you have completed Integration, if you have not entered into a valid merchant processing agreement with an authorized bank card processor, you cannot receive the Services through the Platform.

39.5.2. Set-Up Assistance Services. Subject to Section 39.5.1 above, upon your request to us, and upon payment of any applicable Fees, we will provide you with set-up services to assist with the Integration.

39.5.3. Shut Downs. We reserve the right, from time to time, without prior notice, to shut down and restart the Platform for maintenance and/or software upgrades for reasonable time periods of one minute or more.

39.5.4. Orders by Customers. You are solely responsible for accepting, processing, and filling any orders for purchases by your Customers, and for handling any inquiries arising therefrom. You shall use the highest standards in the industry in responding to complaints by Customers. We are not responsible or liable for any unauthorized access to your data or Your Systems by any means or device.

39.5.5. Suspension of Access to the Platform and Services. We may suspend your access to the Platform and Services, without prior notice, with cause. For purposes of this Section 39 the term "cause", in addition to cause as defined under the Agreement, shall mean that significant activity by you has been detected (which excludes a high volume of transactions) or the security or integrity of the Platform is materially compromised. We will make commercially reasonable efforts to provide prior notification to you of any such proposed suspension and provide you with a reasonable opportunity to cure, provided just you (and no other user) are affected, and provided such cure is allowed by the applicable law or the Card Organization Rules. If prior notification to you is not possible because such significant activity or security issue would materially and adversely affect other users of the Platform and Services, then we will provide notice of such suspension as promptly as possible thereafter with detailed information regarding the suspected fraudulent activity or security issue, as well as any other information that can assist you with identifying the root cause of the problem responsible for such suspension. Upon a determination by us that you are not responsible for the fraudulent activity or security issue resulting in the suspension or any security threat as abated, the Services and your license to the Software shall be promptly re-activated and the Services under this Section 39 shall recommence. Regardless of the reason for such suspension, you shall be responsible for the payment of all fees due up to and including the effective date of the suspension.

39.6. Security of Information. We will use commercially reasonable efforts to maintain the security of the Services and the Platform. You will use commercially reasonable efforts to maintain the security of Your Systems. Such steps by you will be taken at your sole cost and expense, and shall include, without limitation: (i) creating firewalls to protect against unauthorized access to Your Systems by your employees, contractors, Customers, or by any other person; and (ii) implementing reasonable protective techniques suggested by us. You further agree that you will be bound by and comply with all of our and all Card Organization security rules and regulations as they now exist or as each may be amended or supplemented from time to time. Notwithstanding the foregoing, the parties recognize that there is no guarantee or absolute security of information that is communicated over the internet.

39.7. Privacy. We have adopted online Privacy Statement(s) to inform individuals as to our online collection and use of personal information. You agree that, during the term of this Agreement, you will adequately communicate and comply with an appropriate privacy policy explaining your online collection and use of the personal information of your Customers. Unless required by law, Card Organization Rules, or done pursuant to this Agreement, you shall not, under any circumstances, sell, purchase, provide, or otherwise disclose any customer's account information, transaction information, or other personal information to any third party. You shall store all data securely. We may advise potential users of the services that we have a relationship with you.

39.8. Audit Rights. Upon notice to you, we may audit your usage, records and security of the Services, your Customer's payment processing information, and the services provided hereunder to ensure (i) that you are using the Services in full compliance with the provisions of this Section 39; (ii) that all applicable fees have been paid; (iii) that you are adhering to your privacy policy; and; (iv) that you are in full compliance with all applicable laws, regulations and rules (including but not limited to Card Organization Rules). Any

such audit shall be conducted during regular business hours at your offices and shall not interfere unreasonably with your business.

39.9. Indemnification. You shall indemnify, defend, and hold us, our subsidiaries and affiliates and our and their officers, directors, employees, shareholders, agents and attorneys from any Claim(s) arising from the conduct of your business, any Transactions submitted through the Platform hereunder for payment processing, any false or inaccurate representation made by you or the negligence, fraud, dishonesty or willful behavior of any of your employees or agents, or from your failure to strictly comply, in whole or in part, with any: (i) terms and conditions pursuant to this Agreement and any addenda hereto or Documentation; or (ii) applicable law, regulations or rules. Upon written notice from us to you, you shall immediately undertake the defense of such Claim by representatives of your own choosing, subject to our reasonable approval.

39.10. Limitation of Liability.

39.10.1. Processor is not liable for the merit and legitimacy of the orders forwarded by you. All liability for validity of orders remains with you. We are not responsible for any data entry errors, Customer misrepresentations, or reporting errors resulting from your actions. We shall not be liable to you or your Customer for the accuracy of the information provided by the Platform or our Services.

39.10.2. In no event shall we be liable to you, or to any other person or entity, under this Section 39, or otherwise, for any punitive, exemplary, special, incidental or consequential damages, including, without limitation, any loss or injury to earnings, profits or goodwill.

39.10.3. Notwithstanding any provision in this Agreement to the contrary, in no event shall our liability under this Section 39 for all Claims arising under, or related to, this Section 39 exceed, in the aggregate (inclusive of any and all Claims made by you against us, whether related or unrelated), the lesser of: (i) the total amount of fees paid by you for the our Services during the 12-month period immediately preceding the date the event giving rise to such Claim(s) occurred; or (ii) \$50,000.00.

39.10.4. Notwithstanding provisions set forth herein, we will not be liable for any Claims under this Agreement arising directly or indirectly from or otherwise concerning: (a) any termination, suspension, delay or disruption of service (including billing for a service) by the Internet, any common carrier or any third party service provider; (b) any failure, disruption or malfunction of the Services provided hereunder or the Internet, or any communications network, facility or equipment beyond our reasonable control, whether or not attributable to one or more common carriers or third party service providers; (c) any failed attempts by you or your Customers to access any Systems or to complete processing transactions; or (d) any failure to transmit, obtain or collect data from Customers or for human, machine or software errors or faulty or your or your Customer's erroneous input. Except as expressly agreed to by us in writing with respect to any Separate Product, we are not liable for any Excluded Products.

39.11. DISCLAIMER OF WARRANTIES. YOU ACKNOWLEDGE AND AGREE THAT THE USE OF THE PAYEEZY GATEWAY SERVICES AND DOCUMENTATION ARE AT YOUR SOLE RISK WE MAKE NO REPRESENTATION OR WARRANTY, EXPRESS OR IMPLIED, AND NO IMPLIED AT LAW WARRANTY SHALL ARISE FROM THIS SECTION, PAYEEZY GATEWAY SERVICES, DOCUMENTATION, OUR PROCEDURES, OTHER SERVICES PROVIDED OR PERFORMED BY US HEREUNDER, INCLUDING, WITHOUT LIMITATION: (A) ANY IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, (B) ANY WARRANTIES OF NONINTERFERENCE OR NON-INFRINGEMENT; OR (C) ANY WARRANTIES THAT ANY PRODUCT OR SERVICE PROVIDED HEREUNDER (INCLUDING BUT NOT LIMITED TO THE SOFTWARE) WILL (1) MEET YOUR REQUIREMENTS; (2) OPERATE ACCORDING TO YOUR EXPECTATIONS; (3) PROVIDE ACCURATE DATA; OR (4) OPERATE UNINTERRUPTED OR ERROR FREE. ANY AND ALL SUCH WARRANTIES ARE EXPRESSLY DISCLAIMED BY US AND WAIVED BY YOU. WE DO NOT WARRANT THAT ANY ERRORS WILL BE CORRECTED. EXCEPT AS OTHERWISE SPECIFICALLY SET FORTH HEREIN, THE PAYEEZY GATEWAY SERVICES, (INCLUDING WITHOUT LIMITATION THE PAYEEZY GATEWAY AND SOFTWARE), DOCUMENTATION AND OTHER SERVICES PROVIDED HEREUNDER ARE PROVIDED ON AN "AS-IS, WITH ALL FAULTS" BASIS. THIS DISCLAIMER OF WARRANTIES CONSTITUTES AN ESSENTIAL PART OF THIS AGREEMENT. All decisions to reject any processing transaction or payment for your products or services are solely your responsibility.

39.12. Notices. You agree to notify us of any change in your name, type of business, or any other information required on your Merchant Processing Application at least thirty (30) business days prior to the effective date of change. Any notice or other communication required or permitted to be given hereunder shall be in writing, addressed or transmitted to the party to be notified at such party's address or number at such party's last known address or number, and shall be: (i) if sent by us, hand delivered or delivered by facsimile transmission, overnight courier or certified, registered, regular mail or e-mail; or (ii) if sent by you, certified or registered mail, postage prepaid return receipt requested to 3975 N.W. 120th Avenue, Coral Springs, FL 33065. Any notice delivered hereunder shall be deemed effective, as applicable, upon delivery, if hand delivered or sent by overnight courier; upon receipt as evidenced by the date of transmission indicated on the transmitted material, if by facsimile transmission or e-mail; on the date of delivery indicated on the return receipt, if mailed by certified or registered mail; or ten (10) days after mailing, if by regular mail (or as otherwise required by applicable law). The parties' addresses may be changed by written notice to the other party as provided herein.

39.13. Subcontractors. Processor may subcontract all or part of the Services using a variety of providers globally, but, notwithstanding any such subcontract, Processor shall remain fully responsible for performance of the Services, including ensuring the compliance of subcontractors with the terms of this Agreement applicable to such subcontractors.

39.14. Survival. Upon termination or expiration of this Section 39 or the Agreement, a party's obligations shall cease except for those remaining or required to be performed following such termination. For the avoidance of doubt, the parties agree that those provisions of this Section that logically should survive its termination or expiration in order to accomplish its fundamental purposes will do so. All representations, warranties, indemnities and covenants made herein shall survive the termination of this Section and shall remain enforceable after such termination.

40. Special Provisions Regarding Clover Insights Service Terms and Conditions

If you elect to utilize the First Data Clover InsightsSM Solution (“**Clover Insights**”) the terms and condition in this Section 40 shall apply (“**Clover Insights Terms and Conditions**”); and if you were granted a First Data Clover Insights Temporary Demonstration License, an election for Services under this Section 40 shall serve to supersede it. Clover Insights is provided to you by Processor and not Bank. Bank is not liable to you in any way with respect to Clover Insights. Clover Insights, transactions processed, and other matters contemplated under Section 40 are subject to the terms and conditions of the Agreement, as applicable, except to the extent the terms directly conflict with the Clover Insights Terms and Conditions, in which case the Clover Insights Terms and Conditions will control.

40.1. Definitions. Capitalized terms used herein shall have the meanings given to such terms as set forth in Section 40.1 or as defined elsewhere in this Section 40, or the Agreement.

“**Customer**” means a Person who makes a purchase of goods or services from you, the transaction detail of which is utilized in Clover Insights.

“**Customer Information**” means information about your Customers (e.g., name, mailing address, card account number, e-mail address, telephone number) obtained in connection with your use of the Services and may be utilized in Clover Insights.

“**Data**” means transaction data that may include processing data from First Data Merchant Services LLCs credit and debit information warehouse and other available sources that First Data Merchant Services LLC owns or has a contractual or other right to use in Clover Insights.

“**Device**” means a tablet, computer, smartphone or other mobile device, or other device that you use to access the Clover Insights website to receive or to which you receive communications from Clover Insights.

“**First Data**” means First Data Corporation, which is the parent company of First Data Merchant Services LLC.

“**First Data Clover Insights Marks**” means the trademarks or service marks related to Clover InsightsSM and sub-licensed to you by Processor.

“**First Data Clover Insights Solution**” or “**Clover Insights Solution**” means the website or the application associated with Clover InsightsSM, the object code version of the Clover Insights software applications and communications you receive from the applications. Among other things, Clover Insights allows merchants to track and visualize information regarding their own revenue, ticket size, and Customers contained in the Data and other third party data sources. Clover Insights may also permit a merchant to compare its performance to groups of similar businesses within their industry and/or certain geographic areas using the Data and other third party data sources, subject to certain limitations. The features and functionality of Clover Insights may be modified from time to time by First Data or its third party provider(s). For the avoidance of doubt, the term “software” in this definition does not include any software that may be obtained by you separately from Clover Insights (e.g., any applications downloaded by you). The First Data Clover Insights Solution is deemed part of the “Services,” as defined in and provided under the Agreement.

“**Clover Insights Solution Fees**” means the fees charged for your use of the First Data Clover Insights Solution, which includes additional fees for multiple locations.

“**Third Party Services**” are the services, products, promotions or applications provided to you by or through someone other than Processor.

“**User Documentation**” means that documentation regarding the operation, guidelines and features and functionality of Clover Insights that is made available to you from time to time at the website, by internet link or otherwise. User Documentation may be modified from time to time by First Data or its third party provider(s).

40.2. License Grant. Subject to the Clover Insights Terms and Conditions in this Section 40, Processor grants you a personal, limited, non-exclusive, revocable, non-transferable sub-license, without the right to further sub-license or assign in any way, to electronically access and use, solely in the United States, Clover Insights to manage your establishment(s) and analyze associated point of sale activities within the United States. For purposes of this Section 40, “United States” does not include U.S. Territories or possessions. Clover Insights is for your internal business use only. This Section 40 does not grant you any rights to First Data Clover Insights Marks. Except for the license expressly granted herein, all intellectual property and proprietary rights in or related to Clover Insights and First Data Clover Insights Marks are and will remain the sole and exclusive property of First Data or its

affiliates, vendors, or third party provider(s) (as applicable), and any and all right, title and interest associated with Clover Insights not expressly granted in this Section 40 is deemed withheld.

40.3. Restrictions.

40.3.1. You may not, nor may you permit any third party, other than employees and agents with a business need, to do any of the following: (a) access or attempt to access Clover Insights (or any part) that is not expressly made available for public use; (b) decompile, disassemble, reverse engineer, or otherwise attempt to reconstruct or discover by any means any source code or any underlying data, ideas or algorithms of Clover Insights (or any part), except to the extent that such restriction is expressly prohibited by law; (c) modify, translate, or alter in any manner, Clover Insights (or any part), or First Data Clover Insights Marks; (d) create derivative works of or based on Clover Insights (or any part) or Clover Insights Marks; (e) except for backup and archival purposes, directly or indirectly copy Clover Insights (or any part), except screen shots may be copied and retained solely for internal business purposes; (f) republish, upload, post, transmit, disclose, or distribute (in any format) Clover Insights (or any part) except as expressly permitted herein; (g) access or use (in any format) Clover Insights (or any part) through any time-sharing service, service bureau, network, consortium, or other means; (h) rent, lease, sell, sublicense, assign, or otherwise transfer your license rights to any third party, whether by operation of law or otherwise; (i) use or ship Clover Insights (or any part) outside of the United States, or access Clover Insights (or any part) from outside the United States, without in any case obtaining our advance written consent; (j) remove, relocate, or otherwise alter any proprietary rights notices from Clover Insights (or any part), or First Data Clover Insights Marks; (k) perform or attempt to perform any actions that would interfere with the proper working of Clover Insights, prevent access to or use of Clover Insights by other users, or in our reasonable judgment impose an unreasonable or disproportionately large load on Clover Insights’ infrastructure, network capability or bandwidth; or (l) use Clover Insights (or any part) except as permitted in Section 40.2.

40.3.2. You shall not take any action inconsistent with the stated title and ownership in Section 40.2. You will not file any action in any forum that challenges the ownership of any part of Clover Insights, any related software, materials or User Documentation. Failure to comply with this provision will constitute a material breach of this Agreement and may restrict Processor’s ability to sublicense Clover Insights to you. Processor has the right to immediately terminate Services under this Section 40, and First Data has the right to immediately terminate your access to and use of Clover Insights in the event of a challenge by you.

40.4. Clover Insights Limitations and Requirements.

40.4.1. You may access Clover Insights through your Device using a wired (ethernet) or wireless (wifi or cellular) connection to the Internet. You are solely responsible for the payment of any fees that may be imposed by your Internet/data provider. Your use of Clover Insights may be subject to: (a) the terms of your agreements with your Internet/data provider; and (b) the availability or uptime of the services provided by your Internet/data provider.

40.4.2. You may use Clover Insights to conduct analysis of the Data and third party data made available through Clover Insights application and/or other tools made available at the website or in the application.

40.4.3. First Data may alter which Devices and browsers are approved as compatible with Clover Insights in its discretion from time-to-time.

40.4.4. First Data may perform maintenance on Clover Insights from time to time which may result in service interruptions, delays, or errors. Neither First Data nor its affiliates, vendors, or third party provider(s), will be liable for any such interruptions, delays, errors, or bugs. You agree that First Data or its affiliates, vendors, or third party provider(s) may contact you in order to assist you with Clover Insights and obtain information needed to identify and fix any errors.

40.4.5. You shall at all times comply with the User Documentation.

40.4.6. You shall comply with the following requirements in connection with your use of Clover Insights:

40.4.6.1. In the event you are able to discern any information about a particular entity or individual from the information available from Clover Insights, either alone or with other information in your possession, you understand and acknowledge that the information may be subject to certain privacy, marketing, insider trading, or other applicable laws and you will limit your use thereof in accordance with all applicable laws.

40.4.6.2. With respect to each Customer who desires to receive marketing material or other communications from you via text message or email, such Customer must check the appropriate consent or the consent must be provided in writing; you are NOT permitted to add or modify a Customer’s consent indication on his behalf.

40.4.6.3. You (or your agents acting on your behalf) may only send marketing materials or other communications to the Customer’s provided phone number, street address, and/or email address if the Customer has specifically consented in writing executed by the Customer.

40.4.6.4. NOTWITHSTANDING THE CAPABILITY OF CLOVER INSIGHTS TO COLLECT AND STORE CUSTOMER INFORMATION, SOME STATES MAY LIMIT YOUR USE OF SUCH INFORMATION ONCE COLLECTED, EVEN IF THE CUSTOMER HAS PROVIDED ITS CONSENT, AND/OR YOUR DISCLOSURE OF SUCH INFORMATION TO THIRD PARTIES. YOU ACKNOWLEDGE AND AGREE THAT (1) YOUR USE OF

CUSTOMER INFORMATION OBTAINED IN CONNECTION WITH CLOVER INSIGHTS MAY BE SUBJECT TO LOCAL, STATE, AND/OR FEDERAL LAWS, RULES, AND REGULATIONS, (II) YOU ARE SOLELY RESPONSIBLE FOR KNOWING SUCH LAWS, RULES, AND REGULATIONS, AND (III) YOU WILL AT ALL TIME STRICTLY COMPLY WITH ALL SUCH LAWS, RULES, AND REGULATIONS.

40.4.7. You shall comply fully with the requirements of all applicable federal, state and local laws and regulations related to your use of Clover Insights and provision and use of Customer Information and point of sale data in connection with Clover Insights. Furthermore, you are solely responsible for monitoring legal developments applicable to Clover Insights and the operation of your business, interpreting applicable laws and regulations, determining the requirements for compliance with all applicable laws and regulations, and maintaining an on-going compliance program.

40.4.8. In connection with Clover Insights, you shall receive a username and password to access Clover Insights. You are responsible for securely storing and keeping the username and password in accordance with this Section 40.10 below. You will not permit anyone unauthorized by you to use the username and password and you may only authorize your employees and agents with a business need to use the username and password. At such time as multiple usernames and passwords are available, you shall restrict the use of usernames and passwords to single individuals and you shall monitor use of Clover Insights to ensure compliance with this Section 40 by those to whom you have provided usernames and passwords and you shall keep records regarding who has access to which usernames and passwords at all times.

40.5. Equipment. You must obtain all equipment necessary for you to access and use the Clover Insights website. No communication channel or device to access the website is included within the provision of the First Data Clover Insights Solution, and you shall be responsible for all such equipment and communication channels, including but not limited to all device or channel compatibility.

40.6. Term and Termination. Clover Insights Terms and Conditions in this Section 40 shall become effective upon execution hereof and shall end when terminated as set forth herein. For the avoidance of doubt, except as set forth below, termination of Services under Section 36 will not terminate the underlying Agreement. You may terminate your First Data Clover Insights Solution services at any time upon thirty (30) days' notice by calling the Customer Service number on your statement. Notwithstanding the foregoing sentence, upon as much advance notice as is commercially practicable, First Data may terminate your access to, and use of Clover Insights if (i) it is determined that you are using Clover Insights for any fraudulent, illegal, or unauthorized purpose, (ii) you violate the Clover Insights Terms and Conditions or an Event of Default occurs under the Agreement, (iii) First Data terminates its agreement with any third parties that are involved in providing Clover Insights, or (iv) First Data otherwise decides to discontinue providing Clover Insights. You acknowledge and agree that an occurrence of (i) or (ii) above may be deemed an Event of Default under the Agreement, thereby affording Processor and Bank all rights and remedies as set forth in the Agreement triggered by such an Event of Default, which may include immediate termination of the Services under Section 40 without notice.

40.7. Third Party Services. Clover Insights may be used in connection with Third Party Services that you obtain separately for your purposes (e.g., an accounting application on your Device). If you decide to use Third Party Services, you will be responsible for reviewing and understanding the terms and conditions associated with Third Party Services (including obtaining and maintaining any required third party hardware and/or software that is required for the Third Party Services to work with Clover Insights). Your access of any Third Party Services is at your own risk. Third Party Services are not governed by the terms and conditions of this Section 40 or the Agreement. ANY CONTENT DOWNLOADED OR OTHERWISE OBTAINED THROUGH THE USE OF THIRD PARTY SERVICES (E.G., ACCOUNTING APPLICATION) IS DOWNLOADED AT YOUR OWN RISK. NEITHER FIRST DATA NOR ITS AFFILIATES, VENDORS, OR THIRD PARTY PROVIDER(S), WILL BE RESPONSIBLE FOR ANY ACTIONS OR ANY FAILURES TO ACT OF ANY THIRD PARTY, AND SUCH LIABILITY RELATED TO ALL THIRD PARTY SERVICES IS EXPRESSLY DISCLAIMED.

40.8. Account Registration. First Data may require you to register at Clover Insights website or through the application. If and when prompted by the registration process, you agree to (a) provide true, accurate, current and complete information about yourself and/or your business, and (b) maintain and update this information to keep it true, accurate, current and complete. If any information provided by you is untrue, inaccurate, not current or incomplete, First Data has the right to terminate your First Data Clover Insights account ("Account") and refuse any and all current or future use of Clover Insights.

40.9. Privacy and Data Use. All data collected from you in connection with the Services or in connection with your use of Clover Insights, including Customer Information and information about your business and employees used with or stored in or by Clover Insights (collectively, "Account Data"), is collected by First Data, its affiliates, vendors, and/or third party provider(s); therefore, the use and sharing of such Account Data is controlled by the applicable Privacy Policy displayed and available at or through a link on the Clover Insights website. You acknowledge and agree that First Data, its affiliates, vendors, and/or third party provider(s) may access your Account Data, and our use of your Account Data is governed by the Clover Insights Terms and Conditions and the Agreement. You also agree that First Data, its affiliates, vendors, and/or third party provider(s) may access and use Account Data to provide or enhance Clover Insights or the Services.

40.10. Protecting Your Information. You are solely responsible for ensuring that your account numbers, passwords, security questions and answers, login details and any other security or access information used by you to use or access Clover Insights are kept safe and confidential. You must prevent unauthorized access to and use of any Account Data. You are responsible for all electronic communications sent to First Data, its affiliates, vendors, or third party provider(s) containing Account Data. When First Data receives communications containing Account Data, it will assume you sent it to First Data. You must immediately notify First Data if you become aware of any loss, theft or unauthorized use of any Account Data (see Clover Insights support center contact information below). First Data reserves the right to deny you access to Clover Insights, in whole or in part, if First Data believes that any loss, theft or unauthorized use of any Account Data or access information has occurred.

40.11. Accuracy of Information. You are solely responsible for ensuring the accuracy of all information and data regarding your business that you provide to First Data, its affiliates, vendors, and/or third party provider(s) in connection with Clover Insights (e.g., Customer Information). First Data, its affiliates, vendors, and/or third party provider(s) disclaim any and all liability arising out of any inaccuracies as a result of use of such information or data.

40.12. First Data Clover Insights Solution Disclaimer.

40.12.1. AS IS. USE OF CLOVER INSIGHTS IS AT YOUR OWN RISK. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, CLOVER INSIGHTS IS PROVIDED "AS IS" AND NEITHER FIRST DATA NOR ITS AFFILIATES, VENDORS, OR THIRD PARTY PROVIDER(S) MAKES ANY REPRESENTATIONS OR WARRANTIES OF ANY KIND (EXPRESS OR IMPLIED) WITH REGARD TO CLOVER INSIGHTS, INCLUDING, WITHOUT LIMITATION, WARRANTIES OF ACCURACY, MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE OR NON-INFRINGEMENT, OR THAT CLOVER INSIGHTS WILL FUNCTION UNINTERRUPTED OR ERROR-FREE, OR THAT CLOVER INSIGHTS IS SECURE, FREE OF VIRUSES OR OTHER HARMFUL COMPONENTS OR THAT ANY DEFECTS OR ERRORS WILL BE CORRECTED.

40.12.2. Financial Advice. First Data Clover Insights Solution does not provide any business, investment or financial advice and is not advocating any business decision or the sale or purchase of any real property, stocks, bonds, or securities. First Data expressly states, and you hereby acknowledge, that Clover Insights is provided solely for informational purposes and are not to be used as a substitute for independent financial investment advice nor are they intended to be relied upon by any person or entity, including you or your Customers for the purposes of investment or other financial decisions. Clover Insights is not to be construed as providing business or investment advice and should not be used or construed, in whole or in part, as a basis or recommendation for an investment or business decision.

40.12.3. Accuracy. While First Data takes commercially reasonable measures to ensure the accuracy of the information and content contained in Clover Insights, it makes no representation or warranty of any kind with respect to Clover Insights. You acknowledge and agree that all use of Clover Insights by you and all other persons shall be: (i) based upon your own determination and evaluation and (ii) at your sole risk. At times the Data may include third party data that is appended to the Data and First Data has not investigated and does not make any representation or warranty with respect to the accuracy of the third party data.

40.13. Indemnity. Without limiting your indemnification obligations in the Agreement, you agree to indemnify and hold First Data, its affiliates, vendors, and third party provider(s) harmless from and against all losses, liabilities, damages, and expenses (including reasonable attorneys' fees) arising out of or relating to:

40.13.1. Your failure to comply with all terms and conditions in this Section 36, including but not limited to User Documentation;

40.13.2. Your use (alone or in combination with any other information) of any Customer Information, reports, information or analytics obtained in connection with your use of Clover Insights;

40.13.3. The content or delivery of any marketing messages that you send or cause to be sent to any Customer phone number or email address collected through the use of Clover Insights; or

40.13.4. Any other party's access and/or use of Clover Insights with your unique username, password, or other appropriate security code.

40.14. Notices. First Data, its affiliates, vendors, and/or third party provider(s) may provide notices and other information regarding Clover Insights to you via the method(s) described in the Agreement.

40.15. Amendment. First Data has the right to: (i) require changes or addition to the Clover Insights Terms and Conditions in Section 40 at any time, and (ii) change, delete, discontinue, or impose conditions on any feature or aspect of Clover Insights with notice provided to you as set forth in the Notices section of the Section 40. Any use of Clover Insights after the publication of any such changes shall constitute your acceptance of the Clover Insights Terms and Conditions as modified.

40.16. Ideas. You may choose to, or First Data, its affiliates, vendors, or third party provider(s) may invite you to, submit comments or ideas about Clover Insights, including, without limitation, about how to improve Clover Insights ("Ideas"). By submitting any Idea, you agree that: (a) First Data expressly disclaims any confidentiality obligations or use

restrictions, express or implied, with respect to any Idea, (b) your submission will be non-confidential, and (c) First Data is free to use and disclose any Idea on an unrestricted basis without notifying or compensating you and without you claiming any rights therein. You release First Data, its affiliates, vendors, or third party provider(s) from all liability and obligations that may arise from the receipt, review, use or disclosure of any portion of any Idea.

40.17. Third Party Beneficiaries. First Data, its affiliates, vendors, or third party provider(s) used in providing Clover Insights are intended third party beneficiaries of this Section 40 as applicable, and each of them may enforce its provisions as if it was a party hereto. Except as expressly provided in this Section 40, nothing in this Section 40 is intended to confer upon any Persons any rights or remedies, and the parties do not intend for any Persons to be third-party beneficiaries of this Section 40.

40.18. Limitation of Liability. The cumulative liability to you from First Data, its affiliates, vendors, and third party provider(s) for any and all claims arising out of or resulting from this Section 40 shall not exceed the total for the Clover Insights Solution Fees you paid to the Processor in the twelve months immediately preceding any claim.

41. Special Provisions Regarding Clover Service

If you elect to use the Clover Service, the following additional terms and conditions of this Section 41 shall apply.

The Clover Service is provided to you by Processor and not Bank. The Clover Service, transactions processed, and other matters contemplated under this Section 41 are subject to the terms and conditions of the Agreement, as applicable, except to the extent the terms of this Section 41 directly conflict with another provision of the Agreement, in which case the terms of this Section 41 will control; provided however, Bank is not a party to this Agreement insofar as it applies to the Clover Service, and you acknowledge that Bank is not liable to you in any way with respect to the Clover Service. For the purposes of this Section, 41, the words “we,” “our” and “us” refer only to the Processor and not the Bank.

41.1. Definitions. Capitalized terms used herein shall have the meanings given to such terms as set forth in this Section 41 or as defined in the Glossary or elsewhere in this Agreement.

“**Clover**” means Clover Network, Inc.

“**Clover Marks**” means the trademarks or service marks of Clover, an affiliate of Processor.

“**Clover Service**” means the website associated with the Clover Service, the object code version of Clover software applications (whether owned or licensed by Clover) resident on a Device at the time we provide you with the Device and the object code version of the software that enables the applications resident on a Device at the time of provisioning, and any related updates (including software maintenance or bug fixes) that are designed to assist with the management of your business and enable payment processing at the point of sale, and any materials, documentation and derivative works released by Processor from time to time. For the avoidance of doubt, the term software in the preceding sentence does not include any software that may be obtained by you separately from the Clover Service (e.g., any applications downloaded by you through an application marketplace). The Clover Service is deemed part of the “Services,” as defined in and provided under the Agreement.

“**Customer**” means a Person who makes a purchase of goods or services from you, the transaction for which utilizes the Clover Service.

“**Customer Information**” means information about your Customers (e.g., name, mailing address, e-mail address, telephone number) obtained in connection with your use of the Clover Service.

“**Device**” means a tablet, smartphone, or other mobile or fixed form factor identified by Processor from time to time as compatible with and capable of supporting the Clover Service.

“**Third Party Services**” are the services, products, promotions or applications provided by someone other than Processor.

41.2. License Grant. During the term of the Agreement, Processor grants you a personal, limited, non-exclusive, revocable, non-transferable license, without the right to sublicense or assign in any way, to electronically access and use the Clover Service solely in the United States to manage your establishment and conduct associated point of sale activities within the United States in accordance with the terms of this Section 41. For purposes of this Section 41, “United States” does not include U.S. Territories or possessions. The Clover Service is for your internal business use only. This Section 41 does not grant you any rights to the Clover Marks. All intellectual property and proprietary rights in or related to the Clover Service and the Clover Marks are and will remain our, our affiliates’, our vendors’, or our licensors’ (as applicable) sole and exclusive property, and any and all right, title and interest associated with the Clover Service not expressly granted by Processor in this Section 41 are deemed withheld.

41.3. Restrictions. You may not, nor may you permit any third party to do any of the following: (a) access or attempt to access the Clover Service (or any part) that is not intended or made available for public use; (b) decompile, disassemble, reverse engineer, or otherwise attempt to reconstruct or discover by any means any source code, underlying ideas or algorithms of the Clover Service (or any part), except to the extent that such restriction is expressly prohibited by law; (c) modify, translate, or alter in any manner, the Clover Service (or any part) or the Clover Marks; (d) create derivative works of or based on the Clover Service (or any part) or the Clover Marks; (e) except for backup and archival purposes, directly or indirectly copy the Clover Service (or any part); (f) republish, upload,

post, transmit, disclose, or distribute (in any format) the Clover Service (or any part) except as permitted herein; (g) access or use (in any format) the Clover Service (or any part) through any time-sharing service, service bureau, network, consortium, or other means; (h) rent, lease, sell, sublicense, assign, or otherwise transfer your license rights to any third party, whether by operation of law or otherwise; (i) use or ship the Clover Service (or any part) outside of the United States, or access the Clover Service (or any part) from outside the United States, without in any case obtaining our advance written consent; (j) remove, relocate, or otherwise alter any proprietary rights notices from the Clover Service (or any part) or the Clover Marks; (k) perform or attempt to perform any actions that would interfere with the proper working of the Clover Service, prevent access to or use of the Clover Service by other users, or in our reasonable judgment impose an unreasonable or disproportionately large load on our infrastructure, network capability or bandwidth; or (l) use the Clover Service (or any part) except as permitted in subsection 41.2 above.

You shall not take any action inconsistent with the stated title and ownership in subsection 41.2 above. You will not file any action, in any forum that challenges the ownership of any part of the Clover Service, any related software, materials or documentation. Failure to comply with this provision will constitute a material breach of this Agreement. We have the right to immediately terminate your access to and use of the Clover Service in the event of a challenge by you.

41.4. Clover Service Limitations and Requirements.

41.4.1. You may access the Clover Service through your Device using a wired (ethernet) or wireless (wifi or cellular) connection to the Internet. You are solely responsible for the payment of any fees that may be imposed by your Internet/data provider. Your use of the Clover Service may be subject to: (a) the terms of your agreements with your Internet/data provider; and (b) the availability or uptime of the services provided by your Internet/data provider.

41.4.2. You may use the Clover Service to conduct point of sale activities offline; transactions initiated offline will be queued and submitted for authorization when Internet connectivity to the Clover System is restored. However, you assume all risk, responsibility and liability associated with any transaction that you choose to conduct while the Clover Service is used offline.

41.4.3. The Clover Service does not function with every mobile device. Processor may alter which Devices are approved as compatible with the Clover Service in our discretion from time-to-time.

41.4.4. We may perform maintenance on the Clover Service from time to time which may result in service interruptions, delays, or errors. We will not be liable for any such interruptions, delays, errors, or bugs. You agree that we may contact you in order to assist you with the Clover Service and obtain information needed to identify and fix any errors.

41.4.5. You shall at all times comply with any operating procedures, requirements, or guidelines regarding your use of the Clover Service that are posted on the Clover website or otherwise provided or made available to you (collectively, “Clover Ops Guide”).

41.4.6. You shall comply with the following requirements in connection with your use of the Clover Service:

- With respect to each Customer who requests the delivery of transaction receipts via text message or email, such Customer must enter his phone number or email address in the appropriate space displayed on the Device himself; you are NOT permitted to add or modify any Customer Information (including but not limited to phone number and email address) on behalf of a Customer.
- With respect to each Customer who desires to receive marketing material or other communications from you via text message or email, such Customer must check the appropriate consent check box displayed on the Device himself; you are NOT permitted to add or modify a Customer’s consent indication on his behalf.
- You (or your agents acting on your behalf) may only send marketing materials or other communications to the Customer’s provided phone number, street address, and/or email address if the Customer has specifically consented by checking (himself) the applicable box displayed on the Device.
- NOTWITHSTANDING THE CAPABILITY OF THE CLOVER SERVICE TO COLLECT AND STORE CUSTOMER INFORMATION AND TO ALLOW YOUR CUSTOMERS TO ELECT TO RECEIVE MARKETING MATERIALS FROM YOU, SOME STATES MAY LIMIT YOUR USE OF SUCH INFORMATION ONCE COLLECTED, EVEN IF THE CUSTOMER HAS PROVIDED HIS CONSENT, AND/OR YOUR DISCLOSURE OF SUCH INFORMATION TO THIRD PARTIES. YOU ACKNOWLEDGE AND AGREE THAT (I) YOUR USE OF CUSTOMER INFORMATION OBTAINED IN CONNECTION WITH THE CLOVER SERVICE MAY BE SUBJECT TO LOCAL, STATE, AND/OR FEDERAL LAWS, RULES, AND REGULATIONS, (II) YOU ARE SOLELY RESPONSIBLE FOR KNOWING SUCH LAWS, RULES, AND REGULATIONS, AND (III) YOU WILL AT ALL TIME STRICTLY COMPLY WITH ALL SUCH LAWS, RULES, AND REGULATIONS.
- If TransArmor software is resident on your Device at the time we provide you with the Device and therefore part of the Clover Service, it will be used to perform such encryption and tokenization (“TransArmor Service”) and the additional terms set forth in Section 38 apply. However you will only receive the applicable TransArmor service subscribed by you as set forth in the Application.

f) You are responsible to provide and obtain any disclosures and consents related to the E-SIGN Act that may be required in connection with your communications and agreements with your Customers.

41.5. Fees. You shall pay Processor the fees for Clover Service as set forth on the Application.

41.6. Term and Termination. The Clover Service may be terminated at any time by either party upon thirty (30) days' written notice to the other party. Notwithstanding the foregoing sentence, upon as much advance notice as is commercially practicable, we may suspend or terminate the Clover Service if (a) we determine that you are using Clover Service for any fraudulent, illegal, or unauthorized purpose, (b) you violate the terms of this Section 41 or an Event of Default occurs under the Agreement, (c) we terminate our agreement with any third parties that are involved in providing the Clover Service, or (d) Processor otherwise decides to discontinue providing the Clover Service. You acknowledge and agree that an occurrence of (a) or (b) above may be deemed an Event of Default under the Agreement, thereby affording Processor and Bank all rights and remedies as set forth in the Agreement triggered by such an Event of Default, which may include immediate termination of the Agreement without notice.

41.7. Third Party Services. The Clover Service may contain links to Third Party Services (e.g., an application marketplace). If you decide to use Third Party Services, you will be responsible for reviewing and understanding the terms and conditions associated with Third Party Services (including obtaining and maintaining any required third party hardware and/or software that is required for the Third Party Services to work with the Clover Service). Your access of any Third Party Services is at your own risk. Third Party Services are not governed by the terms and conditions of this Section 41 or the Agreement. ANY CONTENT DOWNLOADED OR OTHERWISE OBTAINED THROUGH THE USE OF THIRD PARTY SERVICES (E.G., APPLICATION MARKETPLACE AND ANY APPS AVAILABLE AT SUCH APPLICATION MARKETPLACE) IS DOWNLOADED AT YOUR OWN RISK. PROCESSOR WILL NOT BE RESPONSIBLE FOR ANY ACTIONS OR ANY FAILURES TO ACT OF ANY THIRD PARTY, AND PROCESSOR EXPRESSLY DISCLAIMS ANY LIABILITY RELATED TO ALL THIRD PARTY SERVICES. PROCESSOR DOES NOT WARRANT, ENDORSE, GUARANTEE, OR ASSUME RESPONSIBILITY FOR ANY THIRD PARTY SERVICE OR PRODUCT ADVERTISED OR OFFERED THROUGH THE CLOVER SERVICE OR ANY HYPERLINKED WEBSITE OR SERVICE, OR FEATURED IN ANY BANNER OR OTHER ADVERTISING, AND PROCESSOR WILL NOT BE A PARTY TO OR IN ANY WAY MONITOR ANY TRANSACTION BETWEEN YOU AND PROVIDERS OF THIRD PARTY SERVICES OR PRODUCTS.

41.8. Account Registration. We may require you to register and create a "Member" or "Merchant" account to use the Clover Service. If and when prompted by our registration process, you agree to (a) provide true, accurate, current and complete information about yourself and/or your business, and (b) maintain and update this information to keep it true, accurate, current and complete. If any information provided by you is untrue, inaccurate, not current or incomplete, we have the right to terminate your Clover Service account ("Account") and refuse any and all current or future use of the Clover Service.

41.9. Privacy and Data Use. All data collected from you at www.clover.com or in connection with your use of the Clover Service, including Customer Information and information about your business and employees used with or stored in or by the Clover Services (collectively, "Account Data"), is collected by Clover and not Processor or Bank; therefore, the use and sharing of such Account Data is controlled by the Clover Privacy Policy (available at https://www.clover.com/privacy_policy). You acknowledge and agree that we may access your Account Data upon our request to Clover, and our use of your Account Data is governed by the terms set forth in the Agreement.

41.10. Protecting Your Information. You are solely responsible for ensuring that your account numbers, passwords, security questions and answers, login details and any other security or access information used by you to use or access the Clover Service are kept safe and confidential. You must prevent unauthorized access to and use of any Account Data. You are responsible for all electronic communications sent to us or to any third party (including Clover) containing Account Data. When we receive communications containing Account Data, we assume you sent it to us. You must immediately notify us if you become aware of any loss, theft or unauthorized use of any Account Data. We reserve the right to deny you access to the Clover Service, in whole or in part, if we believe that any loss, theft or unauthorized use of any Account Data or access information has occurred.

41.11. Accuracy of Information. You are solely responsible for ensuring the accuracy of all information and data regarding your business that you provide to us or our service providers in connection with the Clover Service (e.g., menus loaded onto the Device). In addition, you are solely responsible for verifying that all information and data loaded onto a Device by us or our service providers at your request are accurate prior to your business use of such Device. We and our service providers disclaim any and all liability arising out of any inaccuracies with respect to such information or data.

41.12. Clover Service Disclaimer. USE OF THE CLOVER SERVICE OR ANY EQUIPMENT PROVIDED WITH THE CLOVER SERVICE IS AT YOUR OWN RISK. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, THE CLOVER SERVICE IS PROVIDED "AS IS" AND PROCESSOR MAKES NO REPRESENTATIONS OR WARRANTIES OF ANY KIND (EXPRESS OR IMPLIED) WITH REGARD TO THE CLOVER SERVICE, INCLUDING, WITHOUT LIMITATION, WARRANTIES OF ACCURACY, MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE OR NON-INFRINGEMENT, OR THAT THE CLOVER SERVICE WILL FUNCTION UNINTERRUPTED OR

ERROR-FREE, OR THAT THE CLOVER SERVICE IS SECURE, FREE OF VIRUSES OR OTHER HARMFUL COMPONENTS OR THAT ANY DEFECTS OR ERRORS WILL BE CORRECTED.

41.13. Indemnity. Without limiting your indemnification obligations in the Agreement, you agree to indemnify and hold us harmless from and against all losses, liabilities, damages, and expenses (including reasonable attorneys' fees) arising out of or relating to:

- Your failure to comply with all terms and conditions in this Section 41, including but not limited to the Clover Ops Guide;
- Your use of any Customer Information obtained in connection with your use of the Clover Service;
- The content or delivery of any marketing messages that you send or cause to be sent to any Customer phone number or email address collected through the use of the Clover Service; or
- Any other party's access and/or use of the Clover Service with your unique username, password, or other appropriate security code.

41.14. Notices. We may provide notices and other information regarding the Clover Service to you via the method(s) described in the Agreement or in the E-Sign Consent Agreement set forth below.

41.15. Amendment. We have the right to change or add to the terms of this Section 41 at any time, and to change, delete, discontinue, or impose conditions on any feature or aspect of the Clover Service with notice provided to you as set forth in subsection 41.14 above. Any use of the Clover Service after our publication of any such changes shall constitute your acceptance of this Agreement as modified.

41.16. Ideas. You may choose or we may invite you to submit comments or ideas about the Clover Service, including, without limitation, about how to improve the Clover Service ("Ideas"). By submitting any Idea, you agree that: (a) we expressly disclaim any confidentiality obligations or use restrictions, express or implied, with respect to any Idea, (b) your submission will be non-confidential, and (c) we are free to use and disclose any Idea on an unrestricted basis without notifying or compensating you. You release us from all liability and obligations that may arise from our receipt, review, use or disclosure of any portion of any Idea.

41.17. Third Party Beneficiaries. Processor's Affiliates and any Persons Processor uses in providing the Clover Service are intended third party beneficiaries of this Section 41, and each of them may enforce its provisions as if it was a party hereto. Except as expressly provided in this subsection 41.17, nothing in this Section 41 is intended to confer upon any Persons any rights or remedies, and the parties do not intend for any Persons to be third-party beneficiaries of this Section 41.

42. Special Provisions Regarding Clover Go Service (Mobile Payments)

If you elect to use the Clover Go Service, the following additional terms and conditions of this Section 42 shall apply.

The Clover Go service is provided to you by Processor and not Bank. The Clover Go service, transactions processed, and other matters contemplated under this Section 42 are subject to the terms and conditions of the Agreement, as applicable, except to the extent the terms of this Section 42 directly conflict with another provision of the Agreement, in which case the terms of this Section 42 will control; provided however, Bank is not a party to this Agreement insofar as it applies to the mobile payments service, and you acknowledge that Bank is not liable to you in any way with respect to the mobile payments service. For the purposes of this Section, 42, the words "we," "our" and "us" refer only to the Processor and not the Bank.

42.1. Your mobile payments service ("Clover Go Service") enables you to accept card-based payments using (a) a smart phone or other supported mobile device that you provide, (b) an approved card reader you obtain from us ("Clover Go Reader"), and (c) an application ("Clover Go App") that you download from the Apple App Store or Google Play. The Clover Go Service does not support offline point of sale activities and requires Internet connectivity for proper functioning. We may update the Clover Go Service from time to time.

42.2. Only Apple iOS and Google Android operating systems are compatible with the Clover Go Service, and only certain types of mobile devices using Apple iOS and Google Android are supported for the Clover Go App and Clover Go Service. Please contact us for information on whether a particular mobile device is supported for the Clover Go App and Clover Go Service.

42.3. Additional terms of use ("Clover Go Terms") apply to the Clover Go Service. From time to time, Clover Go Terms will be presented to you electronically on an "in-application" basis, and you will be required to "click to agree" before being permitted to use the Clover Go App. If we update the Clover Go Terms you will be required to "click to agree" to the updated Clover Go Terms in order to use the Clover Go App again.

42.4. TO USE THE CLOVER GO SERVICE, YOU MUST ALSO BE USING, AT A MINIMUM, THE TRANSARMORSM DATA PROTECTION SERVICE, which is sometimes referred to as "TransArmor Tokenization and Encryption". You may also choose to use the Clover Security Plus Solution Services, which includes the TransArmor Data Protection Service.

42.5. If you are already using the single-token version of either the TransArmor Data Protection Service or Clover Security Plus Services, then no additional TransArmor products are needed for the Clover Go Service.

42.6. If you are using the Payeezy Gateway or if you accept card-not-present payments (for example, Internet payments), you may need a different TransArmor product. Please contact us for information.

42.7. If you are not already using a TransArmor product, then you must first sign an agreement for an eligible TransArmor product.

42.8. USE OF CLOVER GO READERS IS AT YOUR OWN RISK. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, CLOVER GO READERS ARE PROVIDED "AS IS," AND WE MAKE NO REPRESENTATIONS OR WARRANTIES OF ANY KIND (EXPRESS OR IMPLIED) WITH RESPECT TO CLOVER GO READERS, INCLUDING BUT NOT LIMITED TO: (a) WARRANTIES OF QUALITY, ACCURACY, MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, OR NON-INFRINGEMENT, (b) ANY WARRANTY THAT THE CLOVER GO READERS WILL FUNCTION UNINTERRUPTED OR ERROR-FREE, (c) ANY WARRANTY THAT ANY DEFECTS OR ERRORS WILL BE CORRECTED, OR (d) ANY WARRANTY THAT THE CLOVER GO READERS ARE SECURE, FREE OF VIRUSES OR OTHER HARMFUL COMPONENTS.

43. Choice of Law; Venue; Waiver of Jury Trial

43.1. Choice of Law. Choice of Law. Our Agreement shall be governed by and construed in accordance with the laws of the State of New York (without regard to its choice of law provisions).

43.2. Venue. We have substantial facilities in the State of New York and many of the services provided under this Agreement are provided from these facilities. The exclusive venue for any actions or claims arising under or related to this Agreement shall be in the appropriate state or federal court located in Suffolk County, New York.

43.3. Waiver of Jury Trial. ALL PARTIES IRREVOCABLY WAIVE ANY AND ALL RIGHTS THEY MAY HAVE TO A TRIAL BY JURY IN ANY JUDICIAL PROCEEDING INVOLVING ANY CLAIM RELATING TO OR ARISING UNDER THIS AGREEMENT.

44. Other Terms

44.1. Force Majeure. No party shall be liable for any default or delay in the performance of its obligations under this Agreement if and to the extent such default or delay is caused, directly or indirectly, by (i) fire, flood, earthquake, elements of nature or other acts of God; (ii) any terrorist attacks or outbreak or escalation of hostilities, war, riots or civil disorders in any country; (iii) any act or omission of the other party or any government authority; (iv) any labor disputes (whether or not employees' demands are reasonable or within the party's power to satisfy); or (v) the nonperformance by a Person for any similar cause beyond the reasonable control of such party, including without limitation, failures or fluctuations in telecommunications or other equipment. In any such event, the nonperforming party shall be excused from any further performance and observance of the obligations so affected only for as long as such circumstances prevail and such party continues to use commercially reasonable efforts to recommence performance or observance as soon as practicable. Notwithstanding anything to the contrary in this paragraph, your failure to receive payment or funds from a Person shall not excuse the performance of your obligations to us under this Agreement.

44.2. Compliance with Laws. In performing its obligations under this Agreement, each party agrees to comply with all laws and regulations applicable to it. You further agree to cooperate and provide information requested by Servicers, as Servicers determine necessary, to facilitate Servicers compliance with any applicable law including without limitation the rules and regulations promulgated by the Office of Foreign Assets Control of the US Department of the Treasury. You further acknowledge and agree that you will not use your merchant account and/or the Services for illegal transactions, for example, those prohibited by the Unlawful Internet Gambling Enforcement Act, 31 U.S.C. Section 5361 et seq, as may be amended from time to time, or those involving any Person listed on the U.S. Department of Treasury, Office of Foreign Assets Control, Specially Designated Nationals and Blocked Persons List (available at www.treas.gov/ofac) or the U.S. Department of State's Terrorist Exclusion List (available at www.state.gov), or for the processing and acceptance of transactions in certain jurisdictions pursuant to 31 CFR Part 500 et seq. and other laws enforced by the Office of Foreign Assets Control ("OFAC") or in connection with illegal activity of any kind.

44.3. Notices. Except as otherwise specifically provided, all notices and other communications required or permitted hereunder (other than those involving normal operational matters relating to the processing of Card transactions) shall be in writing, if to you at your address appearing in the Application or by any electronic means, including but not limited to the e-mail address you have provided on the Application. If to us at our address appearing in Section A.5 of Part IV of this Agreement, with a copy to Attention: General Counsel's Office, 3975 N.W. 120th Avenue, Coral Springs, FL 33065, and Notices shall be deemed to have been given (i) if sent by mail or courier, upon the earlier of five (5) days after mailing or when actually received or, in the case of courier, when delivered, and (ii) if sent by facsimile machine, when the courier confirmation copy is actually received. Notice given in any other manner shall be effective when actually received. Notices sent to the your last known address (including e-mail address), as indicated in our records, shall constitute effective notice to the Merchant under this Agreement. If you change your address (including your e-mail address), you must notify us at least 30 days prior of the effective date of any such change. Failure to provide us with a valid address (including e-mail

address) may result in the termination of the Agreement. Notwithstanding the above, all bankruptcy or collection related notices must be sent to the following address Merchant Services Department, 5251 Westheimer Road, Fourth Floor, Houston, Texas 77056, Attn: Bankruptcy and Collection Notifications. All such notices must include the related merchant name and merchant number. Failure to provide Notice to this address or include this pertinent merchant information will be deemed ineffective. All notices must include your merchant name(s) and merchant number(s). Failure to provide notice in the manner described in this Section will be deemed ineffective.

44.4. Headings. The headings contained in this Agreement are for convenience of reference only and shall not in any way affect the meaning or construction of any provision of this Agreement.

44.5. Severability. The parties intend every provision of this Agreement to be severable. If any part of this Agreement is not enforceable, the remaining provisions shall remain valid and enforceable.

44.6. Entire Agreement; Waiver. This Agreement constitutes the entire Agreement between the parties with respect to the subject matter thereof, and supersedes any previous agreements and understandings. A party's waiver of a breach of any term or condition of this Agreement shall not be deemed a waiver of any subsequent breach of the same or another term or condition.

44.7. Amendment. We may modify any provision of this Agreement by providing written notice to you. You may choose not to accept the requirements of any such change by terminating the Agreement within twenty (20) days of receiving notice. If you choose to do so, notify us that you are terminating for this reason so that we may waive any early termination fee that might otherwise apply. For purposes of this section, an electronic or "click-wrap" notice intended to modify or amend this Agreement and which you check "I Accept" or "I Agree" or otherwise accept through an electronic process, shall constitute in writing as required herein. This Section 44.7 does not apply to fee changes, which are governed by Sections 25.4 and 25.5.

44.8. Third Party Beneficiaries. Our respective Affiliates and any Persons we use in providing the Services are third party beneficiaries of this Agreement and each of them may enforce its provisions as it was a party hereto. Except as expressly provided in this Agreement, nothing in this Agreement is intended to confer upon any Person any rights or remedies, and the parties do not intend for any Persons to be third-party beneficiaries of this Agreement.

44.9. Card Organization Rules. The parties acknowledge that the Visa, MasterCard, Discover Network and PayPal Card Organization Rules give Visa, MasterCard, Discover Network and PayPal certain rights to require termination or modification of this Agreement with respect to transactions involving Visa, MasterCard, Discover Network and PayPal Cards and the Visa, MasterCard, Discover Network and PayPal Card systems and to investigate you. The parties also acknowledge that issuers of other Cards, for which we perform services on your behalf, may have similar rights under their applicable Card Organization Rules with respect to this Agreement's applicability to transactions involving such other Cards.

44.10. Publicity. Client may not use the logo, name, trademark, or service mark of Processor and/or Bank in any manner, including without limitation, in any advertisements, displays, or press releases, without the prior written consent of Processor and Bank.

44.11 E-SIGN CONSENT AGREEMENT

1. Consent

By signing the Confirmation Page, you consent and agree that:

- Processor can provide disclosures required by law and other information about your legal rights and duties to you electronically.
- Where required or requested, your electronic signature (via "click-through" or other method) on agreements and documents relating to the Clover Service has the same effect as if you signed them in ink.
- Processor can send all communications, billing statements, amendments to the Clover Service, notices, and other disclosures or information regarding the Clover Service or your use of the Clover Service or the Services as defined in the Agreement (collectively defined as "Disclosures") to you electronically (1) via e-mail, (2) by access to a web site that we designate in an e-mail notice we send to you at the time the information is available, or (3) to the extent permissible by law, by access to a website that we will generally designate in advance for such purpose.
- If you want a paper copy, you can print a copy of the Disclosure or download the information for your records.
- This consent applies to all future Disclosures sent to you in connection with the Clover Service, the Agreement, or your use of the Clover Service or the Services as defined in the Agreement.

2. Legal Effect

By consenting, you agree that electronic Disclosures have the same meaning and effect as if Processor provided paper Disclosures to you. When Processor sends you an email or other electronic notification alerting you that the Disclosure is available electronically and makes it available online, that shall have the same meaning and effect as if Processor provided a paper Disclosure to you, whether or not you choose to view or print or download the Disclosure.

As used in this Agreement, the following terms mean as follows:

Address Verification Service (“AVS”): A service provided through which the merchant verifies the Cardholder’s address, in whole or in part. Primarily used by Mail/Telephone/Internet order merchants, Address verification is intended to deter fraudulent transactions, however, an AVS Match does not guarantee that a transaction is valid. An AVS request should generally be submitted with an authorization request. The AVS response, if available, however will not impact whether any associated authorization request is approved or denied. You may be charged an AVS fee for any AVS request you submit even if we are not able to provide a response to the request.

Affiliate: Person that, directly or indirectly, (i) owns or controls a party to this Agreement or (ii) is under common ownership or control with a party to this Agreement.

Application: the Application for Services executed by you.

Authorization: approval by, or on behalf of, the Issuer to validate a transaction. An Authorization indicates only that the Issuer has confirmed there is sufficient availability of funds on the Cardholder’s account at the time the Authorization is requested.

Authorization Approval Code: A number issued to a participating merchant by the Authorization Center which confirms the Authorization for a sale or service.

Authorization and Capture: Refers to the communication of instructions from your POS device or other systems to our computer systems, whether the communications are for authorization requests or any other capture of information.

Authorization Center: A department that electronically communicates a merchant’s request for Authorization on Credit Card transactions to the Cardholder’s bank and transmits such Authorization to the merchant via electronic equipment or by voice Authorization.

Bank: The bank identified on the Application signed by you.

Bankruptcy Code: Title 11 of the United States Code, as amended from time to time.

Batch: A single Submission to us of a group of transactions (sales and Credits) for settlement. A Batch usually represents a day’s worth of transactions.

Business Day: Monday through Friday, excluding Bank holidays.

Card: See either Credit Card or Debit Card.

Cardholder: Means the Person whose name is embossed on a Card and any authorized user of such Card, also referred to as Card Member by American Express.

Cardholder Information: the data contained on a Card, or otherwise provided to you, that is required by the Payments Organization or us in order to process, approve and/or settle a Card transaction, including the names, addresses and Card account numbers of Cardholders.

Card Not Present Sale/Transaction: A transaction that occurs when the Card is not present at the point-of-sale, including Internet, mail-order and telephone-order Card sales.

Card Verification Codes: A three-digit value printed in the signature panel of most Cards and a four-digit value printed on the front of an American Express Card. Visa’s Card Verification Code is known as CVV2; MasterCard’s Card Verification Code is known as CVC2; the Card Verification Codes for Discover Network, PayPal and American Express are known as a Card Identification Numbers (CID). Card Verification Codes are used to deter fraudulent use of an account number in a non-face-to-face environment, (e.g., mail orders, telephone orders and Internet orders).

Card Verification Value (CVV)/Card Validation Code (CVC)/Card Identification Data (CID): A unique value encoded on the Magnetic Stripe of a Card used to validate Card information during the Authorization process.

Cardholder Verification Method (CVM): A method used to confirm the identity of a Cardholder and to signify Cardholder acceptance of a transaction, such as signature, Offline PIN, and Online PIN.

Cash Benefits: An EBT account maintained by an Issuer that represents pre-funded or day-of-draw benefits, or both, administered by one or more government entities, and for which the Issuer has agreed to provide access under the EBT program. Multiple benefits may be combined in a single cash benefit account.

Cash Over Transaction: Dispensing of cash by a merchant in connection with a Card sale, other than a PIN Debit Card transaction, for the purchase of goods or services.

Charge or Charges: The total price, including all applicable taxes and gratuities, for the purchase of goods or services at a merchant for which a Cardholder has signed a Sales Draft or otherwise indicated intent to pay with a Card.

Chargeback: A Card transaction (or disputed portion) that is returned to us by the Issuer. Client is responsible for payment to us for all Chargebacks.

Chip: An integrated microchip embedded on a Card containing cardholder and account information.

Chip Card: A Card with an embedded EMV-compliant chip containing memory and interactive capabilities used to identify and store additional data about a Cardholder, an Account, or both.

Claim: Means any claim (including initial claims, counterclaims, cross-claims, and third party claims), dispute, or controversy between you and us arising from or relating to the Agreement or prior Card acceptance agreements, or the relationship resulting therefrom, whether based in contract, tort (including negligence, strict liability, fraud, or otherwise), statutes, regulations, or any other theory, including any question relating to the existence,

validity, performance, construction, interpretation, enforcement, or termination of the Agreement or prior Card acceptance agreements or the relationship resulting therefrom.

Contactless Payment: Payment performed in a Card-Present Environment with a Contactless card or Payment Device (e.g., Mobile phone) at the Point-of-Transaction.

Client: The party identified as “Client” on the Application. The words “Subscriber,” “you” and “your” refer to Client. Also, sometimes referred to as “Merchant.”

Credit: A refund or price adjustment given for a previous purchase transaction.

Credit Card: a payment account that is (a) presented to you in various forms (including cards, fobs, tags, mobile devices, or virtual forms), (b) bears the Mark of a Payments Organization, and (c) enables the Cardholder to buy goods or services on credit.

Credit Draft: A document evidencing the return of merchandise by a Cardholder to a Client, or other refund or price adjustment made by the Client to the Cardholder, whether electronic, paper or some other form, all of which must conform to Card Organization Rules and applicable law.

Credit Limit: The credit line set by the Issuer for the Cardholder’s Credit Card account.

Customer Activated Terminal (CAT): A magnetic stripe terminal or chip-reading device (such as an automatic dispensing machine, Limited Amount Terminal, or Self-Service Terminal) that is not an ATM.

Data Incident: any actual or potential unauthorized or fraudulent access to (or use, disclosure, or alteration of) transaction data, whether consisting of a single event, a continuous course of events, or a series of related events.

Data Incident Expenses: means: (a) any obligations that you have to us arising from a Data Incident including EMV Upgrade Costs; (b) the costs of a security assessment conducted by a qualified security assessor approved by a Payments Organization or PCI to determine the cause and extent of a Data Incident; and (c) any reasonable fees and expenses incurred by us, or by you with our prior written consent, for any Mitigation Services specifically approved by us in writing but only if the Mitigation Services are provided within one (1) year following discovery of the relevant Data Incident.

Data Usage Charge: Charged to you for our processing of Sales Data sent to us.

Debit Card: a payment account that is (a) presented to you in various forms (including cards, fobs, tags, mobile devices, or virtual forms), (b) bears the Mark of a Payments Organization, and (c) enables the Cardholder to buy goods or services by debiting the Cardholder’s bank account or stored value/prepaid account.

Dial-Up Terminal: An Authorization device which, like a telephone, dials an Authorization Center for validation of transactions.

Discount Rate: A percentage rate and/or amount charged to a merchant for processing its qualifying daily Credit Card and Non-PIN Debit Card transactions, as set forth in the Application. Transactions that fail to meet applicable interchange requirements will be charged additional amounts as set forth in Section 19.1.

Electronic Benefit Transfer (EBT): An Electronic Benefits Transfer system used to deliver certain government delivered benefits, including without limitation Cash Benefits and FNS, SNAP and WIC Benefits, to EBT customers.

Electronic Draft Capture (EDC): A process which allows a merchant’s Dial-Up Terminal to receive Authorization and capture transactions, and electronically transmit them to the Processor. This eliminates the need to submit paper for processing.

EMV Upgrade Costs: the costs you agree to incur to upgrade payment acceptance and processing hardware and software to enable you to accept and process EMV-enabled Cards in a manner compliant with the PCI DSS.

Entity: Means a corporation, partnership, sole proprietorship, trust, association, or any other legally recognized entity or organization.

Factoring: The submission of authorization requests and/or Sales Drafts by a merchant for Card sales or cash advances transacted by another business. Factoring is prohibited.

Fixed Acquirer Network Fee (FANF): Fee that applies to the acceptance of all Visa branded products and is based on both the size and the number of merchant locations. The fee will be assessed per merchant Taxpayer ID, based on the number of merchant locations, Merchant Category Code (MCC), and monthly Total Gross merchant Sales Volume associated with each Taxpayer ID.

Fraud Full Recourse: One of American Express’s Chargeback programs

General Terms: Section of the Program Guide, including any amendments or modifications.

Gross: When referred to in connection with transaction amounts or fees, refers to the total amount of Card sales, without set-off for any refunds or Credits.

Imprinter: A manual or electric machine used to physically imprint the merchant’s name and ID number as well as the Cardholder’s name and Card number on Sales Drafts.

Issuer: The financial institution or Card Organization (or other Entity authorized by a Card Organization) which has issued a Card to a Person.

Limited Amount Terminal: A Customer Activated Terminal that has data capture only capability, and accepts payment for items such as parking garage fees, road tolls, motion picture theater entrance, or magnetic-stripe telephones.

Magnetic Stripe: A stripe of magnetic information affixed to the back of a plastic Credit or Debit Card. The Magnetic Stripe contains essential Cardholder and account information.

Marks: Names, logos, emblems, brands, service marks, trademarks, trade names, tag lines or other proprietary designations.

MasterCard Account Status Inquiry Service Fee: Zero dollar Account Status Inquiry Service requests (including AVS, CVC2 or both).

MasterCard CVC2 Fee: A fee assessed for transactions acquired in the U.S. Region with the CVC2 (Three digit code on the back of the MasterCard issued card) included in the transaction for authorization and where the CVC2 response value equals 'M' (Match) or 'N' (Invalid/did not match). The fee will not be applied to Account Status Inquiry (ASI) requests.

MasterCard Digital Enablement Fee: A fee assessed by MasterCard on select Card Not Present transactions.

MasterCard Processing Integrity Fee: The MasterCard Processing Integrity Fee is assessed in the event MasterCard cannot match an approved authorization to a settled transaction (within 120 days from the date the authorization was granted) or a reversal request (within a specific time frame). The Processing Integrity Fee can be avoided by settling transactions only with an approved authorization. If an authorization approval is no longer needed, it must be electronically reversed within 24 hours for a card-present transaction or within 72 hours for card not present transaction.

Media: The documentation of monetary transactions (i.e., Sales Drafts, Credit Drafts, computer printouts, etc.)

Merchant Identification Card: A plastic embossed card supplied to each merchant to be used for imprinting information to be submitted with each Batch of paper Sales Drafts. Embossed data includes Merchant Identification Number, name and sometimes merchant ID code and terminal number.

Merchant Identification Number: A number that numerically identifies each merchant location, outlet, or line of business to the Processor for accounting and billing purposes.

Merchant Processing Application: The Merchant Processing Application and Agreement executed by Client, which is one of the documents comprising the Agreement.

Merchant Provider: Any Person engaged by you to provide services to you involving or relating to (i) access to Cardholder data, transaction data or information related to either Cardholder data or transaction data or (ii) PIN encryption, including without limitation, Encryption Service Organizations (ESOs).

Mitigation Service: a service provided to a cardholder whose information is the subject of a Data Incident, where the primary purpose of the service is to mitigate the effects of the Data Incident, including identity theft education and assistance and credit monitoring.

Non-Bank Services: Products and/or Services for which Bank is not responsible or a party to including American Express, PIN Debit Card, and Electronic Benefits Transfer Transactions, TeleCheck Check Services, and Transactions Involving Cards from other Non-Bank Card Organizations, such as Voyager Fleet Systems, Inc., Wright Express Corporation and Wright Express Financial Services Corporation, Discover, PayPal, Leasing, TransArmor, Wireless, Payeezy Gateway Services, Global ePricing Services and other items as may be indicated in this Program Guide.

Non-PIN Debit Card: A device with a Visa, MasterCard or Discover Network Mark that is tied to a Cardholder's bank account or a prepaid account and which is processed without the use of a PIN.

Non-Qualified Interchange Fee: The difference between the interchange fee associated with the Anticipated Interchange Level and the interchange fee associated with the more costly interchange level at which the transaction actually processed.

Non-Qualified Surcharge: A surcharge applied to any transaction that fails to qualify for the Anticipated Interchange Level and is therefore downgraded to a more costly interchange level. The Non-Qualified Surcharge (the amount of which is set forth on the Service Fee Schedule) is in addition to the Non-Qualified Interchange Fee, which is also your responsibility (see above, Section 19.1)

PAN Truncation: A procedure by which a Cardholder's copy of a Sales Draft or Credit Draft, or as required by applicable law, the Sales Draft or Credit Draft you retain, will only reflect the last four digits of the Card account number.

Payments Organization: any payments association or payments network we support whose cards or other payment forms you accept under your merchant processing agreement.

Person: A third party individual or Entity, other than the Client, Processor or Bank.

PIN: the personal identification number associated with a Debit Card.

PIN Debit: a type of transaction using a Debit Card that requires a Cardholder to enter a PIN for authentication.

PINless Debit: a type of PIN Debit transaction that, under applicable Rules and for qualifying transactions, does not require the Cardholder to enter a PIN for authentication.

Point of Sale (POS) Terminal: A device placed in a merchant location which is connected to the Processor's system via telephone lines and is designed to authorize, record and transmit settlement data by electronic means for all sales transactions with Processor.

Processor: The entity identified on the Application (other than the Bank) which provides certain services under the Agreement.

Program Guide (also known as the Merchant Services Program Terms and Conditions): The booklet which contains Your Payments Acceptance Guide, the General Terms, Third Party Agreements and the Confirmation Page, which together with the Application and the Schedules thereto and documents incorporated therein, constitute your Agreement with Processor and Bank.

Recurring Payment Indicator: A value used to identify transactions for which a Cardholder provides permission to a merchant to bill the Cardholder's Card account at either a predetermined interval or as agreed by the Cardholder for recurring goods or services.

Referral: A message received from an Issuer when an attempt for Authorization requires a call to the Voice Authorization Center or Voice Response Unit (VRU).

Reserve: money we owe to you (net of any obligations you owe to us) that we hold back in order to secure or fund your obligations with us.

Reserve Account: An account established and funded at our request or on your behalf, pursuant to Section 25 of the Agreement.

Retrieval Request/Transaction Documentation Request: A request for documentation related to a Card transaction such as a copy of a Sales Draft or other transaction source documents.

Rules: the rules, regulations, standards, releases, interpretations and other requirements (whether contractual or otherwise) imposed or adopted by any Card Organization and related authorities, including those of the PCI Security Standards Council, LLC, the National Automated Clearing House Association and (with respect to EBT transactions) the Quest Operating Rules.

Sales/Credit Summary: The identifying form used by a paper Submission merchant to indicate a Batch of Sales Drafts and Credit Drafts (usually one day's work). Not a Batch header, which is used by electronic merchants.

Sales Draft: Evidence of a purchase, rental or lease of goods or services by a Cardholder from, and other payments to, Client using a Card, including preauthorized orders and recurring transactions (unless the context requires otherwise); regardless of whether the form of such evidence is in paper or electronic form or otherwise, all of which must conform to Card Organization Rules and applicable law.

Schedules: The attachments, addenda and other documents, including revisions thereto, which may be incorporated into and made part of this Agreement concurrently with or after the date of this Agreement.

Self-Service Terminal: A Customer Activated Terminal that accepts payment of goods or services such as prepaid cards or video rental, has electronic capability, and does not accept PINs.

Servicers: Bank and Processor collectively. The words "we," "us" and "our" refer to Servicers, unless otherwise indicated.

Services: the activities undertaken by us to authorize, process and settle Card transactions undertaken by Cardholders at your location(s), and all other services provided by us under this Agreement.

Settlement Account: An account or account(s) at a financial institution designated by you as the account to be debited and credited by us for Card transactions, fees, Chargebacks and other amounts due under the Agreement or in connection with the Agreement.

Signature Debit: a type of transaction using a Debit Card that requires the Cardholder to provide a signature for authentication rather than a PIN.

Store and Forward: A transaction that has been authorized by a merchant when the merchant cannot obtain an Authorization while the customer is present, typically due to a communications failure. The merchant will store the transaction electronically in their host system and retransmit the transaction when communications have been restored.

Summary Adjustment: An adjustment to your Submission and/or Settlement Accounts in order to correct errors. (See Sections 10.3 and 10.4).

Telecommunication Card Sale: Individual local or long-distance telephone calls, for which the telephone service provider is paid directly by use of a Card. These do not include, however, calls paid for with pre-paid telephone service cards. Telecommunication Card Sales are considered Card Not Present Sales.

Transaction Fees: Service costs charged to a merchant on a per transaction basis.

Transaction Integrity Fee: Fee assessed on Visa Debit Card and prepaid Card purchase transactions that either fail or do not request CPS qualification.

Us, We and Our: See Servicers.

Wireless Networks: certain cellular telephone and data networks to which we have access through Wireless Vendors.

Wireless Services: wireless data communication services that use radio base stations and switching offered by Wireless Networks in order to allow you to capture and transmit to us certain wireless Card Authorization transactions or to transmit other communications to our system.

Wireless Software: wireless software (including any documentation relating to or describing the wireless software) downloaded by you or your designee from our systems onto the Wireless Equipment.

Wireless Vendors: one or more third party vendors selected by us in our sole discretion through whom we have acquired the right to resell Wireless Services.

You, Your: See Client.

Your Payments Acceptance Guide: a quick reference to the guidelines for processing transactions. You'll also find recommendations and tips to help you prevent fraud, reduce chargebacks, and properly handle payments, refunds, exchanges, and most other situations you'll encounter in your day-to-day-business.

PART III: THIRD PARTY AGREEMENTS

The following Agreements are Third Party Agreements entered into between Client and the Third Parties identified in the Third Party Agreements.

If Client desires to receive the products and/or services offered under a Third Party Agreement, Client must check the appropriate box or otherwise indicate such desire in the Merchant Processing Application, in which case the terms and conditions of the Third Party Agreement shall be binding upon Client. The Signature page in the Merchant Processing Application or any Schedule thereto shall also serve as a signature page to the Third Party Agreements.

Client acknowledges that the Third Parties are relying upon the information contained on the Merchant Processing Application and the Schedules thereto, all of which are incorporated by reference into the Third Party Agreements.

Equipment Lease Agreement

This Equipment Lease Agreement ("Lease Agreement") is being entered into by and between First Data Merchant Services LLC (through its business unit First Data Global Leasing), and the Lessee identified on the signature panel of this Merchant Processing Application ("MPA"). In this Lease Agreement, the words "we," "our" and "us" refer to First Data Merchant Services LLC and its successors and assigns and the words "you" and "your" refer to Lessee and its permitted successors and assigns.

Lessee hereby authorizes us or our designees, successors or assigns (hereinafter "Lessor") to withdraw any amounts including any and all sales taxes now due or hereinafter imposed, owed by Lessee in conjunction with this Lease Agreement by initiating debit entries to the bank account designated by Lessee on the MPA (the "Settlement Account"). In the event of default of Lessee's obligation hereunder, Lessee authorizes debit of its account for the full amount due under this Lease Agreement. Further, Lessee authorizes its financial institution to accept and to charge any debit entries initiated by Lessor to Lessee's account. In the event that Lessor withdraws funds erroneously from Lessee's account, Lessee authorizes Lessor to credit Lessee's account for an amount not to exceed the original amount of the debit. This authorization is to remain in full force and effect until Lessor has received written notice from Lessee of its termination in such time and in such manner as to afford Lessor a reasonable opportunity to act. Lessee also authorizes Lessor from time to time to obtain investigative credit reports from a credit bureau or a credit agency concerning Lessee.

1.1. Equipment. We agree to lease to you and you agree to lease from us the equipment identified on the MPA or such other comparable equipment we provide you (the "Equipment"), according to the terms and conditions of this Lease Agreement. ~~We are providing the Equipment to you "as is" and make no representations or warranties of any kind as to the suitability of the Equipment for any particular purpose.~~ The term Equipment includes the Equipment initially deployed under the Lease Agreement and/or any additions, replacements, substitutions, or additions thereto.

1.2. Effective Date, Term and Interim Rent.

- a) This Lease Agreement becomes effective on the earlier of the date we deliver any piece of Equipment to you (the "Delivery Date") or acceptance by us. This Lease Agreement remains in effect until all of your obligations and all of our obligations under it have been satisfied. We will deliver the Equipment to the site designated by you.
- b) The term of this Lease Agreement begins on a date designated by us after receipt of all required documentation and acceptance by us (the "Commencement Date"), and continues for the number of months indicated on the MPA. THIS IS A NON-CANCELABLE LEASE FOR THE TERM INDICATED.
- c) You agree to pay an Interim Lease Payment in the amount of one-thirtieth (1/30th) of the monthly lease charge for each day from and including the Delivery Date until the date preceding the Commencement Date.
- d) YOU ACKNOWLEDGE THAT THE EQUIPMENT AND/OR SOFTWARE YOU LEASE UNDER THIS LEASE AGREEMENT MAY NOT BE COMPATIBLE WITH ANOTHER PROCESSOR'S SYSTEMS AND THAT WE DO NOT HAVE ANY OBLIGATION TO MAKE SUCH SOFTWARE AND/OR EQUIPMENT COMPATIBLE IN THE EVENT THAT YOU ELECT TO USE ANOTHER SERVICE PROVIDER. UPON TERMINATION OF YOUR MERCHANT PROCESSING AGREEMENT, YOU ACKNOWLEDGE THAT YOU MAY NOT BE ABLE TO USE THE EQUIPMENT AND/OR SOFTWARE LEASED UNDER THIS LEASE AGREEMENT WITH SAID SERVICE PROVIDER.

1.3. Site Preparation. You will prepare the installation site(s) for the Equipment, including but not limited to the power supply circuits and phone lines, in conformance with the manufacturer's and our specifications and will make the site(s) available to us by the confirmed shipping date.

1.4. Payment of Amounts Due.

- a)

SCHEDULE OF FEES			
Default Fees	Amount	Administrative Fees	Amount
NSF Fee	\$10	Upgrade Fee	\$50
Collection Fee	\$25	Assumption Fee	\$150
Late Fee (10% of Total Due)	min \$5	Lease Copy Fee	\$7
Collection Invoicing Fee	\$7	Equipment Service Program**	\$4.95
Improper Return Fee*	\$100		

- b) The monthly lease charge is due and payable on the same day of each successive month thereafter of the Lease Term for each piece of leased Equipment. You agree to pay all assessed costs for delivery and installation of Equipment.
- c) In addition to the monthly lease charge, you shall pay, or reimburse us for, amounts equal to any taxes or assessments on or arising out of this Agreement or the Equipment, and related supplies or any services, use or activities hereunder, including without limitation, state and local sales, use, property, privilege and excise tax, exclusive, however, of taxes based on our net income. Reimbursement of property tax calculation is based on an average tax rate.
- d) Your lease payments will be due despite dissatisfaction for any reason with the Equipment or related processing services.
- e) Whenever any payment is not made by you in full when due, you shall pay us as a late charge, an amount equal to ten percent of the amount due but no less than \$5.00 for each month during which it remains unpaid (prorated for any partial month), but in no event more than the maximum amount permitted by law. You shall also pay to us an administrative charge of \$10.00 for any debit we attempt to make against your bank account that is rejected, but in no event more than the maximum amount permitted by law.
- f) In the event your account is placed into collections for past due lease amounts, you agree that we can recover a collection expense fee of \$25 for each aggregate payment requiring a collection effort, but in no event more than the maximum amount permitted by law.
- g) * See paragraph 1.5(g) for details regarding this fee.
- h) ** See paragraph 1.5(i) for details regarding this fee.

1.5. Use and Return of Equipment; Insurance.

- a) You shall cause the Equipment to be operated by competent and qualified personnel in accordance with any operating instructions furnished by us or the manufacturer. You shall maintain the Equipment in good operating condition and protect it from deterioration, normal wear and tear excepted.
- b) You shall not permit any physical alteration or modification of the Equipment, or change the installation site of the Equipment, without our prior written consent.
- c) You shall not create, incur, assume or allow to exist any consensually or judicially imposed liens or encumbrances on, or part with possession of, or sublease the Equipment without our prior written consent.
- d) You shall comply with all governmental laws, rules and regulations relating to the use of the Equipment. You are also responsible for obtaining all permits required to operate the Equipment at your facility.
- e) We or our representatives may, at any time, enter your premises for purposes of inspecting, examining or repairing the Equipment.
- f) The Equipment shall remain our personal property and shall not under any circumstances be considered to be a fixture affixed to your real estate. You shall permit us to affix suitable labels or stencils to the Equipment evidencing our ownership.
- g) You agree that all Equipment returns shall be to TASQ Technology, 1169 Canton Road, Marietta, GA 30066 be done in a manner that can be tracked, and shall have the Lease number referenced on the return packaging. You understand and agree that your failure to return the Equipment in the manner noted in the preceding sentence will delay our receipt of the return and possibly result in you being charged \$100. If returned Equipment shows excessive wear and tear or is not in good operating condition (in each case, as determined by us in our reasonable discretion), you will be charged our cost to restore such Equipment to normal or good operating condition, as applicable.
- h) You shall keep the Equipment adequately insured against loss by fire, theft, and all other hazards.
- i) You shall provide proof of insurance as evidenced by a certificate naming First Data Merchant Services LLC as a loss payee under your insurance policy. The loss, destruction, theft, or damage of or to the Equipment shall not relieve you from your obligation to pay the full purchase price or total monthly leases charges hereunder.
- j) You may choose not to insure the Equipment and participate in the Equipment Service Program. The Equipment Service Program provides a replacement of the Equipment for as long as you participate in the Program during the Lease Term. The Equipment Service Program includes (i) free comparable replacement terminal (new or refurbished) in the event of a defect or malfunction (terminal defects or malfunctions caused by acts of

God are not covered by this Program), (ii) free shipping and handling on both the replacement terminal and return of defective terminal, (iii) free overnight shipping and handling on replacement terminal if requested by 3:00 pm ET (Monday - Thursday). If you don't return your damaged equipment, you will be charged the full purchase price of the replacement equipment sent to you. The monthly fee of \$4.95 for the optional Equipment Service Program is a per terminal fee. You can choose to insure the Equipment and terminate your participation in the program at any time by calling our Customer Service department.

1.6. Title to Equipment. The Equipment is, and shall at all times be and remain, our sole and exclusive property, and you shall have no right, title or interest in or to the Equipment except as expressly set forth in this Lease Agreement or otherwise agreed in writing. Except as expressly provided in Section 8, no transference of intellectual property rights is intended by or conferred in this Lease Agreement. You agree to execute and deliver to us any statement or instrument that we may request to confirm or evidence our ownership of the Equipment, and you irrevocably appoint us as your attorney-in-fact to execute and file the same in your name and on your behalf. If a court determines that the leasing transaction contemplated by this Lease Agreement does not constitute a financing and is not a lease of the Equipment, then we shall be deemed to have a first lien security interest on the Equipment as of the date of this Lease Agreement, and you will execute such documentation as we may request to evidence such security interest. If this Lease Agreement is deemed a loan despite the intention of the parties, then in no contingency or event whatsoever shall interest deemed charged hereunder, however such interest may be characterized or computed, exceed the highest rate permissible under any law which a court of competent jurisdiction shall, in a final determination, deem applicable hereto.

1.7. Return or Purchase of Equipment at End of Lease Period.

Upon the completion of your Lease Term the Agreement shall continue on a month-to-month basis. There is no obligation to continue the lease after the Lease Term ends. At the end of your Lease Term, you will have the option to:

- (a) return the Equipment to us;
- (b) purchase the Equipment from us for the lesser of fair market value at the time (as determined in good faith by us), or an amount equal to ten-percent (10%) of the total lease payments under this Lease Agreement with respect to each item of Equipment; or
- (c) as noted, rent the Equipment on a month-to-month basis at the existing monthly lease payment. In the absence of an affirmative election by you to return or purchase the Equipment, (c) will apply and this Agreement will continue on a month-to-month basis at the existing monthly lease payment. After the end of the Lease Term, if you do not want to continue to rent the Equipment on a month-to-month basis, then you will be obligated to provide Lessor with notice of that choice prior to the end of the Lease Term and advise whether you will return the Equipment to Lessor or purchase the Equipment, which price Lessor shall provide to you upon receipt of the notification. If you fail to provide such notice at least 30 days prior to the end of the Lease Term, you acknowledge that Lessor may not have time to suspend billing due for the next month's lease charge. If we terminate this Agreement pursuant to paragraph 3 due to a default by you, then you shall immediately return the Equipment to us at the address set forth in paragraph 11 no later than the tenth Business Day after termination, or remit to us the fair market value of the Equipment which amount we shall provide after good faith determination. We may collect any amounts due to us under this paragraph 4 by debiting your Settlement Account, and to the extent we are unable to obtain full satisfaction in this manner, you agree to pay the amounts owed to us promptly upon our request.

1.8. Software License. We retain all ownership and copyright interest in and to all computer software, related documentation, technology, know-how and processes embodied in or provided in connection with the Equipment other than those owned or licensed by the manufacturer of the Equipment (collectively "Software"), and you shall have only a nonexclusive license to use the Software in your operation of the Equipment.

1.9. Limitation on Liability. We are not liable for any loss, damage or expense of any kind or nature caused directly or indirectly by the Equipment, including any damage or injury to persons or property caused by the Equipment. We are not liable for the use or maintenance of the Equipment, its failure to operate, any repairs or service to it, or by any interruption of service or loss of use of the Equipment or resulting loss of business. Our liability arising out of or in any way connected with this Lease Agreement shall not exceed the aggregate lease amount paid to us for the particular Equipment involved. In no event shall we be liable for any indirect, incidental, special or consequential damages. The remedies available to you under this Lease Agreement are your sole and exclusive remedies.

1.10. Warranties.

- a) Leased equipment is warranted against material defects for the life of the lease. This warranty does not include damage to the equipment resulting from accident or misuse or any other breach of the Lease Agreement. If the equipment should become defective within the warranty period, First Data Merchant Services LLC will replace it free of charge (except that appropriate shipping charges may apply).
- b) All warranties, express or implied, made to you or any other person are hereby disclaimed, including without limitation, any warranties regarding quality, suitability, merchantability, fitness for a particular purpose, quiet enjoyment, or non-infringement.

- c) You warrant that you will only use the Equipment for commercial purposes and will not use the Equipment for any household or personal purposes.

1.11. Indemnification. You shall indemnify and hold us harmless from and against any and all losses, liabilities, damages and expenses resulting from (a) the operation, use, condition, liens against, or return of the Equipment or (b) any breach by you of any of your obligations hereunder, except to the extent any losses, liabilities, damages or expenses result from our gross negligence or willful misconduct.

1.12. Default; Remedies.

- a) If any debit of your Settlement Account initiated by us is rejected when due, or if you otherwise fail to pay us any amounts due hereunder when due, or if you default in any material respect in the performance or observance of any obligation or provision of this Lease Agreement or any agreement with any of our affiliates or joint ventures, any such event shall be a default hereunder. Without limiting the foregoing, any default by you under a processing agreement with us or with an affiliate or joint venture to which we are a party will be treated as a default under this Lease Agreement. Such a default would include a default resulting from early termination of the MPA.
- b) Upon the occurrence of any default, we may at our option, ~~effective immediately without notice~~, either (i) terminate this lease and our future obligations under this Lease Agreement, repossess the Equipment and proceed in any lawful manner against you for collection of all charges that have accrued and are due and payable, or (ii) accelerate and declare immediately due and payable all monthly lease charges for the remainder of the applicable lease period together with the fair market value of the Equipment (as determined by us), not as a penalty but as liquidated damages for our loss of the bargain. Upon any such termination for default, we may proceed in any lawful manner to obtain satisfaction of the amounts owed to us and, if applicable, our recovery of the Equipment, including entering onto your premises to recover the Equipment. In any case, you shall also be responsible for our costs of collection, court costs, as well as applicable shipping, repair and refurbishing costs of recovered Equipment. You agree that we shall be entitled to recover any amounts due to us under this Lease Agreement by charging your Settlement Account or any other funds of yours that come into our possession or control, or within the possession or control of our affiliates or joint ventures, or by setting off amounts that you owe to us against any amounts we may owe to you, in any case without notifying you prior to doing so. Without limiting the foregoing, you agree that we are entitled to recover amounts owed to us under this Lease Agreement by obtaining directly from an affiliate or joint venture to which we are a party and with which you have entered into an MPA any funds held or available as security for payment under the terms of the MPA, including funds available under the "Reserve Account; Security Interest" section of the MPA, if applicable.

1.13. Assignment. You may not assign or transfer this Lease Agreement, by operation of law or otherwise, without our prior written consent. For purposes of this Lease Agreement, any transfer of voting control of you or your parent shall be considered an assignment or transfer of this Lease Agreement. We may assign or transfer this Lease Agreement and our rights and obligations hereunder, in whole or in part, to any third party without the necessity of obtaining your consent.

1.14. Lease Guaranty. No guarantor shall have any right of subrogation to any of our rights in the Equipment or this Lease Agreement or against you, and any such right of subrogation is hereby waived and released. All indebtedness that exists now or arises after the execution of this Lease Agreement between you and any guarantor is hereby subordinated to all of your present and future obligations, and those of your guarantor, to us, and no payment shall be made or accepted on such indebtedness due to you from a guarantor until the obligations due to us are paid and satisfied in full.

1.15. Governing Law; Venue; Miscellaneous. This Lease Agreement shall be governed by and will be construed in accordance with the laws of the State of ~~New York~~ (without applying its conflicts of laws principles). The exclusive venue for any actions or claims arising under or related to this Lease Agreement shall be in the appropriate state of federal court located in ~~Suffolk~~ County, ~~New York~~. If any part of this Lease Agreement is not enforceable, the remaining provisions will remain valid and enforceable.

1.16. Notices. All notices must be in writing, and shall be given (a) if sent by mail, when received, and (b) if sent by courier, when delivered; if to you at the address appearing on the MPA, and if to us at 4000 Coral Ridge Drive, Coral Springs, Florida 33065. Attn: Lease Department. Customer Service toll free number 1-877-257-2094.

1.17. Entire Agreement. This Lease Agreement constitutes the entire Agreement between the parties with respect to the Equipment, supersedes any previous agreements and understandings and can be changed only by a written agreement signed by all parties. This Lease Agreement may be executed in any number of counterparts and all such counterparts taken together shall be deemed to constitute one and the same instrument. Delivery of an executed counterpart of a signature page of this Lease Agreement by facsimile shall be effective as delivery of a manually executed counterpart of this Lease Agreement.

I. Services

TeleCheck will provide Company with the services indicated in the TeleCheck Services Application and Agreement (**TeleCheck Application**) which may include: (i) coded information that it may use when deciding whether to accept a check or electronic funds transfer item (each an **Item**, and together, **Items**) when provided by its consumers as payment, (ii) settlement processing services and (iii) warranty or verification services; all as described in this Agreement (together, **Services**). TeleCheck will be Company's exclusive provider of the Services during the Term (defined below) of this Agreement. Company agrees to the terms of this Agreement by signing the TeleCheck Application; clicking "Accept" or "Install" when presented via an App (as applicable and described below); or using any of the Services. Company acknowledges that the Specialty Items (Settlement Only) service does include receiving coded information, warranty or verification services.

I.1. Delivery by Application. If the TeleCheck Services are provided through TeleCheck's check acceptance application (**App**) that resides on a Clover® point of sale device (a **Device**), Company agrees that this Agreement will govern Company's access to and use of TeleCheck's Services on such App. Company's use of its Device is subject to its agreement with the supplier of the Device (and not TeleCheck), and this Agreement does not alter Company's agreement with its Device supplier. Company will comply with the terms of its agreement with the Device supplier; and warrants that it is authorized to install and use TeleCheck's App on the Device.

I.2. Submitting Items. Company will designate the types of Items it accepts and that it will submit to TeleCheck for processing under this Agreement as indicated on the TeleCheck Application. Company must submit the Item to TeleCheck through the appropriate service. For example, checks presented in person by consumers at Company's point of sale can only be submitted through the In-Person Warranty (or Verification) service, checks sent through the mail to Company can only be submitted through the By Mail/Drop Box service. Company will submit all of its designated Items to TeleCheck for processing under this Agreement. Except for Items processed through the By Mail/Drop Box service, TeleCheck will analyze each Item that Company submits for processing and, in its discretion, provide Company with an approval or decline code with respect to each Item. TeleCheck will give Company operating guidelines and specifications, as applicable, to assist Company with properly accepting and submitting its Items for processing (operating guidelines and specifications may be provided to Company electronically or made available via the Internet).

I.3. Information Warranty. If Company has selected a warranty service in the TeleCheck Application, TeleCheck warrants the accuracy of the information given in its approval code (the **Information Warranty**) when an Item meets the warranty requirements described below. Items that satisfy TeleCheck's Information Warranty and meet the corresponding warranty requirements are **Eligible Items**. TeleCheck will purchase Eligible Items that are subsequently dishonored, returned, reversed, or otherwise not paid by a consumer's financial institution (these Items are **Return Items**). Company's sole remedy for a breach of TeleCheck's Information Warranty is the right to require TeleCheck to purchase an Eligible Item that became a Return Item. TeleCheck's liability to Company for breach of its Information Warranty will not exceed the lesser of: (a) the amount of the Eligible Item, or (b) the Warranty Maximum set forth in the TeleCheck Service Application and Agreement. Company may accept Items that do not receive an approval code or that do not meet the warranty requirements (these Items are **Ineligible Items**); however, Ineligible Items are not covered under TeleCheck's Information Warranty and TeleCheck will not purchase them.

I.4. Warranty Requirements. Company represents and warrants that each Item it submits to TeleCheck for processing and coverage under the Information Warranty meets the following requirements:

A. General Requirements. The following apply to all Items unless otherwise specified:

- (1) the Item was submitted to TeleCheck for processing according to TeleCheck's operating guidelines and specifications, and Company obtained a single approval code for it;
- (2) the Item is drawn on the consumer's deposit account at a United States or Canadian financial institution (for example, and without limitation, money orders, cashier's checks, travelers checks, insurance checks, credit card checks, or non-first party Items are Ineligible Items);
- (3) the Item, or a clear image of the Item (if submitted using a mobile or other optical imaging device), shows the consumer's name, address, check number, and routing and account numbers in the MICR line (not applicable if the payment is online or over the phone);
- (4) the Item is a properly completed first party Item that is dated, payable to Company, made out for the amount due to Company for its goods or services, and signed by the consumer (not applicable if the payment is online or over the phone);
- (5) the consumer authorized debiting its account by electronic funds transfer or remotely created check for the amount of the Item (an **Authorization**) in accordance with TeleCheck's operating guidelines and specifications and the rules of the National Automated Clearinghouse Association (**NACHA Rules**), as applicable, for the services utilized;

- (6) the Item represents the consumer's payment obligation to Company for its goods or services, and has not been used in another transaction;
- (7) the amount of the Item (a) is for the price of Company's goods or services, (b) matches the amount submitted to TeleCheck for processing, and (c) does not exceed the Warranty Maximum;
- (8) the Item was not submitted as a split sale or in other ways to avoid these warranty requirements or the Warranty Maximum;
- (9) the Item is not for credit, cash, or payment on an account, debt, or Item already due to Company;
- (10) the Item does not pre-date or post-date the date of the transaction and corresponding inquiry to TeleCheck by more than 1 calendar day;
- (11) the transaction and corresponding Item are not subject to any stop payment, dispute or setoff right;
- (12) Company is not aware of anything that invalidates the Item, prevents its collection, or relieves the consumer from liability for it; and
- (13) Company provided the notices required by applicable Law (defined in **Section 21.1** below), authorizing TeleCheck to process the Item as an electronic funds transfer or remotely created check and imposing (and authorizing such processing of) a fee for Return Items.

B. Requirements For In Person Payments: If a consumer presents a paper check in-person at Company's point of purchase location, in addition to those in **Section 1.4 A**, above the following requirements apply and must be followed in accordance with TeleCheck's operating guidelines and specifications: (a) the consumer signed an authorization to debit consumer's account and consumer's signature on the authorization reasonably matches the name imprinted on the Item; (b) the authorization must be clearly and conspicuously posted and a copy of the authorization must be provided to the consumer and (c) the Item must be voided and returned to the consumer after submission to TeleCheck for processing. If such in-person payment is approved as a paper check that cannot be settled as an electronic funds transfer, the additional requirements in **Section 1.4 F** below apply.

C. Requirements For Online Payments: If a consumer makes an online payment, the following requirements apply in addition to those in **Section 1.4 A** above: (a) the consumer electronically authorized the transaction in accordance with TeleCheck operating guidelines and specifications and (b) the payment website site authenticates the consumer's identity and uses appropriate site security and internet session security standards in accordance with the NACHA Rules.

D. Requirements For Phone Payments: If the consumer makes payment over the phone, the following requirements apply in addition to those in **Section 1.4 A**, above: (a) the consumer provided a telephonic authorization in accordance with TeleCheck operating guidelines and specifications; (b) the payment is not the result of Company initiating an unsolicited telephone call to consumer with which Company had no prior relationship; and (c) Company directly tape recorded the verbal telephonic authorization from consumer or, alternatively, Company sent the required written confirmation notice of the oral authorization to the consumer.

E. Requirements for Mail/Drop Box Checks: If the consumer provides a paper check which was mailed in or submitted in a drop box to Company, the requirements in **Section 1.4 A** above apply except (a) the check must be for payment that is not more than 60 days past due; (b) the check must not be post-dated or dated earlier than 20 days from the date of inquiry to TeleCheck; and (d) Company must securely store the check for at least 60 days following the corresponding payment transaction at which time it must be destroyed. Additionally, the consumer must not have notified Company that the check was not to be converted into an electronic funds transfer. If such mail/drop box check is approved as a paper check that cannot be settled as an electronic funds transfer, the additional requirements in **Section 1.4 F** below apply.

F. Requirements for Mobile Checks or any Checks Approved as Paper Only. If TeleCheck approves an Item as a paper check that could not be settled as an electronic funds transfer (i.e. check is to be deposited by Company) or the check is submitted to TeleCheck as an image through a mobile device (either, a **Paper Settlement Item**), the following requirements apply in addition to those in **Section 1.4 A** above: (a) the check must include the consumer's name (imprinted by the manufacturer), physical address (imprinted by the manufacturer or written on the check according to TeleCheck's operating guidelines – P.O. Boxes will not be accepted), phone number (with area code), identification type and number (imprinted or written on check), Company's TeleCheck Subscriber Number and TeleCheck's approval code; (b) the consumer's signature must reasonably match the name imprinted on the check and (c) Company must send Paper Settlement Items that were presented in-person at Company's point of purchase and that become Return Items directly from its financial institution to TeleCheck within 30 days of the date on the check. If the Paper Settlement Item was mailed in or submitted in a drop box by the consumer to Company, or if the Item was presented by the consumer to Company and submitted through a mobile device by Company to TeleCheck, and subsequent to the transaction TeleCheck instructs Company to deposit the check (due to image quality issues

(a **Redeposit Check Item**), Company must deposit the Redeposit Check Item within 2 days of TeleCheck's instruction to do so and TeleCheck must receive it for purchase within 45 days of the date on the check. Paper Settlement Items and Redeposit Check Items may only be presented once for payment (TeleCheck will not accept Paper Settlement Items or Redeposit Check Items that Company or its financial institution presented for payment more than once). In addition, Company must securely store the physical check for at least 60 days following the corresponding payment transaction.

1.5. Electronic Images. If the Item is submitted to TeleCheck by Company as an image using a mobile device or other image reader, the ability to settle imaged Eligible Items to the banking system depends on (a) the quality of the image and (b) the banking system's ability to accept the image for settlement processing. Company will use a third party provider to capture images of Items using a mobile device (this third party, an **Image Vendor**) and submit those images to TeleCheck. Company acknowledges that its Image Vendor will require some of Company's account information (including, without limitation, merchant account number, contact name, email address and device identifier) to submit Item images to TeleCheck; and authorizes TeleCheck to provide the Image Vendor with the information necessary to allow it to submit Item images to TeleCheck on behalf of Company. TeleCheck is not responsible for the image quality of Items submitted through Company's Image Vendor, or submission of the images by Company's Image Vendor to TeleCheck. Company will destroy the physical checks that were submitted as electronic images after storing them securely for at least 60 days.

1.6. Authorization. Company will maintain a copy of each consumer's Authorization for the longer of: (a) 2 years, or (b) the period of time required by the NACHA Rules. Company will provide TeleCheck with legible copies of Authorizations within 7 days of TeleCheck's request for them.

1.7. Assignment of Items. Company assigns all if its right, title, and interest in each Eligible Item that it submits to TeleCheck for warranty coverage when the Item becomes a Return Item. Company will reasonably aid TeleCheck in its enforcement of the rights associated with an assigned Eligible Item.

1.8. Processing Notices; Return Item Fees. Company will post, and provide consumers with, notices at the point of sale that are required to process Items using the Services and to collect fees on Return Items. Company will assess the highest fee amount allowed by applicable Laws on all Return Items, which TeleCheck may collect and retain from consumers.

1.9. "Goodwill" of an Ineligible Item. TeleCheck may elect to provide warranty coverage for an Ineligible Item that Company submits for processing. Providing warranty coverage for an Ineligible Item will not constitute a course of dealing, waiver of rights, or prevent TeleCheck from rejecting warranty coverage for any other Ineligible Items.

1.10. Updating Information. Company will promptly notify TeleCheck if (a) a consumer makes any payment to Company or returns any goods in connection with a Return Item that is subject to warranty coverage, or (b) Company cancels any services paid for by an Item that is subject to warranty coverage; both representing a full or partial satisfaction of the Return Item. Company's notice of payment or cancellation of services will identify the consumer.

1.11. Chargeback. TeleCheck may chargeback any Eligible Item that it purchased from Company for coverage under the Information Warranty if:

- (1) the consumer returned the goods or services (in whole or in part) that were paid for with the Item;
- (2) Company has not delivered the goods or services that were paid for using the Item;
- (3) the Item is subject to any stop payment, dispute, or setoff;
- (4) the consumer makes full or partial payment to Company for the Item, or provides any form of security to ensure its payment;
- (5) the goods or services were initially delivered on credit or under a lease;
- (6) the purchase transaction, the payment represented by the Item, or transferring the Item to TeleCheck (by assignment or otherwise) is void or invalid for any reason other than the consumer's bankruptcy;
- (7) Company breaches the applicable warranty requirements for Eligible Items;
- (8) Company submits multiple Items or duplicate Items related to the same transaction for processing (e.g., deposits a paper Item previously submitted for processing as an electronic Item without TeleCheck's direction to do so);
- (9) Company does not submit its Items to TeleCheck for processing within 1 calendar day of the transaction date (for batch processing, Items must be submitted to TeleCheck for processing within 7 calendar days of the transaction date);
- (10) the consumer disputes authorizing the Item, its validity, or the amount debited for it (except in the case of third party fraud committed with a consumer's check);
- (11) the consumer's Authorization is incomplete or invalid;
- (12) Company fails to provide TeleCheck with a legible copy of an Authorization within 7 days of a request for it; or
- (13) Company breaches this Agreement, alters an Item or approval code, or submits an Item with Knowledge it is likely to become a Return Item. **Knowledge** means facts or

circumstances which, if known, would cause a merchant, using commercially reasonable judgment, to independently refuse to accept an Item (including, without limitation, splitting single transactions into smaller components or resubmitting Items that were previously denied).

Company will immediately notify TeleCheck if it has Knowledge that any of the above circumstances occur. Company will continue to be responsible for its chargebacks after termination of this Agreement. TeleCheck may chargeback any amounts that exceed the Warranty Maximum for an Eligible Item.

2. Non-Warranty Services

2.1. If any of the verification services or the Specialty Items (Settlement Only) services are selected by Company in the TeleCheck Application (**Non-Warranty Services**), TeleCheck will have no liability for any Item that is processed using the Non-Warranty Services that is subsequently returned, dishonored, reversed or otherwise unpaid, and does not warranty the checks processed using the Non-Warranty Services. There will be no payment to Company for any loss from transactions processed through the Non-Warranty Services. Company assumes all risks that Items accepted by Company may result in Return Items. Company will be fully responsible and liable to TeleCheck for all Return Items, regardless of the reason or timing. TeleCheck will deduct or offset all Return Items against any amounts to be paid to Company for Items to settled under this Agreement or, alternatively, TeleCheck may initiate debits to Company's Settlement Account (defined in Section 3.1 below) for all such Return Items.

2.2. Representations and Warranties. Company represents and warrants that each Item submitted under any of the Non-Warranty Services complies with the following, (a) the Item was submitted to TeleCheck in accordance with the TeleCheck's operating guidelines and specifications, (b) the consumer authorized debiting its account by electronic funds transfer or remotely created check for the amount of the Item in accordance with in accordance with the TeleCheck's operating guidelines and specifications and NACHA Rules including, without limitation, providing any necessary notices to consumer (not applicable to the Specialty Items (Settlement Only) services) and (c) the requirements in **Sections 1.4. B., C. and D** (as applicable to the type of Item presented) have been complied with.

3. Settlement

3.1. Company will identify one or more bank accounts held in its name (each, a **Settlement Account**) that TeleCheck will use in connection with the Services. Company authorizes TeleCheck to (a) initiate credits to the Settlement Account for proceeds that correspond to Company's transactions; (b) initiate debits to the Settlement Account for any amounts that may be owed or are required to be paid under this Agreement; (c) initiate the transaction to a consumer's deposit account on Company's behalf for Items that are owed to it; and (d) initiate adjustments related to the foregoing (including, without limitation, adjustments for chargebacks or partial adjustments). TeleCheck may initiate any transfer by Automated Clearing House (**ACH**) entry.

3.2. TeleCheck reserves the right to decline processing any Item. TeleCheck will initiate a funds transfer for Company's transactions that were processed under this Agreement; less any amounts due from Company for fees, refunds, adjustments or its other obligations. TeleCheck will typically credit Company's settlement funds to its Settlement Account within 2 banking days once the transactions are finally submitted to TeleCheck for settlement processing.

3.3. TeleCheck may recover amounts associated with any adjustments for an Item that are made to the Settlement Account at Company's request or due to its error. TeleCheck may also recover amounts associated with any fees that a consumer paid to its financial institution because of these adjustments.

3.4. Company must promptly notify TeleCheck if it fails to receive any settlement funds or if there are any changes to the Settlement Account. Transfer of settlement funds may be delayed or misdirected if Company provides inaccurate information about, or fails to notify TeleCheck of changes to, the Settlement Account. TeleCheck is not responsible for settlement errors that arise if Company provides inaccurate information about, or fails to notify TeleCheck of changes to, the Settlement Account.

4. Financial Information

Company will promptly provide any financial or other information reasonably requested by TeleCheck to perform credit risk, security, qualification, and other reviews related to providing the Services, transactions submitted, fulfillment of obligations to TeleCheck, or the financial condition of Company. Company authorizes TeleCheck to obtain information from third parties when performing credit risk, security, qualification, and other reviews.

5. Notice of Material Changes

Company will provide TeleCheck with reasonable advance notice of any material change in the nature of Company's business (including, without limitation, any change to Company's operations that would materially affect its products sold, services provided, or the procedures it follows for payments acceptance). The failure to provide TeleCheck with this notice constitutes a material breach of this Agreement.

6. Company's Payment Obligations

Fees. Company will pay TeleCheck for: (a) all fees and charges for the Services that are set forth in the TeleCheck Service Application and Agreement; (b) all Items that are charged back; (c) all adjustments required in connection with Company's transactions; and (d) all costs, liabilities, or other obligations imposed on TeleCheck by third parties as a result of transactions submitted by Company, its actions, or inactions.

6.1. Other Fees. Company will also pay TeleCheck for the following fees and charges for the Services (as applicable): (a) **Customer Requested Operator Call Fee** (also called **CROC** or **Voice Authorization Fee**), which is an additional \$2.50 fee per operator or Interactive Voice Response (IVR)-assisted call that Company initiates, but TeleCheck does not request; (b) **December Risk Surcharge**, which is an additional percentage charge added to the Inquiry Rate for each authorization inquiry in the month of December; (c) **Funding Report Fee**, which is a \$10.00 monthly fee to receive daily funding or weekly funding reports (the Funding Report Fee does not apply if TeleCheck provides the funding report monthly); (d) **Inquiry Rate**, which is the percentage rate that applies to the face amount of each Item (up to the Warranty Maximum) that Company submits to TeleCheck for authorization (whether or not TeleCheck issues an approval code for the Item); (e) **Monthly Minimum Fee**, which is the minimum aggregate amount of the Inquiry Rate fees that Company must pay on a monthly basis (if the total Inquiry Rate fees for Company's Items submitted during any month is less than the Monthly Minimum Fee, then the Monthly Minimum Fee will apply); (f) **Monthly Processing Fee** is a monthly fee for handling Company's account; (g) **Special Handling Fee**, which is a \$5.00 fee applied when the following occur: (1) a chargeback of an Eligible Item, (2) an Item processed for payment must be corrected due to Subscriber's error or at Subscriber's request, or (3) TeleCheck elects (in its discretion) to process an Item that fails to meet the applicable warranty requirements, or that is a Return Item, as a "Goodwill" Item; (h) **Transaction Fee**, which is the additional per transaction charge for each Item that Company submits to TeleCheck for authorization or processing (whether or not TeleCheck issues an approval code for the Item); and (i) **Unauthorized Return Fee** is a fee applicable to any Item that is dishonored, returned, reversed, or otherwise not paid by the Consumer's financial institution for the reason that such Item is unauthorized by the Consumer.

6.2. Early Termination Fee. TeleCheck will suffer substantial injury, for which it would be difficult to determine damages, if Company breaches this Agreement or terminates it early in violation of the Agreement's terms. TeleCheck may recover damages equal to 90% of the aggregate Monthly Minimum Fees and Monthly Processing Fees that are payable for the unexpired portion of the then-current Term as an accurate reflection of these damages and realistic pre-estimate of TeleCheck's losses caused by an early termination of this Agreement.

7. Reserve

7.1. TeleCheck may require Company to fund a cash reserve (**Reserve**) in an amount that reflects TeleCheck's assessment of risk, as it may determine in its discretion from time-to-time. The Reserve is a payment obligation of TeleCheck, established by holding back transaction proceeds or debiting the Settlement Account in order to potentially offset any obligations that Company may have to TeleCheck. The Reserve is not a segregated fund that Company may claim to own. TeleCheck is obligated to pay to Company any amounts remaining from the Reserve after all other then-current and contingent liabilities or obligations related to Company's payment transactions have expired.

7.2. The obligations due to Company from the Reserve will not accrue interest unless required by applicable Laws.

7.3. TeleCheck will notify Company if a Reserve is established (including its amount) or if the amount of the Reserve is modified.

7.4. TeleCheck may set off any obligations that Company owes to TeleCheck from the Reserve.

7.5. Although Company acknowledges that the Reserve is a general obligation of TeleCheck, and not a specifically identifiable fund, if any person claims that the Reserve is an asset of Company that is held by TeleCheck, Company grants and acknowledges that TeleCheck have a security interest in the Reserve and, at TeleCheck request, will provide documentation to reflect this security interest.

8. Setoff and Priority

All funds that TeleCheck owes to Company under this Agreement are subject to Company's payment obligations under this Agreement. TeleCheck may setoff or recoup amounts Company owes to TeleCheck against any funds that TeleCheck owes to Company.

9. Statements, Reporting

TeleCheck will provide Company with statements or electronic reporting (together, **Statements**) reflecting the fees, settlement amounts, and other information related to the Services. Company must review the Statements and inform TeleCheck of any errors within 60 days following the date that the error was, or should have been, reported; provided, Company must report settlement or funding errors to TeleCheck within 30 days (reporting errors will enable TeleCheck to recover amounts or prevent them from continuing). TeleCheck will have no obligation to provide refunds for errors that Company reports more than 60 days or 30 days (as applicable) after the errors were, or should have been, reported.

Company and TeleCheck will work together to resolve issues or disputes that arise in connection with the Statements, or the funds credited or debited to the Settlement Account.

10. Term

This Agreement begins on the earlier of the dates when Company signs its TeleCheck Services Application and Agreement, submits its first Item for processing under this Agreement, or when Company downloads the App (this date, the **Effective Date**). The length of this Agreement's initial term is designated in the TeleCheck Services Application and Agreement (**Initial Term**). This Agreement will automatically renew for successive one-year periods (each, a **Renewal Term**), unless TeleCheck or Company provides the other with at least 30 days' written notice of non-renewal at the end of the Initial Term. The Initial Term together with any Renewal Term(s) is the Term of this Agreement.

11. Termination; Modification; Suspension

11.1. General Termination. Either Company or TeleCheck may terminate this Agreement by giving 30 days' advance notice if the other materially breaches this Agreement and fails to remedy the breach within 30 days of receiving notice of it. TeleCheck may terminate this Agreement upon written notice to Company for any reason (with or without cause) during its Term. If the Services are delivered through TeleCheck's App, Company may terminate this Agreement for any reason (with or without cause) during its Term by uninstalling the App.

11.2. Modification. TeleCheck may modify this Agreement's terms (including, without limitation, its fees) upon 30 days' notice to Company, during which notice period Company may terminate this Agreement by providing written notice of termination to TeleCheck. Company's continued use of the Services after the 30 day period contained in a notice of modification from TeleCheck will constitute Company's acceptance of the new terms.

11.3. Suspension. TeleCheck may suspend its Services or settlement of any funds under this Agreement if it determines that questionable activity occurs with respect to Company's payment transactions (including, without limitation, if there are excessive Return Items associated with Company's Items, Company breaches the NACHA Rules, or if required by applicable laws. TeleCheck may also suspend or terminate its Services if requested by its Originating Financial Depository Institution.

12. Confidential Information

12.1. Confidentiality. Neither party will disclose non-public information about the other party's business (including, without limitation, the terms of this Agreement, technical specifications, customer lists, or information relating to a party's operational, strategic, or financial matters) (together, **Confidential Information**). Confidential Information does not include information that: (1) is or subsequently becomes publicly available (through no fault of the recipient); (2) the recipient lawfully possesses before its disclosure; (3) is independently developed without reliance on the discloser's Confidential Information; or (4) is received from a third party that is not obligated to keep it confidential. Each party will implement and maintain reasonable safeguards to protect the other party's Confidential Information.

12.2. Disclosure. The recipient may disclose the other party's Confidential Information: (1) to its directors, officers, personnel, and representatives (including those of its subsidiaries, affiliates, subcontractors or vendors) that need to know it in connection with the recipient's performance under this Agreement, and are bound by confidentiality obligations materially similar to those required under this Agreement; and (2) in response to a subpoena, court order, or as required under applicable Laws or NACHA Rules.

13. Data Use; Security.

13.1. Data Use. TeleCheck owns all right, title and interest in the data it obtains from providing the Services to Company.

13.2. Data Security. Company will implement commercially reasonable practices, including administrative, physical and technical safeguards, that are designed to: (a) maintain the security and confidentiality of Consumer Information, (b) protect against reasonably anticipated threats to the security or integrity of Consumer Information, and (c) protect against unauthorized access to or use of Consumer Information that could result in substantial harm or inconvenience to the consumer. **Consumer Information** is customer information Company receives in connection with any transaction contemplated by this Agreement.

14. License to Marks

TeleCheck grants Company a limited, non-exclusive, non-transferrable, non-sublicensable, royalty-free license to use the trademarks, service marks and logos (together, **Marks**) that TeleCheck provides to Company during the Term of this Agreement. Company (a) may use the Marks only in the United States; (b) may use the Marks only in connection with its use of the Services; (c) will follow the branding guidelines that TeleCheck provides or makes available from time-to-time; and (d) will not use materials containing the Marks without TeleCheck's prior written permission. Company will not otherwise distribute, lease, sublicense, sell, modify, copy or create derivative works from the Marks. TeleCheck reserves to itself all right, title, interest or license (express or implied) to the Marks that are not specifically granted to Company under this Agreement; and may suspend or terminate this license upon written notice to Company.

15. Indemnification

Company will indemnify, defend, and hold TeleCheck harmless for all losses, damages, costs, or expenses (including reasonable attorney's fees) claimed against it by third parties, which arise from Company's gross negligence, willful misconduct, or breach under this Agreement.

16. Exclusion of Damages

Neither party will be liable to the other for lost profits, revenues or business opportunities, nor any exemplary, punitive, special, indirect, incidental, or consequential damages (whether any are direct or indirect); regardless of whether these damages were foreseeable or either party was advised they were possible.

17. Limitation of Liability

TeleCheck' aggregate liability to Company for losses arising from any cause (regardless of the form of action or legal theory) in connection with this Agreement will be limited to \$75,000.00

18. Notices

Written notices (other than normal operations) required under this Agreement will be sent by certified mail or national courier (with tracking and delivery confirmation). TeleCheck may also provide written notices required under this Agreement by regular mail. Notices will be effective upon receipt. Notices to Company will be sent to the address it provides on the TeleCheck Service Application and Agreement. Notices to TeleCheck will be sent to: TeleCheck Services, Inc., Attn: TeleCheck Merchant Services, Mail Stop A-12, 7301 Pacific Street, Omaha, NE 68114; with copies to TeleCheck Services, Inc., Attn: General Counsel's Office, 3975 N.W. 120th Avenue, Coral Springs, FL 33065 and legalpapers@firstdata.com

19. Third Party Beneficiaries

There are no third party beneficiaries to this Agreement other than TeleCheck' subsidiaries and affiliates involved in providing the Services to Company. Each party is responsible for the performance of any third parties it uses in connection with the Services, and their compliance with the terms of this Agreement. TeleCheck is not responsible or liable to Company for any errors or breaches of this Agreement that occur because of Company's third party providers (e.g., without limitation, issues that arise from ACH network participants, or if Company uses third party providers or applications to capture electronic images of Items to submit to TeleCheck). TeleCheck may audit Company's compliance with this Agreement upon reasonable notice, during normal business hours, and at TeleCheck's expense; and as required by the NACHA Rules. TeleCheck's Originating Depository Financial Institution may also audit Company's compliance with this Agreement and the NACHA Rules.

20. Waivers

A party's delay or failure to exercise any of its rights under this Agreement will not be a waiver of those rights.

21. Compliance with Law, Choice of Law, Waiver of Jury Trial

21.1. Compliance with Law. The parties will comply with all laws, regulations, and rules (including ACH's network rules, requirements, and standards; the **NACHA Rules**) (together **Laws**) that are applicable to their respective performance obligations under this Agreement. Company acknowledges that it is the Originator under the NACHA Rules with respect to its transactions and agrees to comply with its obligations as an Originator. Company certifies that it has a legitimate business need for the information that TeleCheck provides through its Services, will use the information in connection with submitting payment transactions to TeleCheck for processing and for no other purpose, and will use the information only for permissible purposes under the Fair Credit Reporting Act (Company will not use TeleCheck's information for employment related purposes).

21.2. Choice of Law; Waiver of Jury Trial. This Agreement will be governed by New York law (without regard to its choice of law provisions). The courts of New York, New York will be the proper venue for legal proceedings brought in connection with this Agreement. **TeleCheck and Company each waive their right to a jury trial for claims arising in connection with this Agreement.**

22. Entire Agreement, Amendment, Counterparts

The defined term Agreement includes its schedules, addenda, and any amendments (capitalized terms used in the schedules, addenda, or amendments without definition will have the meanings given to them in this Agreement). This Agreement is the entire agreement between the parties and replaces any prior agreements or understandings (written or oral) with respect to its subject matter. Except as set forth in Section 11.2, modifications to this Agreement must be in writing, executed by the parties. This Agreement and any amendments may be executed electronically and in counterparts, each of which constitutes one agreement when taken together. Electronic and other copies of the executed Agreement are valid.

23. Assignment

Company may not assign this Agreement without TeleCheck's written consent. TeleCheck may assign this Agreement upon notice to Company. This Agreement will be enforceable against a party's permitted successors or assigns. This Agreement may not be continued, assumed, or assigned in the event of a bankruptcy or other insolvency event without consent from the non-bankrupt or insolvent parties.

A.1. Electronic Funding Authorization

All payments to Client shall be through the Automated Clearing House (“ACH”) and shall normally be electronically transmitted directly to the Settlement Account you have designated or any successor account designated to receive provisional funding of Client’s Card sales pursuant to the Agreement. Client agrees that any Settlement Account designated pursuant to the preceding sentence will be an account primarily used for business purposes. Neither *Wells Fargo Bank*, N.A. nor First Data Merchant Services LLC can guarantee the time frame in which payment may be credited by Client’s financial institution where the Settlement Account is maintained.

Client hereby authorizes *Wells Fargo Bank*, N.A. and its authorized representative, including First Data Merchant Services LLC, to access information from the Settlement Account and to initiate credit and/or debit entries by bankwire or ACH transfer and to authorize your financial institution to block or to initiate, if necessary, reversing entries and adjustments for any original entries made to the Settlement Account and to authorize your financial institution to provide such access and to credit and/or debit or to block the same to such account. This authorization is without respect to the source of any funds in the Settlement Account, is irrevocable and coupled with an interest. This authority extends to any equipment rental or purchase agreements which may exist with Client as well as to any fees, fines and assessments and Chargeback amounts of whatever kind or nature due to First Data Merchant Services LLC or *Wells Fargo Bank*, N.A. under terms of this Agreement whether arising during or after termination of the Agreement. This authority is to remain in full force and effect at all times unless and until First Data Merchant Services LLC and *Wells Fargo Bank*, N.A. have consented to its termination at such time and in such a manner as to afford them a reasonable opportunity to act on it. In addition, Client shall be charged twenty-five dollars (\$25.00) for each ACH which cannot be processed, and all subsequent funding may be suspended until Client either (i) notifies First Data Merchant Services LLC that ACH’s can be processed or (ii) a new electronic funding agreement is signed by Client. Client’s Settlement Account must be able to process or accept electronic transfers via ACH.

A.2. Funding Acknowledgement

Automated Clearing House (ACH). Your funds for MasterCard, Visa, Discover Network, PayPal and American Express transactions will ordinarily be processed and transferred to your financial institution within two (2) Business Days from the time a batch is received by Processor if your financial institution is the Bank. If your financial institution is not the Bank, your MasterCard, Visa, Discover Network, PayPal and American Express transactions will ordinarily be processed via the Federal Reserve within two (2) Business Days from the time a batch is received by Processor. The Federal Reserve will transfer such amounts to your financial institution.

A.3. Additional Fees and Early Termination

If Client’s MasterCard, Visa, Discover Network, PayPal and American Express transaction(s) fail to qualify for the discount level contemplated in the rates set forth in the Application, Client will be billed the fee indicated in the Mid-Qualified Discount field or Non-Qualified Discount field. If you are utilizing the Enhanced Billback Discount option, the Client will be charged the Enhanced Billback Rate on the volume of said transaction that failed to qualify, in addition to the difference between the MasterCard/Visa/Discover Network/PayPal and American Express Qualified Rate agreed to on the Service Fee Schedule and the actual interchange rate assessed to the downgraded transaction.

- a. Any increases or decreases in the interchange and/or assessment portion of the fees;
- b. The appropriate interchange level as is consistent with the qualifying criteria of each transaction submitted by Client;
- c. Increases in any applicable sales or telecommunications charges or taxes levied by any state, federal or local authority related to the delivery of the services provided by First Data Merchant Services LLC when such costs are included in the Service or other fixed fees.

The discount fees shown on the Service Fee Schedule shall be calculated based on the gross sales volume of all Visa, MasterCard/Discover/PayPal and American Express volume.

A Monthly Minimum Processing Fee will be assessed immediately after the date Client’s Application is approved. (Refer to Service Fee Schedule, if applicable.)

In addition to the PIN Debit Card transaction fees set forth on the Application, Client shall be responsible for the amount of any fees imposed upon a transaction by the applicable debit network.

The parties further agree and acknowledge that, in addition to any remedies contained herein or otherwise available under applicable law and, if (a) Client breaches this Agreement by improperly terminating it prior to the expiration of the initial term of the Agreement, or (b) this Agreement is terminated prior to the expiration of the initial term of the Agreement due to an Event of Default, then Servicers will suffer a substantial injury that is difficult or impossible to accurately estimate. Accordingly, the parties have agreed that the amount described below is a reasonable pre-estimate of Servicers’ probable loss.

In the event that Client terminates this Agreement within three (3) years from the date of approval by First Data Merchant Services LLC and Wells Fargo Bank, N.A. or this Agreement is terminated by Servicers within 3 years from the date of approval due to an Event of Default, Client will be charged a fee for such early termination, if so indicated on the Application on the Service Fee Schedule.

Client’s obligation with respect to the Monthly Minimum Processing Fee will end simultaneously with First Data Merchant Services’ receipt of Termination Fee.

A.4. 6050W of the Internal Revenue Code

Pursuant to Section 6050W of the Internal Revenue Code, merchant acquiring entities and third party settlement organizations are required to file an information return for each calendar year reporting all payment card transactions and third party network transactions with payees occurring in that calendar year. Accordingly, you will receive a Form 1099-K reporting your gross transaction amounts for each calendar year. Your gross transaction amount refers to the gross dollar amount of the card transactions processed through your merchant account with us. In addition, amounts reportable under Section 6050W are subject to backup withholding requirements. Payors will be required to perform backup withholding by deducting and withholding income tax from reportable transactions if (a) the payee fails to provide the payee’s taxpayer identification number (TIN) to the payor, or (b) if the IRS notifies the payor that the TIN (when matched with the name) provided by the payee is incorrect. Accordingly, to avoid backup withholding, it is very important that you provide us with the correct name and TIN that you use when filing your tax return that includes the transactions for your business.

A.5. Addresses For Notices

PROCESSOR:
First Data Merchant Services LLC:
 4000 Coral Ridge Drive,
 Coral Springs, FL 33065
 Attn: Merchant Services

Important Phone Numbers:
(see also Sections 9 and 16)

Customer Service
 1-800-858-1166

BANK:
Wells Fargo Bank, N.A.:
 P.O. Box 6079
 Concord, CA 94524
 1-844-284-6834

**CITY OF FRUITLAND PARK
AGENDA ITEM SUMMARY SHEET
Item Number: 6d**

ITEM TITLE: Resolution 2020-034 Document Redacton Software
For the Meeting of: July 23, 2020
Submitted by: City Attorney/City Clerk/City Manager/Police Chief
Date Submitted: July 15, 2020
Funds Required: Yes
Account Number: 01512 30340
Amount Required: \$5,000
Balance Remaining: N/A
Attachments: Yes Resolution 2020-034, (license agreement, addendum amendment to agreement, and terms)

Item Description: Resolution 2020-034 Document Redaction Software

Action to be Taken: Adopt Resolution 2020-034.

Staff's Recommendation: Approval.

Additional Comments: Addressed at the July 9, 2020 regular meeting . The license agreement and market trends will be evaluated annually.

City Manager Review: Yes

Mayor Authorization: Yes

RESOLUTION 2020-034

A RESOLUTION OF THE CITY COMMISSION OF THE CITY OF FRUITLAND PARK, FLORIDA, APPROVING LICENSE AGREEMENT BETWEEN THE CITY OF FRUITLAND PARK AND VERITONE, INC. FOR DOCUMENT REDACTION SOFTWARE RELATING TO PUBLIC RECORDS; AUTHORIZING THE MAYOR TO EXECUTE THE LICENSE AGREEMENT; PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the City of Fruitland Park retains public records and is legally obligated to provide for inspection and copying public records that may be requested; and

WHEREAS, public records may contain confidential and/or exempt information that must be redacted prior to providing for inspection and copying; and

WHEREAS, Veritone, Inc. is willing to grant the City a license to use its aiWARE Platform and related services for redaction purposes; and

WHEREAS, use of the aiWARE Platform for purposes of redaction will allow for a more cost effective and efficient manner of redacting documents; and

WHEREAS, the City Commission of the City of Fruitland Park, Florida finds it serves a municipal purpose and will be a benefit to the City to obtain the necessary license.

NOW, THEREFORE, BE IT RESOLVED AS FOLLOWS:

Section 1. The License Agreement between the City of Fruitland Park and Veritone, Inc., **a copy of which is attached hereto**, is approved.

Section 2. The Commission authorizes the Mayor to execute the License Agreement between the City of Fruitland Park and Veritone, Inc.

Section 3. This resolution shall take effect immediately upon its final adoption by the City Commission of the City of Fruitland Park, Florida.

PASSED AND RESOLVED this ____ day of _____, 2020, by the City Commission of the City of Fruitland Park, Florida.

SEAL

CITY COMMISSION OF THE CITY OF
FRUITLAND PARK, FLORIDA

CHRIS CHESHIRE, MAYOR

ATTEST:

ESTHER COULSON, CITY CLERK, MMC

Mayor Cheshire	_____	(Yes),	_____	(No),	_____	(Abstained),	_____	(Absent)
Vice Mayor Gunter	_____	(Yes),	_____	(No),	_____	(Abstained),	_____	(Absent)
Commissioner Bell	_____	(Yes),	_____	(No),	_____	(Abstained),	_____	(Absent)
Commissioner DeGrave	_____	(Yes),	_____	(No),	_____	(Abstained),	_____	(Absent)
Commissioner Mobilian	_____	(Yes),	_____	(No),	_____	(Abstained),	_____	(Absent))

Approved as to form:

Anita Geraci-Carver, City Attorney

LICENSE AGREEMENT

This License Agreement (“Agreement”) is entered into as of the date of the last signature below (“Effective Date”) by and between Veritone, Inc. (for itself and/or its subsidiaries), having a principal office located at 575 Anton Boulevard, Suite 100, Costa Mesa, CA 92626 (“Veritone”) and the entity listed under Licensee Information below (“Licensee”), with respect to license(s) to Veritone’s aiWARE Platform and related Services.

LICENSEE INFORMATION			
Agency Name:	Fruitland Park Police Department		Billing Contact Information
Agency Address:	506 W. Berckman St. Fruitland Park, FL 34731		Contact Name:
Contact Name:			Contact Phone:
Phone:			Contact Email:
Email:			Email for Invoices:
LICENSE AND SERVICES DETAILS			
Initial Term:	Start Date:		End Date:
No. of Users:	Three (3) Users		License Fee:
Services:	<ul style="list-style-type: none"> - Veritone aiWARE™ Platform Access - Veritone Redact Application - Cognitive Processing (detailed below) - Standard webinar training and onboarding; technical support via phone, email and chat 		
Cognitive Processing:	License includes cognitive processing of up to two (2) hour per month of media uploaded by Licensee through the Redact Application. Additional processing in any month will be charged at a rate of \$100.00 per hour of media uploaded to the Redact Application (“Additional Processing Fees”).		
TERMS AND CONDITIONS			

1. **Master License Terms and Conditions.** This Agreement is governed by the Veritone Master License Terms and Conditions at <https://www.veritone.com/terms-conditions> (the “Terms and Conditions”), which are incorporated herein by reference. In the event of any conflict or inconsistency between the provisions of this Agreement and the provisions contained in the Terms and Conditions, the provisions of this Agreement shall govern and control. Capitalized terms used but not defined herein shall have the meanings ascribed to them in the Terms and Conditions.
2. **Redact Application and Cognitive Processing.** During the Term, Veritone will provide Licensee with access to the Redact Application and the cognitive processing specified above. Cognitive processing will be via an automated process within the Platform. Licensee will be responsible for uploading media in a format reasonably required by Veritone in order to ingest and process the media through the Redact Application. Licensee represents and warrants that it has the right to furnish to Veritone and to use such media in connection with Licensee’s use of the Platform and Services.
3. **Limitations.** Licensee acknowledges that the Redact Application is intended to be used by Licensee only as a tool to support review and redaction of video footage, and the Redact Application and the results generated therefrom should not be considered or relied upon as a substitute for Licensee’s customary review and redaction procedures. Licensee acknowledges that there are inherent limitations in artificial intelligence technologies, and Veritone makes no representations or warranties as to the accuracy, quality, sufficiency or usefulness of the results generated by the Redact Application. Licensee is solely responsible for verifying all results generated by the Redact Application as part of its customary review and redaction procedures.
4. **Payment Terms.** The License Fee will be invoiced upon execution of this Agreement and will be due and payable upon receipt of invoice. Thereafter, subject to credit approval, Veritone will submit an invoice for the Additional Processing Fees incurred during the previous month (if any), and such invoices will be due and payable by the first day of the month following the invoice date. Notwithstanding the foregoing, if the total Additional Processing Fees incurred during a calendar month are less than \$50.00, Veritone may, in its sole discretion, delay invoicing of such Additional Processing Fees until the total Additional Processing Fees incurred but not yet invoiced exceed \$50.00. All amounts are payable in U.S. dollars.
5. **Authority.** The person executing this Agreement on behalf of each party represents and warrants that he or she has full authority to execute the same on behalf of such party, and that no other actions or approvals are required for such party to enter into this Agreement and perform its obligations hereunder.

ACCEPTED AND AGREED BY:	
VERITONE, INC.	LICENSEE
Signature:	Signature:
Name:	Name:
Title:	Title:
Date:	Date:

ADDENDUM TO LICENSE AGEEMENT WITH VERITONE INC.

This Addendum is added to the Master License Terms and Conditions and the Agreement for Veritone aiWARE™ Platform Access, Cognitive Processing, and Standard webinar training and onboarding; technical support via phone, email and chat services between the City of Fruitland Park and Veritone Inc.

"IF THE CONTRACTOR HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE CONTRACTOR'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS CONTRACT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT (352) 360 6790, ecoulson@fruitlandpark.org, 506 West Berckman Street, Fruitland Park, Florida 34731."

By signing, you agree that you have read, understand and will comply with all terms, conditions and statements listed.

This Agreement must be approved by a Veritone Inc. Authorized Officer.

Client:

Veritone Inc.

Please Print Name

Please Print Name

Title:

Title:

Signature:

Signature:

Date:

Date

AMENDMENT NO. 1 TO LICENSE AGREEMENT

This Amendment No. 1 to License Agreement (the "Amendment") is entered into effective as of July 23, 2020 ("Effective Date"), by and between Veritone, Inc. ("Veritone") and Fruitland Park City Hall ("Licensee").

WHEREAS, Veritone and Licensee have entered into that certain License Agreement having an effective date of July 23, 2020 (the "Agreement"); and

WHEREAS, the parties desire to amend certain terms and conditions of the Agreement as set forth herein.

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

1. **Defined Terms.** Capitalized terms used but not defined herein shall have the meanings ascribed to them in the Agreement.

2. **Master License Terms and Conditions.** The parties agree to amend certain terms and conditions contained in the Master License Terms and Conditions as follows:

a. **Changes to Platform, Service and Fees (Section 9).** The following sentence shall be added to the end of Section 9:

"Notwithstanding the foregoing, during the initial Term of a License Agreement, Veritone will not adjust the Fees under such License Agreement."

b. **Limitation of Liability.** Section 13.2 shall be deleted in its entirety and replaced with the following:

"EXCEPT WITH RESPECT TO VERITONE'S INDEMNIFICATION OBLIGATIONS HEREUNDER, VERITONE'S LIABILITY FOR DAMAGES ARISING OUT OF, RELATING TO OR IN ANY WAY CONNECTED WITH THIS AGREEMENT SHALL IN NO EVENT EXCEED _____ TIMES THE FEES PAID BY LICENSEE TO VERITONE DURING THE TERM."

c. **Controlling Law (Section 14.4).** The first sentence of Section 14.4 shall be deleted in its entirety and replaced with the following:

"This Agreement shall be governed by and construed in accordance with the laws of the State of Florida (other than the conflict of law rules) and subject to the sole jurisdiction of the courts sitting in Lake County, Florida."

3. **Other Terms Unchanged.** Except as expressly amended hereinabove, all other terms and conditions set forth in the Agreement shall remain in full force and effect, and the Agreement, as amended by this Amendment, shall continue to be binding on the parties hereto.

IN WITNESS WHEREOF, the parties have caused this Amendment to be executed and delivered by their duly authorized representatives as of the Effective Date.

VERITONE, INC

LICENSEE

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____

Date: _____

Date: _____

VERITONE, INC.

MASTER LICENSE TERMS AND CONDITIONS

These Master License Terms and Conditions (“Terms and Conditions”) apply to any License Agreement related to a license to access and use the Platform and associated Services (as such capitalized terms are defined hereinbelow).

- 1. License Agreement; Controlling Terms.** For purposes hereof, “License Agreement” shall mean the written license agreement, order form, subscription form, statement of work or other written document that evidences the purchase by a licensee (“Licensee”) of a license to access and use the Platform and Services from Veritone, Inc. or one of its subsidiaries (collectively, “Veritone”), either directly or through an authorized reseller of Veritone. The Platform means the Veritone aiWARE™ artificial intelligence operating system, which delivers near real-time media processing and analytics, enabling users to process, index, organize, manage, search, analyze and share audio, video and other data through a suite of applications and other services (collectively, the “Services”). The specific Services, fees and payment terms, amount of content processing, storage and/or data transfer (as applicable), number of authorized users (as applicable), and the term of the license shall be as set forth in the License Agreement. The License Agreement may also contain other license-specific terms and conditions. In the case of a License Agreement entered into directly between Veritone and Licensee, (a) the License Agreement and these Terms and Conditions are collectively referred to herein as this “Agreement”; (b) in the event of any conflict or inconsistency among the terms and conditions set forth in the License Agreement and in these Terms and Conditions, the rights and obligations of the parties shall be interpreted based on the following order of priority: (1) the License Agreement and (2) these Terms and Conditions; and (c) this Agreement constitutes the complete and exclusive agreement between Veritone and Licensee with respect to the Platform and Services, superseding and replacing any and all prior agreements, communications, and understandings, both written and oral, regarding such subject matter, and no additional or different provision contained in any purchase order form, order acknowledgment form, invoice or similar form of either party will be effective. In the case of a License Agreement entered into between Licensee and an authorized reseller of Veritone, these Terms and Conditions are referred to herein as this “Agreement” and represent the agreement between Veritone and Licensee governing the license(s) to the Platform and Services being purchased by Licensee from such reseller under that separate License Agreement, and Licensee acknowledges and agrees that Veritone is an intended third party beneficiary of such License Agreement with respect to this Agreement and, therefore, may enforce its rights hereunder directly against Licensee.
- 2. License, Reservation of Rights, Restrictions.**

 - 2.1. License.** Veritone hereby grants to Licensee, during the Term (as defined in Section 7 below), a non-transferable, non-sublicensable, non-exclusive, revocable license to access and use the Platform and Services, subject to the terms and conditions set forth in this Agreement (the “License”). Licensee agrees to use the Platform and Services only for its internal business purposes in accordance with the terms of this Agreement. For the avoidance of doubt, the Platform and Services and its content may not be displayed publicly; provided that, subject to the provisions of Section 2.4 (Restrictions) and Section 11 (Indemnification) of this Agreement, Licensee may post, publish or otherwise share its owned or licensed content via the Platform for which sharing capabilities are enabled during the Term in accordance with the terms of this Agreement.
 - 2.2. Reservation of Rights.** The Platform and Services are licensed by Veritone to Licensee, and not sold. Licensee acquires only the right to use the Platform and Services in accordance with this Agreement and does not acquire any rights of ownership. Nothing herein shall be construed to transfer any rights, title or ownership of any Veritone or Veritone-licensed software, technology, materials, information or Intellectual Property Rights to Licensee. All right, title and interest (including all Intellectual Property Rights) in and to the Platform and Services shall at all times remain the sole and exclusive property of Veritone and/or its respective licensors and all use thereof shall inure to the benefit of Veritone and/or its respective licensors. Except as expressly set forth in this Agreement, no right or license, express or implied, is granted to Licensee or any third party by estoppel, implication, exhaustion or other doctrine of law, equity or otherwise with respect to any product, service, software, technology, materials, information or Intellectual Property Rights of Veritone or its affiliates or licensors. “Intellectual Property Rights” means all forms of proprietary rights, titles, interests, and ownership including patents, patent rights, copyrights, trademarks, trade dresses, trade secrets, know-how, mask works, *droit moral* (moral rights), publicity rights and all similar rights of every type that may exist now or in the future in any jurisdiction, including without limitation all applications and registrations therefore and rights to apply for any of the foregoing.
 - 2.3. Third Party Licenses.** Certain software components of the Platform and Services are supplied pursuant to license agreements from third parties, and Licensee agrees that Licensee’s use of the Platform and Services shall be subject to the provisions of such third party license agreements.

2.4. Restrictions.

2.4.1. License Restrictions. Licensee agrees to use the Platform and Services only for lawful purposes and only as expressly authorized under this Agreement. Without limiting the generality of the foregoing, except as expressly authorized hereunder, Licensee agrees that it shall not, directly or indirectly: (i) license, sublicense, sell, resell, rent, lease, transfer, assign, distribute, display or otherwise make the Platform or Services, in whole or in part, including any content or data derived therefrom that is not directly owned by Licensee or for which Licensee has all necessary rights, available to any third party, or use the Platform or Services to provide services to any third party; (ii) reverse engineer, decompile, disassemble, modify, translate, reconstruct, omit, distort, obscure, copy or create derivative works of all or any portion of the Platform, Services, any underlying software, or any other Veritone Property (as defined below), or otherwise attempt to access the source code of the Platform or Services; (iii) incorporate any portion of the Platform or Services into Licensee's own programs or compile any portion of them in combination with Licensee's own programs; (iv) store or otherwise capture to physical media, or enable a third party to store or capture, the Platform or Services or any portion thereof; (v) permit any persons, other than Licensee's authorized users for which Licensee has procured User IDs pursuant to the License Agreement, to access and use the Platform or Services; or (vi) violate any laws, rules or regulations in connection with its use of the Platform or Services, including any data or content contained in, transmitted through or derived therefrom.

2.4.2. Prohibited Acts. Licensee acknowledges and agrees that Licensee is prohibited from doing any act that may have the effect of undermining the integrity of the Platform, Services, any related computer systems, infrastructure or environment, or the methods by which Veritone provides Services to users. Without limiting the generality of the foregoing, Licensee agrees that it shall not, directly or indirectly: (i) defeat, circumvent or modify any authentication technology or other security measures, controls, limitations, or content or functionality filters contained in or associated with the Platform or Services, or otherwise attempt to access any aspect of the Platform or Services that Licensee has not been granted authorization to access under the License Agreement; (ii) deploy or facilitate the use or deployment of any script, routine, robot, spider, scraper or any other automated means, method or device with respect to Licensee's access and use of the Platform and Services for any purpose, including to access, view, select, or copy in whole or in part, any content, program, functionality of the Platform or Services, or any other proprietary information or trade secret of Veritone that is made available through the Platform or Services; (iii) deploy or facilitate the use or deployment of any program, system, means, method or device, for any purpose that places an unreasonable, unnecessary or excessive demand or load on the Platform, Services, or related hardware and connections, or prohibits, denies or delays access to Services by other users or otherwise threatens the continuous services of Veritone's ISPs, suppliers and vendors; (iv) introduce into the Platform or Services any program, executable file or routine (such as a worm, Trojan horse, cancel-bot, time bomb or virus) irrespective of whether any such program or routine results in detrimental harm to the Platform, Services, or any underlying systems or programs; (v) remove any proprietary notices, labels or marks from the Platform or Services; (vi) establish any direct or deep link or other connection to any specific page or location within the Platform or Services, other than the Platform log-in page; (vii) use or attempt to use another user's account without authorization, or interfere with another user's access to the Platform or Services; or (viii) access or use the Platform or Services to design, develop, build, market or support a competitive product or service.

2.4.3. Content and Data Restrictions. Licensee agrees that it shall not: (i) upload or transmit through the Platform or Services any material, content, media or data (collectively, "Content") with respect to which Licensee does not either own all right, title and interest or have the appropriate license(s) for lawful use, or otherwise violate or infringe upon the intellectual property rights of any third party in Licensee's use of the Platform or Services, including the use or distribution of any data derived from the Platform or Services; or (ii) upload or transmit through the Platform or Services any Content which: (1) is unlawful, threatening, abusive, defamatory, invasive of privacy or publicity rights, vulgar, obscene, profane or otherwise objectionable; (2) encourages conduct that would constitute a criminal offense, give rise to civil liability or otherwise violate any law; or (3) creates or attempts to create any liability of Veritone.

3. Access and Use. Veritone will enable Licensee to access and use the Platform for the duration of the Term, subject to any early termination of this Agreement in accordance with the terms hereof. Access to the Platform will be through unique log-in credentials assigned to Licensee by Veritone (each, a "User ID"). Licensee shall be given that number of User IDs as specified in the License Agreement. Licensee will provide accurate and complete information in registering its authorized users for account access. Licensee acknowledges and agrees that the log-in credentials assigned hereunder are Confidential Information and may only be used by Licensee and its authorized users to access the Platform in accordance with the terms of this Agreement, and that Licensee will not publish, share, or otherwise enable any third party, directly or indirectly, to

access the Platform for any purpose. Licensee further agrees that Licensee is responsible for its and its authorized users' use of the Platform, including use via the User IDs, and for any consequences thereof. Licensee agrees to immediately notify Veritone of any unauthorized or improper use of any log-in credentials of Licensee. All of the rights, obligations, restrictions, representations and warranties related to Licensee's access and use of the Platform under this Agreement shall apply to Licensee and all of Licensee's employees, contractors, consultants, representatives and agents (collectively, "Representatives"). Licensee shall be responsible for all acts and omissions of its Representatives in the performance of this Agreement and for any breach of this Agreement by any of its Representatives.

4. Intellectual Property.

4.1. Veritone Property. As between Veritone and Licensee, Veritone and/or its respective licensors retain all right, title and interest (including Intellectual Property Rights) in and to the Platform and Services, including, but not limited to any elements, components, content, technology, software, code, documentation, derivative works, revisions, enhancements, modifications, condensations and/or compilations of or relating to the Platform and Services, and any trademarks, brand identifiers, materials and information, which are created, authored, developed, conceived and/or reduced to practice by Veritone and/or its respective licensors, including in connection with Veritone's provision of the Platform and Services to Licensee under this Agreement ("Veritone Property").

4.2. Licensee Property. As between Licensee and Veritone, Licensee retains all right, title and interest (including Intellectual Property Rights) in and to Licensee's Content, and any software, technology, trademarks, brand identifiers, materials and information which are independently created, authored, developed, conceived or reduced to practice by Licensee.

5. Licensee Content.

5.1. Content Ownership. Licensee represents and warrants that (i) Licensee and/or its licensors own all right, title and interest in and to all Content uploaded to or transmitted through the Platform or Services, or otherwise have all rights in such Content as necessary to use the same in connection with Licensee's use of the Platform and Services, (ii) such Content does not and will not misappropriate or infringe upon any third party's Intellectual Property Rights, or violate any other rights of any third party, and (iii) Licensee has all rights in such Content necessary to grant the rights contemplated by this Agreement.

5.2. License to Content. Unless otherwise specified in the License Agreement, Licensee hereby grants to Veritone a non-exclusive, royalty-free, worldwide license (i) to use and display all Content that Licensee provides to Veritone or that are otherwise uploaded to or captured by the Platform through Licensee's use of the Platform and Services to provide the Services and perform its obligations under this Agreement, directly or through its third party service providers, (ii) to share such Content with Veritone's third party service providers (and, where applicable, with Licensee's third party Representatives) in connection with Veritone's provision of the Platform and Services to Licensee, and (iii) to create aggregated or redacted forms of Content that do not identify Licensee or any of Licensee's users for Veritone's business purposes, including improvements and enhancements to the Platform and Services.

5.3. Third Party Data Sources. To the extent that any Content provided by Licensee includes data from third party sources, or Licensee is otherwise granted access to data from third party sources through the Services, Licensee represents that it holds a valid and current license from such third party data sources to access and use such data (each, a "Data License"). Licensee acknowledges and agrees that certain analytics functionality offered as part of the Services will not be available to Licensee without Licensee's licensed right to access and use any and all such third party data. Licensee agrees to notify Veritone promptly upon the expiration or termination of any such Data License.

6. Feedback. During the Term, Licensee may provide Veritone with such written evaluations, comments and/or suggestions (collectively, "Feedback") regarding the Platform or Services. Licensee acknowledges and agrees that any Feedback provided to Veritone by Licensee hereunder shall be deemed to be Veritone Property and Licensee hereby assigns all right, title and interest in and to such Feedback to Veritone and acknowledges that Veritone will be entitled to, without limitation, implement and exploit any such Feedback in any manner without any restriction or obligation. Notwithstanding the foregoing, Licensee acknowledges that Veritone is not obligated to act on any such Feedback.

7. Term and Termination.

7.1. Term. The term of this Agreement and the License shall be as set forth in the License Agreement (the "Term").

7.2. Termination. In addition to any termination rights expressly provided in the License Agreement, this Agreement may be terminated by either party if the other party (i) materially breaches any provision of this Agreement which remains uncured for a period of fourteen (14) days from the date of written notice of such breach; or (ii) makes an assignment

for the benefit of its creditors, is declared insolvent, or has a receiver or trustee in bankruptcy appointed to take charge of all or part of such party's property.

7.3. Effect of Termination. If at any time this Agreement is terminated, or upon expiration of the Term, (i) the License and all other rights granted to Licensee herein shall automatically terminate, (ii) Licensee shall immediately cease using the Platform and Services and shall comply with the Purge Obligation (defined below) with respect to the Platform, and (iii) Licensee shall no longer have access via the Platform to (x) any of the content uploaded to the Platform by Licensee or (y) any of the content, data or analytics derived from any Licensee uploaded content or Platform content that remains hosted on the Platform. As used herein, "Purge Obligation" means the complete deletion of all files on Licensee's computer systems, or other storage device or media under Licensee's ownership or control that contain copies of the Platform, or any portion thereof, including but not limited to, any data compiled by Licensee captured or otherwise obtained from or through the use of the Platform. Veritone shall have no liability to Licensee for any changes, limitations, suspensions, disablements, terminations or discontinuances of the Platform, or this Agreement.

7.4. Survival. The provisions of Sections 2.2 (Reservation of Rights), 4 (Intellectual Property), 6 (Feedback), 7.3 (Effect of Termination), 8.1 (Fees and Payments), 8.2 (Taxes), 10 (Confidentiality), 11 (Indemnification), 12.2 and 12.3 (Warranty and Disclaimers), 13 (Limitation of Liability), 14 (Miscellaneous) hereof and the payment terms of License Agreement, as applicable, shall survive the expiration or any early termination of this Agreement for any reason.

8. Fees, Charges and Payments.

8.1. Fees and Payments. In consideration for the License and Licensee's access and use of the Platform and Services, Licensee shall pay the license fees, and any applicable additional fees, as set forth in the License Agreement (collectively, the "Fees"). All Fees and other amounts due under this Agreement are payable in U.S. dollars.

8.2. Taxes. All Fees and any other amounts due hereunder are exclusive of taxes and similar assessments which may be imposed on the delivery of the Platform and Services and any other transactions contemplated hereby. Licensee shall be solely responsible for the payment of any and all sales, use, value added, excise, import, or other similar taxes or payments in lieu thereof, including interest and penalties thereon, imposed by any authority, government or governmental agency arising out of or in connection with amounts due hereunder (other than those levied on Veritone's income), and Licensee shall make such payments, and timely file any return or information required by treaty, law, rule or regulation. Upon request, Licensee shall provide Veritone with documentation evidencing such payments. If Veritone is required to pay any such taxes, duties or fees, Licensee shall reimburse Veritone immediately upon receipt of Veritone's invoice thereof.

8.3. Suspension of Platform Access. In addition to Veritone's termination rights set forth herein and without prejudice to any other rights of Veritone at law or in equity, Veritone may suspend its performance under this Agreement and any other agreement with Licensee and Licensee's access to the Platform if Licensee fails to comply with any part of its payment obligations set forth herein. Such suspension of service shall not suspend or otherwise affect Licensee's payment obligations set forth herein.

9. Changes to Platform, Service and Fees. Veritone may, from time to time, in its sole discretion, make changes to the Platform and Services, or a portion thereof including, without limitation, formats, content, reports, functionality, and/or techniques ("Service Change"). In the event of a Service Change, Veritone may, adjust the Fees for the Platform and Services ("Fee Change") in writing. Such Fee Change shall become effective on the date stated in Veritone's notice to Licensee unless, within fifteen (15) days after a Fee Change notice that would result in an increase in the Fees, Licensee notifies Veritone in writing of its refusal to accept the Fee Change, in which event the applicable License to Licensee shall terminate as of the effective date of the change; provided, however, that if the Fee Change is an increase in the Fees, Veritone may, in its sole discretion, elect to rescind the Fee Change, in which case the Platform and Services, as changed, shall continue as provided herein.

10. Confidentiality.

10.1. Confidential Information. Each party (a receiving party) acknowledges and agrees that during the Term and in the course of using the Platform and Services and performing its duties under this Agreement, it may obtain information relating to the other party (a disclosing party), its and/or its customers', vendors', or third party service providers' business or technologies, which is of a confidential and proprietary nature ("Confidential Information"). Such Confidential Information may include, but is not limited to, trade secrets, know-how, inventions, techniques, processes, software, algorithms, programs, schematics, data, technology roadmap, sales and marketing plans, and any other information which the receiving party knows or has reason to know is, or which by its nature would reasonably be considered to be, confidential, proprietary or trade secret information of the other party. Without limiting the foregoing, Confidential Information of Veritone shall include the Platform, Services and all associated software and documentation, as well as Feedback or any results of the evaluation or testing of the Platform or Services. The receiving party shall at all times,

both during the Term and for a period of three (3) years after its termination (or, in the case of the Platform, Services and any associated software or trade secrets, in perpetuity), keep in trust and confidence all Confidential Information of the disclosing party, and shall not (i) use such Confidential Information other than as expressly authorized under this Agreement or as required for the receiving party to perform its obligations under this Agreement, or (ii) disclose any Confidential Information of the disclosing party to third parties (other than to Veritone's third party service providers in connection with the performance of its obligations under this Agreement), without the disclosing party's prior written consent. The receiving party further agrees to immediately return to the disclosing party or destroy all Confidential Information (including all copies, extracts and summaries thereof) in the receiving party's possession, custody, or control upon the expiration or any termination of this Agreement. The obligations of confidentiality shall not apply to information which (a) has entered the public domain except where such entry is the result of the receiving party's breach of this Agreement; (b) prior to disclosure hereunder, was already in the receiving party's possession and not subject to any confidentiality obligations, as demonstrated by written evidence; (c) subsequent to disclosure hereunder is obtained by the receiving party on a non-confidential basis from a third party who has the right to disclose such information to the receiving party; or (d) has been independently developed by the receiving party without use of or reference to the disclosing party's Confidential Information, as demonstrated by written evidence.

10.2. Permitted Disclosures. The receiving party may make disclosures (i) as required by applicable law or the rules of a stock exchange on which such party's shares are then traded; or (ii) as compelled by court order issued by a court of competent jurisdiction provided that the receiving party subject to such court order (a) provides the disclosing party with prompt written notice of any such compelled disclosure, (b) uses diligent reasonable efforts to limit disclosure, (c) uses commercially reasonable efforts to obtain confidential treatment or a protective order in connection with the information subject to such compelled disclosure, and (d) allows the disclosing party to participate in any such proceeding.

11. Indemnification.

11.1. Licensee Indemnification of Veritone. Licensee will defend, indemnify and hold harmless Veritone and its subsidiaries, affiliates, successors, assigns, licensors, and their respective members, officers, directors, employees, licensors, agents, from and against any liability or expense, including, without limitation, any expenses, losses, damages, judgments, litigation costs and reasonable attorneys' fees, that Veritone may incur as a result of any claim, suit or proceeding brought against Veritone by any third party arising or resulting from (a) Licensee's breach of any representation, warranty, covenant or obligation contained in this Agreement; or (b) Licensee's use of the Platform or Services (including uploading, using, publishing, posting or otherwise sharing of Licensee's Content or any other data or content derived from the Platform or Services) in any manner that violates this Agreement, any laws, rules, regulations, or any third party terms and conditions, or that violates, misappropriates or infringes the rights (including Intellectual Property Rights) of any third party; *provided that* Veritone gives Licensee prompt notice of any such claims, cooperates with Licensee in responding to such claims, and permits Licensee to control the defense or settlement of such claims, subject to Veritone's right to (i) conduct the defense of such claims at Veritone's expense, or participate in the defense of such claims with its own counsel at its own expense, and (ii) approve any settlement that binds or purports to bind Veritone.

11.2. Veritone Indemnification of Licensee. Veritone will defend, indemnify and hold harmless Licensee and its subsidiaries, affiliates, successors, assigns, licensors, and their respective members, officers, directors, employees, licensors, agents, from and against any liability or expense, including without limitation, any expenses, losses, damages, judgments, litigation costs and reasonable attorneys' fees, that Licensee may incur as a result of any claim, suit or proceeding brought against Licensee by any third party arising or resulting from any allegation that the Platform or Services, or any part thereof, misappropriates or infringes upon any third party's Intellectual Property Rights, except to the extent such claims arise from Licensee's negligence, misconduct or violation of any terms of this Agreement; *provided that* Licensee gives Veritone prompt notice of any such claims, cooperates with Veritone in responding to such claims, and permits Veritone to control the defense or settlement of such claims, subject to Licensee's right to (i) conduct the defense of such claims at Licensee's expense, or participate in the defense of such claims with its own counsel at its own expense, and (ii) approve any settlement that binds or purports to bind Licensee. If the Platform, in whole in part, becomes or, in Veritone's opinion is likely to become, the subject of an infringement claim or action, Veritone may, at its option: (x) procure, at no cost to Licensee, the right for Licensee to continue using the Platform; (y) replace or modify the Platform to render the Platform non-infringing, provided there is no material loss of functionality; or (z) if, in Veritone's reasonable opinion, neither (x) nor (y) above is commercially feasible, terminate this Agreement and refund any prepaid amounts for unused Services during the terminated portion of the Term. The foregoing states Veritone's sole obligation and Licensee's exclusive remedy in the event any such infringement claim or action is commenced or is likely to be commenced.

12. Warranties and Disclaimers.

- 12.1. Mutual Warranties.** Each party represents and warrants to the other that: (i) it is duly organized and validly existing under the laws of the jurisdiction of its incorporation or formation, and has full power, rights and authority to enter into this Agreement and carry out its obligations hereunder; (ii) the person executing this Agreement is authorized to do so on its behalf; (iii) this Agreement is valid and legally binding upon it; and (iv) the execution, delivery and performance thereof by such party does not conflict with any other agreement, instrument or understanding to which it is a party or by which it may be bound, nor would violate any applicable law or regulation.
- 12.2. Disclaimer.** THE PLATFORM, SERVICES AND ANY OTHER VERITONE PRODUCTS AND SERVICES ARE PROVIDED ON AN "AS IS" AND "AS AVAILABLE" BASIS. EXCEPT AS EXPRESSLY PROVIDED IN THIS AGREEMENT, VERITONE MAKES NO WARRANTY, EXPRESS OR IMPLIED, WITH RESPECT TO THE PLATFORM AND SERVICES, INCLUDING, WITHOUT LIMITATION, ANY WARRANTY AS TO THE ACCURACY OF PROCESSING RESULTS, ANY WARRANTY OF MERCHANTABILITY, QUALITY OR FITNESS FOR A PARTICULAR PURPOSE, WARRANTIES ARISING FROM COURSE OF DEALING OR USAGE OF TRADE, AND WARRANTIES OF NON-INFRINGEMENT. VERITONE DOES NOT WARRANT THAT THE PLATFORM AND SERVICES ARE ERROR-FREE, WILL RUN UNINTERRUPTED, OR THAT ALL ERRORS CAN OR WILL BE CORRECTED. NO ADVICE OR INFORMATION, WHETHER ORAL OR WRITTEN, OBTAINED BY LICENSEE FROM VERITONE SHALL CREATE ANY SUCH WARRANTY. LICENSEE HAS BEEN ADVISED AND AGREES THAT NOTWITHSTANDING ANYTHING IN THIS AGREEMENT TO THE CONTRARY, VERITONE DOES NOT REPRESENT, WARRANT OR COVENANT THAT IT HAS SECURED ALL NECESSARY RIGHTS WITH RESPECT TO ANY PUBLIC MEDIA MONITORED AND/OR RECORDED BY THE PLATFORM AND IT IS LICENSEE'S SOLE RESPONSIBILITY TO IDENTIFY, SOLICIT AND OBTAIN ANY NECESSARY RIGHTS AND APPROVALS FOR ITS USE THEREOF.
- 12.3.** LICENSEE ACKNOWLEDGES AND AGREES THAT THE INTERNET IS A PUBLIC NETWORK OVER WHICH VERITONE EXERTS NO CONTROL. VERITONE MAKES NO REPRESENTATIONS OR WARRANTIES WHATSOEVER, AND SHALL HAVE NO LIABILITY WHATSOEVER, WITH RESPECT TO THE ACCURACY, DEPENDABILITY, PRIVACY, SECURITY, AUTHENTICITY OR COMPLETENESS OF DATA TRANSMITTED OVER OR OBTAINED USING THE INTERNET, OR ANY INTRUSION, VIRUS, DISRUPTION, LOSS OF COMMUNICATION, LOSS OR CORRUPTION OF DATA, OR OTHER ERROR OR EVENT CAUSED OR PERMITTED BY OR INTRODUCED THROUGH LICENSEE'S USE OF THE INTERNET. LICENSEE IS SOLELY RESPONSIBLE FOR IMPLEMENTING ADEQUATE FIREWALL, PASSWORD AND OTHER SECURITY MEASURES TO PROTECT ITS SYSTEMS, DATA AND APPLICATIONS FROM UNWANTED INTRUSION, WHETHER OVER THE INTERNET OR BY OTHER MEANS.

13. Limitation of Liability.

- 13.1.** EXCEPT FOR (A) BREACHES OF EACH PARTY'S OBLIGATIONS UNDER SECTION 10 (CONFIDENTIALITY), AND (B) AMOUNTS FINALLY AWARDED OR SETTLED IN A THIRD PARTY CLAIM FOR WHICH A PARTY IS RESPONSIBLE UNDER SECTION 11 (INDEMNIFICATION), NEITHER PARTY, INCLUDING ITS OFFICERS, DIRECTORS, EMPLOYEES, REPRESENTATIVES AND AFFILIATES, SHALL BE LIABLE FOR ANY INDIRECT, INCIDENTAL, SPECIAL, CONSEQUENTIAL, OR PUNITIVE DAMAGES, INCLUDING WITHOUT LIMITATION, LOST DATA OR LOST PROFITS, OR COSTS OF PROCURING SUBSTITUTE GOODS OR SERVICES, HOWEVER ARISING, EVEN IF IT HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.
- 13.2.** EXCEPT WITH RESPECT TO VERITONE'S INDEMNIFICATION OBLIGATIONS HEREUNDER, VERITONE'S LIABILITY FOR DAMAGES ARISING OUT OF, RELATING TO OR IN ANY WAY CONNECTED WITH THIS AGREEMENT SHALL IN NO EVENT EXCEED THE FEES PAID BY LICENSEE TO VERITONE DURING THE TERM.

14. MISCELLANEOUS

- 14.1. No Assignment.** Neither party may assign any of its rights or obligations under this Agreement without the prior written consent of the other party, except that either party may assign its rights and obligations under this Agreement without the consent of the other party to an affiliate directly or indirectly controlling, controlled by, or under direct or indirect common control with such party or in connection with any merger (by operation of law or otherwise), consolidation, reorganization, change in control or sale of all or substantially all of its assets related to this Agreement or similar transaction. This Agreement inures to the benefit of and shall be binding on the parties' permitted assignees, transferees and successors.
- 14.2. Severability.** If any provision of this Agreement is found by a court of competent jurisdiction to be invalid, the parties nevertheless agree that the court should endeavor to give effect to the parties' intentions as reflected in such provision, and the other provisions of this Agreement remain in full force and effect.
- 14.3. No Waiver.** The failure of either party to exercise or enforce any right or provision of this Agreement shall not constitute a waiver of such right or provision.

- 14.4. Controlling Law.** This Agreement shall be governed by and construed in accordance with the laws of the State of California (other than the conflict of law rules) and subject to the sole jurisdiction of the courts sitting in Orange County, California. Notwithstanding the foregoing, nothing in this Section 14.4 shall be deemed to limit the parties' rights to seek injunctive relief in any other court of law of competent jurisdiction.
- 14.5. Independent Contractors.** This Agreement does not create any relationship other than Veritone as an independent contractor performing services covered by this Agreement and Licensee as the party contracting with Veritone for those services. No party is a partner or a legal representative of the other for any purpose whatsoever, nor is any party authorized to make any contract, agreement or warranty on behalf of any other party. Under no circumstance shall one party's employees be construed to be employees of the other party.
- 14.6. Publicity.** Except as required or compelled by applicable law, the rules of any stock exchange, or a court order issued by a court of competent jurisdiction, neither party will make any public statement regarding, or disclose, advertise or publish the terms and conditions of this Agreement without the prior written consent of the other party; provided, however, that Veritone may reference Licensee on Veritone's website, other marketing and media relations materials, investor relations materials, and as a customer in Veritone's SEC filings.
- 14.7. Notices.** All notices to either party shall be in writing and delivered by hand or by certified mail or overnight delivery service to the address set forth by Licensee and/or Veritone in the License Agreement, or to such other address as either party shall give by notice to the other party. Alternatively, the parties may, at their election, utilize email as the method of delivery of any such notice to be provided hereunder. Any such notices sent by email shall be delivered to the email addresses set forth in the License Agreement, or such other email address as designed by a party during the Term. Notices shall be deemed effective when delivered to the applicable address, unless any such notice is sent by email, in which event, notice shall be deemed effective upon confirmation of delivery by a "read receipt" or other such notice generated by the applicable email system, but in any event, by reply of the recipient of such notice.
- 14.8. Electronic Communication.** In connection with its use of the Platform and Services, Licensee consents to receiving communications from Veritone electronically. Veritone will communicate with Licensee by e-mail or by posting notices on the Platform or through any Services. Licensee agrees that all notices, disclosures and other communications that Veritone provides to Licensee electronically satisfy any legal requirement that such communications be in writing.
- 14.9. Force Majeure.** Except for the obligation to make payments of any Fees or any other amounts due hereunder, neither party will be liable for any failure or delay in its performance under the Agreement due to any cause beyond such party's control including acts of war, terrorism, acts of God, embargo, riot, sabotage, labor shortage or dispute, governmental act, or failure of the Internet, or any component comprising or operating the network infrastructure thereof (each, a "Force Majeure Event"), provided that the delayed party: (i) gives the other party prompt notice of such cause, and (ii) uses its reasonable commercial efforts to promptly correct such failure or delay in performance. If Veritone is unable to provide Service(s) for a period of one hundred and twenty (120) consecutive days as a result of a continuing Force Majeure Event, either party may elect to terminate this Agreement.
- 14.10. Construction.** This Agreement shall be fairly interpreted and construed in accordance with its terms and without strict interpretation or construction in favor of or against either party. Each party has had the opportunity to consult with counsel in the negotiation of this Agreement.
- 14.11. Counterparts.** This Agreement may be executed in one or more counterparts (including fax or email) each of which shall be deemed an original but all of which taken together shall be deemed one and the same instrument.
- 14.12. Headings.** Unless otherwise expressly stated in this Agreement, the words "herein," "hereof," "hereto," and "hereunder" and other words of similar import refer to this Agreement as a whole and not to any particular section, subsection, or other subdivision. The words "include" and "including" shall not be construed or interpreted as terms of limitation. The words "day," "month," and "year" mean, respectively, calendar day, calendar month, and calendar year. Section headings are for reference purposes only, and should not be used in the interpretation hereof.
- 14.13. Amendment.** No addendum, waiver, consent, modification, amendment or change of the terms of this Agreement shall bind either party unless in a writing that references this Agreement and is signed by duly authorized representatives of Licensee and Veritone.
- 14.14. Attorney's Fees.** If any action arises under this Agreement, including, without limitation the interpretation or enforcement of any term of this Agreement, the prevailing party in any such action shall be entitled to recover its reasonable attorney's fees and related costs.

**CITY OF FRUITLAND PARK
AGENDA ITEM SUMMARY SHEET
Item Number: 6e**

ITEM TITLE: Resolution 2020-028 Planning Services Agreement
For the Meeting of: July 23, 2020
Submitted by: City Attorney/City Manager/Community
Development Director
Date Submitted: July 14, 2020
Funds Required: No.
Attachments: Proposed Resolution 2020-028, Planning Services
Agreement and "Exhibit A": Public Rate Schedule.

Item Description: Resolution 2020-028 approving the agreement
between the City of Fruitland Park and LPG Urban & Regional Planners, Inc., for professional
planning services.

Action to be Taken: Adopt Resolution 2020-028

Staff's Recommendation: Approval

Additional Comments: None

City Manager Review: Yes

Mayor Authorization: Yes

RESOLUTION 2020-028

A RESOLUTION OF THE CITY COMMISSION OF THE CITY OF FRUITLAND PARK, FLORIDA, APPROVING THE PLANNING SERVICES AGREEMENT BETWEEN THE CITY OF FRUITLAND PARK AND LPG URBAN & REGIONAL PLANNERS, INC. FOR PROFESSIONAL PLANNING SERVICES; PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the City of Fruitland Park, Florida, a municipal corporation organized and existing under the laws of the State of Florida (hereafter the "CITY") needs professional planning services in various development and planning projects, and LPG Urban & Regional Planners, Inc. desires to continue providing these services to the City; and

WHEREAS, the City Commission of the City of Fruitland Park, Florida finds it prudent to enter into an agreement with a third-party professional planning group that is capable of providing on-call planning services, special project planning services, GIS technologies, and other services to the City; and

WHEREAS, LPG Urban & Regional Planners, Inc. currently provide such services to the City and the City is very satisfied with its services and desires to continue utilizing its services; and

WHEREAS, the City Commission of the City of Fruitland Park, Florida desires to approve the Planning Services Agreement and finds it is beneficial to the City, its residents, businesses and development community.

NOW, THEREFORE, BE IT RESOLVED AS FOLLOWS:

Section 1. The Planning Services Agreement, a copy of which is attached hereto, is approved.

Section 2. The Commission authorizes the Mayor to execute the Planning Services Agreement.

Section 3. This resolution shall take effect immediately upon its final adoption by the City Commission of the City of Fruitland Park, Florida.

PASSED AND RESOLVED this 9th day of July, 2020, by the City Commission of the City of Fruitland Park, Florida.

SEAL

CITY COMMISSION OF THE CITY OF
FRUITLAND PARK, FLORIDA

Chris Cheshire, Mayor

ATTEST:

ESTHER COULSON, CITY CLERK

Commissioner Bell _____ (Yes), _____ (No), _____ (Abstained), _____ (Absent)
Vice Mayor Gunter _____ (Yes), _____ (No), _____ (Abstained), _____ (Absent)
Commissioner DeGrave _____ (Yes), _____ (No), _____ (Abstained), _____ (Absent)
Commissioner Mobilian _____ (Yes), _____ (No), _____ (Abstained), _____ (Absent)
Mayor Cheshire _____ (Yes), _____ (No), _____ (Abstained), _____ (Absent)

Approved as to form and legality:

Anita Geraci-Carver, City Attorney

PLANNING SERVICES AGREEMENT

This Agreement is made and entered into on this ___ day of _____, 2020, by and between the **CITY OF FRUITLAND PARK, FLORIDA**, a municipal corporation (hereinafter referred to as “CITY”), 506 W. Berckman Avenue, Fruitland Park, Florida 34731, and **LPG URBAN & REGIONAL PLANNERS, INC.**, a Florida corporation, (hereinafter referred to as “CONSULTANT”), located at 1162 Camp Avenue, Mt. Dora, Florida 32757.

RECITALS

WHEREAS, the CITY desires for CONSULTANT to provide professional planning services to the CITY in various development and planning projects/assignments upon terms and conditions set forth below, and CONSULTANT also desires to undertake these tasks and assist the CITY; and

WHEREAS, CONSULTANT has represented, upon which CITY has relied to its detriment, that CONSULTANT is qualified and competent to perform such services.

NOW, THEREFORE, in consideration of the premises and mutual covenants hereinafter set forth, CITY and CONSULTANT agree as follows:

1. SCOPE OF PROFESSIONAL SERVICES

A. The following services will be provided on an as-needed, on-call basis:

- Review of land development applications and supporting documents plans, including but not limited to comprehensive plan amendments, rezoning, annexation, residential and commercial plats, site plans, plats, and other documents submitted to the CITY seeking development approvals.
- Attend meeting with CITY staff and applicants.
- Attend planning and zoning meetings, and city commission meetings.
- Communicate and coordinate with other CITY consultant’s.
- Communicate and coordinate with DEO and other governmental agencies relating to planning.

The CITY and CONSULTANT agree that tasks outlined in paragraph 1.A. above do not require specific work orders or approvals. Such work may be authorized by verbal direction of the City Manager or designee, or through phone, mail or email communication from the City Manager or designee. It is agreed by the CITY and CONSULTANT that the services outlined below will be compensated in accordance with CONSULTANT’S fee scheduled as **Exhibit A**.

B. Upon request by the CITY, CONSULTANT will provide services such as, but not limited to the following,

- Specific planning guidance including but not limited to review and revise the City's Comprehensive Plan, review and revise the City's land development code, propose new land development regulations as deemed by Consultant to be beneficial to the CITY.
 - Creation of specific purpose maps and drawings GIS technologies.
 - Preparation of studies to support establishment or updating of Community Redevelopment Plan for the CITY's CRA.
 - Such other planning services as may be required and requested by CITY.
- C. Upon request for services outlined in paragraph 1.B above, CONSULTANT shall provide the CITY with specific PROPOSAL containing a scope of work and project fee.
- D. Upon approval by the CITY, the scope of work and project fee will be specifically set out and incorporated into and become a part of this Agreement.
- E. CONSULTANT agrees to perform the functions of their office in a timely, competent and professional manner. CONSULTANT shall maintain an adequate and competent staff of professionals for the purpose of rendering services hereunder, without additional costs to the CITY.
- F. CONSULTANT is fully responsible under the terms of this Agreement for professional quality relating to planning services furnished to CITY by CONSULTANT.
- G. The CITY expressly reserves the right to contract for performance of these services with other consultants.

2. AUTHORIZATION FOR SERVICES AND TIME FOR COMPLETION

- A. The services outlined in paragraph 1.A. above will be performed on an as-needed basis, and will commence on and be completed by dates as agreed upon by the CITY and CONSULTANT in each instance.
- B. Such services as described in paragraph 1.B. above will be rendered by CONSULTANT on a negotiated fee basis and shall be commenced upon receipt of the CITY's written acceptance of the proposal, and shall be completed within the time specified therein. In the event CONSULTANT is unable to complete the services within the time specified because of delays resulting from untimely review and approval by the CITY, the CITY shall grant a reasonable extension of time for completion of Work upon timely written request for same which shall be given by CONSULTANT to the CITY.
- C. In the event there are delays on the part of the CITY or regulatory agencies as to the approval of any work product submitted by CONSULTANT which might delay the project's scheduled completion date, the CITY shall grant to CONSULTANT, in writing, an extension of the Contract time.

3. COMPENSATION AND METHOD OF PAYMENT

- A. CONSULTANT shall calculate invoices for work performed under paragraph 1.A. above, on the hourly rates outlined in CONSULTANT's fee scheduled as **Exhibit A**.
- B. The CONSULTANT reserves the right to propose adjustments in rates or fees on an annual basis to adjust for industry costs. Any changes in rates or fees must be approved by the CITY as a contract amendment.
- C. The CONSULTANT shall submit separate invoices/billing statements on or as soon as practical after the first day of each calendar month. CONSULTANT shall submit monthly invoices detailing the services performed and allowable reimbursable expenses incurred during the previous calendar month relating to Work authorized according to paragraph 1.A. above, or as authorized by an executed proposal. Invoices shall be in writing and mailed to the CITY.
- D. CONSULTANT shall provide supporting documentation for its invoices as required by the CITY.
- E. The CITY shall tender payments in accordance with the Florida Prompt Payment Act, Part VII, Chapter 218, Florida Statutes. The CITY reserves the right to withhold payment to the CONSULTANT if the CITY determines that the quantity or quality of the work performed is unacceptable. The CITY shall provide written notice to the CONSULTANT within 10 business days of the CITY'S decision not to pay and the reasons for non-payment.

4. CHANGES IN SCOPE OF WORK

The CITY or CONSULTANT may request changes that would increase, decrease, or otherwise modify the scope of work to be provided. Such changes and method of compensation must be agreed upon in writing by written amendment to this Agreement or proposal issued hereunder prior to any deviation from the terms of the Agreement or proposal including the initiation of any extra work. Such changes shall not bind the CITY unless executed with the same formality as the respective proposal or this Agreement.

5. TERM OF THE AGREEMENT

The initial term of this Agreement shall be for twelve (12) months from the date first written above. Prior to the expiration of the initial term, the CITY and CONSULTANT may elect to renew the contract for four additional one (1) year option terms. Any such additional term(s) are subject to mutually agreed upon changes (if any) to this Agreement and CONSULTANT'S fee schedule. CONSULTANT shall perform all services authorized during any renewal period in accordance with the terms and conditions herein or as changed and mutually agreed upon.

In the event the Term expires and is not renewed, or is terminated as provided in Paragraph 6 below, if CONSULTANT has not completed a task pursuant to paragraph 1.B, then the terms

of this Agreement will be in effect through the date of completion of the task if CITY requests CONSULTANT in writing to complete said task.

6. TERMINATION

- A. Either the CITY or CONSULTANT may terminate this Agreement without reason by giving sixty (60) days advance notice in writing to the other.
- B. In the event of termination of this Agreement by either party, CONSULTANT agrees to not commit itself to any further expenditure of time or resources and deliver all work to the CITY, whether completed or in progress, that is not yet in the CITY'S possession, except any work relating to a particular task that CITY requests CONSULTANT to complete. Then such work shall be delivered to CITY upon completion.
- C. Both the CITY and CONSULTANT shall have the right to terminate the Agreement with ten (10) days advance notice in writing for failure of the other party to fulfill its Agreement obligations and shall have all other rights and remedies otherwise available to the CITY and CONSULTANT under law.

7. INSURANCE

- A. CONSULTANT shall provide, pay for, and maintain in force at all times during the services to be performed, such insurance, including Worker's Compensation insurance, Employer's Liability insurance, Comprehensive General Liability insurance with a \$1,000,000 combined single limit for each occurrence, and Professional Liability insurance in an amount no less than \$1,000,000 as will assure to the CITY, the protection contained in the foregoing Indemnification undertaken by CONSULTANT. The certificates of insurance and endorsements shall be provided to CITY upon execution of this Agreement, naming the CITY as an additional insured. Renewal certificates shall be provided to CITY within 30 days of renewal.
- B. Such policy or policies shall be issued by companies authorized to do business in the State of Florida, and having agents upon whom service of process may be made in Florida.
- C. Failure to obtain and maintain such insurance as set out above shall be considered a breach of contract and may result in termination of this Agreement for default.
- D. The insurance coverage enumerated above constitutes the minimum requirements and said enumeration shall in no way lessen or limit the liability of the CONSULTANT under the terms of this Agreement. CONSULTANT may procure and maintain at its own expense any additional insurance that in its judgment may be necessary.

8. NOTICES

All official notices required hereunder shall be deemed duly given if delivered in person or sent by certified mail return receipt requested and addressed as follows:

If to CITY:

Gary La Venia, City Manager
City of Fruitland Park
506 W. Berckman Avenue
Fruitland Park, FL 34731

If to CONSULTANT:

Greg Beliveau
LPG Urban and Regional Planners, Inc.
1162 Camp Avenue
Mt. Dora, FL 32757

All communications relating to the day-to-day activities of the work under this Agreement shall be exchanged between the CITY and the CONSULTANT'S Project Director.

9. EQUAL OPPORTUNITY EMPLOYMENT

CONSULTANT agrees that it will not discriminate against any employee or applicant for employment for work under this Agreement because of race, color, religion, sex, age or national origin and will take affirmative steps to ensure that applications are employed, and employees are treated during employment without regard to race, color, religion, sex, age or national origin. This provision shall include, but not be limited to the following: employment, upgrading, demotion or transfer; recruitment, advertising; layoff or termination; rates of pay or their forms of compensation; and selection for training, including apprenticeship.

10. APPLICABLE LAW

This Agreement will be construed and interpreted according to the laws of the State of Florida. Venue and jurisdiction for proceedings in connection with this agreement will be the county or circuit court of the Fifth Judicial Circuit of Florida, in Lake County, Florida.

11. ASSIGNMENT

This Agreement, or any interest herein, shall not be assigned, transferred, or otherwise encumbered, under any circumstances, by the parties hereto without prior written consent of the opposite party and only by a document of equal dignity herewith.

12. WAIVER

The forbearance of either party with regard to any breach or failure to perform any provision of this Agreement shall not be deemed to constitute a waiver of the provision or any provision of this Agreement either at the time of the breach or failure occurs or at any time throughout the term of this Agreement.

13. INDEPENDENT CONTRACTOR

It is hereby mutually agreed that CONSULTANT is and shall remain an independent contractor and not an employee of the CITY.

14. NO THIRD-PARTY BENEFICIARIES

This Agreement is for the sole benefit of the parties hereto and their successors and permitted assigns and no other party shall have the right to enforce any provision of this Agreement or to rely upon the provisions of this Agreement.

15. CONVICTED VENDOR LIST

A person or affiliate who has been placed on the convicted vendor list following a conviction for a public entity crime may not submit a bid, proposal, or reply on a contract to provide any goods or services to a public entity; may not submit a bid, proposal, or reply on a contract with a public entity for the construction or repair of a public building or public work; may not submit bids, proposals, or replies on leases of real property to a public entity; may not be awarded or perform work as a contractor, supplier, subcontractor, or consultant under a contract with any public entity; and may not transact business with any public entity in excess of the threshold amount provided in s.287.017 for CATEGORY TWO for a period of 36 months following the date of being placed on the convicted vendor list.

16. PUBLIC RECORDS

All electronic files, audio and/or video recordings, and all papers pertaining to any activity performed by the provider for or on behalf of the City shall be the property of the City and will be turned over to the City upon request. In accordance with Florida "Public Records" law, Chapter 119, Florida Statutes, each file and all papers pertaining to any activities performed for or on behalf of the City are public records available for inspection by any person even if the file or paper resides in the CONSULTANT'S office or facility.

IF THE CONTRACTOR (CONSULTANT) HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE CONTRACTOR'S (CONSULTANT'S) DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS CONTRACT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT 352-360-6790,

ecoulson@fruitlandpark.org, 506 West Berckman Street, Fruitland Park, FL 34731.

17. ENTIRE AGREEMENT; MODIFICATION

This Agreement constitutes the entire Agreement between the parties with respect to the subject matter hereof and may not be amended except by a written amendment executed by authorized representatives of both parties. In the event of a conflict between the terms and conditions of this Agreement and any attachment, the terms of this Agreement will prevail.

IN WITNESS WHEREOF, the parties have hereto caused the execution of this document, the year and date first written above.

WITNESSES:

CITY OF FRUITLAND PARK

Print Name:

Chris Cheshire, Mayor

Dated: _____

ATTEST

Esther Coulson, City Clerk

WITNESSES:

LPG URBAN AND REGIONAL PLANNERS, INC.

Print Name:

Gregory A. Beliveau, President

Dated: _____

Print Name:

ATTACHMENT A
PUBLIC RATE SCHEDULE

Labor Category	Rate
Principal	\$ 155.00/HR.
Landscape Architect	\$ 110.00/HR.
Senior Planner	\$ 80.00/HR.
GIS Analyst III	\$ 75.00/HR.
Planner I	\$ 75.00/HR.
Planning Tech	\$ 60.00/HR.
Word Processor	\$ 50.00/HR.

ATTACHMENT A2

(Revised February 2009)

NON-LABOR CATEGORY	
Mileage	IRS Standard Mileage Rates
Reproduction/Color Copies	at cost
Courier/Express	at cost
Postage	at cost
Outside Consultants	at cost

PLOT PRICING		
A size	8.5 X 11	\$ 2.00 each
B size	8.5 X 14	\$ 2.00 each
C size	11 X 17	\$ 3.50 each
D size	18 X 24	\$ 6.00 each
E size	24 X 36	\$ 15.00 each
F size	36 X 48	\$ 25.00 each
Custom	Custom	\$ 1.50 sq. ft.
Custom	Custom	\$ 1.50 sq. ft.

**CITY OF FRUITLAND PARK
AGENDA ITEM SUMMARY SHEET
Item Number: 6f**

ITEM TITLE: Resolution 2020-036 Development Review
Applications

For the Meeting of: July 23, 2020

Submitted by: City Attorney/City Manager/
Development Director Community

Date Submitted: July 14, 2020

Funds Required: No.

Attachments: Proposed Resolution 2020-036, proposed amended review fee schedule and existing agreement between the City of Fruitland Park and Booth, Ern, Straughan & Hiott, Inc.

Item Description: Resolution 2020-028; approving a new review fee schedule as an amendment to the agreement between the City of Fruitland Park and Booth, Ern, Straughan & Hiott, Inc. for Engineering and Surveying Services dated October 27, 2011.

Action to be Taken: Adopt Resolution 2020-036

Staff's Recommendation: Approval

Additional Comments: None

City Manager Review: Yes

Mayor Authorization: Yes

RESOLUTION 2020-036

A RESOLUTION OF THE CITY COMMISSION OF THE CITY OF FRUITLAND PARK, FLORIDA, APPROVING AND ADOPTING A REVIEW FEE SCHEDULE FOR ENGINEERING SERVICES RELATING TO DEVELOPMENT REVIEW APPLICATIONS; REPEALING ALL FEES IN CONFLICT HEREWITH; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the City entered into that Agreement between City of Fruitland Park and Booth, Ern, Straughan & Hiott, Inc. for Engineering and Surveying Services dated October 27, 2011 (thereinafter the “Agreement”); and

WHEREAS, the Agreement provides for engineering services to be compensated in accordance with the hourly rate schedule attached to the Agreement; and

WHEREAS, Booth, Ern, Straughan & Hiott, Inc. has requested a change in the fee schedule to include flat rates for listed development application type reviews requiring no more than an initial review and one follow up review and with PUD development with more than 20 acres remaining at the hourly rate schedule; and

WHEREAS, the City is authorized pursuant to Chapter 166, Florida Statutes and Sec. 99.30 of the City of Fruitland Park Code of Ordinances to impose fees to cover the costs associated with regulation of an activity or property use; and

WHEREAS, the City Commission desires to recover expenses incurred to regulate an activity or property use; and

WHEREAS, the City desires to adopt a new review fee schedule for engineering review of development applications; and

WHEREAS, the City Commission of the City of Fruitland Park, Florida, has determined the fees set forth herein are proper regulatory fees and the fees do not exceed the cost of the regulatory activity.

WHEREAS, the City Commission of the City of Fruitland Park, Florida, has determined the proposed review fee schedule as proposed is reasonable and is in the best interest of the City to approve and adopt.

THEREFORE, BE IT RESOLVED by the City Commission of the City of Fruitland Park, Florida, as follows:

1. The above recitals are true and correct and, by this reference, are hereby incorporated into and made an integral part of this resolution.
2. The City Commission hereby adopts the attached Review Fees schedule dated March 12, 2020 as an amendment to the Agreement between City of Fruitland Park and Booth, Ern, Straughan & Hiott, Inc. for Engineering and Surveying Services dated October 27, 2011.

3. The City Commission hereby adopts the Review Fees schedule attached hereto which shall be effective for any applications submitted subsequent to the date of this Resolution. These fees cover consultant charges for engineering review only. All terms and conditions set forth in the attached Review Fees Schedule is binding on applicants who are responsible for payment of actual costs incurred by the City.

4. Any fees in conflict herewith are hereby repealed.

5. This resolution shall be effective immediately upon adoption.

PASSED AND RESOLVED this ____ day of _____, 2020, by the City Commission of the City of Fruitland Park, Florida.

SEAL

CITY COMMISSION OF THE CITY OF
FRUITLAND PARK, FLORIDA

CHRIS CHESHIRE, MAYOR

ATTEST:

ESTHER COULSON, CITY CLERK, MMC

Mayor Cheshire	____	(Yes),	____	(No),	____	(Abstained),	____	(Absent)
Vice Mayor Gunter	____	(Yes),	____	(No),	____	(Abstained),	____	(Absent)
Commissioner Bell	____	(Yes),	____	(No),	____	(Abstained),	____	(Absent)
Commissioner DeGrave	____	(Yes),	____	(No),	____	(Abstained),	____	(Absent)
Commissioner Mobilian	____	(Yes),	____	(No),	____	(Abstained),	____	(Absent)

Approved as to form:

Anita Geraci-Carver, City Attorney

**ADDENDUM TO ENGINEERING AND SURVEYING SERVICES AGEEMENT WITH
BOOTH, ERN, STRAUGHAN & HOITT, INC.**

**This Addendum is added to the Agreement for engineering and surveying services between
the City of Fruitland Park and Veritone Inc.**

"IF THE CONTRACTOR HAS QUESTIONS REGARDING THE APPLICATION
OF CHAPTER 119, FLORIDA STATUTES, TO THE CONTRACTOR'S DUTY TO
PROVIDE PUBLIC RECORDS RELATING TO THIS CONTRACT, CONTACT
THE CUSTODIAN OF PUBLIC RECORDS AT (352) 360-6790,
ecoulson@fruitlandpark.org, 506 West Berckman Street, Fruitland Park, Florida
34731."

**By signing, you agree that you have read, understand and will comply with all terms,
conditions and statements listed.**

**This Agreement must be approved by a Booth, Ern, Straughan & Hoitt, (BESH) Inc.
Authorized Officer.**

Client:

BESH Inc.

Please Print Name

Please Print Name

Title:

Title:

Signature:

Signature:

Date:

Date



**CITY OF FRUITLAND PARK
PROPOSED REVIEW FEES
MARCH 12, 2020**

APPLICATION TYPE	FEE PER APPLICATION
Annexation	\$600.00
Rezoning	\$600.00
Planned Unit Development less than 10 acres	\$875.00
Planned Unit Development between 10 and 20 Acres	\$1,200.00
Planned Unit Development more than 20 Acres	Hourly
Amendment to P.U.D.	\$600.00
Variance	\$600.00
Conditional Use	\$600.00
Minor Site Plan	\$900.00
Major Site Plan	\$1,600.00
Minor Subdivision Engineering Plan	\$700 less than 10 lots
Minor Subdivision Engineering Plan	\$1,000.00 between 10 and 25 lots.
Major Subdivision Engineering Plan	\$1,000.00 + \$12.00/lot over 25 Lots
Preliminary Plat	\$350 < 10 Lots, \$600.00 between 10 and 25 Lots, \$1,000.00 > 25 Lots
Final Record Plat	\$1,300.00 up to 2 Page Plat Plus \$25.00 for each additional page
Final Inspection (<1 acre)	\$600.00
Final Inspection (>1 acre)	\$1,200.00

ENGINEERS ♦ SURVEYORS ♦ LAND PLANNERS
 902 North Sinclair Avenue ♦ Tavares, Florida 32778
 Phone: 352.343.8481 ♦ Fax: 352.343.8495
 E-Mail: Info@besandh.com ♦ www.besandh.com
Good...Better...*BESH!*

Plat Vacation	\$1,300.00 up to 2 Page Plat Plus \$25.00 for each additional page
Vacation - Easement, R/W, Alley	\$1,000.00

Pre Application meetings, DRC meetings, City Council meetings or Planning and Zoning Council meetings will be bill hourly.

All fees are for initial review and one follow up review. Subsequent reviews, if necessary, will be billed hourly.

Submittals deemed incomplete or insufficient will not be reviewed and will be returned to the City.

**AGREEMENT BETWEEN
CITY OF FRUITLAND PARK AND BOOTH, ERN, STRAUGHAN & HIOTT, INC.
FOR ENGINEERING AND SURVEYING SERVICES**

AGREEMENT

Made as of the 27 day of October in the year of Two
Thousand and Eleven.

BETWEEN

The Owner:

City of Fruitland Park
506 W. Berckman St.
Fruitland Park, Florida 34731

and the Engineer:

Booth, Ern, Straughan & Hiott, Inc.
350 North Sinclair Avenue
Tavares, Florida 32778

FOR THE FOLLOWING SERVICES:

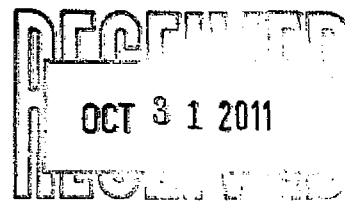
Engineering:

General Engineering Consulting Services, Site Plan Reviews, Subdivision Improvement Plan Reviews, Design, Permitting & Specifications for: Roadways, Storm Water Management Systems, Water Systems, Wastewater Systems, Reuse Water Systems, Drainage and Flood Studies, FEMA Map Revisions, etc.

Surveying:

General Surveying Consulting Services, Recorded Subdivision Plat Reviews, Control Staking, Construction Staking, Boundary Surveys, Topographic Surveys, As-Built Surveys, Alta Surveys, Specific Purpose Surveys, Sketch and Legals, Title Search, Right-of-Way & Route surveys, Underground Utility Locates & Surveys, etc.

Through the CCNA process, the City has selected B.E.S.H. to provide professional engineering services to the City. Nothing in this agreement shall be construed to require the City to use ENGINEER as its exclusive provider of engineering services. City has the right to assign, or to not assign, particular engineering jobs to ENGINEER. Also, nothing herein shall limit the City's right to obtain engineering proposals from other engineering firms for specified major projects, pursuant to the Consultant's Competitive Negotiation Act, Chapter 287, Florida Statutes.



TERMS AND CONDITIONS OF AGREEMENT

1. OWNERSHIP OF DOCUMENTS:

All data, specifications, calculations, estimates, plans, drawings, construction documents, photographs, summaries, reports, memoranda, and other documents, instruments, information and material prepared or accumulated by the ENGINEER (or by such sub-consultants and specialty consultants) in rendering services hereunder shall be the sole property of the OWNER to the extent allowable by law. OWNER may have access to the reproducible copies at no additional cost other than printing.

Provided, that the ENGINEER shall in no way be liable or legally responsible to anyone for the OWNER's use of any such materials for another PROJECT, or following termination. All original documents shall be permanently kept on file at the office of the ENGINEER.

2. TERMINATION OF SERVICES:

This Agreement may be terminated by either party upon not less than thirty (30) days written notice.

If the Owner fails to make payments when due the ENGINEER for services and expenses, the ENGINEER may, upon seven (7) days written notice to the OWNER, suspend performance of services under this Agreement. Unless payment in full is received by the ENGINEER within seven (7) days of the date of the notice, the suspension shall take effect without further notice. In the event of a suspension of services, the ENGINEER shall have no liability to the Owner for delay or damage caused the OWNER because of such suspension of services.

In the event of termination not the fault of the ENGINEER, the ENGINEER shall be compensated for with Reimbursable Expenses then due and all Termination Expenses.

3. PAYMENT:

Engineering services shall be compensated in accordance with the attached hourly rate schedule, provided however, ENGINEER shall not charge for routine telephone calls.

At the City Administrator's request, the Engineer agrees to attend all utility committee meetings and TRC meetings on an as-need basis. All meeting times and locations will be coordinated by City Staff.

4. REIMBURSABLE EXPENSES:

Reimbursable Expenses include expenses incurred by the ENGINEER in the interest of services provided for this Agreement:

1. Expense of transportation and living expenses in connection with out-of-town travel authorized by the OWNER.

2. Expense of reproductions of drawings, specifications and other documents.

5. PAYMENT SCHEDULE:

Invoices shall be to the OWNER one monthly. All invoices shall be payable within forty-five (45) days.

6. CONTACT PERSON:

The primary contact person under this Agreement for the ENGINEER shall be Duane K. Booth, P.E. The primary contact person under this Agreement of the City shall be the City Manager.

7. AGREEMENT DURATION:

This Agreement has no set duration and may be terminated by either party in accordance with Terms and Conditions of Agreement No. 2 above.

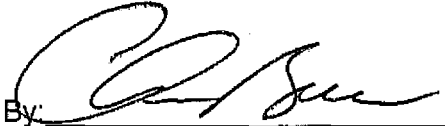
8. CONFLICT OF INTEREST:

ENGINEER shall not undertake any task on behalf of CITY where ENGINEER has a conflict of interest arising out of a past or present professional relationship with a private client. In the event any such conflict arises, ENGINEER agrees to immediately disclose the existence of the conflict to the CITY."

THIS AGREEMENT ENTERED INTO AS OF THE DAY AND YEAR WRITTEN ABOVE.

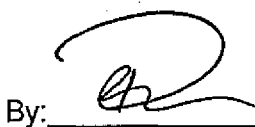
OWNER:

CITY OF FRUITLAND PARK, FLORIDA

By:  10-27-11
Date

ENGINEER:

BOOTH, ERN, STRAUGHAN & HIOTT, INC.

By:  10/5/11
Date

**HOURLY RATE SCHEDULE
(2011)**

Professional Services shall be charged at the following rate schedule:

ENGINEERING

PROFESSIONAL ENGINEER (PRINCIPAL)	\$145.00/HOUR
PROFESSIONAL ENGINEER	\$130.00/HOUR
PROJECT ENGINEER	\$110.00/HOUR
ENGINEER TECHNICIAN I	\$95.00/HOUR
ENGINEER TECHNICIAN II	\$75.00/HOUR
EXPERT TESTIMONY PROFESSIONAL ENGINEER	\$200.00/HOUR

SURVEYING

PROFESSIONAL SURVEYOR (PRINCIPAL)	\$145.00/HOUR
PROFESSIONAL SURVEYOR	\$110.00/HOUR
3 MAN FIELD CREW	\$125.00/HOUR
2 MAN FIELD CREW	\$110.00/HOUR
SURVEY TECHNICIAN I	\$85.00/HOUR
SURVEY TECHNICIAN II	\$75.00/HOUR
TITLE RESEARCHER	\$95.00/HOUR
EXPERT TESTIMONY PROFESSIONAL SURVEYOR	\$200.00/HOUR

**CITY OF FRUITLAND PARK
AGENDA ITEM SUMMARY SHEET
Item Number: 6g**

ITEM TITLE: Resolution 2020-032 Proposed Millage FY2021 3.9134

For the Meeting of: July 23, 2020
Submitted by: City Treasurer
Date Submitted: July 15, 2020
Funds Required:
Attachments: Yes – DR-420, MM-P

Item Description: Resolution 2020-032 - The City of Fruitland Park Commission is required by law to establish the proposed operating millage in accordance with the Truth-In-Millage (TRIM) requirements set forth in Chapter 200 of the Florida Statutes. Once the proposed rate is established, the commission cannot exceed that rate, unless each taxpayer is mailed a revised TRIM notice at the expense of Fruitland Park. By utilizing the same millage as last two year 3.9134, the city will generate an additional \$106,111 over the roll-back rate of 3.776 which is a 3.64% increase over the roll-back rate. Below is a recap of voting requirements related to millage rate and the revenue it would generate:

Rate	Millage Rate	95% Revenue	Required Votes	Increase Last Year	Increase Over Proposed
Proposed rate	3.9134	3,022,226	3	242,248	0
Roll-back rate	3.7760	2,916,116	3	136,137	-106,111
Majority Maximum	3.9747	3,069,567	3	289,588	47,341
2/3 Maximum	4.3722	3,376,547	4	596,568	354,320

Action to be Taken: Adopt Resolution 2020-032.

Staff’s Recommendation: Approve Resolution 2020-032 Proposed Millage FY2021

Additional Comments: N/A

City Manager Review: Yes

Mayor Authorization: Yes

RESOLUTION 2020-032

A RESOLUTION OF THE CITY COMMISSION OF THE CITY OF FRUITLAND PARK, LAKE COUNTY, FLORIDA, ADOPTING A NOT TO EXCEED MILLAGE RATE OF 3.9134 LEVYING OF AD VALOREM TAXES FOR FISCAL YEAR 2020-2021 AND SETTING THE DATE, TIME AND PLACE OF PUBLIC HEARING ON THE BUDGET FOR FISCAL YEAR 2020-2021; PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, pursuant to section 200.065, Florida Statutes, after proper notice, a public hearing will be held at the City of Fruitland Park, Lake County, Florida, on September 10, 2020 at 6:00 p.m., at which time the general public will be given an opportunity to comment and ask questions pertaining to the tentative budget and millage rate; and

WHEREAS, pursuant to section 200.065, Florida Statutes, after proper notice a second public hearing will be held at the City of Fruitland Park on September 24, 2020, at 6:00 p.m. at which time the general public will be given an opportunity to comment and ask questions pertaining to the proposed final budget and millage rate; and

WHEREAS, the gross taxable value for operating purposes not exempt from taxation within Lake County has been certified by the county property appraiser to the City of Fruitland Park as \$812,922,515.

WHEREAS, the City of Fruitland Park is prepared to set a proposed millage rate of 3.9134 mills; and

WHEREAS, the FY2021 operating proposed millage rate of 3.9134 mills is a 3.64% increase to the current year rolled-back rate of 3.7760.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COMMISSION OF THE CITY OF FRUITLAND PARK, LAKE COUNTY, FLORIDA that:

1. The City Commission of the City of Fruitland Park, Florida does hereby ratify and set the proposed not to exceed ad valorem millage rate for the City of Fruitland Park, Lake County, Florida, for the fiscal year 2020-2021 at 3.9134 mills, which is greater than the rolled back of 3.776 mills by 3.64%.
2. The tentative millage and budget hearings will be held on September 10, 2020, at 6:00 p.m. in the Commission Chambers at City Hall located at 506 W. Berckman Street, Fruitland Park, Florida.
3. The final millage and budget hearings will be held on September 24, 2020 at 6:00 p.m. in the Commission Chambers at City Hall located at 506 W. Berckman Street, Fruitland Park, Florida.
4. This resolution shall take effect immediately upon its final adoption by the City Commission of the City of Fruitland Park, Florida.

PASSED AND RESOLVED this 23rd day of July, 2020, at 6:00 p.m., or as soon thereafter, by the City Commission of the City of Fruitland Park, Florida.

Chris Cheshire, Mayor
City of Fruitland Park

Attest:

Esther B. Coulson, MMC, City Clerk

Mayor Cheshire	_____	(Yes),	_____	(No),	_____	(Abstained),	_____	(Absent)
Vice Mayor Gunter	_____	(Yes),	_____	(No),	_____	(Abstained),	_____	(Absent)
Commissioner Bell	_____	(Yes),	_____	(No),	_____	(Abstained),	_____	(Absent)
Commissioner DeGrave	_____	(Yes),	_____	(No),	_____	(Abstained),	_____	(Absent)
Commissioner Mobilian	_____	(Yes),	_____	(No),	_____	(Abstained),	_____	(Absent)

First Reading _____

Approved as to form and legality:

Anita Geraci-Carver, City Attorney



Reset Form

Print Form

CERTIFICATION OF TAXABLE VALUE

DR-420
R. 5/12
Rule 12D-16.002
Florida Administrative Code
Effective 11/12

Year: 2020	County: LAKE
Principal Authority: CITY OF FRUITLAND PARK	Taxing Authority: CITY OF FRUITLAND PARK

SECTION I : COMPLETED BY PROPERTY APPRAISER

1.	Current year taxable value of real property for operating purposes	\$	804,110,318	(1)
2.	Current year taxable value of personal property for operating purposes	\$	8,812,197	(2)
3.	Current year taxable value of centrally assessed property for operating purposes	\$	0	(3)
4.	Current year gross taxable value for operating purposes <i>(Line 1 plus Line 2 plus Line 3)</i>	\$	812,922,515	(4)
5.	Current year net new taxable value (Add new construction, additions, rehabilitative improvements increasing assessed value by at least 100%, annexations, and tangible personal property value over 115% of the previous year's value. Subtract deletions.)	\$	24,331,256	(5)
6.	Current year adjusted taxable value <i>(Line 4 minus Line 5)</i>	\$	788,591,259	(6)
7.	Prior year FINAL gross taxable value from prior year applicable Form DR-403 series	\$	747,762,402	(7)
8.	Does the taxing authority include tax increment financing areas? If yes, enter number of worksheets (DR-420TIF) attached. If none, enter 0	<input checked="" type="checkbox"/> YES	<input type="checkbox"/> NO	Number 2 (8)
9.	Does the taxing authority levy a voted debt service millage or a millage voted for 2 years or less under s. 9(b), Article VII, State Constitution? If yes, enter the number of DR-420DEBT, <i>Certification of Voted Debt Millage</i> forms attached. If none, enter 0	<input type="checkbox"/> YES	<input checked="" type="checkbox"/> NO	Number 0 (9)

	Property Appraiser Certification	I certify the taxable values above are correct to the best of my knowledge.		
SIGN HERE	Signature of Property Appraiser:	Date :		
	Electronically Certified by Property Appraiser	6/29/2020 12:58 PM		

SECTION II : COMPLETED BY TAXING AUTHORITY

If this portion of the form is not completed in FULL your taxing authority will be denied TRIM certification and possibly lose its millage levy privilege for the tax year. If any line is not applicable, enter -0-.

10.	Prior year operating millage levy <i>(If prior year millage was adjusted then use adjusted millage from Form DR-422)</i>		3.9134	per \$1,000	(10)
11.	Prior year ad valorem proceeds <i>(Line 7 multiplied by Line 10, divided by 1,000)</i>	\$	2,926,293		(11)
12.	Amount, if any, paid or applied in prior year as a consequence of an obligation measured by a dedicated increment value <i>(Sum of either Lines 6c or Line 7a for all DR-420TIF forms)</i>	\$	183,533		(12)
13.	Adjusted prior year ad valorem proceeds <i>(Line 11 minus Line 12)</i>	\$	2,742,760		(13)
14.	Dedicated increment value, if any <i>(Sum of either Line 6b or Line 7e for all DR-420TIF forms)</i>	\$	62,224,270		(14)
15.	Adjusted current year taxable value <i>(Line 6 minus Line 14)</i>	\$	726,366,989		(15)
16.	Current year rolled-back rate <i>(Line 13 divided by Line 15, multiplied by 1,000)</i>		3.7760	per \$1000	(16)
17.	Current year proposed operating millage rate		3.9134	per \$1000	(17)
18.	Total taxes to be levied at proposed millage rate <i>(Line 17 multiplied by Line 4, divided by 1,000)</i>	\$	3,181,291		(18)

Millage for 2021 7.1.19

Taxable Values	Certified	FY2021 2020	FY2020 2019	FY2019 2018	FY2018 2017	FY2017 2016	FY2016 2015
Taxable Value		812,922,515	747,762,402	680,084,533	491,629,188	299,998,272	171,725,009
Tax Diff fm Last Year		65,160,113	67,677,869	188,455,345	191,630,916	128,273,263	5,215,221
% Change fm Prior Year		8.71%	9.95%	38.33%	63.88%	74.70%	3.13%
Millage Rate		3.9134	3.9134	3.9134	3.9863	3.9863	4.7371
RBR		3.776	3.7965	3.9134	3.6696	3.2632	4.6185
Percentage of RBR		3.64%	3.08%	0.00%	8.63%	45.17%	2.57%
Proposed Millage		3.9134	3.9134	3.9134	3.9863	4.7371	4.7371
Ad Valorem Budgeted		3,022,226	2,779,979	2,528,371	1,861,792	1,136,089	797,209
Tax Levied		3,181,291	2,926,293	2,661,443	1,959,781	1,195,883	813,479
Collected							
Delinquent Collected							
% Collected							
% Tax Levied		3,022,226	2,779,979	2,528,371	1,861,792	1,136,089	797,209
% Budget/Levied		0.95	0.95	0.95	0.95	0.95	0.98
Additional Ad Valorem		242,248	251,608	666,578	725,703	338,880	24,211



Reset Form

Print Form

MAXIMUM MILLAGE LEVY CALCULATION PRELIMINARY DISCLOSURE

For municipal governments, counties, and special districts

DR-420MM-P
R. 5/12
Rule 12D-16.002
Florida Administrative Code
Effective 11/12

Year: 2020		County: LAKE		
Principal Authority: CITY OF FRUITLAND PARK		Taxing Authority: CITY OF FRUITLAND PARK		
1.	Is your taxing authority a municipality or independent special district that has levied ad valorem taxes for less than 5 years?	<input type="checkbox"/> Yes	<input type="checkbox"/> No	(1)
<p><i>IF YES,</i> <i>STOP HERE. SIGN AND SUBMIT. You are not subject to a millage limitation.</i></p>				
2.	Current year rolled-back rate from Current Year Form DR-420, Line 16	3.7760	per \$1,000	(2)
3.	Prior year maximum millage rate with a majority vote from 2018 Form DR-420MM, Line 13	3.9860	per \$1,000	(3)
4.	Prior year operating millage rate from Current Year Form DR-420, Line 10	3.9134	per \$1,000	(4)
<i>If Line 4 is equal to or greater than Line 3, skip to Line 11. If less, continue to Line 5.</i>				
Adjust rolled-back rate based on prior year majority-vote maximum millage rate				
5.	Prior year final gross taxable value from Current Year Form DR-420, Line 7	\$	747,762,402	(5)
6.	Prior year maximum ad valorem proceeds with majority vote <i>(Line 3 multiplied by Line 5 divided by 1,000)</i>	\$	2,980,581	(6)
7.	Amount, if any, paid or applied in prior year as a consequence of an obligation measured by a dedicated increment value from Current Year Form DR-420 Line 12	\$	183,533	(7)
8.	Adjusted prior year ad valorem proceeds with majority vote <i>(Line 6 minus Line 7)</i>	\$	2,797,048	(8)
9.	Adjusted current year taxable value from Current Year form DR-420 Line 15	\$	726,366,989	(9)
10.	Adjusted current year rolled-back rate <i>(Line 8 divided by Line 9, multiplied by 1,000)</i>	3.8507	per \$1,000	(10)
Calculate maximum millage levy				
11.	Rolled-back rate to be used for maximum millage levy calculation <i>(Enter Line 10 if adjusted or else enter Line 2)</i>	3.8507	per \$1,000	(11)
12.	Adjustment for change in per capita Florida personal income <i>(See Line 12 Instructions)</i>		1.0322	(12)
13.	Majority vote maximum millage rate allowed <i>(Line 11 multiplied by Line 12)</i>	3.9747	per \$1,000	(13)
14.	Two-thirds vote maximum millage rate allowed <i>(Multiply Line 13 by 1.10)</i>	4.3722	per \$1,000	(14)
15.	Current year proposed millage rate	3.9134	per \$1,000	(15)
16.	Minimum vote required to levy proposed millage: (Check one)			(16)
<input checked="" type="checkbox"/>	a. Majority vote of the governing body: Check here if Line 15 is less than or equal to Line 13. The maximum millage rate is equal to the majority vote maximum rate. Enter Line 13 on Line 17.			
<input type="checkbox"/>	b. Two-thirds vote of governing body: Check here if Line 15 is less than or equal to Line 14, but greater than Line 13. The maximum millage rate is equal to proposed rate. Enter Line 15 on Line 17.			
<input type="checkbox"/>	c. Unanimous vote of the governing body, or 3/4 vote if nine members or more: Check here if Line 15 is greater than Line 14. The maximum millage rate is equal to the proposed rate. Enter Line 15 on Line 17.			
<input type="checkbox"/>	d. Referendum: The maximum millage rate is equal to the proposed rate. Enter Line 15 on Line 17.			
17.	The selection on Line 16 allows a maximum millage rate of <i>(Enter rate indicated by choice on Line 16)</i>	3.9747	per \$1,000	(17)
18.	Current year gross taxable value from Current Year Form DR-420, Line 4	\$	812,922,515	(18)

Millage for 2021 Max Levy TRIM

Description	Taxable Value	Millage Rate	Revenue	95% Revenue	Voting Requirement	Increase over last year's revenue	Increase in revenue over 3.9134 proposed millage
Proposed Rate	812,922,515	3.9134	3,181,291	3,022,226	Majority (3)	242,248	0
Rolled-Back-Rate	812,922,515	3.776	3,069,595	2,916,116	Majority (3)	136,137	-106,111
Maximum Majority Rate	812,922,515	3.9747	3,231,123	3,069,567	Majority (3)	289,588	47,341
Maximum Two-third Rate	812,922,515	4.3722	3,554,260	3,376,547	4 Commissioners	596,568	354,320
Last Year's Rate	747,762,402	3.9134	2,926,293	2,779,979	4 Commissioners	0	

CITY OF FRUITLAND PARK
AGENDA ITEM SUMMARY SHEET
Item Number: 6h

ITEM TITLE: Ordinance 2020-004 Pre-Application Fees
For the Meeting of: July 23, 2020
Submitted by: City Attorney/City Manager/Community
Development Director
Date Submitted: July 15, 2020
Funds Required: No
Attachments: Proposed Ordinance 2020-004 and draft notice of
public hearing.

Item Description: Proposed Ordinance 2020-004 requiring the
reimbursement of fees associated with development applications, to include pre-application
fees. (The second reading will be held on August 13, 2020.)

Action to be Taken: Approve Proposed Ordinance 2020-004

Staff's Recommendation: Approval

Additional Comments: None

City Manager Review: Yes

Mayor Authorization: Yes

ORDINANCE 2020-0XX

AN ORDINANCE OF THE CITY COMMISSION OF THE CITY OF FRUITLAND PARK, FLORIDA, AMENDING PROVISIONS IN CHAPTER 102 OF THE CODE OF ORDINANCES TO REQUIRE REIMBURSEMENT OF PROFESSIONAL AND CONSULTANT FEES FOR DEVELOPMENT PRE-APPLICATION MEETINGS; IMPOSING JOINT AND SEVERAL LIABILITY FOR PAYMENT OF SUCH FEES BETWEEN THE PROPERTY OWNER AND PRE-APPLICANT AND BETWEEN THE PROPERTY OWNER AND ANY DEVELOPMENT APPLICANT; IMPOSING PENALTY FOR FAILURE TO PAY; PROVIDING FOR CODIFICATION, SEVERABILITY AND CONFLICTS, AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the Commission finds that development of real property and associated growth should pay for itself and such costs not burden the current residents and taxpayers of the City of Fruitland Park; and

WHEREAS, currently development applicants are required to reimburse the City for professional and consultant fees as well as adjacent property owner notifications related to a development application; and

WHEREAS, the City Commission wishes to clarify that professional and consultant fees includes engineering, surveying, planning, and legal review and any other professional or consultant fee associated with review of the application; and

WHEREAS, significant staff time and professional and consultant time is spent on pre-application meetings; therefore, the City requires reimbursement of those costs similarly to development applications; and

WHEREAS, the City of Fruitland Park has advertised as required by law for a public hearing prior to adoption of this Ordinance; and

WHEREAS, the City Commission of the City of Fruitland Park, Lake County, Florida hereby finds and declares that the adoption of this ordinance is necessary, appropriate, and in the public interest of the citizens of this community.

NOW, THEREFORE, BE IT ORDAINED by the Commissioners of the City of Fruitland Park, Lake County, Florida, as follows:

Section 1. Recitals. The foregoing recitals are true and correct.

Section 2. Amendment. Section 102.01 in Chapter 102 of the Code of Ordinances of the City of Fruitland Park, Florida, is hereby amended to read as follows:

Sec. 102.01. - Professional and consultant fees; costs associated with providing notice of development applications.

All persons, property owners, entities, and/or developers submitting development applications of any kind to the City of Fruitland Park shall be responsible for paying the costs incurred by the city for professional and consultant fees, inclusive of attorney's fees, associated with such applications and for all costs reasonably associated with providing adjacent property owner notifications and advertising costs of such ~~developer's~~ applicant's proposed project. The property owner is jointly and severally liable with an applicant for such costs.

The city shall invoice the applicant ~~developer~~ and/or property owner for such amounts, and shall, upon written request of the applicant ~~developer~~ and/or property owner, provide documentation to support such amounts. The applicant ~~developer~~ and/or property owner shall pay the invoiced amount to the city within 30 days of the date of the invoice. Unless specifically waived by the city for good cause, city staff and consultants shall not process further any development applications submitted by the applicant ~~developer~~ and/or property owner nor issue any development orders (including, but not limited to, building permits, certificates of occupancy, or land use approvals) until the full amounts owed are paid to the city.

All persons, property owners, entities, and/or developers requesting and attending a pre-application meeting with the city ("pre-applicant") to discuss future development of a parcel(s), including but not limited to changes in land use and zoning, shall be responsible for paying the costs incurred by the city for professional and consultant fees, inclusive of attorney's fees, associated with the pre-application meeting. The property owner is jointly and severally liable with the person, entity and/or developers for such costs associated with the pre-application meeting.

The city shall invoice the pre-applicant and property owner for such amounts, and shall, upon written request of the pre-applicant and/or property owner, provide documentation to support such amounts. The pre-applicant and/or property owner shall pay the invoiced amount to the city within 30 days of the date of the invoice. Unless specifically waived by the city for good cause, city staff and consultants shall not process further any development applications submitted by the pre-applicant and/or property owner nor issue any development orders (including, but not limited to, building permits, certificates of occupancy, or land use approvals) until the full amounts owed are paid to the city.

Section 3. Inclusion in Code. It is the intent of the Commissioners that the provisions of this Ordinance shall become and be made a part of the City of Fruitland Park Code and that the sections of this Ordinance may be renumbered or relettered and the word "ordinance" may be changed to "section", "article", or such other appropriate word "or phrase in order to accomplish such intentions.

Section 4. Severability. If any section, sentence, clause, phrase or word of this Ordinance is for any reason held or declared to be unconstitutional, inoperative or void, such holding or invalidity shall not affect the remaining portions of this Ordinance; and it shall be construed to have been the Commissioner's intent to pass this Ordinance without such unconstitutional, invalid or inoperative part therein; and the remainder of this Ordinance, after the exclusion of such part or parts shall be deemed and held to be valid, as if such parts had not been included herein.

Section 5. Conflicts. That all ordinances or parts of ordinances in conflict herewith are hereby repealed.

Section 6. Effective Date. This ordinance shall become effective upon final adoption.

PASSED and ORDAINED this _____ day of _____, 2020, by the City Commission of the City of Fruitland Park, Florida.

SEAL

CITY COMMISSION OF THE CITY OF
FRUITLAND PARK, FLORIDA

CHRIS CHESHIRE, MAYOR

ATTEST:

ESTHER COULSON, CITY CLERK

Mayor Cheshire	_____	(Yes),	_____	(No),	_____	(Abstained),	_____	(Absent)
Vice Mayor Gunter	_____	(Yes),	_____	(No),	_____	(Abstained),	_____	(Absent)
Commissioner Bell	_____	(Yes),	_____	(No),	_____	(Abstained),	_____	(Absent)
Commissioner DeGrave	_____	(Yes),	_____	(No),	_____	(Abstained),	_____	(Absent)
Commissioner Mobilian	_____	(Yes),	_____	(No),	_____	(Abstained),	_____	(Absent)

Approved as to form:

Anita Geraci-Carver, City Attorney

**NOTICE OF PUBLIC HEARINGS
ORDINANCE 2020-0XX**

AN ORDINANCE OF THE CITY COMMISSION OF THE CITY OF FRUITLAND PARK, FLORIDA, AMENDING PROVISIONS IN CHAPTER 102 OF THE CODE OF ORDINANCES TO REQUIRE REIMBURSEMENT OF PROFESSIONAL AND CONSULTANT FEES FOR DEVELOPMENT PRE-APPLICATION MEETINGS; IMPOSING JOINT AND SEVERAL LIABILITY FOR PAYMENT OF SUCH FEES BETWEEN THE PROPERTY OWNER AND PRE-APPLICANT AND BETWEEN THE PROPERTY OWNER AND ANY DEVELOPMENT APPLICANT; IMPOSING PENALTY FOR FAILURE TO PAY; PROVIDING FOR CODIFICATION, SEVERABILITY AND CONFLICTS, AND PROVIDING FOR AN EFFECTIVE DATE.

The proposed Ordinance will be considered at the following public meeting:

Fruitland Park City Commission Meeting on August 13, 2020 at 6:00 p.m.

The public meetings will be held in the Commission Chambers located at City Hall, 506 West Berckman Street, Fruitland Park FL 34731. The full proposed ordinance may be inspected by the public during normal working hours at City Hall. For further information call 352-360-6727. Interested parties may appear at the meetings and will be heard with respect to the proposed ordinance.

A person who decides to appeal any decision made by any board, agency or council with respect to any matter considered at such meeting or hearing, will need a record of the proceedings. For such purposes, any such person may need to ensure that a verbatim record of the proceedings is made, which includes the testimony and evidence upon which the appeal is based (Florida Statutes, 286.0105). Persons with disabilities needing assistance to participate in any of these proceedings should contact Esther Coulson, City Clerk at (352) 360-6790 at least 48 hours before the date of the scheduled hearing.

**CITY OF FRUITLAND PARK
AGENDA ITEM SUMMARY SHEET
Item Number: 7a i-iii**

ITEM TITLE:	City Manager's Report
For the Meeting of:	July 23, 2020
Submitted by:	City Manager
Date Submitted:	July 14, 2020
Funds Required:	No
Account Number:	N/A
Amount Required:	N/A
Balance Remaining:	N/A
Attachments:	No

Item Description:

- i. Economic Development Status Update**
- ii. COVID-19 Status Update**
- iii. Fruitland Park Library Café**

Action to be Taken:

Staff's Recommendation:

Additional Comments: None

City Manager Review: Yes

Mayor Authorization: Yes

CITY OF FRUITLAND PARK
AGENDA ITEM SUMMARY SHEET
Item Number: 7b

ITEM TITLE: CITY ATTORNEY REPORT

For the Meeting of: July 23, 2020

Submitted by: City Attorney

Date Submitted: July 15, 2020

Funds Required: None

Attachments: None

Item Description: City Attorney Report

City of Fruitland Park v. T.D. Burke, Lake County Case No. 2019-CA-001894 (Judge Baxley): On March 19, 2020, the City issued First Set of Admissions Directed to Defendant T. D. Burke and First Request for Production to Defendant T. D. Burke. Responses are due April 20, 2020. Responses were received. Documents responsive to the requests are in the process of being provided. On April 20, 2020 Defendant filed a Motion for Summary Judgment. The previously scheduled hearing of June 10, 2020 was cancelled by the Judge and has been rescheduled to July 27, 2020. No updates since last meeting.

City of Fruitland Park v. State of Florida – Department of Management Services: On December 26, 2019m as previously reported, Mr. Thomas filed the Petition on behalf of the City. The State of Florida, Division of Administrative Hearings has rescheduled the hearing to take place in Tavares August 18 – 20, 2020. On July 14, 2020, the State of Florida, Department of Management Services, Division of Retirement, served the City with Interrogatories and Request for Production of Documents. Responses are due from the City on or before August 14, 2020.

Michael and Laurie Fewless v. City of Fruitland Park, Lake County Case No. 2020-CA-000104 (Judge Welke): Plaintiffs filed a two-count complaint against the City alleging negligence and breach of fiduciary duty. Plaintiffs seek in excess of \$600,000.00. The lawsuit arises from the FRS retirement program. The City's insurance carrier has assigned attorney Thomas to defend the City in this action. On February 26, 2020, Mr. Thomas on behalf of the City filed a Motion to Dismiss to complaint. On March 11, 2020, the City received discovery requests, interrogatories, and request for documents. The City is currently preparing responses.

On March 12, 2020 Circuit Court Welke entered an Order referring the Motion to Dismiss to the General Magistrate to hold a hearing on the Motion. On March 20, 2020 Plaintiffs' attorney filed an objection to the Order referring to the General Magistrate; therefore, Judge Welke will hold a hearing on the City's Motion to Dismiss. A hearing on the Motion has not yet been scheduled. No updates since the last report. No updates since last meeting.

Norman C. Cummins v. Stephen P. Angelillo and City of Fruitland Park, Lake County Case No. 2020-CA-1026 (Judge Davis): Plaintiff purports to be the mortgage holder on Lake County Parcel Id. 10-19-24-0002-000-07500 for a loan issued to Stephen P. Angelillo. The City is named as a party defendant because the City has an existing code enforcement lien recorded against the same property. The City's lien also encumbers additional parcels. The Plaintiff has filed an action to foreclose the property and seeks to extinguish the City's lien as against the above-described parcel. As of June 29, 2020, the accumulated fines are approximately \$82,000.00.

The City was served with the lawsuit on June 23, 2020. A responsive pleading is due on July 13, 2020. The City's insurance company determined there is coverage to defend the City in this action and there is not a deductible. Attorney Andrew Dayes filed an Answer and Affirmative Defenses on behalf of the City.

Action to be Taken:	N/A
Staff's Recommendation:	N/A
Additional Comments:	None
City Manager Review:	Yes
Mayor Authorization:	Yes

**CITY OF FRUITLAND PARK
AGENDA ITEM SUMMARY SHEET
Item Number: 8**

ITEM TITLE:	Public Comments
For the Meeting of:	July 23, 2020
Submitted by:	City Clerk
Date Submitted:	July 14, 2020
Funds Required:	None
Account Number:	N/A
Amount Required:	N/A
Balance Remaining:	N/A
Attachments:	Yes, Resolution 2013-023, Public Participation Policy and Chapter 286 Florida Statutes

Item Description: This section is reserved for members of the public to bring up matters of concern or opportunities for praise. Action may not be taken by the city commission at this meeting; however, questions may be answered by staff or issues may be referred for appropriate staff action.

Note: Pursuant to F.S. 286.0114 and the City of Fruitland Park's Public Participation Policy adopted by Resolution 2013-023, members of the public shall be given a reasonable opportunity to be heard on propositions before the city commission. Accordingly, comments, questions, and concerns regarding items listed on this agenda shall be received at the time the City Commission addresses such items during this meeting. Pursuant to Resolution 2013-023, public comments are limited to three minutes.

Action to be Taken:	None
Staff's Recommendation:	N/A
Additional Comments:	N/A
City Manager Review:	Yes
Mayor Authorization:	Yes

RESOLUTION 2013 -023

A RESOLUTION OF THE CITY COMMISSION OF THE CITY OF FRUITLAND PARK, FLORIDA, PROVIDING FOR A PUBLIC PARTICIPATION POLICY WITH REGARD TO MEETINGS OF CITY BOARDS AND COMMISSIONS; PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the City Commission wishes to adopt a public participation policy for meetings of the City's boards and commissions; and

WHEREAS, the City Commission accordingly desires to pass this Resolution 2013-023 to do so.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COMMISSION OF THE CITY OF FRUITLAND PARK, FLORIDA, AS FOLLOWS:

Section 1. The following Public Participation Policy shall apply to meetings of City boards or commissions as provided herein.

Sec. 1. Citizen's Rights

(a) Definition. For the purposes of this section, "board or commission" means a board or commission of the City of Fruitland Park.

(b) Right to be Heard: Members of the public shall be given a reasonable opportunity to be heard on a proposition before a City board or commission except as provided for below. Public input shall be limited to three (3) minutes. This right does not apply to:

1. An official act that must be taken to deal with an emergency situation affecting the public health, welfare, or safety, if compliance with the requirements would cause an unreasonable delay in the ability of the board or commission to act;
2. An official act involving no more than a ministerial act, including, but not limited to, approval of minutes and ceremonial proclamations;
3. A meeting that is exempt from §286.011; or
4. A meeting during which the Commission is acting in a quasi-judicial capacity. This paragraph does not affect the right of a person to be heard as otherwise provided by law.

Sec. 2. Suspension and Amendment of these Rules

(a) Suspension of these Rules: Any provision of these rules not governed by the City Charter or City Code may be temporarily suspended by a vote of a majority of the Commission.

(b) Amendment of these Rules: These rules may be amended or new rules adopted by resolution.

- (c) Effect of Variance from Rules: The failure to follow this Public Participation Policy shall not be grounds for invalidating any otherwise lawful act of the City's boards or commissions.

Section 2. If any section, subsection, sentence, clause, phrase or portion of this ordinance is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed a separate, distinct, and independent provision and such holding shall not affect the validity of the remaining portion of this Resolution.

Section 3. This Resolution shall become effective immediately upon passage.

RESOLVED this 26 day of September, 2013, by the City Commission of the City of Fruitland Park, Florida.



Christopher J. Bell, Mayor

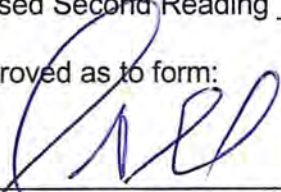
ATTEST:


MARIE AZZOLINO, Acting City Clerk

Passed First Reading 9/26/2013

Passed Second Reading N/A

Approved as to form:


SCOTT A. GERKEN, City Attorney

Select Year:

The 2019 Florida Statutes

[Title XIX](#)[Chapter 286](#)[View Entire Chapter](#)

PUBLIC BUSINESS

PUBLIC BUSINESS: MISCELLANEOUS PROVISIONS

286.0114 Public meetings; reasonable opportunity to be heard; attorney fees.—

(1) For purposes of this section, “board or commission” means a board or commission of any state agency or authority or of any agency or authority of a county, municipal corporation, or political subdivision.

(2) Members of the public shall be given a reasonable opportunity to be heard on a proposition before a board or commission. The opportunity to be heard need not occur at the same meeting at which the board or commission takes official action on the proposition if the opportunity occurs at a meeting that is during the decisionmaking process and is within reasonable proximity in time before the meeting at which the board or commission takes the official action. This section does not prohibit a board or commission from maintaining orderly conduct or proper decorum in a public meeting. The opportunity to be heard is subject to rules or policies adopted by the board or commission, as provided in subsection (4).

(3) The requirements in subsection (2) do not apply to:

(a) An official act that must be taken to deal with an emergency situation affecting the public health, welfare, or safety, if compliance with the requirements would cause an unreasonable delay in the ability of the board or commission to act;

(b) An official act involving no more than a ministerial act, including, but not limited to, approval of minutes and ceremonial proclamations;

(c) A meeting that is exempt from s. [286.011](#); or

(d) A meeting during which the board or commission is acting in a quasi-judicial capacity. This paragraph does not affect the right of a person to be heard as otherwise provided by law.

(4) Rules or policies of a board or commission which govern the opportunity to be heard are limited to those that:

(a) Provide guidelines regarding the amount of time an individual has to address the board or commission;

(b) Prescribe procedures for allowing representatives of groups or factions on a proposition to address the board or commission, rather than all members of such groups or factions, at meetings in which a large number of individuals wish to be heard;

(c) Prescribe procedures or forms for an individual to use in order to inform the board or commission of a desire to be heard; to indicate his or her support, opposition, or neutrality on a proposition; and to indicate his or her designation of a representative to speak for him or her or his or her group on a proposition if he or she so chooses; or

(d) Designate a specified period of time for public comment.

(5) If a board or commission adopts rules or policies in compliance with this section and follows such rules or policies when providing an opportunity for members of the public to be heard, the board or commission is deemed to be acting in compliance with this section.

(6) A circuit court has jurisdiction to issue an injunction for the purpose of enforcing this section upon the filing of an application for such injunction by a citizen of this state.

(7)(a) Whenever an action is filed against a board or commission to enforce this section, the court shall assess reasonable attorney fees against such board or commission if the court determines that the defendant to such action acted in violation of this section. The court may assess reasonable attorney fees against the individual filing such an

action if the court finds that the action was filed in bad faith or was frivolous. This paragraph does not apply to a state attorney or his or her duly authorized assistants or an officer charged with enforcing this section.

(b) Whenever a board or commission appeals a court order that has found the board or commission to have violated this section, and such order is affirmed, the court shall assess reasonable attorney fees for the appeal against such board or commission.

(8) An action taken by a board or commission which is found to be in violation of this section is not void as a result of that violation.

History.—s. 1, ch. 2013-227.

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