

**AGREEMENT TO PIGGYBACK A CONTRACT FOR SERVICES BID BY ANOTHER
GOVERNMENTAL ENTITY**

This Piggyback Agreement (Agreement) is entered into by and between the City of Haines City, a political subdivision of the State of Florida whose address is 620 East Main Street, Haines City, Florida 33844, hereinafter referred to "the **City**", AND **Johnson's Excavating & Services, Inc.**, whose mailing address is 1706 East Trapnell Road, Plant City, Florida 33566, hereinafter referred to as "the **Contractor**".

RECITALS

WHEREAS, Osceola County entered into an agreement with the Contractor on February 1, 2021 to provide demolition services related to the demolition and disposal of existing structures identified as uninhabitable and a danger to the public, pursuant to RFP-20-11940-MM "Demolition Services for Projects under \$100,000.00 on a Task Authorization Basis"; and

WHEREAS, the **City** upon the passing of a resolution adopted by its Board of Commissioners has the legal authority to piggyback onto a purchasing agreement procured in accordance with Chapter 287.057 Florida Statutes by another governmental entity pursuant to Section 189.053, Florida Statutes, when seeking to utilize the same or similar services provided in said agreement; and

WHEREAS, the **City** desires to piggyback onto the above referenced purchasing agreement between the Contractor and Osceola County for utilization of the same or similar services for the demolition and disposal of existing structures identified as uninhabitable and a danger to the public and all appurtenances related to same.

NOW THEREFORE having found it to be in the public interest, the parties agree as follows:

1. The above listed recitals are true and correct and are incorporated herein by reference.
2. The Contractor affirms and ratifies the terms and conditions of the above listed agreement with Osceola County and agrees to perform the services as set forth therein for the City until the work is completed. Contractor further agrees that for the purposes of interpretation and enforcement of the subject Agreement, the term "City of Haines City" shall be substituted for the term "Osceola County" throughout the Contract Documents.
3. The City agrees to utilize the services of the Contractor in a manner and upon the terms and conditions as set forth in the agreement with Osceola County.

4. The Contractor and the City agree to modify the agreement between the Contractor and Osceola County District as follows:

SECTION 1. TERM.

The term of this Agreement shall begin upon execution and continue through December 31, 2024, and may be extended when in the best interests of the CITY.

SECTION 2. SCOPE OF SERVICES.

The CONTRACTOR will furnish and install all necessary labor, materials, permits, and equipment to complete the services set forth in **Exhibit "A"** which is attached hereto and incorporated herein.

SECTION 3. COMPENSATION.

- A. Compensation for services completed by the CONTRACTOR will be in accordance with section 218.70, Florida Statutes, Florida's Prompt Payment Act. The amount to be paid under this Agreement for services rendered will not exceed One Hundred Thousand AND 00/100 DOLLARS (\$100,000.00) per project in accordance, with the pricing schedule set forth by the CONTRACTOR in response to each individual Scope of Services and awarded in the Task Authorization Order demonstrating acceptance by the CITY in the form attached as **Exhibit "B."**

The process for awarding each Task Authorization Order is further described in the attached **Exhibit "C."**

- B. Services to be performed in accordance with this Agreement are subject to the annual appropriation of funds by the CITY. In its sole discretion, the CITY reserves the right to forego use of the CONTRACTOR for any project which may fall within the Scope of Services listed herein. In the event the CITY is not satisfied with work provided by the CONTRACTOR, the CITY will hold any amounts due until such time as the CONTRACTOR has appropriately addressed the problem.

SECTION 4. OBLIGATIONS OF THE CONTRACTOR.

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

- A. It is understood that the CONTRACTOR shall provide and pay for all labor, tools, materials, permits, equipment, transportation, supervision, and any and all other items or services, of any type whatsoever, which are necessary to fully complete and deliver the services requested by the CITY, and shall not have the authority to create or cause to be filed any liens for labor and/or materials on or against the CITY or any property owned

by the CITY. Such lien, attachment, or encumbrance, until it is removed, shall preclude any and all claims or demands for any payment expected by virtue of this Agreement.

- B. The CONTRACTOR will ensure that all of its employees, agents, subcontractors, representatives, and the like, fully comply with all of the terms and conditions set herein when providing services for the CITY in accordance herewith.
- C. The CONTRACTOR shall provide the CITY with a complete disclosure of proposed sub-contractors to be utilized for the performance of any portion of the Scope of Services set forth herein. The use of sub-contractors will be approved, in writing, by the CITY before the project commences.
- D. The CONTRACTOR shall comply with all statutory requirements regarding any payment to sub-contractors and shall file a notarized Release of Liens with all pay applications for sub-contractors.
- E. The CONTRACTOR shall be solely responsible for the means, methods, techniques, sequences, safety programs, and procedures necessary to properly, and fully complete the work set forth in the Scope of Services.
- F. The CONTRACTOR will maintain an adequate and competent staff, and remain authorized to do business within the State of Florida. The CONTRACTOR may subcontract the services requested by the CITY; however, the CONTRACTOR is fully responsible for the satisfactory completion of all subcontracted work.
- G. The CONTRACTOR shall use appropriate tools and/or equipment which are in good repair and proper working order, so as to enable the CONTRACTOR to complete the services required hereby.
- H. At its sole discretion, the CITY will submit to the CONTRACTOR a detailed Scope of Services including sketches and/or drawings of a proposed project, where available. The CONTRACTOR shall evaluate same within seven (7) days and present a response to the CITY, including a price proposal and breakdown for the total cost of completing the project. If the CITY accepts the proposed response to the Scope of Services submitted by the CONTRACTOR, the CITY will issue (1) a Task Authorization Order, similar to the form attached hereto as **Exhibit "B"**, and (2) a properly executed purchase order, which will collectively serve as notice to proceed with the project unless otherwise agreed upon by both parties.
- I. The CONTRACTOR will supervise each project in accordance with the terms and conditions set forth herein and in accordance with the Task Authorization Order issued by the CITY.
- J. The CONTRACTOR shall supply the names and addresses of all subcontractors and material suppliers prior to providing the services required by each Task Authorization Order.

- K. For each project work site, the CONTRACTOR will employ and maintain at least one qualified supervisor who shall have full authority to act on behalf of the CONTRACTOR. Accordingly, any and all communications from the CITY to the qualified supervisor shall be as binding as if given directly to the CONTRACTOR. The name of said supervisor shall be supplied to the CITY in the CONTRACTOR's response to the Scope of Services for each project outlined in the Task Authorization Order.
- L. The CONTRACTOR shall not use a supervisor, subcontractor, or material supplier against whom the CITY has a reasonable objection, and shall make all reasonable attempts to subcontract with local firms currently doing business within the CITY.
- M. During the term of this Agreement and forever hereafter, the CONTRACTOR will not divulge, furnish, or make available to any third person, firm, or organization, without the CITY's prior written consent, or unless incident to the proper performance of its obligations hereunder, or in the course of judicial or legislative proceedings where such information has been properly subpoenaed, any non-public information concerning the services to be rendered by the CONTRACTOR or any subcontractor(s) pursuant to this Agreement. In addition, the CONTRACTOR shall ensure that all of its employees, subcontractor(s), and the like to fully comply with the provisions of this section.
- N. Upon termination, for any reason, the CONTRACTOR shall promptly deliver to the CITY all documents, papers, drawings, models, or any other materials to which the CITY has exclusive rights.

SECTION 5. STANDARD OF CARE.

- A. The CONTRACTOR has, during the selection and negotiation process which has preceded this Agreement, represented to the CITY that it possesses a level of knowledge, experience, and expertise that is commensurate with firms in the areas of practice required for the services to be provided. By executing this Agreement, the CONTRACTOR agrees that the CONTRACTOR will exercise that degree or care, knowledge, skill, and ability as any other similarly situated contractor possessing the degree of skill, knowledge, experience, and expertise within the local area, working on similar activities. The CONTRACTOR shall perform the services requested in an efficient manner consistent with the CITY's stated objectives and standards.
- B. The CONTRACTOR covenants and agrees that it and its employees, agents, subcontractors, representatives, and the like, shall be bound by the same standards of conduct as stated above.

SECTION 6. TERMINATION.

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

SECTION 7. PAYMENT WHEN SERVICES ARE TERMINATED.

- A. In the event of termination of this Agreement by the CITY, and not due to the fault of the CONTRACTOR, the CITY shall compensate the CONTRACTOR for all services performed prior to the effective date of termination.
- B. In the event of termination of this Agreement due to the fault of the CONTRACTOR, or at the written request of the CONTRACTOR, the CITY shall compensate the CONTRACTOR for all services completed, prior to the effective date of termination, which have resulted in a usable product or otherwise tangible benefit to the CITY. All such payments shall be subject to a set-off for any damages incurred by the CITY resulting from any delay occasioned by early termination.

SECTION 8. PAYMENT WHEN SERVICES ARE SUSPENDED.

The CITY reserves the right to suspend any services authorized under this Agreement. In such an event, the CITY shall compensate the CONTRACTOR for all services performed prior to the effective date of any such suspension.

SECTION 9. NON-ENTITLEMENT TO ANTICIPATED FEES.

In the event the professional services to be performed under this Agreement are terminated, eliminated, canceled, or decreased due to termination, suspension, modification, or for any other reason, the CONTRACTOR shall not be entitled to receive compensation for anticipated professional fees, profit, general and/or administrative overhead expenses, or for any other anticipated income or expenses.

SECTION 10. INSURANCE.

During the term of this Agreement, Contractor at its sole expense, shall provide insurance of such a type and with such terms and limits as noted below. Providing and maintaining adequate insurance coverage is a material obligation of Contractor. Contractor shall provide the City a certificate of insurance evidencing such coverage. Contractor's insurance coverage shall be primary insurance as respects to the City for all applicable policies. The limits of coverage under each policy maintained by Contractor shall not be interpreted as limiting Contractor's liability and obligations under this Agreement. All insurance policies shall be through insurers authorized or eligible to write policies in Florida and possess an A.M. Best rating of A-, VII or better, subject to the approval of the City's Risk Manager.

The coverages, limits and/or endorsements required herein protect the primary interests of the City, and these coverages, limits and/or endorsements shall in no way be required to be relied upon when assessing the extent or determining appropriate types and limits of coverage to

protect the Contractor against any loss exposures, whether as a result of this Agreement or otherwise. The requirements contained herein, as well as the City's review or acknowledgement, is not intended to and shall not in any manner limit or qualify the liabilities and obligations assumed by the Contractor under this Agreement.

The following insurance policies/coverages are required:

A. Commercial General Liability

Coverage must be afforded under a Commercial General Liability policy with limits not less than:

- \$1,000,000 each occurrence and \$2,000,000 project aggregate for Bodily Injury, Property Damage, and Personal and Advertising Injury
- \$1,000,000 each occurrence and \$2,000,000 project aggregate for Products and Completed Operations

Policy must include coverage for Contractual Liability, Independent Contractors, and contain no exclusions for explosion, collapse, or underground.

The City, a political subdivision of the State of Florida, its officials, employees, and volunteers are to be covered as an additional insured with a CG 20 26 04 13 Additional Insured – Designated Person or Organization Endorsement or similar endorsement providing equal or broader Additional Insured Coverage with respect to liability arising out of activities performed by or on behalf of the Contractor. The coverage shall contain no special limitation on the scope of protection afforded to the City, its officials, employees, or volunteers.

B. Business Automobile Liability

Coverage must be afforded for all Owned, Hired, Scheduled, and Non-Owned vehicles for Bodily Injury and Property Damage in an amount not less than \$1,000,000 combined single limit each accident.

If the Contractor does not own vehicles, the Contractor shall maintain coverage for Hired and Non-Owned Auto Liability, which may be satisfied by way of endorsement to the Commercial General Liability policy or separate Business Auto Liability policy.

C. Crane and Rigging Liability (if applicable)

Coverage must be afforded for any crane operations under the Commercial General or Business Automobile Liability policy as necessary, in line with the limits of the associated policy.

D. Workers' Compensation and Employer's Liability

Coverage must be afforded per Chapter 440, Florida Statutes. Any firm performing work on behalf of the City must provide Workers' Compensation insurance. Exceptions and exemptions will be allowed by the City's Risk Manager, if they are in accordance with Florida Statute.

The Contractor and its insurance carrier waive all subrogation rights against the City, a political subdivision of the State of Florida, its officials, employees, and volunteers for all losses or damages. The City requires the policy to be endorsed with WC00 03 13 Waiver of our Right to Recover from Others or equivalent.

Contractor must be in compliance with all applicable State and federal workers' compensation laws, including the U.S. Longshore and Harbor Workers' Compensation Act or Jones Act, if applicable.

For any Contractor who has exempt status as an individual, the City requires proof of Workers' Compensation insurance coverage for that Contractor's employees, leased employees, volunteers, and any workers performing work in execution of this Agreement.

If the Contractor has applied for a workers' compensation exemption, the City does not recognize this exemption to extend to the employees of the Contractor. The Contractor is required to provide proof of coverage for their employees, leased employees, volunteers and any workers performing work in execution of this Agreement. This applies to all contractors including but not limited to the construction industry.

Workers Compensation coverage through an Employee Leasing structure (PEO) is not acceptable.

E. Pollution and Remediation Legal Liability (Hazardous Materials)

For the purpose of this section, the term "hazardous materials" includes all materials and substances that are designated or defined as hazardous by Florida or Federal law or by the rules or regulations of Florida or any Federal Agency. If work being performed involves hazardous materials, the Contractor shall procure and maintain any or all of the following coverage, which will be specifically addressed upon review of exposure.

Contractors Pollution Liability Coverage (*If any*)

For sudden and gradual occurrences and in an amount not less than \$1,000,000 per claim arising out of this Agreement, including but not limited to, all hazardous materials identified under the Agreement.

Asbestos Liability Coverage (*If any*)

For sudden and gradual occurrences and in an amount not less than \$1,000,000 per claim arising out of work performed under this Agreement.

Disposal Coverage (*If any*)

The Contractor shall designate the disposal site and furnish a Certificate of Insurance from the disposal facility for Environmental Impairment Liability Insurance, covering liability for sudden and accidental occurrences in an amount not less than \$1,000,000 per claim and shall include liability for non-sudden occurrences in an amount not less than \$1,000,000 per claim.

Hazardous Waste Transportation Coverage (*If any*)

The Contractor shall designate the hauler and furnish a Certificate of Insurance from the hauler for Automobile Liability insurance with Endorsement MCS90 for liability arising out of the transportation of hazardous materials in an amount not less than \$1,000,000 per claim

limit and provide a valid EPA identification number.

F. Professional Liability and/or Errors and Omissions (if architectural or engineering services are provided)

Coverage must be afforded for Wrongful Acts in an amount not less than \$5,000,000 each claim and \$5,000,000 aggregate.

Contractor must keep insurance in force until the third anniversary of expiration of this Agreement or the third anniversary of acceptance of work by the City.

G. Property Coverage (Builder's Risk)

Coverage must be afforded in an amount not less than 100% of the total **project cost**, including soft costs, with a deductible of no more than \$25,000 each claim. Named Windstorm Deductibles, if any, must be disclosed to the City. Coverage form shall include, but not be limited to:

- All Risk Coverage including Flood and Windstorm with no coinsurance clause
- Waiver of Occupancy Clause Endorsement, which will enable the City to occupy the facility under construction/renovation during the activity. (*if applicable*)
- Storage and transport of materials, equipment, supplies of any kind whatsoever to be used on or incidental to the project
- Equipment Breakdown for cold testing of all mechanized, pressurized, or electrical equipment

For installation of property and/or equipment, Contractor must provide Builder's Risk Installation insurance to include coverage for materials or equipment stored at the project site, while in transit, or while stored at a temporary location. Coverage limit must be no less than replacement cost.

This policy shall insure the interests of the owner, contractor, and subcontractors in the property against all risk of physical loss and damage, and name the City as a loss payee. This insurance shall remain in effect until the work is completed and the property has been accepted by the City.

H. Insurance Certificate Requirements

1. The Contractor shall provide the City with valid Certificates of Insurance (binders are unacceptable) no later than thirty (30) days prior to the start of work contemplated in this Agreement.
2. The Contractor shall provide a Certificate of Insurance to the City with a thirty (30) day notice of cancellation; ten (10) days' notice if cancellation is for nonpayment of premium.
3. In the event that the insurer is unable to accommodate the cancellation notice requirement, it shall be the responsibility of the Contractor to provide the proper notice. Such notification will be in writing by registered mail, return receipt requested, and addressed to the certificate holder.
4. In the event the Agreement term goes beyond the expiration date of the insurance policy, the Contractor shall provide the City with an updated Certificate of Insurance no later than

- ten (10) days prior to the expiration of the insurance currently in effect. The City reserves the right to suspend the Agreement until this requirement is met.
5. The certificate shall indicate if coverage is provided under a claims-made or occurrence form. If any coverage is provided on a claims-made form, the certificate will show a retroactive date, which should be the same date of the initial contract or prior.
 6. The City shall be named as an Additional Insured on all liability policies, with the exception of Workers' Compensation.
 7. The City shall be granted a Waiver of Subrogation on the Contractor's Workers' Compensation insurance policy.
 8. The Agreement, Bid/Contract number, event dates, or other identifying reference must be listed on the certificate.

The Certificate Holder should read as follows:

City of Haines City
620 E. Main St.
Haines City, FL 33844

The Contractor has the sole responsibility for all insurance premiums and shall be fully and solely responsible for any costs or expenses as a result of a coverage deductible, co-insurance penalty, or self-insured retention; including any loss not covered because of the operation of such deductible, co-insurance penalty, self-insured retention, or coverage exclusion or limitation. Any costs for adding the City as an Additional Insured shall be at the Contractor's expense.

If the Contractor's primary insurance policy/policies do not meet the minimum requirements, as set forth in this Agreement, the Contractor may provide an Umbrella/Excess insurance policy to comply with this requirement.

The Contractor's insurance coverage shall be primary insurance as respects to the City, a political subdivision of the State of Florida, its officials, employees, and volunteers. Any insurance or self-insurance maintained by the City, its officials, employees, or volunteers shall be excess of Contractor's insurance and shall be non-contributory.

Any exclusions or provisions in the insurance maintained by the Contractor that excludes coverage for work contemplated in this Agreement shall be deemed unacceptable and shall be considered breach of contract.

All required insurance policies must be maintained until the contract work has been accepted by the City, and/or this Agreement is terminated. Any lapse in coverage shall be considered breach of contract. In addition, Contractor must provide confirmation of coverage renewal via an updated certificate should any policies expire prior to the expiration of this Agreement. The City reserves the right to review, at any time, coverage forms and limits of Contractor's insurance policies.

All notices of any claim/accident (occurrences) associated with this Agreement, shall be provided to the Contractor's insurance company and the City's Risk Management office as soon as practical.

It is the Contractor's responsibility to ensure that all independent and subcontractors comply with these insurance requirements. All coverages for independent and subcontractors shall be

subject to all of the requirements stated herein. Any and all deficiencies are the responsibility of the Contractor.

I. Loss Control/Safety

Precaution shall be exercised at all times by the Contractor for the protection of all persons, including employees, and property. The Contractor shall comply with all laws, regulations, or ordinances relating to safety and health, and shall make special effort to detect hazardous conditions and shall take prompt action where loss control/safety measures should reasonably be expected.

The City may order work to be stopped if conditions exist that present immediate danger to persons or property. The Contractor acknowledges that such stoppage will not shift responsibility for any loss or damages from the Contractor to the City.

SECTION 11. PERFORMANCE BOND.

At the CITY's option, the, CONTRACTOR will furnish a performance bond, at no additional charge to the CITY, prior to commencing any services required by a Task Authorization Order. Said performance bond shall be in the amount and form acceptable to the CITY and secured no later than ten (10) days after the issuance of the Task Authorization Order.

SECTION 12. CITY OBLIGATIONS.

- A. At the CONTRACTOR's request, the CITY agrees to provide, at no cost, all pertinent information known to be available to the CITY to assist the CONTRACTOR in providing and performing the required services.
- B. Without further approval of the Board of City Commissioners, and so long as the total cost of each project does not exceed \$100,000.00, the CITY hereby appoints the City Manager, or a designee thereof, to act on its behalf in making decisions regarding the tasks and projects to be completed hereunder. As such, the City Manager, or a designee thereof, may authorize change orders from the original Task Authorization Order.

SECTION 13. ENTIRE AGREEMENT.

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

SECTION 14. APPLICABLE LAW, VENUE, JURY TRIAL.

The laws of the State of Florida shall govern all aspects of this Agreement. In the event

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

SECTION 15. PUBLIC RECORDS.

A. 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 AGREEMENT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT THE FOLLOWING:

Public Records Manager
620 East Main Street
Haines City, Florida 33844
863-421-9921 Ext 5137
blane@hainescity.com

- B. The CONTRACTOR understands that by virtue of this Agreement all of its documents, records and materials of any kind, relating to the relationship created hereby, shall be open to the public for inspection in accordance with Florida law. If CONTRACTOR will act on behalf of the CITY, as provided under section 119.011 (2), Florida Statutes, the CONTRACTOR, subject to the terms of section 287.058(1)(c), Florida Statutes, and any other applicable legal and equitable remedies, shall:
1. Keep and maintain public records required by the CITY to perform the service.
 2. Upon request from the CITY'S custodian of public records, provide the CITY with a copy of the requested records or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided by Florida law.
 3. Ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law for the duration of the contract term and following completion of the contract if the CONTRACTOR does not transfer the records to the CITY.
 4. Upon completion of the contract, transfer, at no cost, to the CITY all public records in possession of the CONTRACTOR or keep and maintain public records required by the CITY to perform the service. If the CONTRACTOR transfers all public records to the CITY upon completion of the contract, the CONTRACTOR shall destroy any duplicate public records that are exempt or confidential and exempt

from public records disclosure requirement. If the CONTRACTOR keeps and maintains public records upon completion of the contract, the CONTRACTOR shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to the CITY, upon request from the CITY'S custodian of public record, in a format that is compatible with the information technology systems of the CITY.

5. If the CONTRACTOR does not comply with a public records request, the CITY shall enforce the contract provisions in accordance with the contract.

SECTION 16. INDEPENDENT CONTRACTOR.

It is agreed by the parties hereto, at all times and for all purposes, within the scope of this Agreement, the relationship of the CONTRACTOR and the CITY is that of an independent contractor and the CONTRACTOR, its employees, subcontractors, representatives, and the like, shall not be entitled to any of the rights, privileges or benefits of a CITY employee.

SECTION 17. APPLICABLE LICENSING.

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

SECTION 18. COMPLIANCE WITH ALL LAWS.

The CONTRACTOR, at its sole expense, shall comply with all Laws, Ordinances, Judicial Decisions, Orders, and Regulations of Federal, State, County, and municipal governments, as well as their respective Departments, Commissions, Boards, and Officers, which are in effect at the time of execution of this Agreement or are adopted at any time following the execution of this Agreement.

SECTION 19. INDEMNIFICATION.

The CONTRACTOR agrees to be liable for any and all damages, losses, and expenses incurred, by the CITY, caused by the acts and/or omissions of the CONTRACTOR, or any of its employees, agents, sub-contractors, representatives, or the like. The CONTRACTOR agrees to indemnify, defend and hold the CITY harmless for any and all claims, suits, judgments or damages, losses and expenses, including but not limited to, court costs, expert witnesses, consultation services and attorney's fees, arising from any and all acts and/or omissions of the CONTRACTOR, or any of its employees, agents, sub-contractors, representatives or the like.

SECTION 20. SOVEREIGN IMMUNITY

The CITY expressly retains all rights, benefits and immunities of sovereign immunity in accordance with Section 768.28, Florida Statutes. Notwithstanding anything set forth in any section, article or paragraph of this Agreement to the contrary, nothing in this Agreement shall be deemed as a waiver of sovereign immunity or limits of liability which may have been adopted by the Florida Legislature or may be adopted by the Florida Legislature, and the cap on the amount and liability of CITY for damages, attorney fees and costs, regardless of the number or nature of claims in tort, equity or contract, shall not exceed the dollar amount set by the Florida Legislature for tort. Nothing in this Agreement shall inure to the benefit of any third party for the purpose of allowing any claim against the CITY which would otherwise be barred under the Doctrine of Sovereign Immunity or operation of law.

SECTION 21. BANKRUPTCY OR INSOLVENCY.

If the CONTRACTOR shall file a Petition in Bankruptcy, or if the same shall be adjudged bankrupt or insolvent by any Court, or if a receiver of the property of the CONTRACTOR shall be appointed in any proceeding brought by or against the CONTRACTOR, or if the CONTRACTOR shall make an assignment for the benefit of creditors, or proceedings shall be commenced on or against the CONTRACTOR's operations of the premises, the CITY may terminate this Agreement immediately notwithstanding the notice requirements of Section 7 hereof.

SECTION 22. BINDING EFFECT.

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

SECTION 23. ASSIGNMENT.

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

SECTION 24. SEVERABILITY.

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

SECTION 25. WAIVER.

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

SECTION 26. NOTICE.

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

CITY: City of Haines City
Attn: Procurement Services
620 East Main Street
Haines City, Florida 33844

CONTRACTOR: Johnson's Excavation & Services, Inc.
1706 East Trapnell Road
Plant City, Florida 33566

SECTION 27. MODIFICATION.

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

SECTION 28. HEADINGS.

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

SECTION 29. ADMINISTRATIVE PROVISIONS.

In the event the CITY issues a purchase order, memorandum, letter, or any other instrument addressing the services, work, and materials to be provided and performed pursuant

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

SECTION 30. CONFLICT OF INTEREST.

The CONTRACTOR warrants that the CONTRACTOR has not employed or retained any company or person, other than a bona fide employee working solely for the CONTRACTOR, to solicit or secure this Agreement, and that the CONTRACTOR has not paid or agreed to pay any person, company, corporation, individual, or firm any fee, commission, percentage, gift or any other consideration, contingent upon or resulting from the award or making of this Agreement. For the breach or violation of this Paragraph, the CITY shall have the right to terminate this Agreement immediately, without liability and without regard to the notice requirements of Section 7 hereof.

SECTION 31. PUBLIC ENTITY CRIMES.

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

SECTION 32. EMPLOYMENT ELIGIBILITY VERIFICATION (E-VERIFY)

Pursuant to Florida Statutes, Section 448.095, the CONTRACTOR shall be registered with and utilize the U.S. Department of Homeland Security's E-Verify system to verify the employment eligibility status of all employees performing work under this Agreement as well as all newly hired employees. In addition, the CONTRACTOR shall require any and all subcontractors performing work in accordance with this Agreement to register with and utilize the U.S. Department of Homeland Security's E-Verify system to verify the employment eligibility status of all employees performing work under this Agreement as well as all newly hired employees. Any such subcontractor shall provide an affidavit to the CONTRACTOR stating that the subcontractor does not employ, contract with or subcontract with any ineligible individuals and the CONTRACTOR must keep a copy of said affidavit for the duration of this Agreement. Violation of this section is subject to immediate termination of this Agreement without regard to any notice otherwise required herein. In the event the CITY incurs costs as a result of the CONTRACTOR'S breach of this provision, any and all such costs shall be paid by the CONTRACTOR immediately upon receipt of notice of the same from the CITY. Information on registration for and use of the E-Verify Program may be obtained at the Department of

Homeland Security website: <http://www.dhs.gov/E-Verify>

SECTION 33. JOINT AUTHORSHIP.

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

SECTION 34. EQUAL OPPORTUNITY EMPLOYER

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

SECTION 35. AUDITING, RECORDS, AND INSPECTION.

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

SECTION 36. PROJECT MANAGERS.

The CITY and the CONTRACTOR have identified individuals as Project Managers, listed below, who shall have the responsibility for managing the work performed under this Agreement. The person or individual identified by the CONTRACTOR to serve as its Project Manager for this Agreement, or any replacement thereof, is subject to prior written approval and acceptance of the CITY. If the CITY or CONTRACTOR replace their current Project Manager with another individual, an amendment to this agreement shall not be required. The CITY will notify the CONTRACTOR, in writing, if the current CITY Project Manager is replaced by another individual.

A. The CITY Project Manager's contact information is as follows:

Richard Greenwood, Development Services Director
Haines City Development Services Department
620 East Main Street
Haines City, Florida 33844
Phone: (863) 421-9933
Email: RGreenwood@hainescity.com

B. The CONTRACTOR Project Manager's contact information is as follows:

Donathan A. Johnson, President
Johnson's Excavation & Services, Inc.
1706 East Trapnell Road
Plant City, Florida 33566
Phone: (813) 752-7097
Email: sales@jecontracting.com

SECTION 37. PUBLIC EMERGENCIES.

It is hereby made a part of this Agreement that before, during, and after a public emergency, disaster, hurricane, tornado, flood, or other acts of God, Haines City shall require a "First Priority" for goods and services. It is vital and imperative that the health, safety, and welfare of the citizens of Haines City are protected from any emergency situation that threatens public health and safety as determined by the CITY. The CONTRACTOR agrees to rent/sell/lease all goods and services to the CITY or governmental entities on a "first priority" basis. The CITY expects to pay contractual prices for all products and/or services under this Agreement in the event of a disaster, emergency, hurricane, tornado, flood, or other acts of God. Should the CONTRACTOR provide the CITY with products and/or services not under this Agreement, the CITY expects to pay a fair and reasonable price for all products and/or services rendered or contracted in the event of a disaster, emergency, hurricane, tornado, flood, or other acts of God.

SECTION 38. SCRUTINIZED COMPANIES AGREEMENT TERMINATION CLAUSE

This Agreement may be terminated by the CITY, without penalty to the CITY, i) in the event that Vendor is put on the scrutinized companies lists enumerated in Section 287.135, Florida Statutes, or ii) if the CITY determines that Vendor falsely certified to the CITY that Vendor is not listed as a scrutinized company. Exemptions and additional penalties shall be as set forth in Section 287.135, Florida Statutes.

6. The terms, covenants and conditions set forth in the agreement between the Contractor and Osceola County not specifically amended herein, will continue in existence, and are hereby ratified, approved, and confirmed, and will remain binding upon the parties hereto.
7. The Osceola County executed contract is attached in Exhibit "D". The Osceola County contract documents for RFP-20-11940-MM "Demolition Services for Projects under \$100,000 on a Task Authorization Basis" are incorporated herein by reference.
8. This agreement shall become effective on the later of the dates following the parties' signatures below.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their duly authorized representatives as of the dates indicated below.

CITY OF HAINES CITY, FLORIDA

By: _____
Morris L. West, Mayor-Commissioner

Date: _____, _____, 2022.

ATTEST:

By: _____
Erica Anderson, City Clerk

Date: _____, _____, 2022.

Reviewed as to form and legal sufficiency

Fred Reilly, City Attorney

JOHNSON'S EXCAVATION & SERVICES., INC.,
a Florida corporation

By: _____
Name: Donathan A. Johnson
Title: President
Date: _____, _____, 2022

EXHIBIT "A"
SCOPE OF SERVICES

A. Scope of Services.

It is the intent of this solicitation to engage one or more qualified contractors for the provision of a complete turn-key solution for securing, demolishing, removal, clearing property of all debris, and land restoration, to a natural state on an as needed basis, including unsafe structures.

The CONTRACTOR shall provide and pay for all labor, tools, materials, permits, equipment, transportation, supervision, and any and all other items or services, of any type whatsoever, which are necessary to fully complete each Task Authorization as assigned by the CITY.

Provide all demolition and clearance necessary to completely clear existing structures identified as uninhabitable and a danger to the public on a "Task Authorization" basis. This work shall also include, but not be limited to: all existent concrete pads, footers/foundation, all underground piping, and excess fill to ensure site is left at a finish grade condition equal to the surrounding elevation while maintaining appropriate drainage. Contractor will legally dispose of related debris as follows:

1. All structure(s) made of wood frame, block, metal/steel, aluminum, and other building materials are to be level with the ground surface. Slab, sidewalk, and driveways are to be removed from the subject lot. Structures may include, but not be limited to, residential structures, commercial buildings, accessory structures and mobile homes.
2. All appliances, air conditioners, well houses, etcetera.
3. All man-made materials, trash/garbage, and debris.
4. Backfill spas, removal of aboveground pools, pool cages, fences, sheds, carports, and garages.
5. Septic tanks shall be pumped and demolished according to the requirements of the Community Health Department as stipulated in Florida Administrative Code Chapter 64E-6. This will require a State-licensed plumber or certified septic tank contractor to provide application to the Department of Health for a Septic Tank Abandonment Permit.
6. Water and/or sewer lines shall be properly capped, and power poles shall be properly removed from the site.

7. Existing water wells must be closed using the "Full Grout" system as required by the South Florida Water Management District and stipulated in the Florida Statute 40 A- Well closures are to be performed by a Florida licensed water well contractor. Proof of final inspection must be provided with the Contractor's invoice.
8. Footers and foundations shall be removed to two (2) feet below grade.
9. Remove all vehicles, such as cars and boats, as applicable.
10. The CONTRACTOR shall fill and final grade the site to eliminate any depressions and/or holes on the property.

B. CONTRACTOR Responsibilities

1. The CONTRACTOR shall perform demolition in a manner that provides appropriate consideration for any potential adverse health impacts to the public. All work shall be completed using quality workmanship and in strict compliance with all building codes, the National Emission Standards for Hazardous Air Pollutants (NESHAP), the Occupational Safety and Health Administration (OSHA), and all other applicable laws. The burning of structures/debris is not permissible.

Work on property is to be completed within **thirty (30)** days of the CONTRACTOR's receipt of notice to proceed with demolition on individual property/properties identified in the Notice to Proceed. If additional time is required for any reason, including weather delays, delays by the community, the State, or FEMA, the Contractor must provide a written request for the extension, which must be approved by the CITY.

2. **Backfill - Finishing:** The CONTRACTOR shall obtain inspection and approval from the designated CITY representative prior to backfilling any excavations, holes, or depressions on the demolition site as a result of the structure demolition. All excavations, holes or depressions in the demolition site shall be filled and compacted with sand or earthen fill and a tillable layer of topsoil (minimum of 4-6 inches) spread over the entire property to a uniform, natural grade consistent with established adjacent grades. All fill needed to complete the project shall be included in the Lump Sum Total for each site. No additional fill charges will be accepted.
3. **Adjacent Grades:** When referred to in these specifications, adjacent grades mean approximate existing elevations of the ground surrounding the area excavated, holes or depressions on the demolition site, at a distance of five (5) feet outside the area,

particularly when the existing ground has been previously graded up so as to slope away from the structure. Backfill will match the stability and grade of the adjacent undisturbed soils. To prevent the settling of the backfill and the ponding of surface water, grade shall remain uniformly stable for at least sixty (60) days after the project has been completed and accepted by the CITY. The CONTRACTOR shall remedy such settling by additional tamping, refilling, compacting and re- grading in conformance with the specifications contained herein at no additional cost to the CITY.

4. **Cleanup:** All pieces, parts, scraps, debris, rubbish, wood and organic materials from a structure or part of a structure in the process of being demolished shall be cleaned up and removed from the premises daily. Final cleanup after the structure is demolished shall include complete and thorough removal from the premises of all parts or pieces of the structure, its contents and its furnishings, including all debris, organic materials, rubbish, wood, concrete, and masonry rubble in its entirety. Concrete slabs on grade including floors, entrance slabs, patios, and garages or shed floors shall also be completely removed. If an accessory building (for example a garage, porch, cabana or shed type structure) is part of the project, the underlying concrete slab and/or flooring shall also be removed. If applicable, all hazardous open pits and recesses shall be filled with thoroughly tamped earthen material to eliminate the hazard.
5. **Debris Ownership and Hauling Responsibilities:** The CITY assumes no responsibility for the actual condition of items to be demolished. Once the CONTRACTOR begins activity on a site, all debris generated is the property of the CONTRACTOR and he/she shall be solely responsible for all aspects related to the debris, including, but not limited to: the hauling and disposal of the debris. This includes all materials resulting from demolition unless otherwise specified herein.

The CONTRACTOR will remove and dispose of all excess material, debris and trash developed during the course of providing the contracted services. No material may be burned or buried on site.

6. **Equipment:** The CONTRACTOR shall be responsible for providing all necessary equipment.
 - a. The CONTRACTOR shall be equipped with the normal tools of their trade and shall furnish all labor, tools, and other items necessary for and incidental to executing and completing the required work.

- b. All equipment and vehicles utilized by the CONTRACTOR shall meet all requirements of the federal, state and local regulations including without limitation, all United States Department of Transportation (USDOT), State of Florida Department of Transportation (FOOT) and any and all applicable safety regulations. All loads must be secured and solid metal tailgates must be used on all loads. Sideboards must be sturdy and may not extend more than two (2) feet above the metal sides of the truck or trailer in use for this project.
 - c. The CONTRACTOR shall furnish a complete and updated list identifying truck and trailers that will be used in the transport of debris to the permanent disposal sites. The listing shall include the following information:
 - i. Truck and/or trailer license number;
 - ii. Year, make, model and color of each truck and/or trailer; and, Cubic yardage capacity of each truck and/or trailer.
 - d. The CONTRACTOR will remove all tools and equipment immediately after the completion of the work.
7. **Hazardous Materials:** The CITY does not test structures for Hazardous Materials. The CONTRACTOR will be responsible for inspection of the structure to identify hazardous materials including but not limited to asbestos and lead. If a hazardous material is identified, the CONTRACTOR will contact the Project Manager immediately. The CONTRACTOR will obtain pricing to abate the hazardous material. The Project Manager must approve the additional expense prior to disposing of any hazardous material. Disposal of hazardous materials will be in compliance with applicable federal, state and local codes.
8. **Utilities:** The CONTRACTOR will contact all required utility companies to disconnect their facilities and/or services from the structures to be demolished, as well as secure any required documentation to be submitted to the CITY at the time of permit submittal. Contractor shall cut and cap said utilities at the property line in accordance with applicable utility company rules and regulations.
9. **Permits:** The CONTRACTOR will obtain, at his own expense, all necessary permits required for this type of work.
10. **Tipping Fees:** The CONTRACTOR is responsible for the payment of all tipping fees for the disposal of any debris generated under this contract.
11. **Damage to Public And Or Private Property:** Extreme care shall be taken to safeguard all existing facilities to include but not limited to all nearby or adjoining

properties, site amenities, sidewalks, sprinkler systems, trees, shrubs, windows, and all vehicles on or around the job site. Damage to public and/or private property shall be the responsibility of the CONTRACTOR and shall be replaced or repaired at the CONTRACTOR's sole expense. If the CONTRACTOR has not repaired or replaced damaged property within 24 hours-notice by the CITY, the CITY reserves the right to correct the situation and deduct all charges from the CONTRACTOR's invoice.

C. **Maximum Task Authorization Value:** Maximum total for any individual Task Authorization shall not exceed \$100,000.

D. **Task Authorization Procedure:** This section briefly describes the expected process to be used to request work from the successful proposers.

1. CITY identifies work that needs to be performed.
2. CITY issues a generally worded scope of work outlining the necessary improvement for a specific project to the pre-qualified list of contractors to obtain pricing to complete the project.
3. CONTRACTOR drafts price proposal and submits to CITY for review. This proposal shall include the following:
 - a. Brief description of the work to be performed.
 - b. Labor and material costs for each of the major elements of work. Total cost of project.
 - c. List of sub-contractors.
 - d. Signed statement confirming that the CONTRACTOR has visited the site prior to preparing the estimate and is thoroughly familiar with the site and the scope of work.
 - e. Number of calendar days required to complete the work after CITY authorization. It is the responsibility of the contractor to ensure that he has all the information necessary to prepare the estimate.
 - f. The completed cost proposal shall be signed and dated by the CONTRACTOR and returned to the CITY for review within ten (10) working days of request.
 - g. Upon review of all proposals received; the CITY will assign the project by issuing a Task Authorization.
4. The CITY's review and approval of the cost estimate shall become the sole price for each Task Authorization awarded. The CITY will only consider change orders in extreme cases.
5. A typical Task Authorization shall include the following:
 - a. Sequential Tracking Number

- b. Description of the work to be performed
 - c. Special Conditions (if applicable)
 - d. Identification of all sub-contractors to be used (subject to CITY approval)
 - e. Submittal of Material Sheets (i.e. cut sheets, plans, permits, etc.) Subject to CITY approval
 - f. Liquidated damages provision (if applicable)
 - g. Milestone Schedule and date of Completion
 - h. Pertinent Attachments
6. Issuance by the CITY of a Purchase Order after the Task Authorization has been signed by both parties shall constitute the Notice to Proceed. The CONTRACTOR shall commence on-site work no later than ten (10) working days after receipt of a Purchase Order.
 7. The successful CONTRACTOR(s) may subcontract up to 59% of the work value for each project and shall comply with statutory requirements regarding payment to sub-contractors.
 8. The CONTRACTOR shall control all work.
 9. If in the CITY's opinion, the CONTRACTOR has been found to submit excessive pricing for any element of the task assigned which cannot be justified, the CITY may select an alternate CONTRACTOR for the work. If the CONTRACTOR has been found, in the CITY's opinion, to submit excessive pricing for work elements that cannot adequately be justified on a repeated basis, the CITY reserves the right to suspend the CONTRACTOR from the pre-qualified list.
 10. Maintenance of Traffic shall be performed in accordance with FDOT standards and will be the responsibility of the CONTRACTOR.
 11. CONTRACTORS that have three active tasks assigned and underway will be ineligible to submit a proposal on any additional tasks until at least one existing task is complete and fully accepted by the CITY.

THIS AREA INTENTIONALLY BLANK

Exhibit B

Task Authorization Order

TASK AUTHORIZATION ORDER FORM	
City of Haines City Task Authorization	City Project Manager:
	Date: _____ Number: _____
In accordance with the terms and conditions of the Agreement dated _____ the parties hereto agree to perform the work itemized below.	Contractor: Consultant Project Manager:
NOTE: THE CONTRACTOR/CONSULTANT <u>MAY NOT BEGIN WORK</u> UNTIL A SIGNED PURCHASE ORDER IS DELIVERED TO THE CONTRACTOR/CONSULTANT.	
Summary of Work to be Completed by the Contractor/Consultant	
<u>Each Task Authorization package shall include:</u>	
Attachment A - Scope of Work	
Attachment B - Price Breakdown	
Attachment C - Schedule	
Attachment D - Sub-Contractor	
Recommended By: _____	Date: _____
Department Administrator or delegate	

Reviewed By: _____ Date: _____	
Requestor	
Contractor/Consultant Approved	City Manager or Delegate Approval
Name (print)	Name (print)
Signature:	Signature:
Date:	Date:

Exhibit C

Task Authorization Review and Approval Process

TA REVIEW AND APPROVAL PROCESS

1. The CITY will request written proposals from the CONTRACTOR(s) for each individual project. The task authorization form will include a summary of the proposed project, identifying the proposed project manager and shall include the following attachments at a minimum: Attachment A - Scope of Work, Attachment B - Price Breakdown, Attachment C - Schedule and Attachment D - Sub-Contractor.
2. Projects will be assigned to the individual firms based on current workload, schedule, availability and expertise, in the CITY'S sole discretion. Individual TA's shall not exceed \$100,000 in value.
3. The CONTRACTOR(s) will perform and provide general construction services on a Task Authorization basis to include but not limited to:
 - a. A detailed description of work to be performed;
 - b. According to all building codes, provide itemized labor and materials costs for each of the elements of work (i.e., general conditions, facilities, renovations, carpentry, drywall, ceilings, painting, flooring, plumbing, HVAC, electrical, roofing, windows, doors, etcetera, as applicable to each specific project);
 - c. Total cost of proposal;
 - d. Signed statement confirming that the contractor(s) has visited the site prior to preparing the estimate and is thoroughly familiar with the site and the scope of work;
 - e. Number of calendar days required to complete the work after the CITY's Authorization.
 - f. Signed, dated, and completed cost proposal returned to the CITY for review within ten (10) working days of request;
 - g. Tracking number;
 - h. Special conditions (if applicable)
 - i. Liquidated damages provision (if applicable)
 - j. Milestone Schedule and date of Completion
 - k. Pertinent Attachments; and,
 - l. Associated work as necessary for the completion of the assigned Task Authorization.

Exhibit D

Osceola County Contract

