

**OFFICE OF INSPECTOR GENERAL
CITY OF JACKSONVILLE**



**REPORT OF INVESTIGATION
2021-0002**

**COJ EMPLOYEE ACCEPTED UNALLOWABLE
GIFTS AND MISUSED POSITION TO RECEIVE
EXPEDITED SERVICE**

**MATTHEW J. LASCELL
INSPECTOR GENERAL**

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"Enhancing Public Trust in Government Through Independent and Responsible Oversight"



EXECUTIVE SUMMARY

Report of Investigation 2021-0002

The Office of Inspector General (OIG) initiated an administrative investigation in accordance with §602.303, City of Jacksonville (COJ) Ordinance Code and *substantiates* the allegation that Mr. Richard “Ricky” Leon, Urban Forestry Manager, Mowing and Landscaping Division (Mowing and Landscaping), Public Works Department (Public Works) accepted gifts from a COJ vendor, Lewis Tree Service, Inc. (Lewis Tree), in excess of the allowable dollar amount.

According to §602.701, COJ Ordinance Code, COJ employees are prohibited from accepting gifts given by a vendor that they know does business with their agency if it is:

- (1) in excess of \$100 for a single gift and/or
- (2) the gifts total more than \$250 in a calendar year.

In 2016 and 2017, Mr. Leon received gifts from a person or vendor that he knew did business with his agency (a Lewis Tree employee, Robert “Bobby” Bragan, General Foreman, Lewis Tree) which exceeded the \$100 allowable single gift limit, as well as the \$250 cumulative gift limit per each calendar year.

Mr. Bragan testified that he used his Lewis Tree-issued credit card to pay for Leon’s 2016 and 2017 Florida Vegetation Management Association (FVMA) conference registrations and hotel rooms. Lewis Tree records revealed that Bragan’s Lewis Tree credit card purchased 2016 and 2017 FVMA conference registrations in Mr. Leon’s name in the amount of \$175 and \$215, respectively, as well as several hotel rooms ranging in price from \$337.12 to \$465.01 (2016) and \$572.29 to \$923.45 (2017).

When interviewed by the OIG, Mr. Leon admitted that Lewis Tree paid for him to attend the 2016 and 2017 FVMA conferences, including his hotel rooms.

In addition, during the OIG investigation, Nelson Sambolin, Team Leader, Lewis Tree reported that Mr. Leon may have misused his position to have Lewis Tree trim trees by his residence in an expedited manner. Mr. Leon’s direct supervisor, Emmett “Dave” McDaniel, Chief, Mowing and Landscaping, Public Works, advised that if Mr. Leon needed trees trimmed on his residential street, unless it was an emergency, he needed to have this work in queue with other scheduled work. The OIG *substantiates* the additional allegation of misuse of position.

Testimony from Mr. Sambolin and Mr. Leon, both who were on scene, indicated that the work at Mr. Leon’s residence was not an emergency. Mr. Sambolin also added that “apparently [Leon] wanted it done right then and there, so we go do it.” Mr. Bragan said that Lewis Tree did not wait until the following day (and thus incurred additional overtime costs for COJ) as Mr. Leon “wanted us there at that time.”

Further, according to testimony and records reviewed, on July 13, 2021, a three-person Lewis Tree work crew worked at Mr. Leon’s residential address to trim trees overhanging a COJ right-of-way

and received one hour of overtime pay, \$125.82 per hour, as compared to their regular pay rate of \$100.64 per hour.

RECOMMENDED CORRECTIVE ACTIONS

The OIG recommends the following:

1. The Employee Services Department provide annual ethics refresher training to all COJ employees involved in COJ contracts.
2. The Office of Ethics, Compliance and Oversight (Office of Ethics) establish a city-wide notification letter to all vendors seeking business with COJ regarding the COJ Ethics Code, specifically addressing, §602.701(a) and how to report a potential violation to the Office of Inspector General and/or Office of Ethics.
3. The Mowing and Landscaping Division strengthen their bid specifications by incorporating a mandatory procedure regarding the process to request for contracted services for both routine requests and emergencies.
4. The Mowing and Landscaping Division take any corrective action(s) deemed appropriate.
5. Upon public release, the Employee Services Department place a copy of the OIG report in Mr. Leon's personnel file.

This investigation will be referred to the COJ Ethics Commission, through the Office of Ethics, to review and determine whether Mr. Leon violated §602.701 and/or §602.401 (a) and (d)(1) of the COJ Ethics Code.

IDENTIFIED, QUESTIONED, AND AVOIDABLE COSTS

Identified Costs: N/A

Questioned Costs: \$1,324.59

Avoidable Costs: N/A

Based on records and Mr. Leon's own admission, Lewis Tree paid for Mr. Leon to attend the 2016 and 2017 FVMA conferences (\$175 in 2016 and \$215 in 2017) as well as hotel rooms for both conferences. The OIG was unable to determine which hotel rooms Mr. Leon used in 2016 and 2017 so the least expensive hotel room for each year (\$337.12 in 2016 and \$572.29 in 2017) was used to calculate the questioned costs.

In addition, according to testimony and records, the work at Mr. Leon's residence resulted in a three-person Lewis Tree crew receiving one hour of overtime pay, \$125.82 per hour, which was \$25.18 more than the normal (non-overtime) rate of \$100.64 per hour.

INVESTIGATIVE REPORT

BACKGROUND

During the timeframe of November 4, 2014, through October 24, 2021, Lewis Tree Service, Inc. (Lewis Tree) contracted with the City of Jacksonville (COJ) through COJ Contract Numbers 10053 and 10053-01 to provide “hazardous tree services, tree pruning and right-of-way encroachment clearing.” Lewis Tree’s work was overseen by the COJ Mowing and Landscaping Division (Mowing and Landscaping).

The Office of Inspector General (OIG) received an anonymous complaint (late November 2017) alleging possible paid hunting trips for Emmett “Dave” McDaniel, Chief, or Richard “Ricky” Leon, Urban Forestry Manager, Mowing and Landscaping, Public Works Department.

A preliminary investigation determined the allegation was unfounded, however, the OIG self-initiated an investigation on May 28, 2021 based on the testimony from Daniel Hatcher, Team Leader, Lewis Tree, that Lewis Tree paid for Leon to attend the Florida Vegetation Management Association conference. In addition, in July of 2021, during the investigation, and in response to other information provided by Mr. Hatcher, Nelson Sambolin, Team Leader, Lewis Tree, told the OIG that Mr. Leon may have misused his position to expedite trees being trimmed by Leon’s residence.

ALLEGATION AND FINDING

ALLEGATION 1

Richard “Ricky” Leon, Urban Forestry Manager, Mowing and Landscaping Division, Public Works Department accepted gifts from a City of Jacksonville vendor in excess of the allowable dollar amount. If substantiated, it would be a potential violation of §602.701, City of Jacksonville Ordinance Code. Pursuant to 602.921(a), in part, the Ethics Commission is authorized to issue findings alleging a violation of this Chapter.

FINDINGS

The information obtained *substantiates* the allegation.

COJ Ordinance Code

According to §602.701 (a), COJ Ordinance Code, in part, since at least 2014, COJ employees have been prohibited from accepting “any one gift with a value greater than \$100 or an accumulation of

gifts in any one calendar year that exceeds \$250 from any person or business entity” the COJ employee knows is: (3) a vendor doing business with the employee’s agency.

COJ E-mails

An OIG review of Mr. Leon’s COJ e-mail account revealed e-mails pertaining to Mr. Leon attending the 2016 and 2017 Florida Vegetation Management Association (FVMA) conference in Daytona Beach, Florida as noted below:

2016 FVMA Conference

On February 1, 2016, Mr. Hatcher forwarded Mr. Leon an advertisement for the 2016 FVMA conference. Mr. Hatcher asked Mr. Leon if he wanted to attend the 2016 FVMA conference with him. Mr. Hatcher requested Mr. Leon to respond so he could “get to [sic] rooms.” In his reply on February 3, 2016, Mr. Leon thanked Mr. Hatcher for the invitation and said he would “run it by [Leon’s supervisor, Emmett “Dave” McDaniel, Mowing and Landscaping, Public Works] and see what he thinks.”

2017 FVMA Conference

Regarding the 2017 FVMA conference, on April 3, 2017, Alice Checorski, Executive Assistant, Public Works e-mailed Mr. McDaniel (and copied Mr. Leon) that Mr. Leon needed to provide certain information (e.g., hotel information and rate, registration fee, etc.) for his out of county travel to the 2017 FVMA conference.

Later that same day, Mr. Leon replied to Ms. Checorski (and copied Mr. McDaniel) that “I’m paying for the trip and taking my personal car. No COJ expenses at all.” Mr. McDaniel also e-mailed Ms. Checorski (and copied Leon) on April 3, 2017, that “Ricky is paying his [own] way for this conference.” Shortly thereafter on April 3, 2017, Ms. Checorski responded to Mr. McDaniel that she needed to obtain the above-mentioned information to complete a travel form for Mr. Leon if he was traveling out of county during work hours.¹

COJ Electronic Calendars

Mr. Leon’s COJ electronic calendar listed the FVMA conference as calendar events for April 13, 2016, through April 15, 2016, and April 19, 2017, through April 21, 2017. In the April 19, 2017 through April 21, 2017 calendar event, it was specifically noted “Ricky Out of Office.”

COJ Time and Attendance System Records

According to COJ Time and Attendance System records, Mr. Leon reported eight work hours each day on April 13, 2016, through April 15, 2016, and April 19, 2017, through April 21, 2017.

¹ On June 8, 2021, John Pappas, Director, Public Works advised the OIG that no April 2016 or April 2017 travel records were found pertaining to Mr. Leon.

Lewis Tree Service Records

The OIG reviewed Lewis Tree records pertaining to 2016 and 2017 FVMA conference charges made by Robert “Bobby” Bragan, General Foreman, Lewis Tree, using his Lewis Tree-issued credit card which revealed the following information:

2016 FVMA Conference

Date of Transaction	Purchase	Amount
February 4, 2016	FVMA Conference registration for Mr. Leon	\$175.00
February 4, 2016	FVMA Conference registration for Mr. Bragan	\$175.00
February 4, 2016	FVMA Conference registration for Mr. Hatcher	\$175.00
April 15, 2016	Hilton Daytona Beach Ocean Walk Village (Hilton) Hotel Room ² April 13 to 15, 2016	\$337.12
April 15, 2016	Hilton Hotel Room April 12 to 15, 2016	\$418.05
April 15, 2016	Hilton Hotel Room April 12 to 15, 2016	\$448.29
April 15, 2016	Hilton Hotel Room April 12 to 15, 2016	\$465.01

2017 FVMA Conference

Date of Transaction	Purchase	Amount
February 3, 2017	FVMA Conference registration for Mr. Leon	\$215.00
February 3, 2017	FVMA Conference registration for Mr. Bragan	\$165.00
February 3, 2017	FVMA Conference registration for Mr. Hatcher	\$180.00
April 21, 2017	Hilton Hotel Room ³ April 18 to 21, 2017	\$572.29
April 21, 2017	Hilton Hotel Room April 18 to 21, 2017	\$618.69
April 23, 2017	Hilton Hotel Room April 18 to 23, 2017	\$923.45

² The Hilton receipts only displayed Mr. Bragan’s name so it could not be determined who stayed in each hotel room.

³ The Hilton receipts only displayed Mr. Bragan’s name so it could not be determined who stayed in each hotel room.

Statement of Daniel Hatcher, Team Leader, Lewis Tree

Mr. Daniel Hatcher said that he had been employed by Lewis Tree since approximately 2005. According to Mr. Hatcher, on one occasion, which he estimated occurred in 2016 or 2017, Mr. Bragan used his Lewis Tree-issued credit card to pay for Mr. Leon to attend the FVMA conference in Daytona Beach, Florida. Mr. Hatcher was present when Mr. Bragan had asked Mr. Leon if he wanted to attend the FVMA conference.⁴

Mr. Hatcher said that this was a regular offer made to Mr. Leon's predecessors, but to Mr. Hatcher's knowledge, Mr. Leon was the first to have Lewis Tree pay for the FVMA conference and all associated costs.

In addition, either on the return trip from the 2017 FVMA conference or during the following week, Mr. Bragan told Mr. Hatcher that Mr. Leon had asked to have his hotel room extended until Sunday (Mr. Hatcher advised the FVMA conference was Tuesday or Wednesday through Thursday with Lewis Tree employees heading home on Friday), which was granted.

Mr. Hatcher was not aware of Mr. Leon doing anything in exchange for Lewis Tree paying for him to attend the FVMA conference.

Statement of Robert "Bobby" Bragan, General Foreman, Lewis Tree

Mr. Robert "Bobby" Bragan stated that he had been employed with Lewis Tree since approximately 2002.

He indicated at some point (exact date unknown), Mr. Bragan was present at a meeting with Mr. Leon, Mr. Hatcher and possibly, Nelson Sambolin, Team Leader, Lewis Tree. During this meeting, Mr. Leon said that when the contract came up for renewal, he wanted to add a condition that the Urban Forester [i.e., Mr. Leon] would have the right to remove anyone from the contract as they deemed necessary. Mr. Leon did not give an explanation as to why he wanted to add this condition.

Mr. Bragan said that it had not occurred to him that there was a limitation on COJ employees receiving gifts. He had not received any training regarding the COJ Ordinance Code pertaining to COJ employees receiving gifts or vendors providing gifts to COJ employees.

Mr. Bragan confirmed that Mr. Leon had received gifts from Lewis Tree, specifically the payment of his registration and hotel for the FVMA conference, likely in 2016 and 2017.

Mr. Bragan stated that:

- Lewis Tree had traditionally held an annual dinner for its customers during one night of the FVMA conference.

⁴ The purpose of Mr. Hatcher's interview initially pertained to another matter. When Mr. Hatcher was interviewed by the OIG, the significance of the above-mentioned February 1, 2016 e-mail was unknown; therefore, it was not addressed during his interview.

- He invited Mr. Leon to attend the Lewis Tree dinner at the FVMA conference (he thought in 2016). During this conversation, he told Mr. Leon about the FVMA conference, to which he commented that “he really couldn’t afford” to attend the FVMA conference and wondered if it was possible to have these costs covered.
- Mr. Leon did not directly ask for Lewis Tree to pay for the FVMA conference, but he perceived that Mr. Leon wanted Lewis Tree to pay for it.
- Likely, within the next day or so after his conversation with Mr. Leon he advised his manager at the time, Paul “Rocky” Robinson,⁵ Division Manager, Lewis Tree that Mr. Leon inquired whether Lewis Tree would pay for his FVMA conference and hotel costs.
- Mr. Robinson agreed that Lewis Tree could pay for these costs, which included Mr. Leon’s FVMA conference registration and hotel.
- He did not know why Mr. Hatcher invited Mr. Leon to attend the 2016 FVMA conference, as noted in the above-mentioned February 1, 2016 e-mail, but he thought he could have asked Mr. Hatcher to reach out to Mr. Leon as he may have been busy at the time.

After reviewing the Lewis Tree records for the 2016 FVMA conference, Mr. Bragan believed that one of the hotel rooms was for his family member who he had received approval to get a hotel room. He did not think he would be able to recall which of the hotel rooms was for Mr. Leon.

Mr. Bragan could not remember how Mr. Leon ended up attending another FVMA conference in 2017 at Lewis Tree’s expense. After reviewing Lewis Tree records for the 2017 FVMA conference, Mr. Bragan guessed that the hotel room billed for April 18, 2017 to April 23, 2017, in the amount of \$923.45 was Mr. Leon’s hotel room. According to Mr. Bragan, during the 2017 FVMA conference, Mr. Leon asked to extend his hotel room through the weekend.

In addition, Mr. Bragan said that at another point during the 2017 FVMA conference, Mr. Leon asked him if he (Mr. Leon) could order room service as he had eaten only peanut butter and jelly sandwiches at the 2017 FVMA conference. Mr. Bragan agreed to extend his stay and pay for Mr. Leon’s room service because he asked him, and Mr. Bragan wanted to “please the person you work for.”

Mr. Bragan denied that Mr. Leon’s 2016 and 2017 FVMA conference expenses were paid to obtain a benefit for Lewis Tree. He further did not feel that Mr. Leon threatened or persuaded him to have his FVMA conference expenses paid.

However, although, Mr. Bragan was not the ultimate authority to approve Lewis Tree paying for Mr. Leon’s expenses, if he had been, the discussion about Mr. Leon having authority to remove anyone from the contract would have factored into his decision about whether to pay for Mr.

⁵ As of January 9, 2021, Mr. Robinson was no longer employed with Lewis Tree. Due to Mr. Robinson no longer being employed with Lewis Tree as well as the information obtained during this investigation, the OIG determined an interview with him was unnecessary.

Leon's expenses. He explained that no one wants to get on "the bad side" of the individual that can remove them from a contract.

To Mr. Bragan's knowledge, Mr. Leon was the only COJ employee, as well as the only employee of any entity that Lewis Tree contracted with that had their FVMA conference registration and hotel paid for by Lewis Tree.

Statement of Emmett "Dave" McDaniel, Chief, Mowing and Landscaping

Mr. Emmett "Dave" McDaniel advised that he had been in his current position since approximately March of 2014 and had been employed with COJ since May of 1999.

Mr. McDaniel stated that:

- Mr. Leon had been responsible for the "day-to-day" operations of the Lewis Tree contract since the commencement of his COJ employment. Mr. McDaniel believed the contract allowed the Urban Forester to remove contracted employees from working on the contract, however, Mr. McDaniel advised that he had not read the specifications "in a long time."⁶
- Mr. Leon attended several conferences throughout his employment with COJ, but he did not specifically recall him attending the FVMA conference.
- He did not recall that Mr. Leon told him about Mr. Hatcher's invitation to the 2016 FVMA conference, nor did he tell him that Mr. Hatcher offered to get Mr. Leon a hotel room as this was something he would have remembered.
- If Mr. Leon would have told him, he would have said he could not get a hotel room at Lewis Tree's expense.
- He could not recall anything specific about Mr. Leon attending the 2017 FVMA conference.
- Regarding Mr. Leon's comments to Ms. Checorski in the above-mentioned April 3, 2017 e-mail that Leon was "paying for the trip," Mr. McDaniel understood Mr. Leon to have meant he was paying all his expenses, such as his conference registration and hotel.
- Mr. Leon never told him that Lewis Tree was paying his expenses (conference registration and hotel) for the 2016 and 2017 FVMA conferences. After reviewing the above-mentioned Lewis Tree records for the 2016 and 2017 FVMA conferences, Mr.

⁶ An OIG review of COJ Contract Number 10053, which incorporated the CP-0004-15 Bid Specifications, and the subsequent contract, COJ Contract Number 10053-01, which incorporated the CP-0238-17 Bid Specifications, revealed there was a clause that allowed the Urban Forester to determine if a contracted employee was "incompetent, unfaithful, intemperate, disorderly, or insubordinate; such employee shall, upon written notice by the Urban Forester, be discharged from the assigned work force and shall not be allowed to perform work under this Contract without the written consent of the Urban Forester."

McDaniel said Mr. Leon was dishonest when he responded to Ms. Checorski that he was “paying for the trip.”

- To his knowledge, Mr. Leon had not given Lewis Tree any benefits that other contractors had failed to receive.

Statement of Richard “Ricky” Leon, Urban Forestry Manager, Mowing and Landscaping

Mr. Richard “Ricky” Leon stated he began his COJ employment in November of 2015, as an Urban Forester, and was promoted into his current position in approximately 2017. Mr. Leon had been supervised by Mr. McDaniel since the commencement of his employment.

Mr. Leon indicated the following regarding contract authority:

- He believed there was a clause in the Lewis Tree contract that allowed the Urban Forester to remove any contracted employee from working on the contract. However, he advised that if such a clause existed, it pre-dated him.⁷
- He did not recall whether there had been any discussion to expand the Urban Forester’s authority to remove contracted employees for any reason the Urban Forester saw fit.
- He did not recall a meeting or discussion with Lewis Tree employees where he said he would add a clause to the contract to allow the Urban Forester to remove any contracted employees as they saw fit.

Mr. Leon confirmed Lewis Tree paid for him to attend the 2016 and 2017 FVMA conferences but did not know who from Lewis Tree specifically paid for him or the total amount spent by Lewis Tree.

Mr. Leon indicated the following regarding the 2016 FVMA conference:

- Within a few months of the commencement of his employment (possibly in February of 2016), he thought Mr. Hatcher spoke with him about attending the 2016 FVMA conference.
- Mr. Hatcher may have asked him something along the lines of “were you wanting us to sign you up for the FVMA conference,” which he agreed to do. Mr. Leon said that it seemed to him like it was something he was expected to do, and Mr. Leon needed the continuing education hours to maintain a certification his position required.

⁷ As mentioned in the prior footnote, COJ Contract Number 10053, which incorporated the CP-0004-15 Bid Specifications, and the subsequent contract, COJ Contract Number 10053-01, which incorporated the CP-0238-17 Bid Specifications, contained the same clause pertaining to the Urban Forester’s authority to remove contracted employees from working under these contracts. However, COJ Contract Number 10053 (including the incorporated CP-0004-15 Bid Specifications) predated Mr. Leon’s COJ employment, while the subsequent contract, COJ Contract Number 10053-01 (including the incorporated the CP-0238-17 Bid Specifications) was awarded during Mr. Leon’s COJ employment.

Mr. Leon did not recall any conversations with Mr. Bragan about attending the FVMA conference. When advised that Mr. Bragan testified that he asked if there was any way he could have the FVMA conference expenses “covered,” Mr. Leon said, “I don’t believe I would have said that.”

Mr. Leon further indicated the following regarding the 2016 FVMA conference:

- He “ran it through” Mr. McDaniel and was approved to attend.
- He told Mr. McDaniel that Lewis Tree was going to pay for him to attend the 2016 FVMA conference, but he did not recall exactly what he told Mr. McDaniel.
- He did not know why Mr. Hatcher invited him, as noted in the February 1, 2016 e-mail. He assumed Mr. Hatcher and he had an earlier conversation, which Mr. Hatcher followed up by e-mailing him.
- He assumed he would have relayed everything Mr. Hatcher said in the February 1, 2016 e-mail to Mr. McDaniel.
- That he attended the 2017 FVMA conference because he had attended the previous 2016 FVMA conference; therefore, he thought it was expected for him to attend.
- He assumed Mr. Hatcher had reached out to him for the 2017 FVMA conference with them having a similar conversation as before regarding the 2016 FVMA conference.

Mr. Leon did not recall what he told Mr. McDaniel about attending the 2017 FVMA conference but said he “ran it by him, just like in 2016.” Mr. Leon also told Mr. McDaniel that Lewis Tree would pay for him to attend the 2017 FVMA conference, but he did not recall what he specifically told Mr. McDaniel.

However, Mr. Leon said that after he returned from the 2017 FVMA conference he mentioned to Mr. McDaniel the 2017 FVMA conference was “okay, I probably wouldn’t have gone if Lewis hadn’t paid for it. I said something along those lines.” According to Leon, McDaniel replied, “Don’t say that out loud” or a similar comment.⁸

Mr. Leon stated that Mr. McDaniel’s comment made it sound like he had done something wrong, and he questioned whether he should have attended. Mr. Leon said that Mr. McDaniel’s comment was part of the reason why he did not attend the FVMA conference after 2017, as well as the subject matter not being particularly relevant to his work and his dislike of Daytona Beach.⁹

Regarding his comments to Ms. Checorski in the above-mentioned April 3, 2017, e-mail, Mr. Leon explained that he meant “I took my personal car, um, there were expenses I had paid to FVMA. I’m not sure what they were for. I think they wanted to know if they had to pay for it . . . perhaps

⁸ Based on Mr. Leon’s testimony, the OIG conducted a follow-up interview of Mr. McDaniel. In the follow-up interview, Mr. McDaniel again denied he had any knowledge of Mr. Leon attending the FVMA conferences at Lewis Tree’s expense.

⁹ As further detailed in page 11, Mr. Leon denied requesting to extend his hotel room to Sunday.

it was poorly worded. I should have said it was paid for, or it's not paid by the city." According to Mr. Leon, he was trying to convey COJ did not have to pay for him to attend the 2017 FVMA conference.

Mr. Leon said that he did not "believe" he was trying to conceal Lewis Tree was paying for him to attend the 2017 FVMA conference. When asked, he did not recall whether he provided the requested information to Ms. Checorski. Mr. Leon agreed that if he provided the information requested by Ms. Checorski, it would show Lewis Tree had paid for the 2017 FVMA conference.

Mr. Leon did not know why Mr. McDaniel stated in his April 3, 2017 e-mail that he was paying his own way for the 2017 FVMA conference.

When asked about the Lewis Tree records for the 2016 FVMA conference, Mr. Leon did not know which of the hotel bills were related to his hotel room. However, he said he assumed the April 13, 2016 to April 15, 2016, Hilton bill may have been related to his hotel room. He stated he made this assumption as he would not have wanted to be there for an additional day. In addition, he did not think he would have stayed the night of April 12, 2016, as he disliked Daytona Beach and had to arrange for someone to care for his dog.

When asked about the Lewis Tree records for the 2017 FVMA conference, Mr. Leon could not confirm if any of the hotel bills were related to his hotel room. He said he left the 2017 FVMA conference at one point to attend a regularly scheduled Thursday meeting pertaining to an ongoing COJ lawsuit settlement.¹⁰

Mr. Leon denied that he ever extended his hotel for either conference as he said he was always in a hurry to return from the FVMA conferences. He reiterated that he was not fond of Daytona Beach and had to arrange for someone to care for his dog while he was out of town.

During the interview, Mr. Leon used his personal cellphone to access his personal bank account and claimed transactions dated April 19 and 21, 2017, meant he was in Jacksonville, Florida on those specific days. He then claimed he only stayed at the Hilton one or two nights in 2017.

He further denied that he stayed at the Hilton through the weekend during the 2017 FVMA conference. Mr. Leon speculated he may have been asked if he wanted to extend his stay through the weekend, which was subsequently extended as a contingency, but then the hotel room sat vacant. *It is noted, this testimony is in direct contradiction to Mr. Bragan.*

Mr. Leon further did not recall if he put any food on his hotel bill for Lewis Tree to pay nor did he know if he asked Bragan if he would be able to put food on his hotel bill.

Mr. Leon thought Mr. McDaniel was the only one from COJ who knew he attended the 2016 and 2017 FVMA conferences at Lewis Tree's expense. When advised that Mr. McDaniel denied being

¹⁰ The OIG confirmed through one of the attendees, Jason Teal, General Counsel, COJ, that there was an April 21, 2017 settlement workshop meeting relevant to this matter. Mr. Teal thought Mr. Leon had attended all the settlement workshop meetings.

aware of him attending the 2016 and 2017 FVMA conferences at Lewis Tree's expense and then asked who was being untruthful, he said "I believe Dave."

Mr. Leon thought he received formal ethics training for the first time in November of 2019, when he participated in a Public Works-wide ethics training.¹¹ He said that during this training the concept of receiving a paid conference was discussed as being prohibited.

According to Mr. Leon:

- He had not disclosed that Lewis Tree paid for him to attend the 2016 and 2017 FVMA conferences after attending the Public Works-wide ethics training as "I was at a new job . . . I don't know, what would've you done . . . I don't know. It happened in the past."
- He admitted he was afraid he would get in trouble if he had disclosed it.
- He thought that because he had informed Mr. McDaniel, disclosing it to another party could get Mr. McDaniel fired.
- He did not know why Lewis Tree paid for him to attend the 2016 and 2017 FVMA conferences. When asked why he had Lewis Tree pay for him to attend the 2016 and 2017 FVMA conferences, Leon responded, "Well, so I reject that question . . . it was presented to me that this was going on with or without you. Are you going to attend?"
- He advised that Lewis Tree did not receive any benefits in exchange for paying for him to attend the 2016 and 2017 FVMA conferences.

Statement of Gregory "Greg" Pease, Chief, Procurement Division

Mr. Gregory "Greg" Pease stated that he initially began serving as Chief of the Procurement Division (Procurement) on an interim basis in approximately October of 2011. He was subsequently appointed and confirmed in his current position in approximately March or April of 2012.

Regarding whether it was appropriate for COJ employees to accept gifts from COJ contractors whose work they oversaw, Mr. Pease said that Chapter 602, COJ Ordinance Code (COJ Ethics Code) addresses this behavior. He opined that COJ employees needed to review and follow the COJ Ethics Code.

Mr. Pease also noted that some divisions, such as Procurement, had stricter gift procedures. He explained that Procurement employees were prohibited from accepting any gifts. While he believed there was sufficient ethics training for COJ employees, he thought it needed to be reinforced with an emphasis on COJ employees that oversaw COJ contracts and resources.

¹¹ It should be noted that this training session was conducted in response to OIG Investigation Number 2015-0005 WB.

Letter from Monroe and King, Attorneys at Law

Following his interview with the OIG, Mr. Leon obtained legal counsel through Monroe and King, Attorneys at Law (Monroe and King), who provided a letter to the OIG which addressed Allegation 1. In their letter, Monroe and King reiterated much of the testimony provided by Mr. Leon. Monroe and King added that Mr. Leon extended his hotel room for the 2017 FVMA conference after being advised by Mr. Hatcher that other Lewis Tree employees extended their hotel rooms through the weekend. According to Monroe and King, Mr. Leon returned to the FVMA conference after his meeting in Jacksonville and spent Friday night, April 21, 2017, at the Hilton and returned to Jacksonville on Saturday, April 22, 2017.

ADDITIONAL ALLEGATION AND FINDING

During the investigation, Nelson Sambolin, Team Leader, Lewis Tree informed the OIG that Mr. Leon may have misused his position to have Lewis Tree trim trees by his residence in an expedited manner.

ADDITIONAL ALLEGATION 1

Richard “Ricky” Leon, Urban Forestry Manager, Mowing and Landscaping Division, Public Works Department misused his position by receiving expedited service to have trees trimmed by his residence. If substantiated, it would constitute a violation of City of Jacksonville Bid Specifications Number CP-0238-17, Employee Services Department Directive 0537, and a potential violation of §602.401(a) and (d)(1), City of Jacksonville Ordinance Code. Pursuant to 602.921(a), in part, the Ethics Commission is authorized to issue findings alleging a violation of this Chapter.

FINDINGS

The information obtained *substantiates* the additional allegation.

COJ Bid Specifications Number CP-0238-17

COJ Bid Specifications Number CP-0238-17 was incorporated into COJ Contract Number 10053-01 and details how the contracted tree work services is to be delivered. According to Section 30.1, COJ Bid Specifications Number CP-0238-17, these contracted services included “emergency tree work which may be required at any hour of the day or night to protect the public and to facilitate the restoration of essential public services.” It was noted in Section 30.2, COJ Bid Specifications Number CP-0238-17, that the Urban Forester “will select the job sites for tree work by separate work orders which will be at various locations within Duval County.”

Per Section 31.34, COJ Bid Specifications Number CP-0238-17, upon receiving a Citizen Action Response Effort (CARE)¹² service request for tree services, the Urban Forester is responsible to investigate the request and determine which tree(s) need to be removed or trimmed. If the CARE request is for non-emergency work, the Urban Forester is to e-mail the contractor a copy of the

¹² In 2019, COJ replaced the CARE service request system with the MyJax customer service request system.

CARE request received by COJ. This work is to be completed within 15 workdays of the Urban Forester's e-mail to the contractor.

For emergency work, the contractor must be on site within two hours after being contacted and requested by the Urban Forester to conduct emergency work.

Training Records

Public Works-wide Ethics Training

According to Office of Ethics attendance records, Mr. Leon attended Public Works-wide ethics training on November 12, 2019. The training materials used, included a PowerPoint presentation that addressed the misuse of position. The following slide was part of the PowerPoint presentation:

Misusing Position

Legally

- Using public position for personal gain of you, family, friends or business associates is prohibited
- Follow the same process as every other citizen

Public Opinion

- Avoid saying, "Do you know who I am?" or "I work for the City" in order to get special favors.



Public Works Ethics, Sunshine and Public Records Manual for City Employees – Department of Public Works

In addition to the training on November 12, 2019, the *Public Works Ethics, Sunshine and Public Records Manual for City Employees – Department of Public Works* was provided to Public Works employees and contained the following information:



MISUSE OF POSITION - Do not use your job with the City to get anything special for yourself or anyone else. This includes circumventing City protocol to get better or faster City services and workplace sexual harassment. *Florida Statutes section 112.313(6) and Jacksonville Code section 602.401*

It also contained the following certification page which Mr. Leon completed, shown below:

Acknowledgement of Duties For City Employees	
<p>Pursuant to Section 602.1001, Jacksonville Code, I hereby certify that I have read and understood the summary of the state and local ethics laws provided to me, including the following requirements provided to me:</p> <ul style="list-style-type: none"> <input type="checkbox"/> My duties under State and Local Ethics Laws <input type="checkbox"/> My duties under Public Records Law <input type="checkbox"/> My Ethics Training Requirement <input type="checkbox"/> My duty to report Conflicts of Interest to the Ethics Office 	
 Employee Signature	Richard Leon Printed Name
76361 Employee ID#	11/21/2019 Date

COJ Employee Services Department Directive 0537¹³

According to COJ Employee Services Department (ES) Directive 0537, “Employees are responsible for ensuring that public resources are used in the best interests of the public. Employees also have a duty to use the limited public resources as effectively and efficiently as possible. When serving in a public capacity, the interests of the City of Jacksonville must come before employees’ interests.”

An OIG review of COJ records revealed that Mr. Leon electronically acknowledged ES Directive 0537 on December 14, 2020.

Text Messages

The OIG obtained text messages pertaining to the work at Mr. Leon’s residence. The text messages are summarized in the table below:

Date	Time	From	To	Message
July 12, 2021	12:56 p.m.	Mr. Bragan	Mr. Sambolin	[Leon’s residential address] crew needs to be there by 3:30 to 4 o’clock to meet Ricky and trim up a limb that’s hanging in the road
July 12, 2021	3:42 p.m.	Mr. Sambolin	Mr. Bragan	Call me when u get a minute
July 13, 2021	12:49 p.m.	Mr. Bragan	Mr. Leon	Good afternoon Ricky did you want me to send a crew over to [Leon’s residential street] today at 3:30 to get that limb?
July 13, 2021	3:25 p.m.	Mr. Leon	Mr. Bragan	Yes, I’ll be there at 4:00

¹³ This directive was subsequently revised on November 16, 2021.

Lewis Tree Work Records

According to Lewis Tree work records for the week ending on July 17, 2021, on July 13, 2021, Lewis Tree documented work at an address determined to be Mr. Leon's residence. The entry for Mr. Leon's residential address did not list a work order or similar type of number. (See the relevant Lewis Tree invoice listed below.)

In addition, a three-person Lewis Tree crew, which included Mr. Sambolin, worked 10 hours plus one hour of overtime (11 hours overall) on July 13, 2021. This three-person crew worked 40 hours of non-overtime and 23 hours of overtime during the week ending on July 17, 2021.

July 21, 2021 E-mail from Lewis Tree

On July 21, 2021, Ms. Krystyal Dulin, Contract Support Coordinator, Lewis Tree, e-mailed Mr. Leon and several others (COJ and Lewis Tree employees) the records detailed in the above-mentioned Lewis Tree Work Records section along with a Lewis Tree invoice dated July 20, 2021, for the week ending on July 17, 2021, and a COJ Removals and Hourly Work form.¹⁴

Lewis Tree Invoice dated July 20, 2021

According to the Lewis Tree invoice, Lewis Tree charged COJ for 40 hours of overtime for all three-person crews for the week ending on July 17, 2021, at a rate of \$125.82 per hour (versus the non-overtime rate of \$100.64 per hour).

COJ Removals and Hourly Work Form

The COJ Removals and Hourly Work Form reflected that one three-person crew worked 40 hours at the non-overtime rate of \$100.64 per hour and 23 hours at the overtime rate of \$125.82 per hour.¹⁵

CITY OF JACKSONVILLE - REMOVALS AND HOURLY WORK											v2012019	
Job Number:	21162970 - Tree Maintenance via Trust			CREW:	2007531		Week Ending Date:	12/26/20		PO:	612333-21	
Date:	Address:	P Code	Units	DBH	Hours	Work Order No:	Comment/Ticket #	Unit Cost	Unit Total:	Hourly Total:	GL Code	Invoice #
		4MAN		4 MAN TRIM - BUCKET/CHIPPER	10			\$ 124.31	\$ -	\$ 1,243.10	41405	270810
		3MAN		3 MAN TRIM - BUCKET/CHIPPER	6			\$ 100.64	\$ -	\$ 603.84	41405	
		4MAN		4 MAN TRIM - BUCKET/CHIPPER	3			\$ 124.31	\$ -	\$ 372.93	41405	
		3MANOT		3 MAN TRIM - BUCKET/CHIPPER OT	7			\$ 125.82	\$ -	\$ 880.74	41405	
		3MAN		3 MAN TRIM - BUCKET/CHIPPER	20			\$ 100.64	\$ -	\$ 2,012.80	41405	
		4MAN		4 MAN TRIM - BUCKET/CHIPPER	20			\$ 124.31	\$ -	\$ 2,486.20	41405	
		4MANOT		4 MAN TRIM - BUCKET/CHIPPER OT	10			\$ 157.25	\$ -	\$ 1,572.50	41405	
		3MANOT		3 MAN TRIM - BUCKET/CHIPPER OT	10			\$ 125.82	\$ -	\$ 1,258.20	41405	
		3MAN		3 MAN TRIM - BUCKET/CHIPPER	40			\$ 100.64	\$ -	\$ 4,025.60	41405	
		3MANOT		3 MAN TRIM - BUCKET/CHIPPER OT	23			\$ 125.82	\$ -	\$ 2,893.86	41405	

¹⁴ On July 30, 2021, the OIG was notified by Public Works Director Pappas that Mr. Leon had been removed from managing the Lewis Tree contract approximately two days beforehand. The OIG did not find any response from Mr. Leon to Ms. Dulin's July 21, 2021 e-mail.

¹⁵ The OIG determined that this entry reflected the work completed by Mr. Sambolin's three-person crew.

Statement of Nelson Sambolin, Team Leader, Lewis Tree

Mr. Nelson Sambolin stated that he had been in his current position for approximately eight years.

According to Mr. Sambolin, on July 12, 2021, Mr. Leon e-mailed Mr. Bragan and Mr. Sambolin requesting that a Lewis Tree crew be sent to Mr. Leon's residence at 3:30 p.m. that same day to trim a low-hanging limb.¹⁶ Mr. Leon later contacted Mr. Bragan and Mr. Sambolin to reschedule for the following day, July 13, 2021 at 3:30 p.m.

On July 13, 2021, Mr. Geraldo Melendez, Crew Leader, Lewis Tree and Mr. Naterian Tysdale-Terrell, Crew Leader, Lewis Tree arrived on site prior to Mr. Sambolin and began working. At one point prior to Mr. Sambolin's arrival, Mr. Tysdale-Terrell called Mr. Sambolin and advised that Mr. Leon had requested them to trim all the trees on Mr. Leon's residential block, not just a low-hanging limb as had been previously thought.

As Mr. Sambolin arrived on site, he encountered Mr. Leon leaving his residence. Mr. Sambolin said that Mr. Leon told him that he instructed Mr. Melendez and Mr. Tysdale-Terrell on "what [Leon] needed done." According to Mr. Sambolin, the three Lewis Tree employees worked for approximately two hours, which included overtime, to complete the work that same day.

Mr. Sambolin confirmed there were limbs which hung over the street and needed to be trimmed. However, Mr. Sambolin said that this work could have waited until the following morning. When asked if he thought Mr. Leon had used his position to obtain the benefit of have the trimming completed quicker, Mr. Sambolin said, "Um, yeah, I'd think so. There was no rhyme or reason to do it right then and there . . . apparently he wanted it done right then and there, so we go do it."

Mr. Sambolin also explained that Mr. Leon had failed to provide a service request ticket¹⁷ for this work. According to Mr. Sambolin, these tickets are created and typically provided to Lewis Tree prior to work commencing. On occasion, service request tickets are e-mailed to Mr. Sambolin, or he picked them up after completion of the work.

On July 14, 2021, Mr. Sambolin, who was present with Mr. Bragan on telephone call with Mr. Leon, asked him to provide a service request ticket for the work completed on his residential street. Mr. Leon said he would "write it down" so he (Leon) would remember, but he never provided the service request ticket.

Statement of Robert "Bobby" Bragan, General Foreman, Lewis Tree

Mr. Bragan advised that possibly on July 12, 2021, he received a telephone call from Mr. Leon. According to Mr. Bragan, Mr. Leon needed Lewis Tree to trim trees at an address which he believed was Mr. Leon's personal residence. Mr. Bragan stated that Mr. Leon told him he needed a Lewis Tree work crew at this address by the end of the day.

¹⁶ The OIG searched for, but could not locate, the e-mail mentioned by Mr. Sambolin.

¹⁷ Throughout the interview, Mr. Sambolin referred to service requests by using the term "CARE ticket."

Later that same day, Mr. Bragan asked Mr. Sambolin to be on-site with the dispatched Lewis Tree work crew. During this conversation, Mr. Bragan and Mr. Sambolin “put two and two together that that was [Mr. Leon’s] address” as they both had previously been to Mr. Leon’s residence to pick up service request tickets¹⁸ when Mr. Leon worked from home due to the limited coronavirus-19 emergency.

Mr. Bragan said he and Mr. Sambolin “snickered about, that’s odd, but he hands the work out, you know. Who are we to question it?” Mr. Bragan thought that he and Mr. Sambolin questioned why Mr. Leon wanted this work done later in the day as it could cause their employees to receive overtime pay. However, Mr. Bragan was not aware if Mr. Leon had been advised that work later in day could result in Lewis Tree employees receiving overtime.

Mr. Bragan could not recall why, but this work had to be postponed until possibly July 13, 2021, due to inclement weather or a priority call. Mr. Bragan thought the work was done on a COJ maintained property (i.e., a right-of-way).

Mr. Bragan did not visit the site on July 13, 2021. He indicated at one point, either Mr. Sambolin or Mr. Leon told him the trees in question were “in real bad need of trimming up.” Mr. Bragan did not think the work was an “emergency” due to potentially closing a road or causing injury, but rather a “standard complaint.” When asked why not wait until the following day to work, Mr. Bragan said “[Mr. Leon] wanted us there at that time.”

Mr. Sambolin and possibly Mr. Bragan requested Mr. Leon provide a service request ticket but to Mr. Bragan’s knowledge it was never provided. He said that a failure to receive a service request ticket happened on occasion, especially if Lewis Tree was dispatched on a weekend. However, Mr. Bragan described that not having a service request ticket was one of Mr. Leon’s “pet peeves . . . He’s emphasized [in] the past that it’s very important we make every effort to get a CARE issue for each job.”

When asked whether Mr. Leon received any special treatment or benefit due to his position as Urban Forestry Manager, Mr. Bragan said “We treated that job like any other job he would have given us. You know, if he needs something done, we do it.”

Statement of Emmett “Dave” McDaniel, Chief, Mowing and Landscaping

According to Mr. McDaniel, Lewis Tree typically commenced work upon receiving MyJax tickets. If there was an emergency and Lewis Tree needed to respond, such as during the evening hours, a MyJax ticket would be created by Mowing and Landscaping later to correspond with the relevant invoice. Most of the time Lewis Tree received a packet of MyJax tickets to work on. Mowing and Landscaping would prioritize this work, while Lewis Tree was allowed to prioritize any remaining work.

Mr. McDaniel was not aware that Mr. Leon had requested Lewis Tree employees to trim trees on Mr. Leon’s residential block on July 13, 2021. According to Mr. McDaniel, if Mr. Leon needed

¹⁸ Throughout the interview, Mr. Bragan referred to service requests by using the term “CARE ticket” or “CARE issue.”

the trees trimmed on his street, he should have had this work in the queue, unless it was an emergency.

Mr. McDaniel was unaware that a MyJax ticket had not been generated for the work at Mr. Leon's residential address. He said that if the work was only due to a limb hitting a vehicle it would not be justified to have Lewis Tree employees work on it immediately that day and receive overtime. If the work was an emergency due to the danger it posed, then overtime would be justified.

Mr. McDaniel explained that "If he didn't have a ticket, unless it was dangerous, something that was hanging, that was going to fall on, not just him but anyone else cruising up and down that street, you know, then overtime could be justified. But if it's just for trimming a street segment, you know, that's not something we would ordinarily do on overtime."

Mr. McDaniel would not have objected to Mr. Leon having this work included with Lewis Tree's other upcoming regularly scheduled work. However, he explained that "Unless it was a damaged limb, that was going to cause damage to property or person, that should've been put off until the next day. Or really truly, probably longer than that, cause there's people waiting in front of him and been waiting for a while to get their stuff trimmed."

After being advised that the OIG was told by a Lewis Tree employee that the limbs trimmed were over Mr. Leon's residential street and were not a danger, Mr. McDaniel said, "Okay, so that's a problem. They should've done that on straight time, not OT. And you know, that's just using your, using his position for personal." He opined that Lewis Tree employees were willing to work overtime on this job as Mr. Leon "runs the contract."

Statement of Richard "Ricky" Leon, Urban Forestry Manager, Mowing and Landscaping

Mr. Leon was responsible for assigning work to Lewis Tree and ensuring it was completed properly. He estimated that "95%" of Lewis Tree's work was provided through printed work tickets, typically printed from the MyJax system. If the work was urgent then he would e-mail or text Lewis Tree the details of the work. Sometimes a specific ticket would be generated after the work was completed, but this did not always occur.

Mr. Leon explained that Lewis Tree's work was prioritized by the date entered and the necessity of the work, with the more hazardous work taking priority. According to Mr. Leon, a MyJax ticket did not have to be generated for all work so while there was an attempt to generate a MyJax ticket, at times work came in so quickly "we don't, or we forget."¹⁹

Regarding the work Lewis Tree completed on his residential block, Mr. Leon explained that this street section was commonly used by emergency services to get to a nearby hospital (determined by the OIG to be Saint Vincent's Medical Center) instead of using King Street due to its greater traffic. He had Lewis Tree trim the entire block.

¹⁹ The OIG followed-up with McDaniel and he advised via e-mail on February 1, 2022 that "99% of the time there is a COJ work ticket number associated with the job. There is a chance that sometimes an emergency job falls through the cracks."

Mr. Leon said that he noticed a damaged limb after Jacksonville experienced severe storm conditions from a hurricane. According to Mr. Leon, the tree limb appeared to have been recently damaged due to being struck by passing vehicles.²⁰ He stated that he was concerned about taller vehicles, such as fire trucks and delivery trucks, striking the damaged limb.

Mr. Leon advised that he contacted Mr. Bragan by either a telephone call or text message and advised him that “I need some trees trimmed in front of the house.” The work was subsequently postponed to another day due to inclement weather.

Mr. Leon recalled two Lewis Tree employees responded (he could not recall their names) sometime around 3:30 or 4:00 p.m. with Sambolin arriving later. By the time, they arrived Mr. Leon was off work. He said that he wanted to be there to show them the work he had referenced. Mr. Leon guessed they worked for approximately one hour, however, he was not present during time.

Mr. Leon explained that specific projects were considered an emergency “when there’s something that’s imminent.” According to Mr. Leon, this work was not imminent (which he defined using a scenario where a tree was laying across the street and obstructing traffic), but rather it was a “high priority.” He further explained that imminent work would be something that would be addressed at 3:00 a.m. if necessary, while high priority work was work that could be prioritized for the following day.

From his perspective, this work needed to be completed quickly based upon his observations that the limb in question had been recently struck by a passing vehicle. He also claimed that as a forester he (and COJ) could face liability if he noticed something and did not act. Mr. Leon had Lewis Tree attend to this work later in the day and not wait for the following day as he thought they could get it done on their way back to their office.

He did not think the amount that spent for Lewis Tree to get overtime was significant, but agreed it was work that could have waited until the following day. He also was not aware Lewis Tree would get overtime for this work, as he thought they worked later hours.

Mr. Leon noted that “apparently” a MyJax ticket had not been generated as “we are just inundated in tickets,” but he pointed out that Lewis Tree still wrote and billed for the work. He denied that there was any particular reason why a MyJax ticket was not generated.

Mr. Leon recalled that at some point Mr. Bragan asked him if he had generated a MyJax ticket for this work. He did not know why he failed to generate a MyJax ticket after Mr. Bragan had requested him to do so.

He denied that he tried to circumvent any COJ policies to receive better, faster service or that he received quicker service due to his position.

²⁰ During his interview, Mr. Leon provided a photograph of the aforementioned tree limbs prior to their trimming. However, this photograph did not contain a date or time when it was taken. This same photograph was provided by Monroe and King in their subsequent letter to the OIG as noted below.

Statement of Gregory “Greg” Pease, Chief, Procurement Division

Mr. Pease advised that, in the context of a COJ employee requiring a COJ service that is handled by a COJ contractor they oversaw, the COJ employees needed to go through the exact same process as anyone else (i.e., the general public), such as contacting the COJ general services call center (630-CITY). Mr. Pease opined that it would be highly inappropriate for a COJ employee to contact the contractor directly with the intent to receive quicker service rather than calling 630-CITY, unless the COJ employee had to go through the contractor without any other choice. In this scenario, Mr. Pease opined that the COJ employee would be taking advantage of their position.

While Mr. Pease believed there was sufficient ethics training for COJ employees, he thought it needed to be reinforced with an emphasis on COJ employees that oversaw COJ contracts and resources.

Letter from Monroe and King, Attorneys at Law

As noted previously, Monroe and King, Attorneys at Law submitted a letter to the OIG which also addressed Additional Allegation 1. In their letter, they reiterated much of the testimony provided by Mr. Leon. Monroe and King, Attorneys at Law added that Mr. Leon worried that the limb “would collapse, and given its substantial size, would block off the road or damage a vehicle as it crossed under the tree.” They also advised that he “felt compelled to act quickly to prevent any injury or death that may be caused by an EMS vehicle being damaged or delayed in its duties.”

In addition, their letter stated that there was a “common practice” to “direct small projects without a work order.” Monroe and King provided additional photographs which showed a fire engine closely passing under a large oak tree, as well as several occasions of a fire engine driving on a street during various hours. However, none of the photographs are dated nor are their specific locations provided.

RECOMMENDED CORRECTIVE ACTIONS

The OIG recommends the following:

1. The Employee Services Department provide annual ethics refresher training to all COJ employees involved in COJ contracts.
2. The Office of Ethics, Compliance and Oversight (Office of Ethics) establish a city-wide notification letter to all vendors seeking business with COJ regarding the COJ Ethics Code, specifically addressing, §602.701(a) and how to report a potential violation to the Office of Inspector General and/or Office of Ethics.
3. The Mowing and Landscaping Division strengthen their bid specifications by incorporating a mandatory procedure regarding the process to request for contracted services for both routine requests and emergencies.
4. The Mowing and Landscaping Division take any corrective action(s) deemed appropriate.

5. Upon public release, the Employee Services Department place a copy of the OIG report in Mr. Leon's personnel file.

This investigation will be referred to the COJ Ethics Commission, through the Office of Ethics to review and determine whether Mr. Leon violated §602.701 and/or §602.401 (a) and (d)(1) of the COJ Ethics Code.

IDENTIFIED, QUESTIONED, AND AVOIDABLE COSTS

Identified Costs: N/A **Questioned Costs:** \$1,324.59 **Avoidable Costs:** N/A

Based on records and Mr. Leon's own admission, Lewis Tree paid for Mr. Leon to attend the 2016 and 2017 FVMA conferences (\$175 in 2016 and \$215 in 2017) as well as hotel rooms for both conferences. The OIG was unable to determine which hotel rooms Mr. Leon used in 2016 and 2017 so the least expensive hotel room for each year (\$337.12 in 2016 and \$572.29 in 2017) was used to calculate the questioned costs.

In addition, according to testimony and records, the work at Mr. Leon's residence resulted in a three-person Lewis Tree crew receiving one hour of overtime pay, \$125.82 per hour as opposed to the normal (non-overtime) rate of \$100.64 per hour, which was additional cost of \$25.18.

LEON'S RESPONSE

On February 15, 2022, the OIG e-mailed a copy of the draft Report of Investigation to Leon's legal representative. After a request for clarification from Leon's legal representative, on February 24, 2022, the OIG e-mailed them an updated copy of the draft Report of Investigation. Leon's legal representative e-mailed a response to the OIG on March 21, 2022. In their response, Leon's legal representative questioned some of the information obtained by the OIG; however, none of the issues raised would change the findings of this Report of Investigation. Their response is attached to this report in its entirety.

Attachments:

- A. Governing Directives
- B. Subject Response, dated March 21, 2022

cc: IG Distribution 2021-0002

This investigation has been conducted in accordance with the ASSOCIATION OF INSPECTORS GENERAL Principles & Quality Standards for Investigations.

ATTACHMENT A
GOVERNING DIRECTIVES
2021-0002

ALLEGATION 1: Prohibited Gifts

City of Jacksonville Ordinance Code

§602.701, City of Jacksonville Ordinance Code - Prohibited receipt of gifts and payments.

Amended and enacted September 9, 2014

(a) No officer or employee of the City or of an independent agency, or any other person on his or her behalf, shall knowingly accept, directly or indirectly, any one gift with a value greater than \$100 or an accumulation of gifts in any one calendar year that exceeds \$250 from any person or business entity that the recipient knows is:

(3) A person or business entity which is doing business with, or has made written application within the previous six months, to do business with an agency of which he or she is an officer or employee;

For purposes of the \$250 annual accumulation of gifts, gifts of food and beverage not exceeding \$25 on any given day shall not be included.

Amended and enacted January 8, 2019

(a) *Prohibited Gifts.* No officer or employee of the City or of any independent agency, or any other person on his or her behalf, shall knowingly accept, directly or indirectly, any one gift with a value greater than \$100 or an accumulation of gifts in any one calendar year that exceeds \$250 from any person or business entity that the officer or employee knows is:

(3) A vendor doing business with the officer's or employee's agency.

For purposes of the \$250 annual accumulation of gifts, gifts of food and beverage not exceeding \$25 on any given day shall not be included.

§602.921, City of Jacksonville Ordinance Code - SUBPART B. - POWERS AND DUTIES

The Jacksonville Ethics Commission (Commission) shall be authorized to exercise such powers and shall be required to perform such duties as are hereinafter provided. The Commission shall be empowered to review, interpret, render advisory opinions and enforce Chapter 602,

Ordinance Code; and, in accordance with Section 1.202 of the Charter, to exercise the following powers and duties:

(a) The Commission is authorized to receive, and to investigate and issue findings with regard to any sworn written complaint alleging a violation of this Chapter or by a complaint initiated by a minimum vote of six members of the Commission alleging a violation of this Chapter. All complaints and records shall be confidential as allowed by Section 112.324, Florida Statutes, or any other applicable state law. In support of this power, the Commission is authorized to establish an ethics "hotline" to receive tips and information, each of which shall be treated with confidentiality as authorized by Florida law. The General Counsel, with the assistance of all appropriate and available offices of the City, shall assist the Ethics Commission in the investigation of complaints. The Ethics Commission may refer matters brought to its attention to the State Attorneys' Office or the Florida Commission on Ethics if it determines jurisdiction is vested in, and action is more appropriate if taken by said agencies.

ADDITIONAL ALLEGATION 1: Standards of Conduct

COJ Bid Specifications Number CP-0238-17 Hazardous Tree Services, Tree Pruning, and Right-of-Way Encroachment Clearing

SECTION 30 SCOPE OF WORK

30.1 SCOPE

B. The work includes tree removal, tree pruning, stump grinding, brush and tall grass removal, and the disposal of debris generated by these operations. Also included is emergency tree work which may be required at any hour of the day or night to protect the public and to facilitate the restoration of essential public services.

30.2 JOB SITE LOCATION: The Urban Forester will select the job sites for tree work by separate work orders which will be at various locations within Duval County.

SECTION 30 SPECIAL CONDITIONS

31.34 CARE REQUEST PROCEDURE

A. Investigation: Upon receiving a "Citizen Active Response Effort Request" (CARE) for tree services, the Urban Forester shall investigate the request and identify the type and size of each tree to be removed or pruned noted on the CARE form. If a tree is to be removed, the Urban Forester will paint an "X" on the tree at breast height facing the

street. If the tree is to be pruned, the Urban Forester will paint a 2 inch diameter spot on the tree at breast height facing the street.

B. Notification and Coordination

1. For non-emergency work, the Urban Forester will e-mail a copy of each CARE request or group of CARE requests to the Contractor identifying the common name and size of each tree scheduled for pruning or removal. The Contractor shall complete the work described in each CARE issue within 15 work days from the date of the Urban Forester's email. The City will also have a paper copy of each CARE request available for pick-up by the Contractor the next workday after the email.

1. For emergency work, the Contractor must have a crew on site within two hours after receiving an e-mail or call by phone or radio from the Urban Forester requesting an Emergency Removal, unless a longer time for the crew response is approved by the Urban Forester. The Contractor must immediately notify the Urban Forester if unable to meet the two hour response time.

City of Jacksonville Employee Services Department, Directive 0537 Conflict of Interest Policy

December 14, 2020 Version

Conflict of Interest

City of Jacksonville employees are expected to use good judgement, adhere to high ethical standards, and avoid situations that create an actual or perceived conflict between their personal interests and those of the City. A City employee shall not use his/her position for private gain, for the endorsement of any product, service or enterprise, or for the private gain of friends, relatives, or persons with whom the employee is affiliated . . .

What Constitutes a Conflict of Interest?

Below are several examples of conflicts of interest. This list is not a comprehensive list.

- Using your position with the City of Jacksonville to your personal advantage.
- Using connections obtained through the City of Jacksonville for their own private purposes.

CONFLICT OF INTEREST POLICY STATEMENT

City employee jobs, by their very nature, places employees in a position of public trust. Employees are responsible for ensuring that public resources are used in the best interests of the public. Employees also have a duty to use the limited public resources available as effectively and efficiently as possible. When serving in a public capacity, the interests of the City of Jacksonville must come before employees' interests.

November 16, 2021 Version**Conflict of Interest**

City of Jacksonville employees are expected to use good judgement, adhere to high ethical standards, and avoid situations that create an actual conflict between their personal interests and those of the City. A City employee shall not use his/her position for a special privilege or exemption, for the endorsement of any product, service, or enterprise, or for a special privilege or exemption for the private gain of friends, immediate family members, relatives, or business partners or associates.

What Constitutes a Potential Conflict of Interest and Should Be Reported?

A “conflict of interest” is any act made by a City employee that is prohibited under Chapter 112, Part III, Florida Statutes, or Chapter 602 of the City of Jacksonville Ordinance Code. Below are several potential examples of conflicts of interest. This list is not a comprehensive list.

- Misuse of your City position for a special privilege or exemption.

CONFLICT OF INTEREST POLICY STATEMENT

City employee jobs, by their very nature, place employees in a position of public trust. Employees are responsible for ensuring that public resources are used in the best interests of the public. Employees also have a duty to use the limited public resources available as effectively and efficiently as possible. When serving in a public capacity, the interests of the City of Jacksonville must come before employees’ interests.

City of Jacksonville Ordinance Code**§602.401, City of Jacksonville Ordinance Code - Misuse of position, information, resources etc.**

(a) Misuse of position, title, or authority. It is a violation of this Chapter for an officer, employee or independent contractor of the City or an independent agency to intentionally use his or her official position, title or any authority associated with his or her public office to coerce, induce or attempt to coerce or induce another person, or otherwise act in a manner inconsistent with official duties, to obtain a special privilege or exemption, financial or otherwise, for himself, herself or others, or to secure confidential information for any purpose other than official responsibilities.

(d) City Officers, employees and independent contractors should recognize their responsibility to protect and conserve City property and resources, and to make an honest effort to use official time and City property only for official business. To that end:

(1) Misuse of property. It is a violation of this Chapter for an officer, employee or independent contractor of the City or an independent agency to knowingly use property owned by the City or any independent agency for his or her personal

benefit, convenience or profit, or for the benefit, convenience or profit of others, except in accordance with official written City policies or ordinances.

§602.921, City of Jacksonville Ordinance Code, SUBPART B. - POWERS AND DUTIES

The Jacksonville Ethics Commission (Commission) shall be authorized to exercise such powers and shall be required to perform such duties as are hereinafter provided. The Commission shall be empowered to review, interpret, render advisory opinions and enforce Chapter 602, *Ordinance Code*; and, in accordance with Section 1.202 of the Charter, to exercise the following powers and duties:

- (a) The Commission is authorized to receive, and to investigate and issue findings with regard to any sworn written complaint alleging a violation of this Chapter or by a complaint initiated by a minimum vote of six members of the Commission alleging a violation of this Chapter. All complaints and records shall be confidential as allowed by Section 112.324, Florida Statutes, or any other applicable state law. In support of this power, the Commission is authorized to establish an ethics "hotline" to receive tips and information, each of which shall be treated with confidentiality as authorized by Florida law. The General Counsel, with the assistance of all appropriate and available offices of the City, shall assist the Ethics Commission in the investigation of complaints. The Ethics Commission may refer matters brought to its attention to the State Attorneys' Office or the Florida Commission on Ethics if it determines jurisdiction is vested in, and action is more appropriate if taken by said agencies.

March 21, 2022

VIA U.S. MAIL & EMAIL

Brandon King, CIGI
Investigator
Office of Inspector General
231 East Forsyth Street, Suite 470
Jacksonville, FL 32202
Email: brandonk@coj.net
Inspectorgeneral@coj.net

RE: Office of Inspector General Draft Report
Case No. 2021-0002, Richard Leon

Dear Mr. King,

My firm has been retained to work in conjunction with the firm of Monroe and King to provide a response to your draft report in the above matter. We appreciate the opportunity to provide our perspective. It is important for the City of Jacksonville to have full and complete investigations of the issues your office reviews, and I believe that a number of matters should be considered before you finalize your report.

ALLEGATION 1

Allegation 1 deals with Mr. Leon’s attendance at the 2016 and 2017 Florida Vegetation Management Association (FVMA) annual conference. First, I believe that it is important to note that Mr. Leon did not hold the position that you reference in Allegation 1, and instead was a civil service urban forester at the time. The distinction may not seem important, except for the fact that Mr. Leon was a new employee at the time, and that fact should provide some context from which the events can be better understood.

As a new employee, Mr. Leon did not know whether the offer by Lewis Tree was appropriate or customary. Indeed, Lewis Tree had paid for other events, including the table at the annual “Root Ball” which Mr. Leon, Mr. McDaniel and their significant others attended at Lewis Tree’s expense. Mr. Leon’s email response to the 2016 invitation was therefore appropriate. As you note, Mr. Leon responded by stating that he would confer with Mr. McDaniel. Mr. Leon’s email response says specifically that he would “run it by [McDaniel] and see what he thinks.”

Mr. Leon testified that he did so and obtained McDaniel's consent to attend the conference. Likewise, he obtained the same consent to attend the 2017 conference.

A substantial part of your conclusions came from the testimony of Robert "Bobby" Bragan of Lewis Tree Service, who claims that he and Leon first addressed the question of payment on the opening night of the 2016 event at a dinner (after a full day of conference activities) when Mr. Leon suddenly asked if Lewis Tree Service could "cover" the expense. Mr. Bragan's account doesn't make much sense for a number of reasons. First, his account differs from both the email evidence and Mr. Hatcher's testimony. Mr. Hatcher stated in his interview that he was "present" when Mr. Bragan asked Mr. Leon if he wanted to attend the conference. According to Hatcher, Bragan had asked about the conference well before the opening dinner. Secondly, Hatcher's account differs from the email documenting the request, in which Hatcher asks Leon if he wants to attend two-and-a-half months before the conference.¹

Hatcher's testimony is strange. He states that Lewis Tree had made the same request to Mr. Leon's predecessors for years, and that nobody had accepted. First, there was an easy way to confirm such an assertion – the predecessors could have been asked.² Secondly, the Lewis Tree personnel appear to have acted as if they were shocked that Leon accepted their offer – if Leon's acceptance was out of the ordinary and shocking, why did they keep asking? Why was Leon invited again to the 2017 conference? Further, if Leon's acceptance was out of the ordinary, why did it take at least five years to raise this matter? Mr. Hatcher and Lewis Tree Service were subject to the same provisions of the Jacksonville Ordinance Code that are cited against Mr. Leon, and as a long-time contractor Lewis Tree should have been in a much better position to understand that it was violating the ordinance than newly-employed Ricky Leon.

Mr. Bragan's account suggests that Mr. Leon only addressed payment for the room after the first full day of the conference, which makes little sense. No reasonable person would have waited until the first evening of the event to address the compensation arrangements of an event that was arranged months earlier. If there was any question, why didn't Lewis Tree address the payment question in the 10 weeks between the email and the conference? Hatcher's 2016 email clearly suggests that Lewis Tree would "get" a room for Leon. It does not say that it would reserve a room with the expectation of City payment. If there was any question as to whether the City would have paid for an employee, Lewis Tree and its employees, which have been involved with these conferences for years, would have realized the issue in advance. There is simply no credible way that Lewis Tree would have been surprised by Mr. Leon's supposedly sudden request after the conference began, and the testimony by Lewis Tree's employees doesn't add up.³

¹ Footnote 4 to the report notes that Hatcher was not asked about the email. I have a hard time understanding why he wouldn't have been. It doesn't appear reasonable for a critical witness in an investigation that has taken two years to complete would not have been questioned about a key piece of evidence.

² This investigation has taken years to complete, and it does not appear that you have attempted to reach any predecessor of Mr. Leon. Mr. Bragan states that Paul "Rocky" Robinson approved the expense, and even though he was no longer employed by Lewis as of January 2021, it would appear to me reasonable for him to have been at least contacted by phone. Respectfully, before drawing these conclusions, it would be reasonable to try to reach important witnesses.

³ Bragan's account also contradicts itself. At one point, he claims that he had provided benefits to "please the person you work for," but then states that Leon never persuaded him to have his expenses paid. Bragan's claim that Leon

Mr. Bragan provides an alleged motivation for failing to address the conference payment issue earlier: the alleged pressure that Mr. Leon placed on Lewis Tree in the form of proposing a supposed revision to the contract. The report suggests that the contract was indeed changed after Mr. Leon's employment to include a provision permitting Leon to disapprove of a Lewis Tree Service providing services under the contract. We have confirmed that the provision which Mr. Bragan claims that Leon supposedly threatened to impose was actually in the contract long before Mr. Leon began employment. *See Exhibit attached.*⁴

I want to reemphasize the fact that at the time of the conferences in question, Mr. Leon had not been involved with the Lewis Tree contractual arrangements and did not have the tenure with the City to have determined whether it was standard for Lewis Tree to have covered the expense in question. Indeed, if Lewis Tree had normally paid for the conference, it would have acted in the same way that Lewis Tree apparently pays for the "Root Ball" dinners. Mr. Leon never hid his attendance: rather, his 2016 and 2017 calendars clearly show that he was attending both of the conferences on the days in question.

Mr. McDaniel denies that Leon ever discussed with him Lewis Tree's payment for the conferences in question. My understanding is that Mr. McDaniel was himself accused of impropriety in the acceptance of gifts by Lewis Tree. If so, that fact should have been included in your report because an individual who is accused of the same type of misconduct may be far less likely to admit to his negligence or approval while defending his own conduct.

The investigation cites a 2017 email in response to questions to Mr. McDaniel from Alice Checorksi about travel information. Mr. Leon was cc'd and responded to the email by stating that he was paying for the trip and taking his personal car. His email response only addresses the "trip" and not the lodging, and he testified that he had address Lewis Tree's payment Mr. McDaniel, who also responded to Ms. Checorksi. Further, Mr. McDaniel never responded to Ms. Checorksi's follow-up request to verify the hours of work involved when Mr. Leon attended the conference on duty. Mr. Leon understood, based on his conversations with McDaniel, that he was only required to submit the forms when he used a city vehicle for travel, and he did not submit the form for the two FVMA conferences, or for the other conferences and events for which he was on duty but used his personal vehicle for travel (as can be verified by reviewing the department's records of Leon's past conference approvals).

requested room service because "he had eaten only peanut butter and jelly sandwiches at the 2017 FVMA conference" is also unworthy of credence. Mr. Leon's counsel provided documents showing that he had, in fact, paid for meals during the times in question, which should be sufficient to demonstrate that Leon had not relied on Lewis Tree Service for his food.

⁴ The reference was apparently included to suggest that Mr. Leon was attempting to intimidate Lewis Tree Service by obtaining the ability to veto its work. The provision in the contract has nothing to do with limiting the ability of Lewis Tree Service to perform the work, and instead permits the restriction of specific Lewis Tee employees. Therefore, the alleged motivation doesn't make sense if Mr. Leon was attempting to pressure the company, Lewis Tree Service. As noted above, the contract previously contained the same provision. Your report, however, suggests that the change to the contract was made in October 2017, well after these incidents, and therefore the ability to veto individuals could not have possibly have influenced Lewis Tree Service to pay for the conference hotel costs.

Finally, I believe that it is extremely important to note that training on this type of issue was not provided until 2019. You note in your report that the training was provided in response to the investigation of a 2015 complaint, which your website shows was not completed until 2019. Apparently, there was confusion in the department about these types of matters, which required subsequent training. At the time in question, Mr. Leon was newly hired and had not been made aware of the appropriate processes, and therefore asked his supervisor. These facts should be considered in both the report and the evaluation of Mr. Leon's conduct.⁵

ADDITIONAL ALLEGATION 1

Additional Allegation 1 deals with work performed in July 2021 near Mr. Leon's home. The investigative report details information about the work performed and amounts charged by Lewis Tree Service for the week ending July 17, 2021, which doesn't appear to have anything to do with the allegation in question. The work in question took a specific amount of time, for which compensation was paid to Lewis Tree Service. There is no suggestion that the work caused additional overtime, but instead the assertion is that Mr. Leon should not have requested that the work be performed immediately, rather than on a normal timeframe. It is therefore confusing and misleading to include information about the amounts that Lewis Tree charged for the week in question.

Lewis Tree Service's Team Leader Nelson Sambolin confirmed that the work needed to be performed but stated that it could have waited until the following morning. Sambolin confirmed that the limbs hung over the street and needed to be trimmed. Mr. Bragan confirms being told that the trees were "in real bad need of trimming up." The dates of the work in question confirm that the work was conducted immediately after a tropical storm.

Your report calls into doubt the dates of the photographs that Mr. Leon submitted through his attorney. Respectfully, the photograph shows the state of the limbs after they had been trimmed, and therefore reveals the "best state" of the roadway. If there is any question about the state of the limbs, the need for regular trimming, or the use of the road by rescue vehicles, a simple visit to the roadway will confirm the facts that Mr. Leon asserted. The circumstances certainly justify the standard that Mr. McDaniel explained would apply to non-ticketed work: that it be "dangerous, something that was hanging, that was going to fall on, not just him but anyone else cruising up and down the street."

As Mr. Leon explained, he had called the crew to conduct the work because he knew that rescue vehicles often used the route and a large storm had recently caused damage. One of the witnesses stated that it was important to obtain a CARE ticket for work. I would ask you to review the use of "CARE" tickets, which are tickets created as a result of citizen complaints. Work requests made by employees frequently do not involve tickets, and we would request you to review the history of using and not using such tickets. We do not have the ability, as you or the department would, to review all the tickets, but have confirmed that during the same week, a

similar process for work to be performed without a ticket was used for a concern at the Pinehurst Cemetery.⁶

In your discussion of the additional allegation, the report suggests that Mr. Leon benefitted personally from the work that was performed near his home. Such conclusion is simply not supported. Mr. Leon reported a condition that would negatively impact emergency vehicles and other larger vehicles on the roadway, but no suggestion has been made that he would personally benefit from the tree work. The work in no way impacted his ability to drive his personal vehicle⁷ and provided no benefit to his property.⁸

In closing, we would request that you address the issues that we have identified in this letter. Mr. Leon has always admitted that he made an error in not reporting the 2016 and 2017 conference payments after he received training in 2019, but he believed at the time (until Mr. McDaniel made a comment making him question the arrangement) that his participation in the conference had been approved.

Thank you for reviewing my concerns.

Very truly yours,

Tad Delegal

Enclosure

Cc: Scott Monroe
scott@monroekinglaw.com

TAD/md

⁶ Additionally, the fact that Mr. Leon lived nearby the area where the work was performed does not render the work illegitimate. Naturally, persons working regularly with tree service issues will be more attuned to the need to trim trees, and Mr. Leon's noticing the need in a place near his home would be natural, just as he may notice the need to address tree work on his route to work in areas near to where he is assigned to work. Indeed, Mr. Leon states that his supervisor David McDaniel has had similar work performed near his home, as can be confirmed by searching records for work performed at or near [REDACTED]

⁷ Mr. Leon did own a camper at the time, but it only measured nine foot, three inches tall, well below the fourteen-foot clearance that was attained through the tree trimming. Additionally, the camper was purchased a month before and stored in Mr. Leon's carport. He had no plans to move the camper until September when he had scheduled restoration work to be performed on it in another city. From the photos provided and the witness accounts, you can easily confirm that Mr. Leon would have received no benefit by clearing five-foot above the height of the trailer.

⁸ I believe that Mr. Leon shared during his interview that he personally created another City of Jacksonville program that would have personally helped him, but which he did not use for his own benefit. He created a program in which any property owner could request that a tree be planted in the property's right of way, and his property could have certainly benefited from such planting. He did not accept the benefit, even though he was entitled to do so.

**HAZARDOUS TREE SERVICES,
TREE PRUNING, AND RIGHT-OF-WAY ENCROACHMENT CLEARING**

SECTION 31

SPECIAL CONDITIONS

31.1 PERSONS TO CONTACT

- A. If any questions arise during the bidding period of this Project, please contact the Buyer, Marilyn Laidler, at (904) 255-8804 or by email, mlaidler@coj.net.
- B. If any questions arise during the contract, contact the **John Moscarillo, Urban Forester**, Mowing and Landscape Maintenance Division at (904) 472-2884 or jmoscarillo@coj.net.

31.2 QUALIFICATION OF BIDDERS

- A. Each Bidder shall be an individual, company, partnership, or corporation who has been actively engaged in the field of arboriculture for the past five consecutive years primarily providing tree pruning and tree removal services. Submit the experience record of the Bidder and each sub-contractor. The experience record of the Bidder and each subcontractor shall include a list of related tree work giving the client name, work location, work description, and contract completion date.
- B. Each Bidder shall demonstrate competence, experience, and financial capability to carry out the entire terms of this contract by **submitting its last ANNUAL financial statement with the bid.**
- C. At a minimum, the following equipment must be in the possession of the Bidder and its sub-contractors in combination, either by ownership or long term lease agreement at the time of the Bid. **For each item of equipment listed, include the name, model, year of manufacture, and if owned or leased. If the equipment is leased, include the name of the lessor.** All equipment shall be no more than 10 years old. A list of the required equipment in possession of the BIDDER and its sub-contractors must be submitted with the bid on each Company letterhead signed by the Owner or Corporate Officer and dated. The Urban Forster also reserves the right to inspect the required tools and equipment and the business location to confirm conformance with the specifications before awarding the Project to the lowest responsible Bidder.

- 1) 50 hp Tractor w/15 foot Mower Deck 1
- 2) 55 foot aerial lift with dump body & tools 4
- 3) 80 HP brush chipper 4
- 4) 30 cubic yard Prentice loader type truck 2
- 5) Sidearm flail mower 1
- 6) Truck with pull-behind stump grinder 1
- 7) Miscellaneous tools necessary to complete each job
(chain saws, pole saws, hand saws) 1 Set/Crew

- D. The Bidder must be approved by the Jacksonville Electric Authority (JEA) Forestry Division to work in proximity to energized conductors before submitting a bid. **Include a copy of the Bidder's JEA approval letter with the bid.**
- E. The Bidder must employ an International Society of Arboriculture Certified Arborist in a direct supervisory role, whose **name and certification number shall be submitted with the bid.** Also include with the bid, a list of other employees of the Bidder and sub-contractors who are ISA Certified Arborist along with the certificate of membership for each employee listed.
- F. Bidders must have the ability to respond to a declared emergency with a minimum of fifty (50) aerial lift trucks with a working height of fifty five feet (55') and six (6) thirty (30) yard loader type trucks within 24 hours. Submit with the bid, **evidence of this fleet and its current location and employer.**
- G. Bidder must own, lease or rent an interior office space and a warehouse or outdoor storage yard to contain the equipment required by this contract at the time of the Award. The office and equipment storage must be at a location properly zoned by the City for commercial use. Submit address of facility and proof that the facility is owned, leased, or rented by the Bidder.
- H. The Bidder must directly perform 70% of the Contract work during the Contract period.
- I. **Failure to submit the above requested documentation with the Bid to determine Bidder Qualifications may result in the Bid being deemed as non-responsive and rejected accordingly.**

31.3 CHANGES TO STANDARD CONTRACT DOCUMENTS

Change the following words where they occur in the Contract Documents:

- A. Change "Engineer" to "Urban Forester."
- B. Change "Construction" to "Contract Operations"

31.4 CHANGES TO SECTION 2 OF THE STANDARD CONTRACT DOCUMENTS

- A. Section 2.3.1 Bid Security: Change the amount of the Bid Security to \$5000.00, not 5% of the Base Bid Amount.
- B. Section 2.10 Execution of the Contract: For this project, the Bidder awarded the Contract will receive a "Blanket Order" in the place of a Contract. Upon receipt of the Blanket Order, the Contractor shall submit the required Contract Bonds and return the same within ten (10) days after receipt of Blanket Order. Failure to return the Contract Bonds within the ten (10) day period will be a breach of the Contract and may result in forfeiture of the Bidder's award and forfeiture of the Bid Security to the City. The City may then elect to either award the project to the next lowest responsible bidder or re-advertise the project.
- C. Section 2.25 Major Items of Equipment: Deleted.
- D. Section 2.30 Voluntary Partnering: Deleted.

31.5 CHANGES TO SECTION 3 OF THE STANDARD CONTRACT DOCUMENTS

- A. Delete Appendix B - Off Hours Work
- B. Delete Schedule of Major Items of Equipment
- C. Delete Appendix E - Trench Safety Act Acknowledgement

31.6 DELETIONS OF PARTS OF SECTION 20- GENERAL CONDITIONS

The following parts of Section 20 - General Conditions are deleted from this Contract:

- SECTION 20
- Section 20.3 Notice to Proceed, Preconstruction Conference, and Work Hours
- Section 20.4 Schedule and Progress Reports
- Section 20.5 Photographic Records
- Section 20.12 Copies of Documents, Record Documents
- Section 20.20 Federal Employment Requirements
- Section 20.28 Shop Drawings
- Section 20.37 Warranty and Guarantee
- Section 20.39 Progress Payments
- Section 20.41 Final Payment
- Section 20.53 Engineer’s Field Office
- Section 20.54 Qualifications of Contractors Performing Work on construction of Buildings and/or structures
- Section 20.55 Qualifications of Contractors and Craftsmen Performing Work in Certain specialty Trades
- Section 20.57 Project Sign Details
- Section 20.62 As-Built Drawings
- Section 20.66 Resident Notification and Town Meetings
- Section 20.67 Contractor’s Daily Reports
- Section 20.69 Value Engineering Incentive
- Section 20.71 Surveys and Grade Stakes

31.7 COORDINATION WITH EXISTING UTILITIES

- A. Coordinate all work with utility providers within the project limits to prevent interference with overhead and buried electrical, water, sewer, telephone, TV cables, fiber optic cables, and gas.
- B. If any questions arise concerning JEA facilities, please contact:
 - Water (Wayne McDowell).....904-630-1309
 - Emergency SOCC (Systems Operational Command Center) 665-4801
 - Sewer (Dale Mills).....904-630-1309
 - Electric (Steve Belanger)904-632-6115
 - Emergency SOCC 665-7161
- C. If any questions arise concerning traffic or other utilities that are involved, please contact:
 - City of Jacksonville, Traffic Engineering (Rick Ball) 387-8861
 - AT&T (Gogie Marquez) 256-3225

AT&T (P. K. Patel) pp5963@att.com	(c) 699-4976, (o) 256-3224
Comcast (James Rambo).....	545-3665
Epik Communications (Gene Manning)	(407) 736-8181
FPL Fiber optic (Bill Moore) bill_moore@fpl.com.....	355-9742
COJ Fiber optic (Mark Tarrance) markt@coj.net	255-8414
Level 3 Communications (Brian Lanb).....	(720) 888-6481
MCI Telecommunications (John McNeil)	355-0187
Media One (Paul Larrabe).....	619-3723
Qwest Communicatios (Paul Gonzales).....	(303) 837-3928
Sprint Fiber Operations (Steve Thompson)	(407) 932-1560
TECO, People's Gas Company (Ben Mobley).....	904-443-7317
WilTel (Judy Lake).....	(918) 547-9923
Xspedius (Ken Mikell).....	394-2202

31.8 APPLICATION OF SECTION 31, SPECIAL CONDITIONS

Wherever conflict may exist between the Special Conditions and other parts of the Contract Documents, the order of precedence as set forth in Section 20.61 of the General Conditions shall apply. If unusual situations arise that would make application of the Special Conditions difficult, inappropriate or impossible, then the conflict shall be referred to the Chief, Mowing & Landscape Maintenance for resolution.

31.9 APPLICABLE PORTIONS OF CITY STANDARD SPECIFICATIONS AND DETAILS

In addition to this set of Contract Documents “Hazard Tree Services, Tree Pruning and Right-of-Way Encroachment Clearing,”, the current “City Standard Specifications” and “City Standard Details,” including all revisions and/or addenda published prior to the Bid Date by the Department of Public Works, City of Jacksonville, Florida shall be incorporated into and become a part of these specifications, insofar as the applicable sections applying to the proposed work called for in the Contract Documents or any Addenda thereto.

31.10 OMISSIONS

If a material, detail, practice, procedure, supply, or complement or component required for the successful completion of the project is not included in the Contract Documents, it is understood by the City to have been included in the bid and shall be incorporated into the work unless provisions of “Section 2.19.7- Instruction to Bidders,” are followed.

31.11 BID SECURITY

A bid security in the amount of \$5,000.00 shall be required.

31.12 PERFORMANCE & PAYMENT BOND

A Performance/Payment bond in the amount of 100% of the contract shall be required; see Section 20.45 Contract Bonds.

31.13 AUTHORITY OF URBAN FORESTER

All work shall be done to the satisfaction of the City’s Urban Forester or his designee. The primary authority of the Urban Forster is to evaluate the Contractor's work for

compliance with the Contract Documents. At no time will the Urban Forester supervise the Contractor's work force nor create any responsibility for the acts or omissions of the Contractor, Subcontractor or Supplier during the execution of this Contract.

31.14 CONTRACTOR'S SUPERVISION AND SUPERINTENDENT

The Contractor's Superintendent shall speak, read, and understand English. At least one responsible person who speaks, reads and understands English shall be with each work crew at all times while working on this project.

31.15 QUALIFICATION OF CONTRACTOR'S PERSONNEL

- A. The Contractor's personnel shall be fully competent to perform the work described in these Contract Documents and shall be solely responsible for their performance during the Contract.
- B. Should the Urban Forester determine that an employee of the Contractor is incompetent, unfaithful, intemperate, disorderly, or insubordinate; such employee shall, upon written notice by the Urban Forester, be discharged from the assigned work force and shall not be allowed to perform work under this Contract without the written consent of the Urban Forester. Failure of the Contractor to remove such an employee from the work force may result in a temporary suspension of work and withholding of payments until the problem is corrected.
- C. The Contractor shall protect, defend, indemnify and hold harmless the City, its agents, officials, and employees from any and all claims, actions, and/or suits which may arise from such removal, discharge or suspension of employees.

31.16 SAFETY

- A. The Contractor shall strictly adhere to the requirements of Section 20.23 and Section 20.24 of these Specifications during the extent of this Contract. In addition, the Contractor shall insure that all machinery is properly equipped with safety devices to adequately protect against throwing debris from the machinery.
- B. All workmen shall wear orange clothing of high visibility such as vest, shirts, or jacket at all times when performing litter pick-up operations within City of Jacksonville or FDOT rights-of-way.
- C. Appropriate advance warning signs approved by the Urban Forester and the Traffic Engineering Division will be required. See Section 31.45-Maintenance of Traffic paragraphs for additional requirements.
- D. There will be no separate pay items for Maintenance of Traffic or Safety unless Traffic Engineer requires a formal written MOT Plan to be submitted and approved.

31.17 HAZARDOUS OR TOXIC WASTE AND POLLUTANTS

- A. Should the Contractor encounter or expose a condition that may indicate the presence of hazardous and/or toxic wastes or pollutants, all operations in the immediate vicinity, discontinue work and notify discontinued and notify the Urban Forester immediately. The presence of tanks or barrels; discolored earth, metal, wood, ground water; visible fumes; abnormal odors; excessively hot earth; smoke or other

conditions which appear abnormal may be indicators of hazardous and/or toxic wastes or pollutants and shall be treated with extraordinary caution.

- B. When encountered, the Contractor shall make every effort to minimize the spread of hazardous and/or toxic wastes or pollutants into uncontaminated areas.
- C. Disposition of the hazardous and/or toxic wastes or pollutants shall be by others, not the Contractor, and shall be made in accordance with the laws, requirements and regulations of local, state and/or federal agencies having jurisdiction.
- D. The Contractor's operation may not resume in such areas until so directed by the Urban Forester.
- E. No separate payment will be made for a work delay.

31.18 OBSTRUCTION OF OTHER WORK

If access to work sites is obstructed by construction within the right-of-way, the Contractor shall immediately notify the Urban Forester in order to coordinate work around the area of construction. At no time shall the Contractor be entitled to compensation or adjustments in the Contract Unit Prices for work that was deleted or delayed due to such construction.

31.19 PROVISIONS FOR CONVENIENCE OF THE PUBLIC

The Contractor shall schedule operations so as to minimize inconvenience to adjacent businesses and residents as well as vehicular traffic.

31.20 WORK HOURS

- A. Normal work hours for this contract are from 7:00 a.m. to 4:00 p.m., Monday through Friday, except for City holidays. In general, all work will be performed during daylight hours, except for special or emergency operations, when night work may be allowed if authorized in writing by the Urban Forester.
- B. Work is not allowed on Saturdays, Sundays, and City holidays unless Emergency Work. Exceptions to this rule will be made only if authorized in writing by the Urban Forester.

31.21 SUSPENSION OF WORK

The Urban Forester shall have the authority to suspend work, wholly or in part, for such periods as may be deemed necessary. These periods of suspension include adverse weather conditions, heavy traffic conditions due to special events and other situations that may cause a hazardous condition for motorists and/or pedestrians. Such suspensions or work will be ordered in writing explaining the reasons for the work suspension. Normal operations may resume when directed by the Urban Forester. No separate payment will be made for this work delay.

31.22 EXAMINATION OF WORK

Before submitting a proposal, the Bidder is declaring that he/she has examined the job conditions that may be encountered at potential sites of the proposed work, as well as, the

proposal, specifications, and all other documents comprising the Contract Documents for the work described herein. These sites will be locations throughout the City where there is vegetation encroachment into roadways or where there are dead, dying trees along or within the City rights-of-way and easements and on City properties selected for removal by the Urban Forester. In addition the work includes the removal and pruning of hazardous trees on private property cited by City Municipal Code Compliance Division to abate a code violation.

31.23 PERMITS AND FEES

The Contractor's shall secure and pay for all permits that may be required to accomplish the specified work. The Contractor's shall conduct the work in accordance with required regulations and notify, in advance, all utilities and/or other parties that may be affected by the Contractor's operations. All permit fees, if any, associated with the performance of this Contract shall be borne by the Contractor.

31.24 WORK ON PRIVATE PROPERTY

- A. When the Contractor receives a work order to remove or trim hazardous trees on private property which has been cited by the Municipal Code Compliance Division (MCCD), the Contractor will also receive a. notice issued by the MCCD authorizing the Contractor's RIGHT OF ENTRY to the private property to perform the work.
- B. In other cases, work required by this Contract shall not be performed on private property without the written consent of the affected lawful landowner and the approval of the Urban Forester. Such written consent shall be secured by the Contractor, which shall include the conditions under which such work is to be performed. Such consent shall not constitute a liability to the City nor relive the Contractor of its responsibilities. Promptly furnish a copy of the landowner's written consent to the Urban Forester.

31.25 PRESERVATION OF PROPERTY

The Contractor shall protect all property and improvements from damage associated with, within the vicinity of, or affected by the work in any way. This applies to public and private property, public rights-of-way, and utilities. Included in these provisions are private owner improvements such as plants, and irrigation systems, which may be located on the City right-of-way and within the job site. The Urban Forester shall make prompt determination of liability in case of damage.

31.26 DAMAGES TO EXISTING IMPROVEMENTS

- A. The Contractor, at its expense, shall immediately repair damages to public and private properties caused by, or resulted from the negligence of the contractor. Damage shall be restored to the condition equal to or better than what existed before such damage occurred.
- B. Before doing any repair work, the Contractor shall obtain written authorization from the Urban Forester to make such repairs. The Contractor shall then obtain a written letter of acceptance from the Urban Forester for all items repaired or replaced. Complete all damage repairs before submitting the invoice for the tree work which created the damage. The City will not pay for tree work until the repair work has been accepted by the City.

- C. If repairs are performed by the Contractor in an unsatisfactorily manner, the City may choose to repair the work, have other contractors repair the work, with all costs directly related to the repair work incurred by the City deducted from the Contractor's billing.
- D. For damages in which an unsafe condition is created, the city reserves the right to make immediate repairs at the Contractor's expense.

31.27 ASSIGNMENT TO OTHERS

If the Urban Forester determines that the Contractor has fallen behind schedule by two (2) weeks or more for no apparent reason, the City reserves the right to assign unfinished work on any work order or CARE request to another contractor if the Urban Forester determines that it will be in the City's best interest. The Contractor will not be compensated for any work performed by another contractor. The assignment of work to another contractor may be made without declaring the Contractor in default of this Contract.

31.28 DEFAULT OF CONTRACT

- A. If the Contractor fails to perform the work in accordance with the Contract terms and conditions; fails to begin work within the time herein specified; fails to pursue the work with adequate equipment, materials and/or manpower required to complete the work within the specified time frame; neglects or refuses to remove material from the jobsite; refuses to perform newly assigned work; fails to comply with Contract requirements, minimum wage payments or EEO requirements; fails to perform the work in a suitable manner; or for any reasonable cause becomes unsatisfactory in the performance of the Contract requirements, the City will give written notice to the Contractor and Surety stating the nature of the failure to perform and providing time certain to correct the failure. Default days shall be counted in calendar days regardless of whether or not the Contract time is stipulated in working days.
- B. If, within the time period defined above, the Contractor fails to correct the condition(s) for which the complaint was made, the City will have full power and authority to take the prosecution of the work out of the hands of the Contractor and declare the Contractor in default of the Contract.
- C. If such action is taken, the City may demand the Contractor's Surety take over and complete the project. Upon the failure or refusal of the Surety to take over and begin work within the time specified, the City may take over the work and prosecute it to completion.
- D. Upon declaration of default of the Contract, the City will have full power to appropriate or use any or all materials and equipment to complete the work or may enter in an agreement with others for the completion of work under this Contract. All costs and charges incurred by the City because of the Contractor's default will be charged to the Contractor and be deducted from any money due or money which may become due under the terms of the Contract. If, at the time of the default, the City's expense exceeds the amount currently payable to the Contractor under this Contract, the Contractor and the Surety will be liable and shall pay the City the amount of this excess.

- E. Should the Contractor establish a valid intent to prosecute the work in accordance with the Contract Documents after the notice has been issued and prior to any action by the City to complete the work, the City may elect to permit the Contractor to resume work. In this case, all costs to the City incurred as a result of the delay will be deducted from any money due or money which may become due under the terms of the Contract.
- F. The City shall have no liability for anticipated profits for unfinished work on a Contract that the City has been determined to be in default.

31.29 WITHOLDING PAYMENT FOR UNSATISFACTORY SERVICES

- A. If any defined action, duty, service, or part thereof of a work order or CARE request assigned by the Urban Forester is not performed by the Contractor, the City will deduct payment from the invoice claiming completion of such work order or CARE request until the work is completed to the satisfaction of the Urban Forester.
- B. If any action, duty, service, or part thereof has been completed but is determined by the Urban Forester to be unsatisfactory, the Urban Forester will notify the Contractor of the deficiencies and give the Contractor an appropriate amount of time to correct the deficiency.

31.30 ESTIMATED QUANTITIES

- A. The estimated maximum dollar amount for this contract is one million five hundred thousand dollars (\$1,500,000) during any one year contract period. However, this estimated amount will not obligate the City to an expenditure of the contract amount or any portion thereof.
- B. This Contract is governed by budgetary restriction. Therefore, the total yearly disbursement to the Contractor may be more or less than the total Contract amount since all quantities are estimated and no quantities are guaranteed. The actual disbursement to the Contractor will be based upon the unit price of the type of work authorized, completed, and approved by the Urban Forester.
- C. The items and respective quantities set forth in the Proposal have been established to assist the Bidder in deriving Unit Prices for the work which may or may not be requested during the extent of this Contract. The City reserves the right to decrease or increase quantities with no change in the Unit Price established in the Proposal, unless the unit prices have been modified by the City in accordance with Price Adjustment section of these Special Conditions.
- D. When the Urban Forester requests work covered by this Contract, the request will be in the form of a work order issued for each site or project.

31.31 LIMITATIONS OF OPERATIONS

- A. When necessary for equipment to cross bridges, with full width shoulders on the right, the crossing should be made on the shoulder. All bridges should be crossed with extreme care and operation planned to reduce such crossing to a minimum. When necessary for equipment to cross the travel way, select a location that provides a safe and unobstructed sight distance. The Operator shall stop before crossing the travel way and permit closely approaching vehicles to pass before crossing.

- B. No equipment shall be left on the job site overnight unless approved by the Urban Forester. **No equipment shall be parked in the median regardless of width of the median.**
- C. The Contractor shall conduct all service and supply operations at a location that does not interfere with vehicle or pedestrian traffic. No supply vehicles shall enter the median for any PURPOSE. No service vehicle shall enter the median except to repair or remove inoperable equipment and then only when such repair or removal necessitates a service vehicle.
- D. The Contractor shall submit a Maintenance of Traffic (MOT) plan to the City Traffic Engineer for review and approval prior to mobilizing on a project site requiring a formal design plan. The minimum of five (5) working days is required for the review and approval process to be completed by the Traffic Engineer. Working hours may be dictated by the Traffic Engineer and/or Urban Forester, if the performance of the work under MOT constitutes a substantial safety problem.
- E. The Contract Unit Price for each work item shall include all signs, devices, equipment and personnel required to control traffic and pedestrians for the expected duration of the work at the project site. As these bid items are not time dependent, the Contractor shall include the estimated cost of MOT in each bid price based upon the Contractor's anticipated average project duration. No additional payment will be authorized for Contractor's project delays or for projects that extend beyond the Contractor's initial anticipated project duration, unless approved by the Urban Forester.
- F. If the City requires a written design plan for maintenance of traffic for a particular work site, then the price for the MOT shall be negotiated on a case by case basis. Payment for MOT shall be made for each MOT authorized, designed, approved, maintained and accomplished.

31.32 LIMITS OF PROJECT

Work may be performed on City property, on other public property within Duval County, on private property with City easements, and on private property cited for safety code violations by the Municipal Code Compliance Division. Care shall be taken so as not to disturb public or public property improvements.

31.33 ISSUANCE OF BLANKET ORDER AND NOTICE TO PROCEED

The issuance of the "Blanket Order" by the City shall be the Contractor's "Notice to Proceed." No work shall be started until the Contractor receives the "Master Blanket Order." One Master Blanket Order will be issued for all work involved at all locations. The Master Blanket Order will include the amount of funds available for all work for one year, or a portion of one year, as specified in the Master Blanket Order. The Contractor shall begin work within (10) ten days following receipt of the Master Blanket Order.

31.34 CARE REQUEST PROCEDURE

- A. Investigation: Upon receiving a "Citizen Active Response Effort Request" (CARE) for tree services, the Urban Forester shall investigate the request and identify the type and size of each tree to be removed or pruned noted on the CARE form. If a tree is to

be removed, the Urban Forester will paint an "X" on the tree at breast height facing the street. If the tree is to be pruned, the Urban Forester will paint a 2 inch diameter spot on the tree at breast height facing the street.

B. Notification and Coordination

1. For non-emergency work, the Urban Forester will e-mail a copy of each CARE request or group of CARE requests to the Contractor identifying the common name and size of each tree scheduled for pruning or removal. The Contractor shall complete the work described in each CARE issue within 15 work days from the date of the Urban Forester's email. The City will also have a paper copy of each CARE request available for pick-up by the Contractor the next workday after the email.
2. For emergency work, the Contractor must have a crew on site within two hours after receiving an e-mail or call by phone or radio from the Urban Forester requesting an Emergency Removal, unless a longer time for the crew response is approved by the Urban Forester. The Contractor must immediately notify the Urban Forester if unable to meet the two hour response time.
3. During a FEMA response to a catastrophic event or natural disaster, coordinate with the City Emergency Response Agency. Work shall include removal of leaners and hangers when requested.
4. If there are any questions concerning a CARE request, contact the Urban Forester before proceeding.

31.35 WORK ORDER PROCEDURE FOR ABATEMENT OF PROPERTY SAFETY AND MAINTENANCE CODE VIOLATIONS (TREE REMOVAL OR PRUNING) ON PRIVATE PROPERTY

- A. General: The City Municipal Ordinance Code, Chapter 518, provides for the abatement of unsafe or unsanitary conditions by the Municipal Code Compliance Division (MCCD) on private property if the property owner fails to correct the cited unsafe or unsanitary conditions. Such abatement includes the removal of dead or damaged trees and tree limbs. The City has chosen to employ licensed contractors to abate Chapter 518 violations.
- B. Investigation: The MCCD will prepare a work order packet for each property with a code violation that requires tree removal or tree pruning work. The work order packet will include: the address of the violation; a written notice from MCCD to the property owner authorizing the Contractor's right to enter and abate the code violation (*Notice Regarding City Contractor Right of Entry*); a description of the hazardous tree work; and photograph(s) of each cited tree.
- C. Notification and Coordination
 1. For non-emergency work, the City Urban Forester will e-mail the Contractor a notice that one or more work orders are ready for pick-up at the Mowing and Landscape Maintenance Division office. The Contractor shall pick-up the non-emergency work orders and complete the described work within 15 work days after the date of the Urban Forester's e-mail.

2. If the work order is an emergency, the Urban Forester will email a pdf of the entire packet to the Contractor. For emergency work, complete the work within 3 work days after the date of the Urban Forester's email, unless a longer time for work completion is approved by the Urban Forester.
3. If there are any questions concerning the work order instructions, contact the Urban Forester before proceeding.

31.36 REQUIRED ELECTRONIC COMMUNICATION WITH THE CITY

- A. The Contractor must utilize a laptop computer or other similar device for direct electronic communication with the Urban Forester. The Contractor shall also maintain a NEXTEL phone/direct connect mobile communication system whereby the City can contact the Contractor directly at a specified telephone number 24 hours a day, 7 days a week. A pager number or an answering machine is NOT an acceptable alternative.

31.37 VERIFICATION OF WORK AND PAYMENT APPROVAL

- A. On a weekly basis, submit to the Urban Forester an invoice for each CARE request or work order completed during the previous week.
- B. The Urban Forester will inspect the Contractor's completed work at each site covered by the weekly invoice to insure compliance with each CARE request or work order and the specifications. If the work is unsatisfactory, the Urban Forester will provide the Contractor with a written list of deficiencies, a "punch list," to be corrected at each site. The Urban Forester shall have 5 work days to complete the inspections of the work sites and submit to the Contractor a punch list or lists of the unacceptable work.
- C. The Contractor shall have 2 work days after receipt of the "punch list" to correct the deficiencies unless the Urban Forester approves a time extension.
- D. Submit a written request for a re-inspection immediately upon completion.
- E. Once the Urban Forester determines that the work covered by each work order or CARE request has been satisfactorily completed, the Urban Forester will send the Contractor a written notice of acceptance and process the invoice for payment.

31.38 PHOTOGRAPHIC RECORDS

- A. Provide a photographic record of each tree to be pruned or removed, unless the Urban Forester waives the photographic record requirement for a particular project. Photograph the tree immediately before beginning work and immediately after the work is completed. Take the before and after photographs of each tree from the same location, angle, and magnification. Incorporate a common landmark in each photo where possible. If the work is on a group or row of trees spaced close together, then the photograph can incorporate more than one tree so long as all trees covered by the work order are shown in the photographs.
- B. Take photos with a digital camera which has an instant photo display screen and the ability to record the date and time signature on each photo. Review each photo in the display screen to insure proper exposure, sharp focus and required content; retake, if

necessary. Print the photo with the time and date stamp shown on the image.

- C. Label each photograph noting: if a “before” or “after” photo; the Municipal Code Compliance case number or CARE issue number; the street address and/or RE number; the common name of the tree; and DBH of the tree, if a tree removal. Show each pair of “before” and “after” 5” x 7” photographs on one 8½” x 11” page.
- D. Include a paper copy of the photographic record of each tree covered by each work order or CARE request when submitting an invoice for the completed work. Also, email a digital file of each photographic record to the Urban Forester.
- E. For Right-of-Way Encroachment Pruning, provide a video of the entire length of the work area immediately before beginning work and immediately after work has been completed, unless this requirement is waived by the Urban Forester for a particular project. Take the before and after video from the same locations, angle, and magnification. Incorporate views of common landmarks where possible. Use a video camera which can record a time and date stamp on the video and which can record in a format, such as “.WMV” or “.MOV,” playable on a “Windows 7” based computer. Burn a “cd” of the before and after videos and include it with invoice for the completed work. The Urban Forester may choose, but is not required, to approve the submittal of the video file via email from the Contractor.

31.39 RE-INSPECTION FEE

- A. The City may impose a twenty-five dollar (\$25.00) re-inspection fee each time the Urban Forester visits a work site to conduct a re-inspection of previously rejected work which was not in conformance with the work order and specifications.
- B. The City will deduct each levied re-inspection fee from the Contractor’s invoice covering the work which required a re-inspection.

31.40 METHOD OF PAYMENT

- A. On a weekly basis, submit an invoice to the Urban Forester for each work order or care issue completed and approved during the previous week. Each invoice shall include the following for each job site: the street location, if in the right-of-way; the address and Real Estate Number, if a parcel; the CARE number or MCCD case number; the description, unit price and total price of each work item completed; the completion date; and photographic or video record required for each project.
- B. The Urban Forester will process payment for each invoice when all work covered by the invoice is satisfactorily completed, and accepted by the Urban Forester less outstanding re-inspection fees levied for incomplete work. The City will not make a partial payment if the work covered by the invoice is partially completed.
- C. The Contractor is encouraged to enroll in the City’s Automated Clearing House (ACH) electronic payment program. ACH allows for the systematic direct payments to contractors/ vendors. The ACH enrollment form can be downloaded at www.coj.net under the Online Form link of the Finance Department page.

31.41 BASIS OF PAYMENT

Payment for the work performed under these Contract Documents will be made at the

Contract Unit Price set forth in the Proposal. Each Unit Price shall include the furnishing of all materials, equipment, tools, labor, and supervision to complete the work as described.

31.42 TECHNICAL REQUIREMENTS

A. General

1. Contractor shall perform all tree work and pruning in accordance with recognized standards and principals of arboricultural practice including the latest edition of the American National Standard for Tree Care operations ANSI- 133.1-1994, and the National Arborist Association A300 Standard, unless otherwise stated in a provision within these specifications.
2. Unit Prices: Unit prices for each work item includes the cost of removal and disposal of debris generated by each work order to a legal disposal site or recycling facility, unless debris removal is specifically excluded from the work described in the unit price item.
3. Once work commences at a work site, complete assigned work before moving to another work site.
4. Each day, remove all logs, limbs, brush and debris generated by the work and dispose at a legal disposal site or recycling facility. Leave each job site in a neat, clean and safe condition. Take all necessary steps to protect vehicles, buildings, structures, plant material, lawn area, pedestrians adjacent to the job site.
5. If a tree is mistakenly removed by the contractor during this contract, the Urban Forester shall have the option to either require the Contractor to replace the tree with a tree of equal value or to pay the City the value of the tree using a tree appraisal method accepted in the forestry industry. Install replacement tree or pay the tree value within 15 business days after the Urban Forester's written notification.

B. Equipment

1. The Contractor and sub-contractors must have adequate equipment to remove trees growing on City properties or rights-of-way and as required to meet the contract specification.
2. All vehicles shall comply with safety standards established by the Florida Department of Transportation pertaining to the operation of equipment on public rights-of-way.
3. All vehicles shall carry equipment commonly used in arboricultural work, such as pole saws, chain saws, hand saws, climbing equipment, and safety equipment
4. A list of the Bidder's and sub-contractor's equipment on hand to be utilized on the contract must be submitted with the Bid. The Urban Forester may inspect and photograph all equipment prior to the start of the contract and at any time during the contract.
5. All motor vehicles used by the Contractor and sub-contractor for this contract work shall be clearly marked with its company name and phone number. Each

motor vehicle shall also have removable sign attached to each side of the vehicle which displays the following words in at least 4 inch high letters: "FORESTRY SERVICES FOR THE CITY OF JACKSONVILLE". The contractor shall remove the removable signs from vehicles when the vehicles are not in service to the City of Jacksonville.

6. Keep all assigned vehicles and equipment clean, sanitary, and in good repair at all times.
7. All employees or agents of the Contractor who are assigned to drive or operate vehicles shall, at all times, possess and carry valid commercial vehicle operator's licenses, which are required for the operation of such vehicles or equipment.
8. The Contractor shall insure that all upper booms of the aerial lift devices are fully insulated and certified at all times during this contract. All lower booms must have insulated inserts and carry certification of same.

C. Personnel

1. Workers shall wear uniforms which are appropriate for the work being performed. Each uniform shall be labeled with the company name.
2. The Contractor shall provide written reports and respond to requests by the City related to investigations of claims against the City for property damage and personal injuries claimed to be caused by incidents of falling trees or limbs.
3. The Contractor shall supply and direct all of his employees to wear safety belts, helmets, eye and hearing protection, and any other safety equipment required by the latest OSHA standards and ANSI-Z33.1.
4. Public Relations: The Contractor and his employees shall at all times conduct themselves in an appropriate and courteous manner. If the Contractor or his employees are not able to answer a question or satisfy a citizen request, then the Contractor shall refer the citizen to the Urban Forester.

D. Worksite Safety Blocking Streets, Sidewalks, Driveways

1. Manage work site to minimize the inconvenience to the general public and adjacent property owners. When the work requires the temporary closure of walks, vehicular traffic lanes, private access roads or drives, the Contractor shall provide personnel, barricades, warning signs, cones, and other means required by governing rules and ordinances. Notify adjacent affected property owners or residents at the time of such closures. Do not block driveways with debris at any time.
2. The Contractor shall keep the work area safe.
3. The Contractor shall carefully protect all existing improvements, trees and other vegetation within and adjacent to the work area which are to remain.

E. Tree Removal

1. Tree removal will include topping and other operations necessary to safely

remove the assigned trees. Work also includes the removal of basal sprouts, brush, and weeds within 3 feet of the trunk. Cut each tree to ground level. Felling of trees onto pavement is not allowed.

2. Measurement for Tree Removal: The Urban Forester will measure the diameter of each tree identified for removal at 4½ feet above the natural grade (DBH or Diameter Breast Height) using a caliper measuring tape. For payment purposes, the size of a tree or stump shall be agreed upon by the Urban Forester and the Contractor at the job site. The trunk diameter will be measured to the nearest full inch. Trees with major limbs lower than 54" from the ground shall be measured immediately below the lowest branch collar.

F. Stump Grinding

1. When stump grinding is ordered, grind the stump down to a level at least six inches below grade. Stump grinding shall include all surface roots extending from the trunk. Immediately after grinding each stump, remove the grindings from the work area and backfill cavities with clean, sandy soil. Add and compact backfill until level with the surrounding soil. Do not backfill with grindings or wood chips. Clean debris generated by the stump grinding from adjacent pavement, sidewalks, lawns, streets, and gutters. Do not leave cavities open overnight.
2. Measurement for Stump Grinding: The Urban Forester will measure the average diameter of each stump. Payment for stump grinding, including backfilling, will be based upon the measured stump diameter at ground level.

G. Tree Pruning

1. Pruning shall include the removal of dead, broken, damaged, rubbing, structurally weak branches; co-dominant stems; suckers; branches interfering with the required clear zones above roadways and other use areas; and branches obstructing road signs, traffic control devices and vehicular traffic flow.
2. Use reduction cut, heading cut, or removal cut to remove branches. Leave the branch bark ridge and branch collar. Do not leave branch stubs. When raising the tree crown, try to retain live branches in the upper 60% of the tree height (60% crown ratio).
3. To reduce crown areas under and around overhead power lines, use the natural drop crotch, lateral or directional pruning method to reduce crown areas under and around overhead power lines; avoid heading cuts. Tree pruning around power lines shall be by workers who are approved by the JEA Forestry Division to work in proximity of JEA overhead power lines.
4. Do not use climbers with climbing spikes/irons to prune trees.

H. FEMA Pruning/Removal Definitions: When a FEMA response is declared after a catastrophic event or natural disaster, the following definitions shall apply:

1. *Hanger*: For a FEMA response, a hanger is defined as a hanging limb or branch located on public property, greater than two inches in diameter at the point of breakage and still hanging in a tree and threatening a public-use area. Cut limbs

to the closest main branch junction, leaving the branch bark ridge and branch collar. Payment for each hanger removed, will be at the unit price stated in the bid proposal.

2. *Leaner*: For a FEMA response, a leaner is a hazardous tree with a DBH (diameter breast height) greater than six inches meeting one or more of the following criteria: it has more than 50 percent of the crown damaged or destroyed; it has a split trunk or broken branches that expose the heartwood; it has fallen or has been uprooted within a public-use area; or it is leaning at an angle greater than 30 degrees. Payment for hanger removal will be at the DBH unit price stated in the bid proposal.

I. Emergency Work

1. Emergency work is considered all tree pruning, tree removal, and related work performed by the Contractor at the request of the City from 4:00 PM to 7:30 AM on Monday through Friday; on Saturdays, Sundays, and City holidays, and work requested on a callout basis during normal working hours. Emergency work shall also include work performed during officially declared emergencies by the appropriate City officials.
2. The Contractor shall respond and have work crews on site within two hours of receiving notice from the City. Failure to respond in this timely manner or not meeting minimum crew size will result in liquidated damages of \$500/day.
3. All non FEMA Emergency tree removal shall be done on an hourly basis.

J. Right-of-way Encroachment Clearing

1. The Urban Forester will mark areas for Encroachment Clearing, and identify any trees to remain.
2. Debris Removal: Before beginning Encroachment Clearing, remove all litter and debris from the work limits. Litter and debris may consist of various size bottles, cans, paper, tires, tire pieces, lumber, vehicle parts, junk metal, brush, white goods, small furniture, dead animals, and other small items. It is not intended that minute objects such as cigarette butts, chewing gum wrappers, and similarly sized items be included in the items to be removed from the job site. Cutting, ripping or scattering litter by the clearing operations will not be allowed.
 - a. Tires: Remove tires and tire pieces from the site and disposed of at a recycle facility or landfill which will accept tires. If four or more tires are found piled together, then they are considered as illegal dumping.
 - b. Dead Animals: If dead animals are encountered, place into plastic garbage bags, securely close, and place along the roadside. Notify the Urban Forester as soon as possible of the animal's location. The Urban Forester will arrange for collection by the City's animal control division.
 - c. Large Objects and Illegal Dumping: When a large items such as abandoned vehicles, refrigerators, televisions, water heaters, air conditioners, etc., and illegal dumping are encountered, notify the Urban Forester so arrangements can be made for their removal. Illegal dumping is considered a concentration

of miscellaneous debris and large objects of 1 cubic yard or more. Work around these items until they have been removed by the City.

- d. Payment for Litter and Debris Removal: Payment for the above described work shall be included in the unit price for right-of-way encroachment clearing and shall include all fees for transportation and delivery to a legal dump site.
3. Clear vegetation to provide a clear and open area which extends over the roadway and the adjacent right-of-way to a height of thirteen (13) feet above the road surface (clear zone). Vegetation clearance shall include all trees under 4" DBH, brush, vines and limbs within the right-of-way and those portions of vegetation on adjacent parcels that have grown into the clear zone.
4. Cut all trees and brush in the right-of-way flush to the ground; mow tall grasses to a height of 6 to 8 inches.
5. The Urban Forester may select certain trees $\geq 4"$ DBH to be preserved within the clear zone. These trees shall be protected from damage during the clearing operation.
6. After clearing, remove from the work site and from adjacent pavement all debris generated by the clearing operation. Remove all debris within 24 hours after pruning. Do not place debris where it will block or inhibit travel on any road or private drive.
7. Cleared vegetation debris may be ground in-place if the vegetation is shredded, chipped or mulched to a fine consistency that will not interfere with the use of a rotary mower and if the mulch layer is no more than 2 inches thick. Grass clippings may remain in turf areas.
8. Job Sites: The job site may be one continuous length of clearing or may be a number of smaller increments so long as each increment is 1 mile or less apart and in the same or connecting right-of-way. Clearing in the same or adjacent right-of-way farther than 1 mile apart shall be considered a separate job site.
9. Pay Unit: The payment for encroachment clearing will be per linear foot of right-of-way clearing on one side of the roadway divided by 1000 feet, with the result being multiplied by the 1000 foot unit price. However, the minimum payment at any job site will be for 200 feet of clearing.

K. Work Crews:

The following work crews shall be comprised, at a minimum, of the workers and equipment shown. The hourly rate quoted for the 2, 3 or 4 person crew in the bid shall be for crew and equipment described below.

1. Hourly Pruning - Two Person Crew
 - a. One working foreman/climber
 - b. One groundhand
 - c. One 55 foot aerial lift with dump body and tools
 - d. One 80HP brush chipper

2. Hourly Pruning – Three Person Crew
 - a. One working foreman/climber
 - b. Two groundhands
 - c. One 55 foot aerial lift with dump body and tools
 - d. One 80 hp brush chipper

3. Hourly Pruning – 4 Person Crew
 - a. One working foreman/climber
 - b. Three groundhands
 - c. One 55 foot aerial lift with dump body and tools
 - d. One 80 hp brush chipper

4. Tree Removal and Emergency Work
 - a. One working foreman/climber
 - b. Two groundhands
 - c. One Prentice loader operator
 - d. One 55 foot aerial lift with dump body and tools
 - e. One 80 hp brush chipper
 - f. One 30 cubic yard Prentice loader type truck

5. Right-of-Way Encroachment Clearing Minimum Requirements
 - a. One sidearm flail mower
 - b. One sidearm mower operator
 - c. Crew and equipment necessary to remove all clearing debris within 48 hours of clearing

6. Stump Grinding Minimum Requirements
 - a. One pickup truck and pull behind stump grinder
 - b. One stump grinder operator

31.43 CONTRACT AVAILABLE TO OTHER CITY DEPARTMENTS AND AGENCIES

This Contract may be utilized or “Piggybacked,” by other City Agencies, Departments, Authorities, and other municipalities in Duval County using the unit prices established in the contract, and as amended, for each type of work.

31.44 UNIT PRICE ADJUSTMENTS

- A. The Contract may be extended three (3) times for a period of one (1) year each by mutual agreement of both parties. Submitted bid prices for services shall remain firm against any increase for a period of one (1) calendar year from the award of contract.

- B. The Contractor may submit a written request to increase the unit prices before each contract renewal, if the request is received by certified letter at least 30 days before the completion of the previous one year contract period. The City may agree to the price increase or choose to terminate the contract. The price increase request may cover all or some of the contract bid items.

- C. The Contractor’s request for a price increase will be based solely upon the percentage change of the Consumer Price Index for all Urban Consumers-South Region All Items, (Series CUUR0300SAO). The June CPI of the current year compared to the June CPI of the previous year will be used to determine the amount of the increase.

The City reserves the right to decline any price increase request.

- D. If the City agrees to the requested price increases, the new adjusted Contract Unit Prices will be calculated using the Contract Unit Prices of the previous year's contract or contract renewal and adjusting them by the amount of the submitted CPI.

31.45 UNIT PRICE EXCLUSIONS

- A. The contract unit price proposal shall not apply to the following conditions:
1. Trees with a DBH greater than 54 inches.
 2. Tree or stumps filled with concrete.
 3. Trees growing within City owned or controlled drainage ditches.
 4. Trees growing in locations not accessible to vehicles required by the Contract.
- B. The Urban Forester, on a case by case basis, will either request from the Contractor a price proposal for this work or may request that the work be completed using the hourly rate established in the Contract.

31.46 MAINTENANCE OF TRAFFIC

- A. Scope of Work: Provide and maintain all necessary signing, barricades and other approved traffic control devices for the maintenance of vehicular and pedestrian traffic within the limits of each work site and on adjacent roadways and sidewalks during the work effort at each site.
- B. General Requirements: Maintenance of Traffic shall conform to all local, State, and Federal regulations and shall comply with the guidelines and requirements of the City of Jacksonville Public Works Department, and the latest edition of the following: Manual on Uniform Traffic Control Devices published by Federal Highway Administration, the Florida Department of Transportation (FDOT) Standard Specifications for Road and Bridge Construction, and the FDOT Roadway and Traffic Design Standards.
- C. Temporary Lane Closures: When the work requires a lane of traffic to be temporarily closed, the Contractor shall provide maintenance of traffic in accordance with Section 102 of the FDOT specifications and Section 600 of the FDOT Design Standards. Notify and obtain approval from the City Traffic Engineer 48 hours in advance of such closures. Plan and schedule work to minimize lane closures and to provide existing levels of service during the morning and afternoon peak traffic periods and, in some cases, during the noon peak traffic period. Lane closures will not be allowed during the following times on major arterials unless approved by the City Traffic Engineer:
- 1) 7:00 AM to 9:00 AM
 - 2) 3:00 PM to 6:00 PM
 - 3) During hours of darkness
- D. If the project requires a traffic detour over existing roads, setup and maintain the detour throughout the duration of the road closure. Submit the detour route to the City Traffic Engineer for approval at least 48 hours before the scheduled street closure. Provide a detailed operation plan indicating the beginning and ending dates for the proposed closure along with a drawing showing the point of closure on the

approaching roadway and the locations of driveways and intersecting streets affected by the closure. Also, show the number and location of all barricades, warning signs, and detour signs. The City's approval of the plan does not relieve the Contractor of the responsibility of supplying, installing and maintaining the traffic control devices in accordance with Federal and State standards and specifications. Provide street name blades for detour signs. The Contractor shall not be responsible for the maintenance of existing road outside the limits of the project when used as detour routes unless damage to such roadways is directly a result of the contractor's equipment or operations.

- E. Maintenance of Pedestrian Traffic: Prohibit pedestrians inside the work area of a closed portion of the roadway when operations create a hazard to pedestrian traffic. Properly flag, fence, barricade or use other approved methods to prevent pedestrians from entering the work zone.
- F. Holiday and Special Events: The City Traffic Engineer may impose restrictions on roadway and sidewalk closures during certain holidays and special events. In general, no closures will be permitted within the central business district, in the vicinity of shopping malls or other concentrated shopping areas, beginning on November 26 and ending on January 2. Closures of roadways, or sidewalks in the vicinity of the stadium complex, Civic Auditorium, Convention center and other such areas may be restricted during periods of special entertainment. The City Traffic Engineer will make the final determination as to when closures will be permitted.
- G. Section 20.48: Traffic Interference: Delete all references to "City of Jacksonville Traffic Engineer" and replace with "FDOT."
- H. Delete the last two sentences of paragraph 20.48.2. Payment for maintenance of traffic shall be included in each unit price bid.

31.47 PREVENTION OF MOTOR FUEL & OTHER HAZARDOUS FUEL SPILLS

The Contractor, Sub-Contractors, Suppliers, and any others associated with the Contractor's work shall take precautions to prevent spills of motor fuels, lubricants, oils, greases, hydraulic fluids, coolants/anti-freezes, chemicals and any other substances that may contaminate the environment. The Contractor shall be liable, fully and exclusively, for the immediate clean-up and remediation of such spills, regardless of how the spill occurred. Should a spill occur, engage a qualified environmental clean-up and remediation contractor to perform all clean-up and remediation to the certified satisfaction of the regulatory agency and the City. Clean-up and remediation shall be at no cost to the City.

CHANGES TO GENERAL CONDITIONS, SECTION 20 OF THE SPECIFICATIONS

31.48 EXISTING UTILITIES

- A. Add the following sentence after the second sentence of paragraph 20.23.5:

The Engineer shall investigate the condition and propose remedial action.
- B. Add the following sentence to paragraph 20.23.5:

The utility locating service is Sunshine State One Call of Florida. Dial 811 by phone or by email at www.callsunshine.com. Call at least 2 business days before digging, but not more than 5 business days.

31.49 PROTECTION OF LIFE AND PROPERTY

A. Delete paragraph 20.24.3 and substitute the following:

20.24.3 All existing utilities, pipes, poles, wires, fences, gates, curbing, paving, property line and benchmark markers, trees, shrubs, landscaping, traffic signs, signals, and all other structures and objects, either public or private, that are shown to be preserved shall be protected from damage, destruction or defacement by the Contractor's operations. Should an object sustain such damage, the Contractor shall restore or replace the object to at least the condition existing when construction operations began and at no cost to the City.

B. Add the following sentence to the end of Section 20.24.4:

Immediately notify the Engineer if any historical objects are encountered and leave them undisturbed until the Engineer provides instructions.

31.50 CONTRACTOR'S SUPERVISION AND SUPERINTENDENT

A. Delete paragraph 20.31.2 and paragraph 20.31.7 from Section 20.31.

B. Delete paragraph 20.31.4 from Section 20.31 and substitute the following:

20.31.4 The CONTRACTOR shall designate a job superintendent and provide the name and contact information of the superintendent to the ENGINEER before work begins on the Contract. The superintendent shall be the CONTRACTOR's representative at each job site and shall have complete authority to act on behalf of the CONTRACTOR. All communications given to the superintendent shall be as binding as if given to the CONTRACTOR.

31.51 APPROVAL OF PAYMENT

A. Delete paragraph 20.40.1 from Section 20.40 and substitute the following:

20.40.1 No invoice from the Contractor or payment made by the City under the contract shall be evidence of the satisfactory performance of this Contract, either wholly or in part. No payment shall be construed to be an acceptance of defective work, improper materials, or improper equipment.

31.52 IDEMNIFICATION

Delete the entire Section 20.43 and substitute the following:

20.43 INDEMNIFICATION:

20.43.1 The CONTRACTOR, its employees, agents and subcontractors shall indemnify and hold harmless the CITY, ENGINEER and PROGRAM MANAGEMENT FIRM(S) (where applicable) (including their directors, officers, employees, representative and agents), against and from all liabilities, damages, losses, costs and expenses, of whatsoever kind or nature, including, but not limited to, reasonable attorney's fees, reasonable expert witness fees and court costs, (all of which are collectively referred to as "Damages") to the extent such Damages are caused by the negligence, recklessness or intentional wrongful conduct of the CONTRACTOR its subcontractors and/or persons employed or utilized by the CONTRACTOR or its subcontractors in the performance of this Agreement. Without limiting the foregoing, the above indemnification provision extends to Environmental Impact Claims.

"Environmental Impact Claim" is defined as claims, suits, judgments, costs, losses, expenses (including attorney's fees) which arise out of, are related to, or are based on the actual or threatened dispersal, discharge, escape, release or saturation of chemicals, liquids, gasses or any other material, irritant, contaminant or pollutant in or into the atmosphere, or on, onto, upon, in or into the surface or subsurface (a) soil (b) water or water course, (c) objects, or (d) any tangible or intangible matter, whether sudden or not.

20.43.2 In any and all claims against the CITY, ENGINEER and PROGRAM MANAGEMENT FIRM(S) or any of the officers, agents or employees by any employee of the CONTRACTOR or its Subcontractor, the indemnification obligation under Subparagraph 20.43.1 shall not be limited in any way by any limitation on the amount or type of damages, compensation or benefits payable by or for the CONTRACTOR or any subcontractor under workmen's compensation acts, disability benefit acts or other employee benefit acts.

20.43.3 The obligation of the CONTRACTOR under Subparagraph 20.43.1 will not extend to any claim, damage, loss or expense arising out of a defect in maps, drawings, opinions, reports, surveys, change orders, designs or specifications prepared or furnished by the CITY, the ENGINEER or the PROGRAM MANAGEMENT FIRM(S), or arising out of the giving by the CITY, the ENGINEER or the PROGRAM MANAGEMENT FIRM(S) of erroneous directions or

instructions required to be given to the CONTRACTOR hereunder, or the failure of the CITY, or the ENGINEER or the PROGRAM MANAGEMENT FIRM(S) to give directions or instructions required to be given to the CONTRACTOR hereunder, provided such giving or failure to give directions or instructions is the primary cause of the injury or damage.

31.53 INSURANCE

Delete the entire Section 20.44 and substitute the following:

20.44 INSURANCE:

20.44.1 **GENERAL:** The amounts and types of insurance required should be reasonably commensurate with the hazards and magnitude of the undertaking, but in no event of lesser amount nor more restrictive than the limits of liability and schedule of hazards below described. Insurance requirements should be tailored to the type of construction or operations contemplated.

20.44.2 Without limiting its liability under the Contract Agreement, the CONTRACTOR and its subcontractors shall procure and maintain at its expense during the life of this Contract, insurance of the types and in the minimum amounts stated below:

SCHEDULE	LIMITS
Commercial General Liability Occurrence Basis Only)	
Premises-Operations	\$2,000,000 Aggregate
Blanket X, C, U Hazards	\$1,000,000 Per Occurrence
Products/Completed Operations	
Contractual Liability	
Independent Contractors	
Watercraft, if applicable	
Auto Liability	
All Autos-owned, non-owned, or hired	\$1,000,000 Combined Single Limit
Worker's Compensation	
Florida Statutory Coverage & Employer's Liability (Including appropriate Federal Acts - USL&H and Jones Act)	\$100,000 Each Accident \$500,000 Disease Policy Limit \$100,000 Each Employee/Disease

20.44.3 **POLLUTION LIABILITY:** The CONTRACTOR and subcontractors (where applicable) will provide Pollution Liability coverage with minimum limits of \$1,000,000 per occurrence and \$2,000,000 general aggregate. Such coverage will name the CITY as additional insured and include a waiver of subrogation in favor of the CITY, .

20.44.4 Said insurance shall be written by a company or companies approved to do business in the State of

Florida and acceptable to the CITY'S Division of Insurance and Risk Management. Before commencing any work hereunder, certificates evidencing the maintenance of said insurance shall be furnished to the CITY.

- 20.44.5 The CITY should be named in each separate policy as "an additional interest" insured (except automobile policies).
- 20.44.6 The insurance should provide that no material alteration or cancellation, including expiration and non-renewal, shall be effective until 30 days after receipt of written notice to the CITY.
- 20.44.7 Prior to award of Contract, the CONTRACTOR should be required to present a letter (or other written statement) from its Insurance Agent affirming:
- (1) That the Agent has personally reviewed the insurance requirements of the Contract Documents, and
 - (2) that the Agent is able (having proper market) to provide the coverage and limits of liability required on behalf of the CONTRACTOR.
- 20.44.8 In the event any part of the work to be performed hereunder shall require the CONTRACTOR or its subcontractors to enter, cross or work upon or beneath the property, tracks, or right-of-way of a railroad or railroads, the CONTRACTOR shall, before commencing any such work, at its expense, procure and carry liability or protective insurance coverage in such form and amounts as each railroad shall require.
- 20.44.9 The original of such policy shall be delivered to the railroad involved, with copies to the CITY. The CONTRACTOR shall not be permitted to enter upon or perform any work on the railroad's property until such insurance has been furnished to the satisfaction of the railroad. The insurance herein specified is in addition to any other insurance which may be required by the CITY and shall be kept in effect at all times while work is being performed on or about the property, tracks, or right-of-way of the railroad.
- 20.44.10 Depending upon the nature of any aspect of this project and its accompanying exposures and liabilities, the CITY may, at its sole option, require additional insurance coverage in amounts responsive to those liabilities which may or may not require that the CITY and other authorized representatives also be named as an additional insured.

20.44.11 Neither approval nor failure to disapprove insurance furnished by the CONTRACTOR shall relieve the CONTRACTOR from the responsibility to provide insurance required by the contract. Anything to the contrary and notwithstanding the liabilities of the CONTRACTOR under this Agreement shall survive and not be terminated, reduced or otherwise limited by any expiration or termination of insurance coverage.

31.54 PREVENTION, CONTROL, AND ABATEMENT OF SEDIMENTATION/ EROSION AND WATER POLLUTION

Delete the last sentence of paragraph 20.65.5 and substitute the following:

If there is no bid item for Erosion Control and for Abatement of Erosion and Pollution, then this work shall be included in the bid for each item listed.

31.55 LEGAL WORKFORCE

Add the following Section 20.73:

20.73 LEGAL WORKFORCE

20.73.1 All persons performing work on the Project sites must be United States Citizens or legally authorized to reside and work in the United States. The CITY may request at any time during the Contract period the following information, which shall be furnished to CITY within twenty-four (24) hours of request:

- (1) proof of U.S. citizenship or other legal authorization to reside in U.S. for all persons performing work on the Project; and
- (2) proof that the salaries for all persons performing work on the Project are at or above State and Federal minimum wage requirements; and
- (3) proof of eligibility of all persons performing work on the Project to legally work in the United States.

20.76.2 Additionally, to ensure that all of Contractor's employees assigned to the Project are eligible to be legally employed in the United States, the Contractor must register as a Federal Contractor on the E-Verify website, and, within 30 days of the Effective Date of the Contract for the Project, verify the eligibility of all new employees. Failure of Company to perform this verification may be considered a material breach of contract and Contractor will be liable for any fines or penalties assessed against the CITY for the employment of illegal aliens; and notwithstanding any other provision in the

Contract or Contract Documents to the contrary, CITY may terminate the Contract upon one day's notice and Contractor shall forfeit all payments made prior to contract termination, not as a penalty, but as liquidated damages to compensate the Owner for additional contract administration and for subsequent award procedures.

20.76.3 The Contractor shall include these "Legal Workforce" requirements in each subcontract.