

## FIXED UNIT PRICE AGREEMENT

**THIS AGREEMENT** is made as of the \_\_\_ day of \_\_\_\_\_ in the year 2010, between The City of Leesburg, a Florida Municipal Corporation, whose address is 501 West Meadow Street, Post Office Box 490630, Leesburg, Florida 34749-0630 (hereinafter referred to as the "CITY"), and **STUART C. IRBY COMPANY**, whose address is 8820 N. US Highway 301, Wildwood, Florida 34785 (hereinafter referred to as the "CONTRACTOR").

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

1. **Services.** The CONTRACTOR shall furnish fire retardant clothing for the City of Leesburg, as described per specifications in **EXHIBIT "A"**. The cost of the clothing shall not exceed the unit price amounts stated in **EXHIBIT "A"**.
2. **Labor and Materials.** The vendor shall furnish all labor, material and equipment necessary for satisfactory contract performance. When not specifically identified in the technical specifications, such materials and equipment shall be of a suitable type and grade for the purpose. All material, workmanship, and equipment shall be subject to the inspection and approval of the City's Project Manager..
3. **Payment.** All invoices shall contain the purchase order number, date and location of delivery and confirmation of acceptance of the goods or services by the appropriate City representative. Failure to submit invoices in the prescribed manner will delay payment. Payments shall be tendered in accordance with the Florida Prompt Payment Act, Part VII, Chapter 218, Florida Statutes.
4. **Term of Contract.** The pricing shall remain fixed from the date of initial award through September 30, 2013. The performance period under this contract shall commence upon the date of the execution of contract.
5. **Option to Renew.** The City may renew the agreement for an additional three (3) one-year terms, if mutually agreed upon by the contractor and the City.

Prices shall remain firm for all orders placed during the term of the contract; price escalation may be allowed only in accordance with the following provision (see cost adjustments).

6. **Cost Adjustments.** The cost for all items as bid herein shall remain firm for the first year of the contract. Costs for subsequent years and any extension term years shall be subject to an adjustment only if increases occur in the industry. However, unless very unusual and significant changes have occurred in the industry, such increases shall not exceed 3% per year or, whichever is less, the latest yearly percentage increase in the All Urban Consumers Price Index (CPU-U) (National) as published by the Bureau of Labor Statistics, U.S. Dept. of Labor. The yearly increase, or decrease in the CPI shall be that of the latest index published and available ninety (90) days prior to the end of the contract year then in effect compared to the index for the same month one year prior. Any

requested cost increase shall be fully documented and submitted to the City at least ninety (90) days prior to the contract anniversary date. Any approved cost adjustments shall become effective upon the anniversary date of the contract. In the event the CPI or industry costs decline, the City shall have the right to receive, from the Contractor, a reasonable reduction in costs that reflect such cost changes in the industry. The City may, after examination, refuse to accept the adjusted costs if they are not properly documented, increases are considered to be excessive, or decreases are considered to be insufficient. In the event the City does not wish to accept the adjusted costs and the matter cannot be resolved to the satisfaction of the City, the contract can be cancelled by the City upon giving thirty (30) days written notice to the Contractor.

7. **Shipping Terms, F.O.B. Destination- Inside Delivery.** The F.O.B. point for any product ordered as a result of this solicitation shall be **F.O.B. DESTINATION - INSIDE DELIVERY**. The title for each item will pass from the vendor to the City only after the City receives AND accepts each item. Delivery will not be complete until the City has accepted each item. Delivery to a common carrier shall not constitute delivery to the City. Any transportation dispute shall be between the contractor and the carrier. The City will not consider any bid or proposal showing a F.O.B. point other than F.O.B.: Destination - Inside Delivery.

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

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

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

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

**9. Contact Person.** The primary contact person under this Agreement for the CONTRACTOR shall be Hunter McCormick. The primary contact person under this Agreement for the CITY shall be Greg David.

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

**11. Limitation of Operations.** Deliveries shall be made Monday through Friday between the hours of 8:00 A.M. and 2:00 P.M. Deliveries may be made at other times only with prior written consent of the City Representative. The City will not incur any additional cost for deliveries outside the normal delivery hours.

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

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

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

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IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the respective dates under each signature.

THE CITY OF LEESBURG, FLORIDA

By: \_\_\_\_\_  
Mayor

ATTEST:

\_\_\_\_\_  
City Clerk

Approved as to form:

\_\_\_\_\_  
City Attorney

STUART C. IRBY COMPANY

By: Erich Ewoldt

Printed: Erich Ewoldt

Its: Br. Mgr.  
(Title)

Date: 2-9-10

**EXHIBIT "A"**

Garments to be purchased are as follows:

ITEM DESCRIPTION	PRICE PER ITEM
DRIFIRE - Tan T-Shirt w/pocket (DF2-CM-105TS)	\$ 52.60
DRIFIRE - Tan T-Shirt w/pocket (DF2-CM-105TS) Larger Size	\$ 57.86
DRIFIRE - Tan Long Sleeve Shirt (DF2-CM-324LS)	\$ 66.52
DRIFIRE - Tan Long Sleeve Shirt (DF2-CM-324LS) Larger Size	\$ 73.17
DICKIES - Five pocket, 14 oz. Indura denim jeans (FR488IND14DN)	\$ 39.12
DICKIES - Five pocket, 14 oz. Indura denim jeans (FR488IND14DN) Larger Size	\$ 48.90
BULWARK - Navy zipper front sweatshirt w/hood (SEH6NV)	\$ 89.90
BULWARK - Navy zipper front sweatshirt w/hood (SEH6NV) Larger Size	\$107.88
Embroidered Logo-FR thread	\$ 6.00 (50 or more)
One time set-up fee	\$ 64.00
Price for initial sizing	No charge

All clothing furnished **must** be Drifire brand fire retardant shirts, Dickies brand 14 oz. Indura denim five pocket jeans and Bulwark brand flame resistant front zipper sweatshirt.

Vendor must supply sample sizes for all Electric Department employees to try on for sizing prior to City placing order.

Vendor will have the responsibility to replace any defective garment due to the following:

- Stitching issues
- Poor workmanship
- Damage from factory or shipping

All uniforms shall fit employees properly and vendor will have the responsibility of exchanging items concerning any sizing issues.

Each garment must be covered under warranty and replaced if defective.

Each short sleeve T-shirts (Style DF-CM-105TS shall have DRIFIRE Heat Seal Sticker in the lower right hand front corner of each shirt bottom.

Each short sleeve T-shirt (Style DF-CM-105TS) shall have a pocket on the left front chest.

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\*\*\*\*\* ALL ITEMS OF CLOTHING MUST BE FIRE RETARDANT \*\*\*\*\*