

FIXED UNIT PRICE AGREEMENT

THIS AGREEMENT is made as of the 25th day of March in the year 2013, 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 **LEWIS TREE SERVICE, INC.**, whose address is 300 Lucius Gordon Drive, West Henrietta, New York 14586 (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 Tree Trimming and Line Clearing Services to the CITY, as described per specifications in **EXHIBIT "A"**. The unit costs of the goods shall not exceed those stated in **EXHIBIT "B"** except where the cost adjustment clause has been exercised following the Firm Fixed Price Period.

2. **Labor and Materials.** The CONTRACTOR 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 Contract Supervisor.

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.

a. **Method of Payment** – The method of payment under this Agreement is by credit card through the City's e-payable program. The CONTRACTOR shall be required to enroll in the e-payable program and accept payment by virtual credit card. The CITY currently uses the Visa platform for credit card payments.

4. **Term of Agreement.** The initial term of the Agreement will be through September 30, 2018.

a. **Option to Renew.** The CITY may renew the Agreement for an additional term or terms not to exceed a total of five (5) additional years, if mutually agreed upon by the contractor and the CITY.

5. **Firm Fixed Price Period** – All Pricing will be firm and fixed through September 30, 2014. Following the firm fixed price period the CONTRACTOR may request a price adjustment as provided for in the Cost Adjustments section.

6. **Cost Adjustment** – Pricing for subsequent years and any extension term years shall be subject to an adjustment only if increases over in the industry. However, unless very unusual and significant changes have occurred in the industry, such increases shall not exceed 5% 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. or Labor. The yearly increase, or decrease in the CPI shall be the latest index published and available ninety (90) days prior to September 30th of each year compared to the index for the same month twelve (12) months prior.

The CONTRACTOR is responsible for submitting any request for price increase. Any requested cost increase shall be fully documented and submitted to the CITY at least sixty (60) days prior to the end of any fiscal year, currently September 30th of each year. Should the CONTRACTOR not request a price increase prior to the sixty (60) day period the prices in effect at that time will remain in effect for the next twelve (12) month period of the contract. Any approved cost adjustment shall become effective October 1st. 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 Agreement can be cancelled by the CITY upon giving thirty (30) days written notice to the CONTRACTOR.

7. **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 contract 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 CONTRACTOR, to include return of any non-compliant goods to the CONTRACTOR at the CONTRACTOR's expense, requiring the CONTRACTOR to either provide a direct replacement for the item, or a full credit for the returned item. The CONTRACTOR 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.

8. **Contact Person.** The primary contact person under this Agreement for the CONTRACTOR shall be WILLIAM COMMANDER. The primary contact person under this Agreement for the CITY shall be GREG DAVID.

9. **Warranty.** The CONTRACTOR 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 CONTRACTOR 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.

The CONTRACTOR hereby acknowledges and agrees that all materials, except where recycled content is specifically requested, supplied by the CONTRACTOR in conjunction with this solicitation and resultant contract shall be new, warranted for their merchantability, and fit for a particular purpose.

10. **Risk of Loss.** The CONTRACTOR assumes the risk of loss of damage to the CITY's property during possession of such property by the CONTRACTOR, and until delivery to, and acceptance of, that property to the CITY. The CONTRACTOR 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 CONTRACTOR or a third party.

The CONTRACTOR 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 CONTRACTOR 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.

11. **Counterparts.** Original signatures transmitted and received via facsimile or other electronic transmission of a scanned document, (e.g., PDF or similar format) are true and valid signatures for all purposes hereunder and shall bind the parties to the same extent as that of an original signature. Any such facsimile or electronic mail transmission shall constitute the final agreement of the parties and conclusive proof of such agreement. Any such electronic counterpart shall be of sufficient quality to be legible either electronically or when printed as hardcopy. The CITY shall determine legibility and acceptability for public record purposes. This Agreement may be executed in one or more counterparts, each of which shall for all purposes be deemed to be an original and all of which shall constitute the same instrument.

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 WITENESS WHEREOF, the parties hereto have executed this Agreement on the date indicated in the preamble to the Agreement.

THE CITY OF LEESBURG, FLORIDA

By: _____
Mayor

Date: _____

ATTEST:

City Clerk

Approved as to form:

City Attorney

LEWIS TREE SERVICE, INC.

By: _____

Printed: _____

Its: _____
(Title)

EXHIBIT "A"

- A. **General Conditions.** The Terms and General Conditions from the Invitation to Bid 130231 are incorporated by reference and made a part hereof.

- B. **Special Conditions.** The Special Conditions from the Invitation to Bid 130231 are incorporated by reference and made a part hereof.

- C. **Addenda.** The Addendum number 1 & 2 from the Invitation Bid 130231 are incorporated by reference and made a part hereof.

- D. **CONTRACTOR Bid Submittal.** The bid response to Invitation to 130231 submitted by Lewis Tree Service, Inc. dated February 27, 2013, is incorporated by reference and made a part hereof.

EXHIBIT "B"

ITB 130121 - Tree Trimming & Electric Line Clearing Services

SCHEDULE OF BID ITEMS

Bid No: 130121

Tree Trimming & Electric Line Clearing Services

Your Bid MUST BE submitted on this form.

Submitting Vendor Name: Lewis Tree Service, Inc.

CORE ITEMS / SERVICES				
Item No.	Item Description	Estimated Quantity	Regular Time Unit Cost	Overtime Unit Cost
1.	HOURLY CREW - Includes all personnel and equipment.	2,000 Hours (Regular Time)	\$ 84.49 per hour	\$ 106.05 per hour
2.	FOOTAGE / RIGHT OF WAY CREW – Includes all personnel and equipment.	270,000 Linear Feet	\$ 0.75 per linear foot	\$ 0.75 per linear foot
3.	SUPERVISOR/FOREPERSON	2,000 Hours (Regular Time)	\$ 27.56 per hour	\$ 37.37 per hour
COST OF UNDERBRUSH TREE REMOVAL			Regular Time Unit Cost (each)	Overtime Unit Cost (each)
4.	REMOVAL OF 4" TO 12" TREE	60 each	\$ 26.00	\$ 26.00
5.	REMOVAL OF 12" TO 18" TREE	48 each	\$ 250.00	\$ 250.00
6.	REMOVAL OF 18" TO 24" TREE	14 each	\$ 502.00	\$ 502.00
PERSONNEL			Regular Time Unit Cost (per hour)	Overtime Unit Cost (per hour)
7.	CREW LEADER		\$ 24.04	\$ 32.66
8.	BUCKET TRIMMER		\$ 22.68	\$ 30.71
9.	CLIMBER TRIMMER		\$ 22.68	\$ 30.71
10.	GROUNDSMAN		\$ 18.58	\$ 24.83
11.	EQUIPMENT OPERATOR		\$ 22.68	\$ 32.86
12.	INJECTION SERVICEMAN (Herbicide Applicator)		\$ 24.04	\$ 32.66

EXHIBIT "B"

ITB 130121 - Tree Trimming & Electric Line Clearing Services

EQUIPMENT		Regular Time Unit Cost (per hour)	Overtime Unit Cost (per hour)
13.	BUSH HOG – 66-10, 55HP, 6 FOOT CUT	\$ 23.00	\$ 21.85
14.	CHIPPER	\$ 4.00	\$ 3.80
15.	STUMP GRINDER/REMOVER	\$ 12.00	\$ 12.00
16.	KERSHAW TYPE HEAVY BRUSH OR TREE REMOVER/MOWER – 8” cutter head	\$ 32.80	\$ 31.16
17.	AERIAL BUCKET TRUCK – Hydraulic aerial articulating beam with single bucket, minimum of 50’ bottom of bucket, mounted on suitable truck with hydraulic tool and chain saws. Bucket truck chassis to have a dump body for hold wood chips and a heavy duty front mounted winch.	\$ 14.50	\$ 13.78
18.	BUCKET TRUCK W/DUMP BED – With a heavy duty front mounted winch	\$ 14.10	\$ 13.40
19.	SPLIT DUMP TRUCK – Including hand tools, rope lines and chain saws with heavy duty, front mounted winch	\$ 8.00	\$ 7.60
20.	CHIPPER TRUCK – 4 Wheel drive, front mounted winch with riding cab and tool compartment	\$ 9.50	\$ 9.02
21.	SPRAY TRUCK – 4 wheel drive , dual rear wheels, front mounted winch, tank capacity of at least 300 gallons with 20 gallons minimum pump	\$ 9.70	\$ 9.22
22.	TREE GROWTH RETARDANT – Injection type (Describe system used here) Arbor Systems Direct Inject	\$ 154.31	\$ 163.00
ADDITIONAL LINER FOOT SERVICES		Regular Time Unit Cost (per linear foot)	Overtime Unit Cost (per linear foot)
23.	BUSH HOGGING – PER LINEAR FOOT	\$ 0.25	\$ 0.25
24.	GROWTH RETARDANT SPRAYING – PER LINEAR FOOT	\$ 0.18	\$ 0.18

<p>Double check the Bid prices. Amounts cannot be changed following the Bid due date and time.</p>
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