

AGREEMENT FOR MANAGEMENT SERVICES

THIS AGREEMENT is made as of the _____ day of _____ 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 FACCI BELLA, INC., a Maryland corporation, whose address is 27650 SE Highway 42, Umatilla, FL 32784 (hereinafter referred to as the "CONTRACTOR").

NOW, THEREFORE, in consideration of the mutual benefits accruing to the parties to this Contract, and for other good and valuable considerations, the receipt of which is hereby acknowledged, the parties agree as follows:

1. Services. The CONTRACTOR shall perform the following services: SEE EXHIBIT "A," which is attached and incorporated by reference herein. Nothing herein shall limit the CITY'S right to obtain proposals or services from other contractors for similar projects.

2. Compensation. The services shall be performed for a total price of \$70,000.00 as more particularly detailed on the attached EXHIBIT "B." CONTRACTOR shall not impose any service charge or fee, penalty, or other exaction of any kind against payments rendered by credit card or purchasing card ("P – Card"). If CONTRACTOR accepts payment by credit card, payments made by credit card or P – Card shall be accepted on a "same as cash" basis.

CITY and CONTRACTOR understand and agree that this Contract is subject to the availability of funds to the CITY to purchase the specified products/services. As used herein, a "nonappropriation" shall be defined as an occurrence wherein the CITY, in any fiscal period, does not allocate funds in its budget for the purchase of the specified products/services or other amounts owed pursuant to this Contract, from the source of funding which the CITY anticipates using to pay its obligations hereunder, and the CITY has no other funds, from sources other than ad valorem taxes, which it deems to be available to pay its obligations under this Contract. The CITY may terminate this Contract, with no further liability to the Contractor/Professional, effective the first day of a fiscal period provided that:

- (a) a nonappropriation has occurred, and
- (b) the CITY has provided the CONTRACTOR with written notice of termination not less than fifteen (15) days before the proposed termination date.

Upon the occurrence of such nonappropriation the City shall not be obligated for payment for any fiscal period for which funds have not been appropriated.

3. Codes, Laws, and Regulations. CONTRACTOR will comply with all applicable codes, laws, regulations, standards, and ordinances in force during the term of this Contract. CONTRACTOR shall promptly inform the CITY of any conflict between any code, law, regulation, standard or ordinance, and any aspect of this Contract, materials prepared pursuant to this Contract, or any work done or to be done under this Contract, and assist the CITY in

resolving the conflict. In particular, and without limiting the generality of the foregoing provision, Contractor shall comply with all provisions of the Federal Immigration and Control Act of 1986 (8 U.S. Code § 1324 a) and any successor federal laws, as well as all provisions of Section 448.09, Florida Statutes, prohibiting the hiring and continued employment of aliens not authorized to work in the United States. Contractor shall not knowingly employ or contract with an illegal alien to perform work under this contract or enter into a contract with a subcontractor that fails to certify to the contractor that the subcontractor is in compliance with the terms stated within. Neither the Contractor nor any subcontractor employed by it, shall knowingly employ or contract with an illegal alien to perform work under this Contract. Contractor agrees that it shall confirm the employment eligibility of all employees through participation in E-Verify or an employment eligibility program approved by the Social Security Administration and will require same requirement to confirm employment eligibility of all subcontractors. All cost incurred to initiate and sustain the aforementioned programs shall be included in contract price. Failure to meet this requirement may result in contract termination by the City.

4. Permits, Licenses, and Fees. CONTRACTOR will obtain and pay for all permits and licenses required by law that are associated with the CONTRACTOR'S performance of the Scope of Services.

5. Authorized Expenses. The CITY will not be liable for any expenses incurred by the CONTRACTOR prior to the issuance of a Notice to Proceed except as authorized by the CITY in writing.

6. Access to Records. CONTRACTOR will maintain accounting records, in accordance with generally accepted accounting principles and practices, to substantiate all invoiced amounts. Said records will be available for examination by the CITY during CONTRACTOR'S normal business hours. Said records will be maintained for a period of three (3) years after the date of the invoice.

1. Contingent Fees Prohibited. CONTRACTOR warrants that it has not employed or retained any company or person, other than a bona fide employee working solely for the CONTRACTOR, to solicit or secure this Contract and that he or she has not paid or agreed to pay any person, company, corporation, individual, or firm, other than a bona fide employee working solely for the CONTRACTOR any fee, commission, percentage, gift, or other consideration contingent upon or resulting from the award or making of this Contract. In the event of a breach of this provision, the CITY shall have the right to terminate this Contract without further liability, and at its discretion, deduct from the contract price, or otherwise recover, the full amount of any such fee, commission, percentage, gift or consideration paid in breach of this Contract.

8. Ownership of Documents. All data, specifications, calculations, estimates, plans, drawings, construction documents, photographs, video, summaries, reports, memoranda, and other documents, instruments, information and material prepared or accumulated by the CONTRACTOR (or by such sub-consultants and specialty consultants) in rendering services hereunder shall be the sole property of the CITY who may have access to the reproducible copies at no additional cost other than printing. Provided, that the CONTRACTOR shall in no way be

liable or legally responsible to anyone for the CITY's use of any such materials for another project, or following termination (except with respect to the project for which the materials were prepared under this Contract, as to which this Section shall not act to absolve CONTRACTOR of liability following termination). All original documents shall be permanently kept on file at the office of the CONTRACTOR unless turned over to the CITY at termination or expiration of this Contract. The CITY agrees to indemnify CONTRACTOR as to any claims by third parties arising out of, or related to, such use; provided however that this indemnification shall not extend the CITY's liability beyond the limits on damages under the waiver of sovereign immunity contained in §768.28, Fla. Stat. (2013).

9. Insurance. The CONTRACTOR will maintain throughout this Contract the following insurance:

A. Comprehensive General Liability. The CONTRACTOR shall purchase and maintain Commercial General Liability coverage on forms no more restrictive than the latest editions of the Commercial General Liability policies of the Insurance Services Office (ISO). The Commercial General Liability policy shall provide minimum limits of \$1,000,000 per occurrence combined single limit that includes coverage for bodily and personal injury and property damage liability for premises, operations, products and completed operations, independent contractors, contractual liability covering the agreement, contract or lease, broad form property damage coverages, and property damage resulting from explosion, collapse or underground exposures (x,c,u).

B. Business Automobile Liability. The CONTRACTOR shall purchase and maintain Business Automobile Liability coverage on forms no more restrictive than the latest editions of the Business Automobile Liability policies of the Insurance Services Office (ISO). The Business Automobile Liability policy shall provide minimum limits of \$1,000,000 per occurrence combined single limit that includes coverage for claims for bodily injury and property damage arising from the use of motor vehicles, including on-site and off-site operations, and owned, non-owned and hired vehicles, and employee non-ownership use.

C. Workers' Compensation. The CONTRACTOR shall purchase and maintain Workers' Compensation insurance for all workers' compensation obligations imposed by state law and with employers liability limits of at least \$100,000 each accident and \$100,000 each employee with \$500,000 policy limit for disease.

CONTRACTORS exempt from maintaining Workers' Compensation insurance must provide a valid certificate of exemption issued by the State of Florida.

D. The original of each such policy of insurance, or a complete duplicate, shall be delivered to CITY by CONTRACTOR prior to starting work, together with evidence that the premiums have been paid.

E. All required insurance shall be provided by insurers acceptable to the CITY with an A.M. Best rating of at least "A."

F. The CONTRACTOR shall require, and shall be responsible for assuring that any and all of its subcontractors secure and maintain such insurance that are required by law to be provided on behalf of their employees and others until the completion of that subcontractors work.

G. The required insurance shall be secured and maintained for not less than the limits required by the CITY, or as required by law, whichever is greater.

H. The required insurance shall not limit the liability of the CONTRACTOR.

I. The CITY does not represent these coverages or amounts to be adequate or sufficient to protect the CONTRACTOR'S interests or liabilities, but are merely required minimums.

J. All liability insurance, except professional liability, shall be written on an occurrence basis.

K. The CONTRACTOR waives its right of recovery against the CITY to the extent permitted by its insurance policies.

L. Insurance required of the CONTRACTOR, or any other insurance of the CONTRACTOR shall be considered primary, and insurance of the CITY, if any, shall be considered excess as applicable to any claims, which arise out of the agreement, contract or lease.

M. Except for workers' compensation and professional liability, the CONTRACTOR'S insurance policies shall be endorsed to name the CITY OF LEESBURG as additional insured to the extent of the agreement, contract or lease.

N. The Certificate(s) of Insurance shall designate the CITY as certificate holder as follows:

City of Leesburg
Attention: Mike Thornton, Purchasing Manager
P.O. Box 490630
Leesburg, Florida 34749-0630

The Certificate(s) of Insurance shall include a reference to the project and/or purchase order number.

O. The CONTRACTOR shall notify the CITY at least thirty (30) days in advance of any known or planned cancellation of required insurance policy or coverage.

P. The Certificate(s) of Insurance shall include all deductibles and/or self-insurance retentions for each line of insurance coverage.

Q. The CONTRACTOR, at the discretion of the Risk Manager for the CITY, shall provide information regarding the amount of claims payments or reserves chargeable to the aggregate amount of the CONTRACTOR'S liability coverage(s).

10. Indemnification. The CONTRACTOR shall indemnify the CITY and hold it, its officers, and its employees harmless from liabilities, losses, and costs, including, but not limited to, reasonable attorney's fees to the extent caused by the negligence, recklessness, or intentional wrongful conduct of the CONTRACTOR and persons employed or utilized by the CONTRACTOR in the performance of this Contract.

11. Waiver of Lien. The CONTRACTOR agrees to make payment of all proper charges for labor, materials and equipment supplied and CONTRACTOR shall hold harmless the CITY against any claim arising out of any unpaid bills for labor, services, materials or equipment furnished to this project.

12. Permits, Licenses, and Fees. CONTRACTOR will obtain and pay for all permits and licenses required by law that are associated with the CONTRACTOR'S performance of the Scope of Services, and keep in force at all times any and all licenses required for CONTRACTOR to conduct its business.

13. Independent Contractor. The CONTRACTOR agrees that it is an independent contractor and not an agent, joint venture, or employee of the CITY, and nothing in this Contract shall be construed to be inconsistent with this relationship or status. None of the benefits provided by the CITY to its employees, including but not limited to, workers' compensation insurance, unemployment insurance, or retirement benefits, are available from the CITY to the CONTRACTOR. CONTRACTOR will be responsible for paying its own Federal income tax and self-employment tax, or any other taxes applicable to the compensation paid under this Contract. The CONTRACTOR shall be solely and entirely responsible for his or her acts during the performance of this Contract.

14. Assignment. Neither party shall have the power to assign any of the duties or rights or any claim arising out of or related to the Contract, whether arising in tort, contract, or otherwise, without the written consent of the other party. These conditions and the entire Contract are binding on the heirs, successors, and assigns of the parties hereto.

15. No Third Party Beneficiaries. This Contract confers no rights or benefits on anyone other than the CONTRACTOR and the CITY, and may be enforced only by CONTRACTOR and CITY.

16. Jurisdiction. The laws of the State of Florida shall govern the validity of this Contract, its interpretation and performance, and any other claims related to it. In the event of any litigation arising under or construing this Contract, venue shall lie only in Lake County, Florida. In any litigation arising under this Contract, the prevailing party shall be entitled to recover its reasonable attorneys' fees and court costs, whether at trial, on appeal, in any proceedings in bankruptcy or insolvency, and in proceedings to collect or enforce any judgment obtained.

17. Term. The term of this Contract shall be for a period of one year, unless earlier terminated under another provision of this Contract. CONTRACTOR shall commence work on the day following approval of this Contract by the Leesburg City Commission.

18. Termination. All or part of this Contract may be terminated under the following conditions:

- a. For Convenience. All or part of this Contract may be terminated by the CITY for its convenience on forty – five (45) days written notice to the CONTRACTOR. In such event, the CONTRACTOR will be entitled to compensation for services competently performed up to the date of termination as set forth more particularly on Exhibit “B” attached.
- b. For Cause. CITY may terminate the Contract for cause if CONTRACTOR; i. becomes Insolvent/Bankrupt, or ii. commits a material breach of the Contract which does not otherwise have a specified contractual remedy, provided that:
 1. CITY shall first provide CONTRACTOR with detailed written notice of the breach and of CITY's intention to terminate the Contract, and
 2. CONTRACTOR shall have failed, within the number of days indicated in the written notice, to commence and diligently pursue cure of the breach.

None of these remedies restricts the CITY's right to pursue a cure by filing a claim against the CONTRACTOR's Public Construction Bond.

19. Contact Person. The primary contact person under this Contract for the CONTRACTOR shall be DR. ANNA MARIE CHWASTIAK. The primary contact person under this Contract for the CITY shall be ROBERT SARGENT, Project Representative.

20. Approval of Personnel. The CITY reserves the right to approve the contact person and the persons actually performing the professional services on behalf of CONTRACTOR pursuant to this Contract. If CITY, in its sole discretion, is dissatisfied with the contact person or the person or persons actually performing the services on behalf of CONTRACTOR pursuant to this Contract, CITY may require CONTRACTOR assign a different person or persons be designated to be the contact person or to perform the CONTRACTOR services hereunder.

21. Notices. Any notice permitted or required by this Contract shall be in writing and shall be either delivered in person, sent by Federal Express, UPS or other widely recognized overnight courier service, or mailed by United States Mail, certified with return receipt requested and all postage charges prepaid. Except where receipt is specifically required in this lease, any notice sent by U.S. Mail in accordance with these standards to the proper address as set forth below shall be deemed to be effective on the second business day after the date of postmark; any notice personally delivered shall be effective upon delivery; and any notice sent by overnight courier shall be effective on the next business day after it is placed in the hands of the courier, properly addressed; and any time period shall begin running as of that date, whether or not the notice is actually received. Notices shall be given in the following manner, or in such other manner as may be directed by either party, in writing, from time to time:

CITY OF LEESBURG
ATTN: PURCHASING MANAGER
501 W. MEADOW ST
LEESBURG, FL 34748

DR. ANNA MARIE CHWASTIAK
27650 SE HIGHWAY 42
UMATILLA, FLORIDA 32784

22. Disclosure of Conflict. The CONTRACTOR has an obligation to disclose to the CITY any situation that, while acting pursuant to this Contract, would create a potential conflict of interest between the CONTRACTOR and the CITY, or with CONTRACTOR'S duties under this Contract.

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

24. 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 Contract 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.

25. Entire Agreement. This Contract sets forth the entire understanding of the parties with regard to its subject matter. It supersedes and takes precedence over any and all prior negotiations, representations and agreements, oral or written, all of which are deemed to have merged into this Contract and to have been extinguished except to the extent specifically set forth herein. This Contract may not be amended orally, by implication, by course of conduct, or in any

other manner whatsoever than by way of a written instrument signed by both parties hereto or their lawful successors, and approved by the Leesburg City Commission at a duly noticed meeting with a quorum present. This Contract shall be construed in accordance with the laws of Florida. This Contract shall be binding on the parties hereto, as well as on their lawful successors and assigns. Each party represents for the benefit of the other that it has not entered into this Contract in reliance on, or on the basis of, any promise, negotiation, representation, undertaking or agreement of the other party, oral or written, which is not specifically set forth within this Contract.

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

THE CITY OF LEESBURG, FLORIDA

BY: _____
DAVID KNOWLES, Mayor

ATTEST: _____
BETTY RICHARDSON,
City Clerk

DATE: _____, 2013

APPROVED AS TO FORM AND CONTENT:

CITY ATTORNEY

FACCI BELLA, INC., a Maryland
corporation

BY: _____
DR. ANNA MARIE CHWASTIAK

DATE: _____, 2013

EXHIBIT "A"

The purpose of this Contract is to engage CONTRACTOR to provide video production services for CITY's "Lakefront TV" television station, in accordance with the terms stated.

CONTRACTOR shall have the following responsibilities:

- A. Provide a qualified broadcast technician on site at CITY's Lakefront TV studios for no less than 30 hours weekly, to handle all television programming including shooting, editing, studio setup and operations, and any work required in conjunction with Lakefront TV's cablecast media server. CONTRACTOR will maintain current operations at Lakefront TV and all existing weekly programming, while improving the overall quality of the channel for its viewers.
- B. CONTRACTOR will provide additional staff resources as required to assist in writing, scheduling and producing television programs. CONTRACTOR will actively promote Lakefront TV to increase its visibility to the public, generate new programming complementary to existing programming, and increase private programming sponsorships.
- C. Except as otherwise specified, programming will adhere to the current character of Lakefront TV as a government access cable channel with a primary format of local public affairs, governmental issues, medical information, and business information in Leesburg and Lake County. All programming and management decisions will be coordinated jointly between CITY and CONTRACTOR.
- D. CITY shall permit CONTRACTOR to set up part of its operations in the Lakefront TV studio, and to utilize some of CONTRACTOR's privately owned production equipment in conjunction with the equipment already owned by the CITY. Additional equipment provided by CONTRACTOR will include additional high definition cameras, studio and location lighting fixtures, grip equipment (stands, calmps, mounts, flags, scrims, heads etc.), a broadcast quality teleprompter, multiple microphones, and two Final Cut Pro HD editing bays. The parties will inventory and label all equipment to keep a record of ownership. CONTRACTOR may not utilize any CITY owned equipment for CONTRACTOR's own private video production work. CITY equipment must be used only for Lakefront TV productions.
- E. CONTRACTOR may provide CITY with fifty two (52) half – hour episodes of Dr. Anna Marie Chwastiak's syndicated better living show, half of which may focus on a local energy focused green renovation project. Lakefront TV may air these episodes at no additional charge.
- F. CONTRACTOR will assume all duties for the production of Lakefront TV's current programming and may be called on to assist the CITY with internal video productions from time to time. This production work will include recording and televising various shows as well as all Leesburg City Commission meetings.

- G. CONTRACTOR will coordinate with CITY to pursue corporate sponsorship for Lakefront TV production work and programs. All sponsorships must be mutually agreed upon by CITY and CONTRACTOR. Proceeds from each sponsorship obtained will be divided between the parties in the following manner: for new sponsorships which will require extra production work from CONTRACTOR, 80% of the proceeds will be paid to CONTRACTOR and 20% to CITY. For sponsorships which do not require additional production work, 65% of the proceeds will be paid to the CITY and 35% to CONTRACTOR. CITY will work with CONTRACTOR to provide any needed furniture and assistance in setting up the Lakefront TV studio for new operations as long as there is no additional expense to the CITY. The CITY will also provide keys and security codes to CONTRACTOR to allow free access to the Lakefront TV studio, which shall be returned to CITY upon termination or expiration of this Contract.
- H. CITY may also, at its option, provide technical support on an occasional basis for Lakefront TV equipment, phone and data network services.
- I. CITY shall pay all utility expenses for the Lakefront TV studios, and all charges for high speed data access, provided that such data access shall be used only for Lakefront TV purposes and not for any private business of CONTRACTOR.

EXHIBIT "B"

The total compensation to CONTRACTOR under this Contract shall be \$70,000.00 and compensation shall not exceed that sum. CONTRACTOR shall be paid \$5,833.34 per month due on the first day of each month, in arrears. CONTRACTOR shall be responsible for paying all sales, income and other taxes due on compensation paid to it under this Contract, as well as for paying all tangible personal property tax levied against equipment owned by CONTRACTOR.

If this Contract is terminated prior to expiration, CONTRACTOR shall be entitled to payment on a daily prorated basis for the month the termination becomes effective, from the first day of such month to the actual termination date.

Monthly installments not paid by the 15th day of each month shall be considered past due, and shall bear interest at the rate of 12% per year (commencing on the 16th day of the month the installment first becomes payable) until paid in full. No other penalties or late charges shall apply. Payment may be made in cash, by check, by wire transfer, or by credit or P – card, at CITY's option, unless CONTRACTOR does not accept credit card payments from anyone, in which case payment must be by one of the other methods listed.