

AGREEMENT FOR CONTRACTOR SERVICES

THIS AGREEMENT is made as of the 8th day of September in the year 2014, 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 **PAQCO, INC.** whose address is 101 Weber Avenue, Leesburg, FL 34748 (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 the following services generally described as **OAK DRIVE WATER MAIN UPGRADE** to the CITY as listed in Invitation to Bid 140241 and as described in **ATTACHMENT "A"** which is attached and incorporated by reference herein. Nothing herein shall limit the CITY'S right to obtain bids or proposals for services from other contractors for same or similar work.

2. **Total Construction Cost.** The CONTRACTOR shall perform the Services for a total price not to exceed **\$343,556.00 as reflected by ATTACHMENT "B"**. The cost of these services shall not exceed this amount unless the CITY has executed a written change order approving any increase in price.

3. **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 representative.

4. **Insurance.** The CONTRACTOR will maintain throughout this Agreement the following insurance: **SEE ATTACHMENT "A"**.

- a. The original of each such policy of insurance, or a complete duplicate, shall be delivered to the CITY by CONTRACTOR prior to starting work, together with evidence that the premiums have been paid.
- b. All required insurance shall be provided by insurers acceptable to the CITY with an A.M. Best rating of at least "A."
- c. 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.
- d. 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.
 - e. The required insurance shall not limit the liability of the CONTRACTOR. 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.

- f. All liability insurance, except professional liability, shall be written on an occurrence basis.
- g. The CONTRACTOR waives its right of recovery against the CITY to the extent permitted by its insurance policies.
- h. 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.
- i. Except for works' 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.
- j. 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**
- k. The Certificate(s) of Insurance shall include a reference to the project and/or purchase order number.
- l. The Certificate(s) of Insurance shall indicate that the CITY shall be notified at least thirty (30) days in advance of cancellation.
- m. The Certificate(s) of Insurance shall include all deductibles and/or self-insurance retentions for each line of insurance coverage.
- n. 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).

5. **Guaranty of Faithful Performance and Payment.** Performance and Payment Bonds, written by a Surety firm satisfactory to the City of Leesburg which comply with Section 255.05(1), Florida Statutes, will be required of the successful Bidder to guarantee that he will deliver a complete project under his Contract in strict accordance with the Contract Documents and that he will pay promptly all persons supplying him with labor or materials for the work.

The Performance and Payment Bonds shall each be for an amount not less than the Total Contract Price as agreed to by both parties. The cost of this bond shall be included in the price bid in the Bid Response.

These bonds shall be substantially in the form provided herein and written by a qualified Surety firm and through a reputable and responsible surety bond agency licensed to do business in the State of Florida and Lake County and meet the following requirements:

- a. The Surety must be rated as "A" or better as to strength by Best's Insurance Guide, published by Alfred M. Best Company, Inc., 75 Fulton Street, New York, New York.

- b. **Bonding Limit - Any One Risk:** The Bonding Limit of the Surety shall not exceed ten (10) percent of the policy holders surplus (capital and surplus) as listed by the aforementioned Best's Insurance Guide. The completed Bond shall be executed in four (4) counterparts and delivered to the City of Leesburg with the required Power-of-Attorney and executed contract.

6. **Indemnification.** The CONTRACTOR agrees to make payment of all proper charges for labor required in the aforementioned work and CONTRACTOR shall indemnify CITY and hold it harmless from and against any loss or damage, claim or cause of action, and any attorneys' fees and court costs, arising out of: any unpaid bills for labor, services or materials furnished to this project; any failure of performance of CONTRACTOR under this Agreement; or the negligence of the CONTRACTOR in the performance of its duties under this Agreement, or any act or omission on the part of the CONTRACTOR, his agents, employees, or servants. CONTRACTOR shall defend, indemnify, and save harmless the CITY or any of their officers, agents, or servants and each and every one of them against and from all claims, suits, and costs of every kind and description, including attorney's fees, and from all damages to which the CITY or any of their officers, agents, or servants may be put by reason of injury to the persons or property of others resulting from the performance of CONTRACTOR'S duties under this Agreement, or through the negligence of the CONTRACTOR in the performance of its duties under this Agreement, or through any act or omission on the part of the CONTRACTOR, his agents, employees, or servants.

If however, this Agreement is a "construction contract" as defined in and encompassed by the provision of Florida Statutes § 725.06, then the following shall apply in place of the aforementioned indemnification provision:

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 Agreement. The liability of the CONTRACTOR shall, however, be limited to one million and 00/100 dollars (\$1,000,000.00) per occurrence, and the obligation of the CONTRACTOR to indemnify the CITY shall be limited to acts, omissions, or defaults of the CONTRACTOR; any contractors, subcontractors, sub-subcontractors, material men, or agents or employees of any of them, providing labor, services or materials in connection with the project; and the CITY, its officers, agents and employees, provided however that the CONTRACTOR shall not be obligated to indemnify the CITY against losses arising from the gross negligence, or willful, wanton, or intentional misconduct of the CITY, its officers, agents and employees, or against statutory violations or punitive damages except to the extent caused by or resulting from the acts or omissions of the CONTRACTOR, or any contractors, subcontractors, sub-subcontractors, material men, or agents or employees of any of them, providing labor, services, or materials in connection with this Agreement.

7. **Codes, Laws, and Regulations.** CONTRACTOR will comply with all applicable codes, laws, regulations, standards, and ordinances in force during the term of this Agreement.

8. **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. All permits and licenses required by law or requirements of the Request for Proposal will remain in force for the full duration of this Agreement and any extensions.

9. **Nonappropriation.** The CONTRACTOR understands and agrees that this Agreement 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 Agreement, 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 Agreement. The CITY may terminate this Agreement, with no further liability to the CONTRACTOR, 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 due to nonappropriation of funds.

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.

10. **Public Records Retention.** CONTRACTOR shall keep and maintain public records that ordinarily and necessarily would be required by the CITY in order to perform the services being provided by CONTRACTOR herein. CONTRACTOR shall provide the public with access to public records on the same terms and conditions that the CITY would provide the records and at a cost that does not exceed the cost provided in Chapter 119, Florida Statutes. CONTRACTOR shall ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law. CONTRACTOR shall meet all requirements for retaining public records and transfer, at no cost, to the CITY all public records in possession of the CONTRACTOR upon termination of this Agreement and destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. All records stored electronically must be provided to the CITY by CONTRACTOR in a format that is compatible with the information technology systems of the CITY.

11. **Access to Records.** The services provided under this Agreement may be funded in part by a grant from a government agency other than the CITY. As a requirement of grant funding CONTRACTOR shall make records related to this project available for examination to any local, state or federal government agency, or department, during CONTRACTOR'S normal business hours. Said records will be maintained for a period of five (5) years after the date of the invoice.

12. **Contingent Fees Prohibited.** The CONTRACTOR warrants that he or she has not employed or retained any company or person, other than a bona fide employee working solely for the CONTRACTOR, to solicit or secure this Agreement and that 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 Agreement. In the event of a breach of this provision, the CITY shall have the right to terminate this Agreement 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 Agreement.

13. **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 Agreement 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 Agreement 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.

14. **Ownership of Documents.** All data, specifications, calculations, estimates, plans, drawings, construction documents, photographs, 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. All original documents shall be permanently kept on file at the office of the CONTRACTOR.

15. **Independent Contractor.** The CONTRACTOR agrees that he or she is an independent contractor and not an agent, joint venture, or employee of the CITY, and nothing in this Agreement 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 his own Federal income tax and self-employment tax, or any other taxes applicable to the compensation paid under this Agreement. The CONTRACTOR shall be solely and primarily responsible for his and her acts during the performance of this Agreement.

16. **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 Agreement, whether arising in tort, contract, or otherwise, without the written consent of the other party. These conditions and the entire Agreement are binding on the heirs, successors, and assigns of the parties hereto.

17. **No Third Party Beneficiaries.** This Agreement gives no rights or benefits to anyone other than the CONTRACTOR and the CITY.

18. **Jurisdiction.** The laws of the State of Florida shall govern the validity of this Agreement, its interpretation and performance, and any other claims related to it. In the event of any litigation arising under or construing this Agreement, venue shall lie only in Lake County, Florida.

19. **Term and Termination.** The term of this Agreement shall be for a period of one (1) year or until the terms and conditions of this Agreement, including, but not limited to, its Scope of Services, have been completed, whichever occurs first, as determined by the CITY. Work shall commence within (14) continuous calendar days after CITY issues a Notice to Proceed. All services to be rendered by the CONTRACTOR as specified in the Contract Documents shall be completed within (160) continuous calendar days after the City issues a Notice to Proceed. All or part of this Agreement may be terminated by the CITY for its convenience on fifteen (15) 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.

20. **Nonappropriation.** The CONTRACTOR understands and agrees 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 another 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, 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.

21. **Contact Person.** The primary contact person under this Agreement for the CONTRACTOR shall be FAY PAQUETTE, Vice President. The primary contact person under this Agreement for the CITY shall be JIMMY FEAGLE, Deputy Director of Public Works.

22. **Approval of Personnel.** The CITY reserves the right to approve the contact person and the persons actually performing the services on behalf of CONTRACTOR pursuant to this Agreement. 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 Agreement, CITY may require CONTRACTOR assign a different person or persons be designated to be the contact person or to perform the CONTRACTOR services hereunder.

23. **Disclosure of Conflict.** The CONTRACTOR has an obligation to disclose to the CITY any situation that, while acting pursuant to this Agreement, would create a potential conflict of interest between the CONTRACTOR and his duties under this Agreement.

24. **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 Agreement shall be new, warranted for their merchantability, and fit for a particular purpose.

25. **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 this Agreement. 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.

26. **Illegal Alien Labor** - 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 Agreement or enter into an Agreement with a subcontractor that fails to certify to the CONTRACTOR that the subcontractor is in compliance with the terms stated within. The CONTRACTOR nor any subcontractor employed by him shall not knowingly employ or contract with an illegal alien to perform work under this Agreement. 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 the responsibility of the CONTRACTOR. Failure to meet this requirement may result in termination of the Agreement by the CITY.

27. **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.

28. **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.

[Signature page follows.]

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

THE CITY OF LEESBURG, FLORIDA

By: _____
John Christian, Mayor

ATTEST:

City Clerk

Approved as to form:

City Attorney

PAQCO, INC.

By:  _____

Printed: FAY PAQUETTE

Its: VICE PRESIDENT
(Title)

ATTACHMENT "A"

SCOPE OF SERVICES

- I. **Work.** The CONTRACTOR shall perform all work in accordance with the Contract Documents. Furnish all materials, equipment, tools, labor and supervision necessary to complete the Hood Street Water Main Upgrade Project as required by Invitation to Bid (ITB) 140241; Paqco, Inc. bid submitted August 7, 2014.
- II. **General Terms & Conditions.** The General Terms and Conditions from ITB 140241 are incorporated by reference and made a part hereof.
- III. **Supplemental Conditions.** The Supplemental Conditions from ITB 140241 are incorporated by reference and made a part hereof.
- IV. **Special Terms & Conditions.** The Special Terms and Conditions from ITB 140241 are incorporated by reference and made a part hereof.
- V. **Insurance and Indemnity Requirements.** See Agreement at Items 4 and 5.
- VI. **Addenda.** Addendum 1 thru 3 are incorporated by reference and made a part hereof.
- VII. **Bid Submittal.** The original August 7, 2014 bid submittal and Additive Alternate negotiated pricing of August 14, 2014 from the vendor is incorporated by reference and made a part hereof.

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ATTACHMENT "B"

BASE BID PRICING

Item No.	Description	Unit	Item Quantity	Extended Cost
1	Mobilization, Demobilization and General Conditions	LS	1	\$ 25,000.00
2	Maintenance of Traffic	LS	1	\$ 5,000.00
3	Health and Safety Requirements	LS	1	\$ 5,000.00
4	Environmental Protection	LS	1	\$ 3,000.00
5	Furnish and Install 6" C-900 DR-18 PVC Water Main	LF	2855	\$ 62,810.00
6	New 1" Water Service Transfer Connections Short Side	EA	27	\$ 15,525.00
7	New 1" Water Service Transfer Connections Long Side	EA	33	\$ 51,150.00
8	Furnish and Install 6" Gate Valve and Valve Box	EA	8	\$ 8,800.00
9	Furnish and Install 6" x 6" Tapping Sleeve with Tapping Valve and Valve Box	EA	3	\$ 11,250.00
10	Furnish and Install 6" x 2" Water Main Connection	EA	3	\$ 3,000.00
11	Furnish and Install 6" 11.25-degree Ductile Iron Pipe Bends for Water Main	EA	5	\$ 1,250.00
12	Furnish and Install 6" 22.50-degree Ductile Iron Pipe Bends for Water Main	EA	2	\$ 500.00
13	Furnish and Install 6" 45-degree Ductile Iron Pipe Bends for Water Main	EA	18	\$ 4,950.00
14	Furnish and Install 6" 90-degree Ductile Iron Pipe Bends for Water Main	EA	2	\$ 600.00
15	Furnish and Install 6" x 6" Ductile Iron Pipe Tee for Water Main	EA	4	\$ 1,750.00
16	Plug and Abandon Existing 2" Water Main Pipe	LS	1	\$ 2,000.00
17	Furnish and Install Fire Hydrant Assembly	EA	6	\$ 28,000.00
18	Connect to Existing Water Mains	LS	1	\$ 1,500.00
19	Furnish and Install Blowoff Detail	EA	1	\$ 750.00
20	Furnish and Install Open Cut and Repair Detail	SY	227	\$ 11,350.00
21	Remove and Replace Asphalt Concrete Driveways	SY	138	\$ 6,210.00
22	Furnish and Install Asphalt Concrete Aprons at Driveways	SY	45	\$ 1,125.00
23	Remove and Replace Concrete Driveways 6" thick	SY	409	\$ 26,585.00
24	Remove and Replace Concrete Curb and Gutter	LF	70	\$ 2,450.00
BASE BID TOTAL				\$279,555.00

ATTACHMENT "B" (cont.)

ADDITIVE ALTERNATE

Bid for additional work as specified on drawing sheet C4.

Item No.	Description	Unit	Item Quantity	Extended Cost
A.1	Mobilization, Demobilization and General Conditions	LS	1	\$ 5,000.00
A.2	Maintenance of Traffic	LS	1	\$ 2,000.00
A.3	Health and Safety Requirements	LS	1	\$ 500.00
A.4	Environmental Protection	LS	1	\$ 0.00
A.5	Furnish and Install 6" C-900 DR-18 PVC Water Main	LF	643	\$ 14,146.00
A.6	New 1" Water Service Transfer Connections Short Side	EA	9	\$ 5,175.00
A.7	New 1" Water Service Transfer Connections Long Side	EA	5	\$ 7,750.00
A.8	Furnish and Install 6" 11.25-degree Ductile Iron Pipe Bends for Water Main	EA	24	\$ 6,000.00
A.9	Furnish and Install 6" 22.50-degree Ductile Iron Pipe Bends for Water Main	EA	2	\$ 500.00
A.10	Plug and Abandon Existing 2" Water Main Pipe	LS	1	\$ 1,000.00
A.11	Furnish and Install Fire Hydrant Assembly	EA	2	\$ 7,000.00
A.12	Connect to Existing Water Mains	LS	1	\$ 500.00
A.13	Remove and Replace Concrete Driveways 6" thick	SY	222	\$ 14,430.00
ADDITIVE ALTERNATE BID TOTAL				\$ 64,001.00