

**AGREEMENT TO PROVIDE ANNUAL AERIAL LIFT INSPECTION SERVICES**

THIS AGREEMENT TO PROVIDE ANNUAL AERIAL LIFT INSPECTION SERVICES ("Agreement") is entered into by and between the **CITY OF OCALA**, a Florida municipal corporation ("City"), and **AMERICAN TEST CENTER, INC.**, a foreign profit corporation duly organized in Wisconsin and authorized to do business in the state of Florida (EIN: 41-1561246) ("Vendor").

**WHEREAS**, on February 15, 2022, the City of Ocala issued an Invitation to Bid ("ITB") for the provision of annual testing and inspection of aerial lift equipment supporting the Fleet Management Department, ITB No.: FLT/220110 (the "Solicitation"); and

**WHEREAS**, three (3) firms responded to the Solicitation and, after consideration of price and other evaluation factors set forth in the Solicitation, the bid for submitted by American Test Center, Inc. was the lowest; and

**WHEREAS**, Vendor was chosen as the intended awardee to annual provide annual testing and inspection of aerial lift equipment supporting the Fleet Management Department ("Services").

**NOW THEREFORE**, in consideration of the foregoing recitals, the following mutual covenants and conditions, and other good and valuable consideration, City and Vendor agree as follows:

1. **RECITALS.** City and Vendor hereby represent, warrant, and agree that the Recitals set forth above are true and correct and are incorporated herein by reference.
2. **CONTRACT DOCUMENTS.** The contract documents which comprise the entire understanding between City and Vendor shall only include: (a) this Agreement; (b) those documents listed in this section as Exhibits to this Agreement; and (c) the City's Solicitation for the Project and the bid submitted by Vendor in response to same (the "Solicitation Documents"). Each of these documents are incorporated herein by reference for all purposes. If there is a conflict between the terms of this Agreement and the Contract Documents, then the terms of this Agreement shall control, amend, and supersede any conflicting terms contained in the remaining Contract Documents.

A. **Exhibits to Agreement:** The Exhibits to this Agreement are as follows:

Exhibit A: Scope of Work (A-1 through A-2)

Exhibit B: Equipment List (B-1 through B-2)

If there is a conflict between the individual Exhibits regarding the scope of work to be performed, then any identified inconsistency shall be resolved by giving precedence in the following order: (1) Exhibit A, then (2) Exhibit B.

3. **SCOPE OF SERVICES.** Vendor shall provide all materials, labor, supervision, tools, accessories, equipment, permits, certifications, and all other things necessary for Vendor to perform its obligations under this Agreement as set forth in the attached **Exhibit A - Scope of Work** and the Solicitation Documents. In the event of a conflict between this Agreement and the

Solicitation Documents, this Agreement and all of its Exhibits shall be given precedence to resolve any identified inconsistency. The Scope of Work may only be adjusted by written amendment executed by both parties.

4. **COMPENSATION.** The highest total compensation payable to Vendor by City under this Agreement for the timely and satisfactory performance of services in compliance with the Contract Documents shall be **FORTY-ONE THOUSAND, THREE HUNDRED FIFTY AND NO/100 DOLLARS (\$41,350)** (the "Maximum Limiting Amount"). The allowability of compensation sought under this Contract is expressly made subject to the terms of this Contract, and any pertinent Federal and State law.

- A. **Pricing.** Vendor shall be compensated in accordance with the pricing schedule set forth below:

Item	Description	UOM	Unit Price
1	Bucket Truck	EA	\$375.00
2	Digger Derrick	EA	\$375.00
3	Construction Crane	EA	\$300.00
4	Utility Body Crane	EA	\$200.00

- B. **Renewal Pricing Increases.** Any pricing increase for renewals shall be subject to a maximum negotiated increase of no more than **THREE PERCENT (3%) ANNUALLY** unless there are mitigating market conditions. Price increases shall be based on the CPI-U. Vendor shall submit CPI justification with any and all requests for pricing at least **NINETY (90) DAYS** prior to the end of the then existing Contract Term.
- C. **Invoice Submission.** Vendor shall invoice upon completion of all annual inspections. Invoices submitted by Vendor shall include the City Contract Number, an assigned Invoice Number, and an Invoice Date. Vendor shall submit the original invoice through the responsible City Project Manager at: **City of Ocala Fleet Management Department, Attn: Liza Warmuth, 1805 NE 30<sup>th</sup> Avenue, Bldg. 200, Ocala, Florida 34470**, E-mail: **lwarmuth@ocalafl.org**.
- D. **Payment of Invoices by City.** The City Project Manager must review and approve all invoices prior to payment. City Project Manager's approval shall not be unreasonably withheld, conditioned, or delayed.
- E. **Withholding of Payment.** City reserves the right to withhold, in whole or in part, payment for any and all work that: (i) has not been completed by Vendor; (ii) is inadequate or defective and has not been remedied or resolved in a manner satisfactory to the City Project Manager; or (iii) which fails to comply with any term, condition, or other requirement under this Agreement. Any payment withheld shall be released and remitted to Vendor within **THIRTY (30)** calendar days of the Vendor's remedy or resolution of the inadequacy or defect.



- F. **Excess Funds.** If due to mistake or any other reason Vendor receives payment under this Agreement in excess of what is provided for by the Agreement, Vendor shall promptly notify City upon discovery of the receipt of the overpayment. Any overpayment shall be refunded to City within **THIRTY (30)** days of Vendor's receipt of the overpayment or must also include interest calculated from the date of the overpayment at the interest rate for judgments at the highest rate as allowed by law.
- G. **Tax Exemption.** City is exempt from all federal excise and state sales taxes (State of Florida Consumer's Certification of Exemption 85-8012621655C-9). The City's Employer Identification Number is 59-60000392. Vendor shall not be exempted from paying sales tax to its suppliers for materials to fulfill contractual obligations with the City, nor will Vendor be authorized to use City's Tax Exemption Number for securing materials listed herein.
5. **EFFECTIVE DATE AND TERM.** This Agreement shall become effective and commence on **APRIL 1, 2022** and continue for a term of **TWO (2)** years, through and including **MARCH 31, 2024**. This Agreement may be renewed for up to **TWO (2)** additional, **ONE-YEAR** (1-year) periods by written consent between City and Vendor.
6. **FORCE MAJEURE.** Neither party shall be liable for delay, damage, or failure in the performance of any obligation under this Agreement if such delay, damage, or failure is due to causes beyond its reasonable control, including without limitation: fire, flood, strikes and labor disputes, acts of war, acts of nature, terrorism, civil unrest, acts or delays in acting of the government of the United States or the several states, judicial orders, decrees or restrictions, or any other like reason which is beyond the control of the respective party ("Force Majeure"). The party affected by any event of force majeure shall use reasonable efforts to remedy, remove, or mitigate such event and the effects thereof with all reasonable dispatch.
- A. The party affected by force majeure shall provide the other party with full particulars thereof including, but not limited to, the nature, details, and expected duration thereof, as soon as it becomes aware.
- B. When force majeure circumstances arise, the parties shall negotiate in good faith any modifications of the terms of this Agreement that may be necessary or appropriate in order to arrive at an equitable solution. Vendor performance shall be extended for a number of days equal to the duration of the force majeure. Vendor shall be entitled to an extension of time only and, in no event, shall Vendor be entitled to any increased costs, additional compensation, or damages of any type resulting from such force majeure delays.
7. **INSPECTION AND ACCEPTANCE OF THE WORK.** All services, work, and products provided by Vendor under this Agreement shall be provided under the direction and to the satisfaction and approval of the City Project Manager (the "Project Manager").

- A. The Project Manager shall decide all questions regarding the quality, acceptability, and/or fitness of materials, the rate of progress of the work, and the acceptable fulfillment of the Agreement, in his or her sole discretion, based upon both the requirements set forth by City and the information provided by Vendor in its Bid. The authority vested in the Project Manager pursuant to this paragraph shall be confined to the direction or specification of what is to be performed under this Agreement and shall not extend to the actual execution of the Services.
  - B. Neither the Project Manager's review of Vendor's work nor recommendations made by Project Manager pursuant to this Agreement will impose on Project Manager any responsibility to supervise, direct, or control Vendor's work in progress or for the means, methods, techniques, sequences, or safety precautions or programs incident to Vendor's provision of Services under this Agreement.
8. **TERMINATION AND DEFAULT.** Either party, upon determination that the other party has failed or refused to perform or is otherwise in breach of any obligation or provision under this Agreement or the Contract Documents, may give written notice of default to the defaulting party in the manner specified for the giving of notices herein. Termination of this Agreement by either party for any reason shall have no effect upon the rights or duties accruing to the parties prior to termination.
- A. **Termination by City for Cause.** City shall have the right to terminate this Agreement immediately, in whole or in part, upon the failure of Vendor to carry out any obligation, term, or condition of this Agreement. City's election to terminate the Agreement for default shall be communicated by providing Vendor written notice of termination in the manner specified for the giving of notices herein. Any notice of termination given to Vendor by City shall be effective immediately, unless otherwise provided therein, upon the occurrence of any one or more of the following events:
    - (1) Vendor's performance or workmanship falls below acceptable City or trade standards;
    - (2) Vendor fails to timely and properly perform any of the services set forth in the specifications of the Agreement;
    - (3) Vendor provides material that does not meet the specifications of the Agreement;
    - (4) Vendor fails to complete the work required within the time stipulated in the Agreement;or
    - (5) Vendor fails to make progress in the performance of the Agreement and/or gives City reason to believe that Vendor cannot or will not perform to the requirements of the Agreement.
  - B. **Vendor's Opportunity to Cure Default.** City may, in its sole discretion, provide Vendor with an opportunity to cure the violations set forth in City's notice of default to Vendor. Vendor



shall commence to cure the violations immediately and shall diligently and continuously prosecute such cure to completion within a reasonable time as determined by City. If the violations are not corrected within the time determined to be reasonable by City or to the reasonable satisfaction of City, City may, without further notice, declare Vendor to be in breach of this Agreement and pursue all remedies available at law or equity, to include termination of this Agreement without further notice.

- C. **City's Remedies Upon Vendor Default.** In the event Vendor fails to cure any default under this Agreement within the time period specified in this section, City may pursue any remedies available at law or equity, including, without limitation, the following:

- (1) City shall be entitled to terminate this Agreement without further notice;
- (2) City shall be entitled to hire another vendor to complete the required work in accordance with the needs of City;
- (3) City shall be entitled to recover from Vendor all damages, costs, and attorney's fees arising from Vendor's default prior to termination; and
- (4) City shall be entitled to recovery from Vendor any actual excess costs by: (i) deduction from any unpaid balances owed to Vendor; and (ii) any other remedy as provided by law.

- D. **Termination for Non-Funding.** In the event that budgeted funds to finance this Agreement are reduced, terminated, or otherwise become unavailable, City may terminate this Agreement upon written notice to Vendor without penalty or expense to City. City shall be the final authority as to the availability of budgeted funds.

- E. **Termination for Convenience.** City reserves the right to terminate this Agreement in whole or in part at any time for the convenience of City without penalty or recourse. The Project Manager shall provide written notice of the termination. Upon receipt of the notice, Vendor shall immediately discontinue all work as directed in the notice, notify all subcontractors of the effective date of the termination, and minimize all further costs to City including, but not limited to, the placing of any and all orders for materials, facilities, or supplies, in connection with its performance under this Agreement. Vendor shall be entitled to receive compensation solely for: (1) the actual cost of the work completed in conformity with this Agreement; and/or (2) such other costs incurred by Vendor as permitted under this Agreement and approved by City.

9. **PERFORMANCE EVALUATION.** At the end of the contract, City may evaluate Vendor's performance. Any such evaluation will become public record.

10. **NOTICE REGARDING FAILURE TO FULFILL AGREEMENT.** Any Vendor who enters into an Agreement with the City of Ocala and fails to complete the contract term, for any reason, shall be subject to future bidding suspension for a period of one (1) year and bid debarment for a period of up to three (3) years for serious contract failures.

**11. VENDOR REPRESENTATIONS.** Vendor expressly represents that:

- A. Vendor has read and is fully familiar with all the terms and conditions of this Agreement, the Contract Documents, and other related data and acknowledges that they are sufficient in scope and detail to indicate and convey understanding of all terms and conditions of the work to be performed by Vendor under this Agreement.
- B. Vendor has disclosed, in writing, all known conflicts, errors, inconsistencies, discrepancies, or omissions discovered by Vendor in the Contract Documents, and that the City's written resolution of same is acceptable to Vendor.
- C. Vendor is familiar with all local, state, and Federal laws, regulations, and ordinances which may affect cost, progress, or its performance under this Agreement whatsoever.
- D. Vendor understands that a "public entity crime" as defined in section 287.133(1)(g), Florida Statutes, is "a violation of any state or federal law by a person with respect to and directly related to the transaction of business with any public entity or with an agency or political subdivision of any other state or with the United States..." Vendor further understands that any person or affiliate who has been placed on the convicted vendor list following a conviction for a public entity crime (1) may not submit a bid, proposal, or reply on a contract: (a) to provide any goods or services to a public entity; (b) for the construction or repair of a public building or public work; or (c) for leases of real property to a public entity; (2) may not be awarded or perform work as a Vendor, supplier, subcontractor, or consultant under a contract with any public entity; and (3) may not transact business with any public entity in excess of the threshold amount provided in section 287.017, Florida Statutes, for CATEGORY TWO for a period of 36 months from the date of being placed on the convicted vendor list.

**12. VENDOR RESPONSIBILITIES.** Except as otherwise specifically provided for in this Agreement, the following provisions are the responsibility of the Vendor:

- A. Vendor shall competently and efficiently supervise, inspect, and direct all work to be performed under this Agreement, devoting such attention thereto and applying such skills and expertise as may be necessary to perform the work in accordance with the Contract Documents.
- B. Vendor shall be solely responsible for the means, methods, techniques, sequences, procedures, and safety precautions or programs incident thereto.
- C. Vendor shall be responsible to see that the finished work complies accurately with the contract and the intent thereof.
- D. Vendor shall comply with all local, state, and Federal laws, regulations, and ordinances which may affect cost, progress, or its performance under this Agreement, and be responsible for all costs associated with same.



- E. Vendor shall continue its performance under this Agreement during the pendency of any dispute or disagreement arising out of or relating to this Agreement, except as Vendor and City may otherwise agree in writing.
13. **NO EXCLUSIVITY.** It is expressly understood and agreed by the parties that this is not an exclusive agreement. Nothing in this Agreement shall be construed as creating any exclusive arrangement with Vendor or as prohibit City from either acquiring similar, equal, or like goods and/or services or from executing additional contracts with other entities or sources.
14. **COMMERCIAL AUTO LIABILITY INSURANCE.** Vendor shall procure and maintain, for the life of this Agreement, commercial auto liability insurance covering all automobiles owned, non-owned, hired, and scheduled by Vendor with a combined limit of not less than One Million Dollars (\$1,000,000) for bodily injury and property damage for each accident. Vendor shall name City as an additional insured under the insurance policy.
15. **GENERAL LIABILITY INSURANCE.** Vendor shall procure and maintain, for the life of this Agreement, commercial general liability insurance with minimum coverage limits not less than:
- A. One Million Dollars (\$1,000,000) per occurrence and Two Million Dollars (\$2,000,000) aggregate limit for bodily injury, property damage, and personal and advertising injury; and
  - B. One Million Dollars (\$1,000,000) per occurrence and Two Million Dollars (\$2,000,000) aggregate limit for products and completed operations.
  - C. Coverage for contractual liability is also required.
  - D. City, a political subdivision of the State of Florida, and its officials, employees, and volunteers shall be covered as an additional insured with a CG 20 26 04 13 Additional Insured – Designated Person or Organization Endorsement or similar endorsement providing equal or broader Additional Insured Coverage regarding liability arising out of activities performed by or on behalf of Vendor. The coverage shall contain no special limitation on the scope of protection afforded to City, its officials, employees, or volunteers.
16. **WORKERS' COMPENSATION AND EMPLOYER'S LIABILITY.** Vendor shall procure and maintain, for the life of this Agreement, Workers' Compensation insurance and employer's liability insurance in amounts required by applicable statutes. Vendor shall ensure any and all subcontractors have coverage as required by applicable statutes. Vendor is not required to name City as an additional insured under the policies, but a subrogation waiver endorsement is required. Exceptions and exemptions may be allowed by City's HR/Risk Director, so long as they are in accordance with Florida Statute.
17. **MISCELLANEOUS INSURANCE PROVISIONS.**
- A. Insurance Requirements. These insurance requirements shall not relieve or limit the liability of Vendor. City does not in any way represent that these types or amounts of insurance are

sufficient or adequate to protect Vendor's interests or liabilities, but are merely minimums. No insurance is provided by the City under this contract to cover Vendor. **No work shall be commenced under this contract until the required Certificate(s) of Insurance have been provided.** Work shall not continue after expiration (or cancellation) of the Certificates of Insurance and shall not resume until new Certificate(s) of Insurance have been provided. Insurance written on a "Claims Made" form is not acceptable without consultation with City of Ocala Risk Management.

- B. Deductibles. Vendor is responsible for paying any and all deductibles or self-insured retention. Any deductibles or self-insured retentions above \$100,000 must be declared to and approved by the City. Approval will not be unreasonably withheld.
- C. Certificates of Insurance. Vendor shall provide Certificates of Insurance, accompanied by copies of all endorsements required by this section, that are issued by an agency authorized to do business in the state of Florida and with an A.M. Best rating\* of at least A or greater. Certificates of Insurance must be forwarded to: **City of Ocala, Contracting Department, 3<sup>rd</sup> Floor, 110 SE Watula Ave, Ocala, FL 34471, E-Mail: [vendors@ocalafl.org](mailto:vendors@ocalafl.org)** prior to the commencement of work. Renewal certificates must also be forwarded to the Contracting Department prior to the policy expiration.

\*Non-rated insurers must be pre-approved by the City Risk Manager.

- D. Failure to Maintain Coverage. In the event Vendor fails to disclose each applicable deductible/self-insured retention or obtain or maintain in full force and effect any insurance coverage required to be obtained by Vendor under this Agreement, Vendor shall be considered to be in default of this Agreement.
- E. Severability of Interests. Vendor shall arrange for its liability insurance to include General Liability, Business Automobile Liability, and Excess/Umbrella Insurance, or to be endorsed to include a severability of interests/cross liability provision so that the "City of Ocala" (where named as an additional insured) will be treated as if a separate policy were in existence, but without increasing the policy limits.
- F. Mandatory Endorsements for All Required Policies. All required policies shall include: (i) endorsement that waives any right of subrogation against the City of Ocala for any policy of insurance provided under this Agreement or under any state or federal worker's compensation or employer's liability act; and (ii) endorsement to give the City of Ocala and no less than **THIRTY (30)** days written notice (with the exception of non-payment of premium which requires a **TEN (10)** calendar day notice) in the event of cancellation or material change.



18. **SAFETY/ENVIRONMENTAL.** Vendor shall be responsible for initiating, maintaining, and supervising all safety precautions and programs in connection with the work. Vendor shall take all necessary precautions for the safety of, and shall provide the necessary protection to prevent damage, injury, or loss to:
- A. All employees on the work and other persons that may be affected thereby;
  - B. All work, materials and equipment to be incorporated therein, whether in storage on or off the site; and
  - C. Other property at the site or adjacent thereto, including trees, shrubs, lawns, walks, pavements, roadways, structures, and utilities.
- All, injury, or loss to any property caused, directly or indirectly, in whole or in part, by Vendor, any subcontractor, or anyone directly or indirectly employed by any of them, or anyone for whose acts any of them may be liable, shall be remedied by Vendor. Vendor's duties and responsibilities for the safety and protection of the work shall continue until such time as the work is completed and accepted by City.
19. **NON-DISCRIMINATORY EMPLOYMENT PRACTICES.** During the performance of the contract, Vendor shall not discriminate against any employee or applicant for employment because of race, color, religion, ancestry, national origin, sex, pregnancy, age, disability, sexual orientation, gender identity, marital or domestic partner status, familial status, or veteran status and shall take affirmative action to ensure that an employee or applicant is afforded equal employment opportunities without discrimination. Such action shall be taken with reference to, but not limited to: recruitment, employment, termination, rates of pay or other forms of compensation and selection for training or retraining, including apprenticeship and on-the-job training.
20. **SUBCONTRACTORS.** Nothing in this Agreement shall be construed to create, impose, or give rise to any duty owed by City or its representatives to any subcontractor of Vendor or any other persons or organizations having a direct contract with Vendor, nor shall it create any obligation on the part of City or its representatives to pay or seek payment of any monies to any subcontractor of Vendor or any other persons or organizations having a direct contract with Vendor, except as may otherwise be required by law. City shall not be responsible for the acts or omissions of any vendor, subcontractor, or of any of their agents or employees.
21. **INDEPENDENT CONTRACTOR STATUS.** Vendor acknowledges and agrees that under this Agreement, Vendor and any agent or employee of Vendor shall be deemed at all times to be an independent contractor and shall be wholly responsible for the manner in which it performs the services and work required under this Agreement. Neither Vendor nor its agents or employees shall represent or hold themselves out to be employees of City at any time. Neither Vendor nor its agents or employees shall have employee status with City. Nothing in this

Agreement shall constitute or be construed to create any intent on the part of either party to create an agency relationship, partnership, employer-employee relationship, joint venture relationship, or any other relationship which would allow City to exercise control or discretion over the manner or methods employed by Vendor in its performance of its obligations under this Agreement.

22. **ACCESS TO FACILITIES.** City shall provide Vendor with access to all City facilities as is reasonably necessary for Vendor to perform its obligations under this Agreement.
23. **ASSIGNMENT.** Neither party may assign its rights or obligations under this Agreement to any third party without the prior express approval of the other party, which shall not be unreasonably withheld.
24. **RIGHT OF CITY TO TAKE OVER CONTRACT.** Should the work to be performed by Vendor under this Agreement be abandoned, or should Vendor become insolvent, or if Vendor shall assign or sublet the work to be performed hereunder without the written consent of City, the City Project Manager shall have the power and right to hire and acquire additional men and equipment, supply additional material, and perform such work as deemed necessary for the completion of this Agreement. Under these circumstances, all expenses and costs actually incurred by City to accomplish such completion shall be credited to City along with amounts attributable to any other elements of damage and certified by the Project Manager. The Project Manager's certification as to the amount of such liability shall be final and conclusive.
25. **PUBLIC RECORDS.** Vendor shall comply with all applicable provisions of the Florida Public Records Act, Chapter 119, Florida Statutes. Specifically, Vendor shall:
  - A. Keep and maintain public records required by the public agency to perform the service.
  - B. Upon request from the public agency's custodian of public records, provide the public agency with a copy of the requested records or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided in Chapter 119, Florida Statutes, or as otherwise provided by law.
  - C. Ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law for the duration of the contract term and following completion of the contract if Vendor does not transfer the records to the public agency.
  - D. Upon completion of the contract, transfer, at no cost, to the public agency all public records in possession of Vendor or keep and maintain public records required by the public agency to perform the service. If Vendor transfers all public records to the public agency upon completion of the contract, Vendor shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If Vendor keeps and maintains public records upon completion of the contract, Vendor shall meet all



applicable requirements for retaining public records. All records stored electronically must be provided to the public agency, upon request from the public agency's custodian of public records, in a format that is compatible with the information technology systems of the public agency.

**IF VENDOR HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO VENDOR'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS CONTRACT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT: CITY OF OCALA, OFFICE OF THE CITY CLERK; 352-629-8266; E-mail: [clerk@ocalafl.org](mailto:clerk@ocalafl.org); City Hall, 110 SE Watula Avenue, Ocala, FL 34471.**

26. **AUDIT.** Vendor shall comply and cooperate immediately with any inspections, reviews, investigations, or audits relating to this Agreement as deemed necessary by the Florida Office of the Inspector General, the City's Internal or External auditors or by any other Florida official with proper authority.
27. **PUBLICITY.** Vendor shall not use City's name, logo, seal or other likeness in any press release, marketing materials, or other public announcement without City's prior written approval.
28. **E-VERIFY.** Pursuant to section 448.095, Contractor shall register with and use the U.S. Department of Homeland Security's ("DHS") E-Verify System, accessible at <https://e-verify.uscis.gov/emp>, to verify the work authorization status of all newly hired employees. Contractor shall obtain affidavits from any and all subcontractors in accordance with paragraph 2(b) of section 448.095, Florida Statutes, and maintain copies of such affidavits for the duration of this Agreement. By entering into this Agreement, Contractor certifies and ensures that it utilizes and will continue to utilize the DHS E-Verify System for the duration of this Agreement and any subsequent renewals of same. Contractor understands that failure to comply with the requirements of this section shall result in the termination of this Agreement and Contractor may lose the ability to be awarded a public contract for a minimum of one (1) year after the date on which the Agreement was terminated. Contractor shall provide a copy of its DHS Memorandum of Understanding upon City's request. Please visit [www.e-verify.gov](http://www.e-verify.gov) for more information regarding the E-Verify System.
29. **CONFLICT OF INTEREST.** Vendor must have disclosed with the submission of their bid, the name of any officer, director, or agent who may be employed by City. Vendor must disclose the name of any City employee who owns, directly or indirectly, any interest in Vendor or any affiliated business entity. Any additional conflicts of interest that may occur during the contract term must be disclosed to the City of Ocala Procurement Department.

30. **WAIVER.** The failure or delay of any party at any time to require performance by another party of any provision of this Agreement, even if known, shall not affect the right of such party to require performance of that provision or to exercise any right, power or remedy hereunder. Any waiver by any party of any breach of any provision of this Agreement should not be construed as a waiver of any continuing or succeeding breach of such provision, a waiver of the provision itself, or a waiver of any right, power or remedy under this Agreement. No notice to or demand on any party in any circumstance shall, of itself, entitle such party to any other or further notice or demand in similar or other circumstances.
31. **SEVERABILITY OF ILLEGAL PROVISIONS.** Wherever possible, each provision of this Agreement shall be interpreted in such a manner as to be effective and valid under the applicable law. Should any portion of this Agreement be declared invalid for any reason, such declaration shall have no effect upon the remaining portions of this Agreement.
32. **INDEMNITY.** Vendor shall indemnify City and its elected officials, employees and volunteers against, and hold City and its elected officials, employees and volunteers harmless from, all damages, claims, losses, costs, and expenses, including reasonable attorneys' fees, which City or its elected officials, employees or volunteers may sustain, or which may be asserted against City or its elected officials, employees or volunteers, arising out of the activities contemplated by this Agreement including, without limitation, harm or personal injury to third persons during the term of this Agreement to the extent attributable to the actions of Vendor, its agents, and employees.
33. **NO WAIVER OF SOVEREIGN IMMUNITY.** Nothing herein is intended to waive sovereign immunity by the City to which sovereign immunity may be applicable, or of any rights or limits of liability existing under Florida Statute § 768.28. This term shall survive the termination of all performance or obligations under this Agreement and shall be fully binding until any proceeding brought under this Agreement is barred by any applicable statute of limitations.
34. **NOTICES.** All notices, certifications or communications required by this Agreement shall be given in writing and shall be deemed delivered when personally served, or when received if by facsimile transmission with a confirming copy mailed by registered or certified mail, postage prepaid, return receipt requested. Notices can be concurrently delivered by e-mail. All notices shall be addressed to the respective parties as follows:



If to Vendor:

American Test Center, Inc.  
Attention: Angele Stewart  
2773 Prairie Drive  
River Falls, Wisconsin 54022  
Phone: 800-451-9087  
E-mail: [angele@atctest.com](mailto:angele@atctest.com)

If to City of Ocala:

Tiffany Kimball, Contracting Officer  
110 SE Watula Avenue, 3rd Floor  
Ocala, Florida 34471  
Phone: 352-629-8366 Fax: 352-690-2025  
E-mail: [tkimball@ocalafl.org](mailto:tkimball@ocalafl.org)

Copy to:

Robert W. Batsel, Jr.  
Gooding & Batsel, PLLC  
1531 SE 36<sup>th</sup> Avenue  
Ocala, Florida 34471  
PH: 352-579-6536  
E-mail: [rbatsel@lawyersocala.com](mailto:rbatsel@lawyersocala.com)

35. **ATTORNEYS' FEES.** If any civil action, arbitration or other legal proceeding is brought for the enforcement of this Agreement, or because of an alleged dispute, breach, default or misrepresentation in connection with any provision of this Agreement, the successful or prevailing party shall be entitled to recover reasonable attorneys' fees, sales and use taxes, court costs and all expenses reasonably incurred even if not taxable as court costs (including, without limitation, all such fees, taxes, costs and expenses incident to arbitration, appellate, bankruptcy and post-judgment proceedings), incurred in that civil action, arbitration or legal proceeding, in addition to any other relief to which such party or parties may be entitled. Attorneys' fees shall include, without limitation, paralegal fees, investigative fees, administrative costs, sales and use taxes and all other charges reasonably billed by the attorney to the prevailing party.
36. **JURY WAIVER.** IN ANY CIVIL ACTION, COUNTERCLAIM, OR PROCEEDING, WHETHER AT LAW OR IN EQUITY, WHICH ARISES OUT OF, CONCERNS, OR RELATES TO THIS AGREEMENT, ANY AND ALL TRANSACTIONS CONTEMPLATED HEREUNDER, THE PERFORMANCE HEREOF, OR THE RELATIONSHIP CREATED HEREBY, WHETHER SOUNDING IN CONTRACT, TORT, STRICT LIABILITY, OR

OTHERWISE, TRIAL SHALL BE TO A COURT OF COMPETENT JURISDICTION AND NOT TO A JURY. EACH PARTY HEREBY IRREVOCABLY WAIVES ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY. NEITHER PARTY HAS MADE OR RELIED UPON ANY ORAL REPRESENTATIONS TO OR BY ANY OTHER PARTY REGARDING THE ENFORCEABILITY OF THIS PROVISION. EACH PARTY HAS READ AND UNDERSTANDS THE EFFECT OF THIS JURY WAIVER PROVISION.

37. **GOVERNING LAW.** This Agreement is and shall be deemed to be a contract entered and made pursuant to the laws of the State of Florida and shall in all respects be governed, construed, applied and enforced in accordance with the laws of the State of Florida.
38. **JURISDICTION AND VENUE.** The parties acknowledge that a majority of the negotiations, anticipated performance and execution of this Agreement occurred or shall occur in Marion County, Florida. Any civil action or legal proceeding arising out of or relating to this Agreement shall be brought only in the courts of record of the State of Florida in Marion County or the United States District Court, Middle District of Florida, Ocala Division. Each party consents to the exclusive jurisdiction of such court in any such civil action or legal proceeding and waives any objection to the laying of venue of any such civil action or legal proceeding in such court and/or the right to bring an action or proceeding in any other court. Service of any court paper may be effected on such party by mail, as provided in this Agreement, or in such other manner as may be provided under applicable laws, rules of procedures or local rules.
39. **REFERENCE TO PARTIES.** Each reference herein to the parties shall be deemed to include their successors, assigns, heirs, administrators, and legal representatives, all whom shall be bound by the provisions hereof.
40. **MUTUALITY OF NEGOTIATION.** Vendor and City acknowledge that this Agreement is a result of negotiations between Vendor and City, and the Agreement shall not be construed in favor of, or against, either party because of that party having been more involved in the drafting of the Agreement.
41. **SECTION HEADINGS.** The section headings herein are included for convenience only and shall not be deemed to be a part of this Agreement.
42. **RIGHTS OF THIRD PARTIES.** Nothing in this Agreement, whether express or implied, is intended to confer any rights or remedies under or because of this Agreement on any persons other than the parties hereto and their respective legal representatives, successors and permitted assigns. Nothing in this Agreement is intended to relieve or discharge the obligation or liability of any third persons to any party to this Agreement, nor shall any provision give any third persons any right of subrogation or action over or against any party to this Agreement.



43. **AMENDMENT.** No amendment to this Agreement shall be effective except those agreed to in writing and signed by both parties to this Agreement.
44. **COUNTERPARTS.** This Agreement may be executed in counterparts, each of which shall be an original and all of which shall constitute the same instrument.
45. **ELECTRONIC SIGNATURE(S).** Vendor, if and by offering an electronic signature in any form whatsoever, will accept and agree to be bound by said electronic signature to all terms and conditions of this Agreement. Further, a duplicate or copy of the Agreement that contains a duplicated or non-original signature will be treated the same as an original, signed copy of this original Agreement for all purposes.
46. **ENTIRE AGREEMENT.** This Agreement, including exhibits, (if any) constitutes the entire Agreement between the parties hereto with respect to the subject matter hereof. There are no other representations, warranties, promises, agreements or understandings, oral, written or implied, among the Parties, except to the extent reference is made thereto in this Agreement. No course of prior dealings between the parties and no usage of trade shall be relevant or admissible to supplement, explain, or vary any of the terms of this Agreement. No representations, understandings, or agreements have been made or relied upon in the making of this Agreement other than those specifically set forth herein.
47. **LEGAL AUTHORITY.** 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 to bind and obligate such party with respect to all provisions contained in this Agreement.

**[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK. SIGNATURE PAGE TO FOLLOW.]**



IN WITNESS WHEREOF, the parties have executed this Agreement on 03 / 30 / 2022.

ATTEST:

CITY OF OCALA

Angel B. Jacobs

Angel B. Jacobs  
City Clerk

Ken Whitehead

Ken Whitehead  
Assistant City Manager

Approved as to form and legality:

AMERICAN TEST CENTER, INC.

/s/ Robert W. Batsel, Jr.

Robert W. Batsel, Jr.  
City Attorney

Angele Stewart

By: American Test  
Center, Inc.  
(Printed Name)

Sales Rep

(Title)



**BACKGROUND**

Vendor shall provide annual testing and inspections of bucket trucks, digger derricks, construction cranes, and utility body cranes supporting the Fleet Management Department.

**PROJECT SUMMARY**

1. Vendor shall perform the following annual aerial lift inspection services for the City of Ocala:
  - **Bucket Truck/Digger Derrick:** Dielectric test on boom/insert, visual inspection, magnetic particle testing, dye penetrant, torque testing, load test, functional operation inspection, and on-site test support
  - **Construction Crane/Utility Body Crane:** Visual inspection, magnetic particle testing, dye penetrant, torque testing, load test, functional operation inspection, and on-site test support.
2. **Scheduling:** Vendor shall schedule all inspections and testing with Fleet Division Head, 352-351-6750 or [lwarmuth@ocalafl.org](mailto:lwarmuth@ocalafl.org)
3. **Inspection Location:** The Vendor shall perform all inspections at the City Complex, Fleet Management, 1805 NE 30<sup>th</sup> Avenue, Building 200, Ocala, Florida, 34470.
4. **Working Hours:** The normal/standard working hours for this project are 7:00 AM – 4:30 PM Monday through Friday, excluding holidays.
5. **Standards:** All inspections/testing must be performed per ANSI A92.2, A10.31, and ASME Standards.
6. **Deliverables:** Vendor shall provide paper reports to Fleet Division Head at the time of inspection. A digital copy of the inspection results shall also be provided after completion.

**VENDOR EMPLOYEES AND EQUIPMENT**

1. Vendor must utilize competent employees in performing the work. Employees performing the work must be properly licensed or qualified as required by the Scope of Work.
2. Vendor shall provide an assigned project manager, who will be the primary point of contact. Vendor must provide a valid telephone number to the City Project Manager.
3. At the request of the City, Vendor must replace any incompetent, unfaithful, abusive, or disorderly person in its employment. City and Vendor must each be promptly notified by the other of any complaints received.
4. Vendor's employees must wear suitable work clothes and personal protective equipment as defined by OSHA. Employees shall be clean and in a good appearance as the job conditions permit.
5. Vendor will operate as an independent contractor and not as an agent, representative, partner, or employee of the City of Ocala, and shall control their operations at the worksite, and be solely responsible for the acts or omissions of their employees.
6. No smoking is allowed on City property.

**VENDOR RESPONSIBILITIES**

1. Vendor shall provide all materials, equipment, and labor necessary to perform the aerial lift inspections.
2. While performing work, all Vendor vehicles shall display the company name visible and shall bear the company logo on uniforms.
3. Vendor shall complete all work performed under this solicitation in accordance with policies and procedures of the City of Ocala and all applicable State and Federal laws, policies, procedures, and guidelines.
4. Vendor shall keep the premises free from the accumulation of waste materials and rubbish caused by operations and employees.
5. Vendor is responsible for all damages including but not limited to buildings, curbing, pavement, landscaping, or irrigation systems caused by its activity. Should any property be damaged or destroyed, the Vendor at its expense, shall repair or make restoration as acceptable to the City of destroyed or damaged property no later than one (1) month from the date damage occurred.

**SAFETY**

1. Vendor shall be fully responsible for the provision of adequate and proper safety precautions meeting all OSHA, local, state, and national codes concerning safety provisions for their employees, sub-contractors, and site occupants, staff, public, and all persons in or around the work area.
2. In no event shall the City be responsible for any damages to any of the Vendor's equipment, materials, property, or clothing lost, damaged, destroyed, or stolen.



## Exhibit B- Equipment List

CONTRACT# FLT/220110

## Dielectric List

Unit No.	Description	VIN	Model Year	Make	Model	Department	Body Make	Body Model	Body Serial Number
34-151	45' ALTEC BUCKET TRUCK	1FDAF56P05E94588	2005	FORD	F550	WATER RESOURCES	ALTEC	T445M	923/492302
22-599	55' BUCKET TRUCK	3ALACXFC7KDKG7524	2019	FREIGHTLINER	M2106	ELECTRIC	ALTEC	AM55E	0718DM753
22-600	55' BUCKET TRUCK	3ALACXFC3KDKG7522	2019	FREIGHTLINER	M2106	ELECTRIC	ALTEC	AM55E	7240873890
22-605	55' BUCKET TRUCK	3ALACXFC7KDKG7525	2020	FREIGHTLINER	M2106	ELECTRIC	ALTEC	AM55E	0718DM754
22-607	55' BUCKET TRUCK	1HTEUMMR6LH864991	2020	INTERNATIONAL	MV607	ELECTRIC	ALTEC	AM55E	0811DM3491
22-616	55' BUCKET TRUCK	3HAEETARXMI299121	2020	INTERNATIONAL	HV607	ELECTRIC	ALTEC	970185487-5809802	97-68663661
22-601	55' BUCKET TRUCK	3ALACXFC7KDKG7526	2021	FREIGHTLINER	M2106	ELECTRIC	ALTEC	AM55E	0718DM755
22-602	55' BUCKET TRUCK	3ALACXFC7KDKG7527	2022	FREIGHTLINER	M2106	ELECTRIC	ALTEC	AM55E	0718DM756
22-593	67' AERIAL BUCKET W/MATERIAL HANDLER	3HAWBMRR9K1562436	2019	INTERNATIONAL	F350	ELECTRIC	ALTEC	AA67E	0918FW0107
22-558	AERIAL BUCKET	1FDUF5GYGXB97339	2016	FORD	F-550	ELECTRIC	TEREX	LT40	2160557716
22-574	AERIAL BUCKET	1FDUF5HYOHC90919	2017	FORD	F-550	ELECTRIC	ALTEC-0617DE20390	AT37G -- 970178089-970636145	856-47158193
22-579	AERIAL BUCKET	1FDUF5HYHDA05500	2017	FORD	F-550	ELECTRIC	ALTEC	AT40G	57-48098877
22-580	AERIAL BUCKET	1FDUF5HYH8DA05499	2019	FORD	F-550	ELECTRIC	ALTEC	AT40G	0617EY2601
22-621	BACKYARD DIGGER DERRICK	90-81224182-11-21	2021	ALTEC	DB37	ELECTRIC	ALTEC	DB37	TXED0429-2454
22-405	BUCKET TRUCK	1HTWGAAD864J091041	2004	INTERNATIONAL	7400 SFA 6X4	ELECTRIC	ALTEC	A65	1003CT0591
22-448	BUCKET TRUCK	1HTWCAAN47J472811	2007	INTERNATIONAL	4300SBA	ELECTRIC	ALTEC	AM55	1106DM1419
22-476	BUCKET TRUCK	1HTMMAAN39H051564	2009	INTERNATIONAL	4300 SBA 4X2	ELECTRIC	ALTEC	TA60	0109EL0287
22-484	BUCKET TRUCK	1HTMMAAN79H052894	2009	INTERNATIONAL	4300 SBA 4X2	ELECTRIC	ALTEC	AM55E	0508DM2100
22-493	BUCKET TRUCK	1HTMMAAR1BH362399	2011	INTERNATIONAL	4300 SBA 4X2	ELECTRIC	TEREX	TX55	2100842368
22-494	BUCKET TRUCK	1HTMMAAN1BH362397	2011	INTERNATIONAL	4300 SBA 4X2	ELECTRIC	TEREX	TL41M	2100942692
22-529	BUCKET TRUCK	1HTMMAARXCI604889	2012	INTERNATIONAL	4300 SBA 4X2	ELECTRIC	ALTEC	AM55E	0811DM3490
22-530	BUCKET TRUCK	1HTWHAAT2C1604829	2012	INTERNATIONAL	7400 SFA 6X4	ELECTRIC	TEREX	RMX75-95	2111045187
22-053	BUCKET TRUCK	1HTMMAAN1C1604941	2012	INTERNATIONAL	4300 SBA 4X2	PUBLIC WORKS	TEREX	TL41M	2110845175
22-617	BUCKET TRUCK	3HAEETARIM1299122	2020	INTERNATIONAL	HV607	ELECTRIC	Altec	970185487-5809802	2134984994
07-028	BUCKET TRUCK - TREE CREW	1FVACXFC6KH4461	2019	FREIGHTLINER	M2-106	PUBLIC WORKS	ALTEC	LR7-58	1118FF9493
22-545	BUCKET TRUCK - TREE CREW	1FVACXCYFHGK3137	2015	FREIGHTLINER	M2106	ELECTRIC	ALTEC	LR760-E70	0914FF2983
22-547	CRANE - SIMON STINGER	1FDZW96Y0WV0A04967	1998	FORD	LT9501	ELECTRIC	ALTEC	SIMON STINGER RM4792	4790200100
31-117	CRANE TRUCK	1GDM7H1C1V521718	2000	GMC	C7H042	WATER RESOURCES	TEREX	BT1657	1003276269
22-556	UTILITY BODY W/ CRANE	1FDW5GYZGR897608	2016	FORD	F-550	ELECTRIC	PALFINGER	PSC6025	930348702
22-570	UTILITY BODY W/ CRANE	1GCSYCG3H236945	2017	CHEVROLET	SILVERADO 3500	ELECTRIC	PALFINGER	PSC3216	923750355
31-188	UTILITY BODY W/ CRANE	1GCSYCG5H228586	2017	CHEVROLET	SILVERADO 3500	WATER RESOURCES	PALFINGER	PSC 3216	924932494
34-139	UTILITY BODY W/ CRANE	1GCSYCG6H2240326	2017	CHEVROLET	SILVERADO 3500	WATER RESOURCES	PALFINGER	PSC3216	2017-0085
34-138	UTILITY BODY W/ CRANE	1GCSYCG4H2241765	2017	CHEVROLET	SILVERADO 3500	WATER RESOURCES	WARNER	WS298MDNGLDCE	0404-Y0891
22-415	DIGGER DERRICK	1HTWGAAT74J031883	2004	INTERNATIONAL	7400 6x4	ELECTRIC	ALTEC	D205STR	2090439333
22-462	DIGGER DERRICK	1HTWBAARX81667562	2008	INTERNATIONAL	7300	ELECTRIC	TEREX	COMMANDER 5045	2090439333
22-486	DIGGER DERRICK	1HTWEAAR69J141499	2009	INTERNATIONAL	7400 4x4	ELECTRIC	TEREX	COMMANDER 5045	2090239161
22-509	DIGGER DERRICK	1HTMKAAR59H141498	2009	INTERNATIONAL	4400 SBA 4X2	ELECTRIC	TEREX	COMMANDER 4045	2090439334
22-487	DIGGER DERRICK	1HTWEAAR69J141500	2010	INTERNATIONAL	7401 4x4	ELECTRIC	TEREX	COMMANDER 5045	2151155911
22-547	DIGGER DERRICK	1PVACYDT3GHHK5545	2016	FREIGHTLINER	ME106	ELECTRIC	TEREX	DT65	0719GK0315
22-594	DIGGER DERRICK	3HAWJITAT4KL561112	2019	INTERNATIONAL	7400	ELECTRIC	ALTEC	C5048	2151055910
22-548	DIGGER DERRICK (bigger truck)	1PVACYDT4GHK5537	2016	FREIGHTLINER	M2-106	ELECTRIC	TEREX	C5048	014-48298523
22-581	International Durastar with Altec Digger	3HAWETAR9JL52428	2019	INTERNATIONAL	Durstar (7400)	ELECTRIC	Altec	DH45B	0305DE5557
18-006	BUCKET TRUCK	1FDAF56P25EC71751	2005	FORD	F550	FLEET MANAGEMENT	ALTEC	AT37G	0605 DE 5860
45-583	BUCKET TRUCK	1FDAF56P25EC94589	2005	FORD	F550	OCALA FIBER NETWORK	ALTEC	AT37G	2160557683
23-071	BUCKET TRUCK	1FDUF5GYGXB97339	2015	FORD	F-550 W/TEREX AERIAL	PUBLIC WORKS	TEREX	LT39	2160557684
23-072	BUCKET TRUCK	1FDUF5GYGXB97340	2016	FORD	F-550 W/TEREX AERIAL	PUBLIC WORKS	TEREX	LT40	1000 DE 1782
09-094	BUCKET TRUCK	1FDAF56H491E801761	2001	FORD	F550	FACILITIES MAINTENANCE	ALTEC	AT37G	BOOM 57-66951127 BODY 856-65884959
22-612	BUCKET TRUCK	1FDUF5HY4KDA09380	2019	FORD	F550	ELECTRIC	ALTEC	AT37G	0420GH2884
22-615	BUCKET TRUCK	1FDUF5HTBLDA01840	2020	FORD	F550	ELECTRIC	ALTEC	AT41M	2769912626/856-6995204
23-128	BUCKET TRUCK	1FDUF5HTBLDA01839	2020	FORD	F550	PUBLIC WORKS	ALTEC	AT41M	2151055745
45-566	BUCKET TRUCK	1FDUF5GTGAE59314	2016	FORD	F-550	OCALA FIBER NETWORK	TEREX	LT40	0910-110
34-132	UTILITY BODY W/ CRANE	1FDUF4GT7BEB32895	2011	FORD	F-450	WATER RESOURCES	AUTOCRANE	4004EH	

## Exhibit B- Equipment List

CONTRACT# FLT/220110

34-149	UTILITY BODY W/ CRANE	1FDUF4GY7IDA00828	2018	FORD	F450	WATER RESOURCES	PALFINGER (CRANE)	100420153	PSC5025 / 100420590	PSC5025/5037-ST-A
34-148	UTILITY BODY W/ CRANE	1FDUF4GY9IDA00829	2018	FORD	F450	WATER RESOURCES	PALFINGER	PSC5025 / 100420590	902444	
34-150	UTILITY BODY W/ CRANE	1FDUF4GY5IDA00830	2018	FORD	F450	WATER RESOURCES	PALFINGER	PSC5025 / 100405191	904590	
31-222	UTILITY BODY W/ CRANE	1FDUF4GT5KDA07895	2019	FORD	F450	WATER RESOURCES	READING	CLASSIC II	4149641	
34-165	UTILITY BODY W/ CRANE	1FDUF4GY1KDA07839	2019	FORD	F450	WATER RESOURCES	PALFINGER	PSC5025 / 100405191	912348	
34-166	UTILITY BODY W/ CRANE	1FDUF4GY8KDA07840	2019	FORD	F450	WATER RESOURCES	READING	CLASSIC II	3224181	
31-223	UTILITY BODY W/ CRANE	1FDUF4GT5KDA07896	2020	FORD	F450	WATER RESOURCES	READING	CLASSIC II	4149642	
34-170	UTILITY BODY W/ CRANE	1FDUF4GT8LDA00778	2020	FORD	F450	WATER RESOURCES	IMT	DOMINATOR	DOM15320234	
34-168	UTILITY BODY W/ CRANE	1FDUF4GT4LDA00776	2020	FORD	F450	WATER RESOURCES	IMT	DOMINATOR	DOM153201060	
34-169	UTILITY BODY W/ CRANE	1FDUF4GT6LDA00777	2020	FORD	F450	WATER RESOURCES	IMT	DOMINATOR	DOM15320124	
22-603	BUCKET TRUCK	1FDUF5HTXKDA10375	2019	FORD	F550	ELECTRIC	ALTEC	A141M	FE09-08-98GTR	



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IP: 216.255.240.104



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