

FIRST AMENDMENT TO AGREEMENT FOR YARD AND WOOD WASTE DISPOSAL SERVICES

THIS FIRST AMENDMENT TO AGREEMENT FOR YARD AND WOOD WASTE DISPOSAL SERVICES ("First Amendment") is entered into by and between **CITY OF OCALA**, a Florida municipal corporation ("City"), and **D & G SOLUTIONS GROUP, LLC**, a for-profit limited liability company duly organized and authorized to do business in the state of Florida (EIN: 61-1789875) ("Vendor").

WHEREAS, on April 15, 2021, City and Vendor entered into an Agreement for Yard and Wood Waste Disposal Services (the "Original Agreement"), City of Ocala Contract Number: PWD/200619 for a term of five (5) years, from November 4, 2020 to November 3, 2025; and

WHEREAS, Vendor requested a pricing adjustment due to an increase in the cost of fuel and operating expenses; and

WHEREAS, City and Vendor now desire to amend the Original Agreement to reflect a negotiated pricing increase for yard and wood waste disposal services.

NOW THEREFORE, in consideration of each of the foregoing recitals and the following mutual covenants, conditions and other good and valuable consideration, the receipt and sufficiency of which is hereby mutually acknowledged, City and Vendor agree as follows:

1. **RECITALS.** City and Vendor hereby represent and warrant that the Recitals set forth above are true and correct.
2. **INCORPORATION OF ORIGINAL AGREEMENT.** The Original Agreement between City and Vendor, as amended, is hereby incorporated by reference as if set forth herein in its entirety and remains in full force and effect, except for those terms and conditions expressly amended by this First Amendment.
3. **COMPENSATION.** Paragraph 4 in the Original Agreement is hereby deleted and replaced with the following:

Effective **JULY 1, 2022**, City shall pay Vendor for the satisfactory performance of work in accordance with the Contract Documents a maximum limiting amount not to exceed **ONE MILLION, NINE HUNDRED NINETY-EIGHT THOUSAND, TWO HUNDRED FIFTY-NINE AND 65/100 DOLLARS (\$1,998,259.65)** as full and complete compensation for yard and wood waste disposal for the City on an as-needed basis over the initial term of this Agreement in accordance with the unit pricing set forth below:

DISPOSAL FEE	PER CUBIC YARD	\$6.74
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- A. **Price Adjustments.** Starting **NOVEMBER 1, 2023**, Vendor may request a price adjustment annually based on the prior year's CPI-U index escalation. Price adjustments shall be based on the CPI-U and Vendor must submit CPI justification with any and all requests for adjustment no less than **NINETY (90) DAYS** prior to the anniversary date. Price adjustments will be granted at the City's sole discretion and shall be based on mitigating market conditions as the Vendor may demonstrate. In no case shall a price adjustment exceed the lowest of either: (1) the percentage increase reflected in the published CPI-U for the prior year; or (2) **THREE PERCENT (3%)** above the unit pricing set forth above. The City reserves the right to require a reduction in unit pricing should the CPI-U index de-escalate.
- B. **Invoice Submission.** Monthly 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 Sanitation Department Attn: Dwayne Drake, 2100 NE 30th Avenue, Building 200, Ocala, FL 34470**, E-Mail: ddrake@ocalafl.org. please note: Invoices submitted to the City must include the following information to be accepted and paid: (1) City truck number; (2) Date delivered; and (3) CY received, along with the load costs.

- C. **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. Payments by City shall be made no later than the time periods established in section 218.735, Florida Statutes. The City will endeavor to receive and make payments bi-weekly as received, but are under no obligation to pay at greater frequencies than required by law.
- D. **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 Contractor's remedy or resolution of the inadequacy or defect.
- E. **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.
- F. **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
4. **NOTICES.** All notices, certifications or communications required by this First Amendment 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:

D & G Solutions Group LLC
Attn: Chad Ditty, Managing Member
5451 SE Maricamp Road
Ocala, Florida 34480
PH: 352-266-4401
E-mail: cditty@d-gsolutions.com

If to City of Ocala:

Daphne M. Robinson, Contracting Officer
City of Ocala
110 SE Watula Avenue, 3rd Floor
Ocala, Florida 34471
PH: 352-629-8343
FAX: 352-690-2025
E-mail: notices@ocalafl.org



Copy to:

Robert W. Batsel, Jr.
Gooding & Batsel, PLLC
1531 SE 36th Avenue
Ocala, Florida 34471
PH: 352-579-6536
E-mail: rbatsel@lawyersocala.com

5. **COUNTERPARTS.** This First Amendment may be executed in counterparts, each of which shall be an original and all of which shall constitute the same instrument.
6. **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 First Amendment. Further, a duplicate or copy of the First Amendment that contains a duplicated or non-original signature will be treated the same as an original, signed copy of this original First Amendment for all purposes.
7. **LEGAL AUTHORITY.** Each person signing this First Amendment on behalf of either party individually warrants that he or she has full legal power to execute this First Amendment 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 First Amendment.

IN WITNESS WHEREOF, the parties have executed this First Amendment on

_____.

ATTEST:

CITY OF OCALA

Angel B. Jacobs
City Clerk

Ire Bethea, Sr.
City Council President

Approved as to form and legality:

D & G SOLUTIONS GROUP, LLC

Robert W. Batsel, Jr.
City Attorney

By: _____
(Printed Name)

Title: _____
(Title of Authorized Signatory)