

**MASTER SERVICES AGREEMENT (MSA)
STANDARD TERMS & CONDITIONS**

DAVENPORT GROUP MASTER SERVICES AGREEMENT (“MSA”) is entered into by and between Davenport Group, Inc. (“Davenport Group”), located at 104 Belfast Street, Lewisburg, TN 37091 and Marion County BOCC, FL (“Client”), located at 2511 SE 3rd St, Ocala, FL 34471 is effective as of the date August 12, 2024.

This Agreement applies to all sales orders (each an “Order”) entered into by the parties regarding work to be provided by Davenport Group to Client. Each Order shall be included as an exhibit to this Agreement. Work performed by Davenport Group on behalf of Client in any such Order will be identified as “Services”. Specific Services are subject to additional terms and conditions (“Service Addendums”) which shall be included as an addendum to this Agreement.

1. Service Orders.

- 1.1 Client and Davenport Group shall enter into Orders for Services for the term of this MSA. Each Order issued under this Agreement shall include; (i) the Services to be provided to Client; (ii) the location where the Services are to be performed; (iii) the performance schedule for Services; (iv) the compensation to be paid to Davenport Group and a payment schedule for such Services; (v) the term of the engagement (if applicable); (vi) any other specifications deemed relevant by Client and Davenport Group.
- 1.2 If stated Services are subject to a Service Addendum, the Order shall reference the applicable Service Addendum.
- 1.3 No Order shall be binding upon either party unless executed by both parties. The parties agree and acknowledge that neither party shall have any obligation under an unexecuted Order and that Davenport Group shall not be obligated to provide any services not listed in an Order.

2. Modifications and Additional Services.

- 2.1 In the event that Client requests that Davenport Group provide additional services not described in the Order (collectively “Additional Services”) such Additional Services shall be agreed to in a change order (“Change Order”) which shall include the Services to be performed and the additional compensation for the Additional Services.
- 2.2 Davenport Group shall not be obligated to perform any Additional Services unless both parties have executed a Change Order covering the Additional Services.



3. **Fees and Invoices.**

- 3.1 The fees for all Services performed by Davenport Group for Client are billed at a rate of \$400 USD per hour. All work performed outside of standard business hours 8:00AM – 5:00PM Monday – Friday are billed at a rate of \$500 USD per hour.
- 3.2 After the first anniversary of the signature dates below, Davenport Group reserves the right to change this hourly rate fee by notifying Client by electronic mail 30 days prior to such changes becoming effective.
- 3.3 Except as otherwise specified in the Order, all one-time fees shall be due prior to the commencement of Services, all recurring fees due under an Order shall be billed on the fifteenth (15th) day of the month prior to service, and all hourly billing is billed at the end of each month. Client recognizes that the time is committed by Davenport Group and fees are due regardless of time used. In the event Client fails to pay any fees within fifteen (15) days of invoice due date, such outstanding amounts shall be subject to a finance charge equal to the maximum rate of interest allowed by law, on the past due amounts.
- 3.4 ***Additional addenda to this Agreement may offer special project rates or fixed fees that are different but apply only to the scope of work defined in such addendums.***

4. **Term and Termination.**

- 4.1 **Term.** The Term of this Agreement shall be for the entire period of time that Davenport Group is providing Services to Client under an Order (“Term”). For any ongoing service addendums, the Term shall be for a period of three (3) years unless a different Term is stated in the Order. Upon the completion of the initial term, the term shall automatically renew for subsequent renewal terms equal to the initial term unless terminated by either party within thirty (30) days’ written notice prior to the renewal date.
- 4.2 **Termination after Breach.** Either party may terminate any Order or this Agreement if the other party materially breaches a term of this Agreement and fails to cure such breach (if capable of being cured) within (i) fifteen (15) days after receiving written notice of the breach for monetary breaches, or (ii) thirty (30) days after receiving written notice of the breach for non-monetary breaches, provided, however, in the case of a non-monetary breach that cannot with due diligence be cured within such thirty (30) day period, if the breaching party proceeds as promptly as may be reasonably possible and with all due diligence to cure the breach, the period of time in



which the breaching party may cure shall be extended as necessary to cure such breach, but in no event shall such time period extend beyond a period of thirty (30) days after the breaching party's receipt of written notice of the breach without the written agreement of both parties.

4.3 **Automatic Termination.** This Agreement shall all terminate automatically, without the giving of notice, and all fees for the Term shall become immediately payable in the event that Client: (i) ceases business operations; (ii) becomes insolvent; (iii) files a voluntary petition in bankruptcy (excluding reorganization); (iv) is adjudicated as bankrupt pursuant to an involuntary petition; or (v) suffers appointment of a temporary or permanent receiver, trustee, or custodian for all or a substantial part of its assets.

4.4 **Suspension of Services.** In addition to the termination rights above, Davenport Group may suspend performance of some or all of the unperformed Services in the event Client fails to pay any undisputed amount within fifteen (15) days after the date payment is due pursuant to the Order or delivered invoice, at the option of Davenport Group. Fees shall continue to accrue and are fully payable during this suspension.

4.5 **Effect of Termination.** If this Agreement is terminated for any reason, Client shall unconditionally and immediately pay Davenport Group for all work completed and invoiced up until the date of termination ("Termination Date"), it being understood that the parties shall negotiate in good faith to determine the percentage of the Services completed as of the Termination Date, and the corresponding amount due from Client to Davenport Group (e.g., if Davenport Group provided Services for which Client has not yet paid), as applicable. If this Agreement is terminated as a result of Client's breach or if Client attempts termination early without cause, then if an Order of work provides for a guaranteed term of engagement (for example, a one (1) year period), the balance of fees for such term shall be immediately payable in full.

5. **Proprietary Information.**

5.1 **New Developments; Davenport Group Materials.** As between Davenport Group and Client, (i) all ideas, concepts, inventions, and improvements coming within the scope of Davenport Group's business, conceived by Davenport Group's employees or independent contractors alone or with Client or Client's employees or independent contractors in connection with the provision of Services and (ii) all software, trade secrets, know-how, tools, methodologies, and processes related to the Services, including, without limitation, all copyrights, trademarks, trade names, and other proprietary rights inherent therein or appurtenant thereto (collectively, the "Davenport



Group Materials”) shall be the sole and exclusive property of Davenport Group.

- 5.2 **Davenport Group’s Equipment.** In the event that Davenport Group provides any equipment under an Order (“Davenport Group Equipment”), Client shall not move, rearrange, disconnect, remove, attempt to repair, or otherwise tamper with any Davenport Group Equipment or permit others to do so. Client shall not use the Davenport Group Equipment for any purpose other than what is authorized by the Order. Client is responsible for any damage to, or loss of, Davenport Group Equipment caused by its acts or omissions, or by fire, theft, or other casualty. Upon termination or expiration of this Agreement and/or any applicable Order, Client shall be responsible for the return of all applicable Davenport Group Equipment or may purchase the Davenport Group Equipment from Davenport Group at its retail price. Until such time as the Davenport Group Equipment is returned to Davenport Group, Davenport Group may continue to invoice Client for the monthly fee applicable to such Davenport Group Equipment. If any returned Davenport Group Equipment has been damaged and/or destroyed, Davenport Group may, in its sole discretion, invoice for the replacement cost of such Davenport Group Equipment.
- 5.3 **Third-Party Software.** If an Order includes the use of third-party software (“Software”), Client shall have a nonexclusive, nontransferable, and limited license to use such Software only and solely to the extent necessary to use the applicable Services during the corresponding term. Client may not claim title to, or an ownership interest in, any Software (or any derivations or improvements thereto), and Client shall execute any documentation reasonably required by Davenport Group, including, without limitation, end-user license agreements for the Software. Customer shall not: (i) copy the Software (or any upgrades thereto or related written materials) except for emergency back-up purposes or as permitted by the express written consent of Davenport Group; (ii) reverse engineer, decompile, or disassemble the Software; (iii) sell, lease, license, or sublicense the Software; or (iv) create, write, or develop any derivative software or any other software program based on the Software. In the event this Agreement or an applicable Order is terminated for any reason, Davenport Group shall have the right to access Client’s network and/or computers in order to remove any Software provided by Davenport Group under this Agreement.
- 5.4 **Confidential Information.** The parties agree that “Confidential Information” (as defined below) may be disclosed by a party (“Disclosing Party”) to the other party (“Receiving Party”) under this Agreement. Therefore, the Receiving Party agrees that it shall hold in confidence and, without the prior written approval of the Disclosing Party, shall not disclose to any third party,

except to employees and subcontractors having a need to know, any Confidential Information provided to the Receiving Party by the Disclosing Party or any of its subsidiaries or affiliates. The Receiving Party agrees not to use Confidential Information for any purpose other than within the scope of this Agreement. For this Section “Confidential Information” means: (i) any information of the Disclosing Party, such as related technical data and know-how, financial information, customers, pricing, terms of sale, products, processes, plans, personnel, research and development projects or other aspects of the business of the Disclosing Party, a subsidiary or affiliate, until such information shall have ceased to be proprietary as evidenced by general public availability and knowledge; and (ii) information of a third party as to which the Disclosing Party, its subsidiary or affiliate has a non-disclosure obligation known to the Receiving Party. “Confidential Information” shall not include information already known to the Receiving Party prior to entering this Agreement or information that is publicly known, or information that is required by law to be disclosed, including such information that is not confidential pursuant to Chapter 119, *Florida Statutes*. The Receiving Party understands and agrees that any breach of the covenants contained in this Agreement will cause irreparable injury and damages to the Disclosing Party for which there is no adequate remedy at law, and as to which money damages cannot be readily ascertained. Accordingly, the Receiving Party consents in such event to the granting of injunctive relief against any continuing breach, together with retrospective relief in the form of liquidated damages equal to the entire amount of all fees or other revenue collected by the Receiving Party for its efforts as a result of the breach.

5.5 **Non-exclusivity.** Client agrees and acknowledges that nothing in this Agreement shall be deemed exclusive and nothing shall restrict Davenport Group’s ability to provide similar services to third parties who may be considered competitors of Client so long as Davenport Group does not breach its obligations under Paragraph 5.4 above.

6. **Provisions Applicable to the Services.**

6.1 **Access.** Client agrees to provide Davenport Group with physical access to its individual computer systems and networks for Davenport Group to perform its services. Client also agrees that Davenport Group may access its computer systems or networks via telephone, data line, Internet connection, or other means of communication, in order to perform services upon the systems or network.

6.2 **Compliance with Regulations.** Davenport Group shall comply with all applicable federal, state or local law, rule or regulation.

- 6.3 **Records.** Davenport Group agrees to keep accurate and complete records of the services it performs for Client. These records shall be the property of Davenport Group. These records will not include backups or copies of data from Client's computer systems, unless necessary to perform services which are the subject of this Agreement. Davenport Group shall not be responsible for restoring data lost by Client from Davenport Group's own records. Unless specifically set forth in an Order, Davenport Group shall not provide backup services to Client. Client is encouraged to utilize either the backup services offered by Davenport Group or the backup services provided by a third party.

Notwithstanding any other language in the Agreement, Davenport Group acknowledges that this Agreement and any related correspondence, email, financial records, audits, reports, plans, and other documents created or received by Davenport Group in the performance of this Agreement may be subject to disclosure to members of the public pursuant to Chapter 119, Florida Statutes. Accordingly, Davenport Group will provide Client with access to and copies of its documents in response to a public records request pursuant to Chapter 119, Florida Statutes. Further, Davenport Group will ensure that exempt or confidential and exempt information contained within the public records is not disclosed except as authorized by law for the duration of the Agreement and thereafter if Davenport Group does not transfer all public records to Client. Upon completion of the Agreement, Davenport Group will transfer to the Client, at no cost, all public records in the possession of Davenport Group and destroy all duplicate public records that are exempt or confidential and exempt from disclosure. If Davenport Group keeps and maintains the public records upon completion of the engagement, Davenport Group shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to Client, upon request, in a format that is compatible with the IT system of Client. Notwithstanding any other language in this Agreement, in the event Davenport Group fails to abide by the provisions of Chapter 119, Florida Statutes, Client may, without prejudice to any other right or remedy and after giving Davenport Group seven days written notice during which period Davenport Group still fails to allow access to or copies of such documents, terminate this Agreement effective immediately.

- 6.4 **Temporary Files.** Client agrees and understands that Davenport Group deletes temporary internet files stored on Client's computers and computer system. Davenport Group is in no way liable for any lost passwords or other information due to Davenport Group's deletion of such files.
- 6.5 **Issuance of Keys, Passcodes, and Login Credentials.** Customer may, at its discretion, issue access keys, passcodes, or other Access Credentials to

Davenport Group for the purpose of performing services on behalf of the Customer. Davenport Group acknowledges that the issuance and management of Access Credentials are the responsibility of the Customer. Davenport Group agrees to treat all Access Credentials as confidential information and shall take all the necessary measures to safeguard their security. Upon termination or completion, Customer is responsible for promptly deactivating access points or credentials as needed.

7. **Representations and Warranties; Disclaimer.**

7.1 **Client Representations and Warranties.** Client represents and warrants that (i) it has full authority to enter into this Agreement, (ii) any Client provided software, information or other content does not infringe upon any third party copyright, trademark, patent, trade secret, or other third party right, (iii) Client will comply with all applicable laws, terms of use and with the conditions of applicable to its business, and (iv) Client shall maintain its business in a generally accepted and reputable manner.

7.2 **Davenport Group Representations and Warranties.** Davenport Group represents and warrants that: (i) it has full authority to enter into this Agreement, (ii) the Services shall conform to the description of work to be performed in the Order and shall be performed in a professional and workmanlike manner; (iii) the Work Product will conform in all material respects to the written specifications in the Order, (iv) the Work Product and the Davenport Group Materials will not violate or infringe upon the intellectual property rights of any third parties; and (v) Davenport Group will comply with all applicable laws and terms applicable to the Services.

8. **Independent Contractor.**

8.1 Davenport Group hereby represents that it is an independent contractor and that the relationship between Client and Davenport Group created by this Agreement is an independent contractor relationship.

9. **No Warranties or Guaranties.**

9.1 DAVENPORT GROUP MAKES NO OTHER REPRESENTATIONS, WARRANTIES, OR GUARANTEES, WHETHER EXPRESS OR IMPLIED, EXCEPT FOR THOSE SET FORTH IN THIS AGREEMENT IN WRITING, INCLUDING, WITHOUT LIMITATION, ALL REPORTS, SUMMARIES, INFORMATION OR RECOMMENDATIONS PREPARED OR ISSUED BY DAVENPORT GROUP, OR ADDITIONAL SERVICES, IF ANY, OR WITH RESPECT TO ANY OTHER MATTER HEREUNDER. DAVENPORT GROUP HEREBY EXPRESSLY DISCLAIMS ANY AND ALL IMPLIED

WARRANTIES, INCLUDING THE WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. DAVENPORT GROUP FURTHER DISCLAIMS ANY WARRANTY REGARDING THE COMMERCIAL SUCCESS OR COMMERCIAL PERFORMANCE OF THE DELIVERABLES.

10. **LIMITATIONS OF LIABILITY AND DAMAGES.**

10.1 IN NO EVENT SHALL DAVENPORT GROUP BE LIABLE, WHETHER IN CONTRACT OR IN TORT, FOR ANY LOST PROFITS, LOST SAVINGS, LOST DATA, LOST OR DAMAGED SOFTWARE, OR ANY OTHER SPECIAL, INDIRECT, CONSEQUENTIAL, INCIDENTAL, OR PUNITIVE DAMAGES ARISING OUT OF THIS AGREEMENT OR ORDERS, REGARDLESS OF WHETHER DAVENPORT GROUP HAD NOTICE OF THE POSSIBILITY OF ANY SUCH LOSS OR DAMAGE. IN ADDITION, THE TOTAL LIABILITY OF DAVENPORT GROUP FOR ANY CLAIM OR DAMAGE ARISING FROM OR OTHERWISE RELATED TO THIS AGREEMENT, SHALL NOT EXCEED \$10,000 OR THE TOTAL AMOUNT PAID TO DAVENPORT GROUP BY CLIENT UNDER THE APPLICABLE ORDER, WHICHEVER IS LESS.

11. **Indemnification.**

11.1 Each party (the "Indemnifying Party") shall indemnify, defend, and hold the other party (the "Indemnified Party") harmless from and against any demand, cause of action, debt, or liability, including interest, penalties, court costs, and reasonable attorneys' fees, based upon any third party claim or suit against the other party arising out of, or related to, the performance of any provision of this Agreement (including without limitation the representations and warranties set forth in this Agreement). In claiming any indemnification hereunder, the Indemnified Party shall promptly provide the Indemnifying Party with written notice of any claim that the Indemnified Party believes falls within the scope of this Paragraph 10. The Indemnifying Party shall provide a defense for the Indemnified Party with legal counsel of its own choice and reasonably satisfactory to the Indemnified Party, and shall pay the full amount of any settlement, judgment, or award. The Indemnified Party may, at its own expense, assist the defense if it so chooses, provided that the Indemnifying Party shall control such defense and all negotiations relative to the settlement of any such claim, and provided further that any settlement intended to bind the Indemnified Party may not be entered into without the Indemnified Party's prior written consent, which shall not be unreasonably withheld or delayed. The Indemnified Party shall use its best efforts to cooperate with the Indemnifying Party in any such defense. If the Indemnifying Party fails or refuses to provide a defense, then the Indemnified

Party shall defend or settle the claim at its election, and the Indemnifying Party shall pay all costs of defense and any settlement, judgment, or award. This Agreement and the provisions thereof shall in no way be construed as a waiver of any judicial, sovereign, statutory, or other governmental immunity of the Client.

12. **General.**

- 12.1 **Assignment; Subcontractors.** The rights and obligations of the parties under this Agreement may not be assigned or transferred without the written consent of the other party; provided that this Agreement and the rights and obligations hereunder may be assigned, without consent, to a third party that acquires all or substantially all the assets, business or ownership interests of a party hereto. Davenport Group may use subcontractors in connection with providing the Services pursuant to this Agreement.
- 12.2 **Non-Solicitation.** Each party agrees not to hire, contract, or take away or cause to be hired, contracted, or taken away, any employee or independent contractor from the other party, for a period of two years following termination of this MSA.
- 12.3 **Taxes.** Client shall be responsible for all applicable sales, use, or other taxes related to or arising from the Services, excluding Davenport Group's income taxes. Client shall pay such taxes, or reimburse Davenport Group for such taxes, within thirty (30) days of Davenport Group invoice for these taxes.
- 12.4 **Governing Law and Jurisdiction.** This Agreement shall be governed in all respects by the laws of the State of Florida, without regard to its conflict-of-laws provisions. The parties hereby irrevocably submit to the exclusive jurisdiction of the courts of the State of Florida and any United States District Court situated in the State of Florida for the purposes of construing and enforcing this Agreement.
- 12.5 **Amendment.** This Agreement may be amended only by an instrument in writing executed by an officer of both parties.
- 12.6 **Attorneys' Fees.** In the event of any litigation, arbitration, or mediation between the Parties in connection with or arising out of this Agreement, or to enforce any right or obligation of either Party under this Agreement, or for the construction or interpretation of this Agreement or any right or obligation under or impacted by this Agreement, neither Party shall be entitled to recover attorneys' fees or costs. This provision is specifically agreed upon to encourage good faith resolution of performance or fee issues and to

discourage arbitration and/or litigation.

- 12.7 **Paragraph Headings.** Paragraph headings are for reference purposes only and shall not affect the interpretation or meaning of this Agreement.
- 12.8 **Notices.** Any notice required hereunder shall be made in writing by either hand delivery, nationally recognized courier service, or certified mail with return receipt. Such notice shall be deemed given: (i) at the actual time of receipt if notice is given by hand delivery; (ii) on the date of delivery as set forth on a receipt provided by a nationally recognized courier service if notice is given by courier; or (iii) three business days after mailing if notice is given by certified mail, return receipt. All notices given under this Agreement shall be sent to the addresses set forth on the first page of this Agreement. Either party may change the address to which notices are to be sent by giving notice of the requested change of address to the other party in the manner referenced above.
- 12.9 **No Waiver of Performance.** Failure by either party at any time to require performance by the other party or to claim a breach of any provision of this Agreement will not be construed as a waiver of any right accruing under this Agreement, nor affect any subsequent breach, nor affect the effectiveness of this Agreement or any part hereof, nor prejudice either party with respect to any subsequent action.
- 12.10 **Entire Agreement.** This Agreement and the above-referenced non-expired Orders and applicable Service Addendums constitute in aggregate the entire agreement between Client and Davenport Group with respect to the subject matter hereof and no representation or statement not contained in this Agreement shall be binding upon Davenport Group or Client as a warranty or otherwise. If any provision (or part thereof) of this Agreement is determined by a court of competent jurisdiction, government action or binding arbitration, to be invalid, illegal, or otherwise unenforceable, such provision shall be enforced as nearly as possible in accordance with the stated intention of the parties, while the remainder of this Agreement shall remain in full force and effect and bind the parties according to its terms. This Agreement may be executed in multiple counterparts, all of which together will constitute one original document.
- 12.11 **Force Majeure.** Davenport Group shall not be liable for failure to perform any of its obligations under this Agreement during any period in which such performance is delayed by accidents beyond Davenport Group's reasonable control, such as, but not limited to fire, flood, or other natural disasters, or, embargo, court order, riot, or other intervention of any government authority, provided that Davenport Group immediately notifies Client of such delay. If

Davenport Group's performance is delayed for these reasons for a cumulative period of sixty (60) days or more from the date of such notice, Client may terminate this Agreement by giving Davenport Group written notice.

- 12.12 **Severability.** The provisions of this Agreement are severable and if any provision is held to be unenforceable or invalid. It shall not affect the validity or enforceability of any other provision.
- 12.13 **Construction.** The language of all parts of this Agreement shall in all cases be construed as a whole, according to its fair meaning, and not strictly for or against any party.
- 12.14 **Scrutinized Companies.** Davenport Group certifies that before entering into this Agreement, it was not then and is not now (a) on the Scrutinized Companies that Boycott Israel List, created pursuant to s. 215.4725, F.S. or (b) engaged in a boycott of Israel. Further, Client may, entirely at its option, terminate this Agreement if it meets the following criteria: (a) was entered into or renewed on or after July 1, 2018, and (b) Davenport Group is found to have been placed on the Scrutinized Companies that Boycott Israel List, created pursuant to s. 215.4725, F.S., or is engaged in a boycott of Israel.
- 12.15 **E-Verify.** In accordance with §448.095, Florida Statutes, Davenport Group shall register with and utilize the E-Verify System operated by the United States Department of Homeland Security to verify the employment eligibility of all new employees hired during the term of the Agreement and shall expressly require any subcontractors performing work or providing services pursuant to the Agreement to likewise utilize the E-Verify System to verify the employment eligibility of all new employees hired by the subcontractor during the term of the Agreement. If Davenport Group enters into a contract with a subcontractor performing work or providing services on its behalf, Davenport Group shall also require the subcontractor to provide an affidavit stating that the subcontractor does not employ, contract with, or subcontract with an unauthorized alien. Notwithstanding anything in the Agreement to the contrary, the Parties shall have the rights available to them under §448.095(2)(c)-(f), Florida Statutes. Information on registration for and use of the E-Verify System can be obtained via the internet at the Department of Homeland Security Web site: <http://www.dhs.gov/E-Verify>.

Master Services Agreement



IN WITNESS WHEREOF, the undersigned have executed this Agreement as of the date written above.

Marion County BOCC, FL

Davenport Group, Inc.

Signature



Signature

Name

BJ Bradley

Name

Title

Chief Operating Officer

Title

Date

10/22/2024

Date

FOR REVIEW

MARION COUNTY STANDARD ADDITIONAL TERMS AND CONDITIONS

This Additional Terms and Conditions (this "ATC") are made a part of 25C-032 – Davenport Group Master Services Agreement (hereinafter "the Agreement") between Davenport Group, Inc. ("FIRM") and **MARION COUNTY**, a political subdivision of the State of Florida, 601 SE 25th Ave., Ocala, FL 34471 ("COUNTY") (individually "Party," collectively "Parties.")

BE IT KNOWN that the undersigned Parties, for good consideration, agree to make the changes and/or additions outlined below. These additions shall be valid as if part of the Agreement.

1. **Governmental Entity.** FIRM acknowledges that in light of COUNTY being a governmental entity, this ATC is needed and shall govern the Agreement.
2. **Material Term; Conflict.** This ATC is a material term of the Agreement and same is relied upon by COUNTY in entering into the Agreement. A breach of this ATC is a material breach of the Agreement. The Parties expressly agree that notwithstanding anything to the contrary set forth in the Agreement, in the event of a conflict or inconsistency between the terms of this ATC and those of the Agreement, the terms of this ATC shall govern.
3. **Prompt Payment Act.** FIRM acknowledges that notwithstanding anything to the contrary set forth in the Agreement, COUNTY's obligations and responsibilities for payment and non-payment under the Agreement, including, but not limited to, the accrual of interest thereon if any, are governed by Chapter 218, Part VII, Florida Statutes, Local Government Prompt Payment Act (2023).
4. **Tax Exempt.** Notwithstanding anything to the contrary set forth in the Agreement, FIRM acknowledges receipt of COUNTY's Consumer Certificate of Exemption from the payment of Florida sales and use tax on real property rented, transient rental property rented, tangible personal property purchased or rented, or services purchased.
5. **Public Records Laws; Confidential and Exempt.** Notwithstanding anything to the contrary set forth in the Agreement, FIRM acknowledges COUNTY's duties under Article 1, Section 24, Florida Constitution and Chapter 119, Florida Statutes (2023), to provide public access to COUNTY's records and to hold them open for personal inspection and copying by any person. FIRM acknowledges that the Parties are required to comply with Article 1, Section 24, Florida Constitution and Chapter 119, Florida Statutes, with regard to the Agreement and FIRM affirms that said laws supersede any contrary or inconsistent terms of the Agreement. As such, notwithstanding anything to the contrary set forth in the Agreement, the definitions of "Confidential" and/or "Proprietary" information, the Parties' abilities and obligations to disclose same, the methods for such disclosure, and the remedies, if any regarding same, shall be determined solely according to Article 1, Section 24, Florida Constitution and Chapter 119, Florida Statutes, as those laws may be amended from time to time.

6. **Public Records Obligations.** If, under the Agreement, FIRM is providing services and is acting on behalf of COUNTY as provided under Section 119.011(2), Florida Statutes (2023), FIRM, shall:
- A. Keep and maintain public records required by COUNTY to perform the service;
 - B. Upon request from COUNTY's custodian of records, provide COUNTY 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 Agreement term and following completion of the Agreement if FIRM does not transfer the records to COUNTY; and,
 - D. Upon completion of the Agreement, transfer, at no cost, to COUNTY, all public records in possession of FIRM or keep and maintain public records required by COUNTY to perform the service. If FIRM transfers all public records to COUNTY upon completion of the Agreement, FIRM shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If FIRM keeps and maintains public records upon completion of the Agreement, FIRM shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to COUNTY upon request from COUNTY's custodian of public records in a format that is compatible with the information technology systems of COUNTY.
7. **Unilateral Termination.** If FIRM fails to provide the public records to COUNTY within a reasonable time or otherwise fails to comply with this Section, FIRM may be subject to penalties under Section 119.10, Florida Statutes (2023) and may be subject to unilateral cancellation of the Agreement by COUNTY.

8. **Public Records Questions Contact.**

IF FIRM HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES (2023), TO FIRM'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THE AGREEMENT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT:

Public Relations, 601 SE 25th Ave., Ocala, FL 34471

Phone: 352-438-2300 Fax: 352-438-2309

Email: PublicRelations@MarionFL.org

9. **Annual Appropriations.** FIRM acknowledges that during any fiscal year COUNTY shall not expend money, incur any liability, or enter into any agreement which, by its terms, includes the expenditure of money in excess of the amounts budgeted as available for expenditure.

COUNTY's performance and obligation to pay FIRM under the Agreement are contingent upon annual appropriation being made for that purpose. If during the term of the Agreement, COUNTY does not make an annual appropriation necessary to continue its performance under the Agreement, COUNTY may terminate the Agreement upon the expiration of the funded fiscal year.

10. **E-Verify pursuant to § 448.095, Fla. Stat.** Section 448.095, Florida Statutes (2023), requires FIRM to be registered and use the E-Verify system to verify the work authorization status of all newly hired employees and prohibits FIRM from entering into the Agreement unless it is in compliance therewith. Information provided by FIRM is subject to review for the most current version of the State or Federal policies at the time of the award of the Agreement.
- A. COUNTY hereby affirms it is duly registered, uses, and adheres to the practices of the E-Verify system, including those outlined in the clauses below.
 - B. FIRM has agreed to perform in accordance with the requirements of this Section and agrees as follows:
 - 1. It certifies and assures COUNTY that FIRM is currently in full compliance with Section 448.095, Florida Statutes (2023), it is registered and uses the E-Verify System to verify work authorization status of all newly hired employees.
 - 2. COUNTY shall immediately terminate the Agreement if COUNTY has a good faith belief that FIRM has knowingly violated Section 448.09(1), Florida Statutes (2023), that is, that FIRM knowingly employed, hired, recruited, or referred either for itself or on behalf of another, private or public employment within the State an alien who is not duly authorized to work by the immigration laws or the Attorney General of the United States.
 - 3. When FIRM enters into a contract with an employee, a FIRM or a subFIRM, FIRM shall obtain from that contracting party ("Contracting Party") an affidavit stating that the Contracting Party does not employ, contract with, or subcontract with an unauthorized alien.
 - 4. FIRM shall maintain a copy of such affidavit for the duration of the Agreement and provide it to COUNTY upon request.
 - 5. FIRM shall immediately terminate the Contracting Party if FIRM has a good faith belief that the Contracting Party has knowingly violated Section 448.09(1), Florida Statutes (2023), as set forth above.
 - 6. If COUNTY has a good faith belief that FIRM's Contracting Party has knowingly violated Section 448.095, Florida Statutes (2023), but that FIRM has otherwise complied, COUNTY shall promptly order FIRM to terminate the Contracting Party. FIRM agrees that upon such an order, FIRM shall immediately terminate the Contracting Party. FIRM agrees that if it should fail to comply with such an order, COUNTY shall immediately terminate FIRM.
 - 7. If COUNTY terminates the Agreement with FIRM, FIRM may not be awarded a public contract for at least one (1) year after the date of termination.

8. FIRM is liable for any additional costs incurred by COUNTY as a result of a termination under this Section.
9. Any such termination under this Section is not a breach of the Agreement and may not be considered as such.
10. FIRM shall maintain records of its registration, use, and compliance with the provisions of the E-Verify system, including the registration and use by its subFIRMs, and to make such records available to COUNTY or other authorized governmental entity.
11. To comply with the terms of this Employment Eligibility Verification provision is made an express condition of the Agreement and COUNTY may treat a failure to comply as a material breach of the Agreement.

11. Scrutinized Companies pursuant to § 287.135, Fla. Stat.

A. Certification.

1. If the Agreement is for One Million Dollars or more, FIRM certifies that at the time it submitted its bid or proposal for the Agreement or before entering into the Agreement or renewing same, FIRM was not then and is not now:
 - a. On the Scrutinized Companies with Activities in Sudan List or the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List, created pursuant to Section 215.473, Florida Statutes (2023), or
 - b. Engaged in business operations in Cuba or Syria.
2. If the Agreement is for any amount, FIRM certifies that at the time it submitted its bid or proposal for the Agreement or before entering into the Agreement or renewing same, FIRM was not then and is not now:
 - a. On the Scrutinized Companies that Boycott Israel List, created pursuant to Section 215.4725, Florida Statutes (2023), or
 - b. Engaged in a boycott of Israel.

B. Termination, Threshold Amount. COUNTY may, entirely at its option, terminate the Agreement if it is for One Million Dollars or more and FIRM meets any of the following criteria.

1. Was entered into or renewed on or after July 1, 2011, through June 30, 2012, and FIRM is found to meet any of the following prohibitions:
 - a. Submitted a false certification as provided under Section 287.135(5), Florida Statutes (2023), or
 - b. Been placed on the Scrutinized Companies with Activities in Sudan List or the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List, created pursuant to Section 215.473, Florida Statutes.
2. Was entered into or renewed on or after July 1, 2012, through September 30, 2016, and FIRM is found to meet any of the following prohibitions:
 - a. Submitted a false certification as provided under Section 287.135(5), Florida Statutes;

- b. Been placed on the Scrutinized Companies with Activities in Sudan List or the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List, created pursuant to Section 215.473, Florida Statutes; or
- c. Been engaged in business operations in Cuba or Syria.
- 3. Was entered into or renewed on or after October 1, 2016, through June 30, 2018, and FIRM is found to meet any of the following conditions:
 - a. Submitted a false certification as provided under Section 287.135(5), Florida Statutes;
 - b. Been placed on the Scrutinized Companies with Activities in Sudan List or the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List, created pursuant to Section 215.473, Florida Statutes;
 - c. Been engaged in business operations in Cuba or Syria; or
 - d. Been placed on the Scrutinized Companies that Boycott Israel List, created pursuant to Section 215.4725, Florida Statutes or is engaged in a boycott of Israel.
- 4. Was entered into or renewed on or after July 1, 2018, and FIRM is found to meet any of the following prohibitions:
 - a. Submitted a false certification as provided under Section 287.135(5), Florida Statutes;
 - b. Been placed on the Scrutinized Companies with Activities in Sudan List or the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List, created pursuant to Section 215.473, Florida Statutes; or
 - c. Been engaged in business operations in Cuba or Syria.
- C. **Termination, Any Amount.** COUNTY may, entirely at its option, terminate the Agreement if it is for any amount and meets any of the following criteria.
 - 1. Was entered into or renewed on or after July 1, 2018, and
 - 2. FIRM is found to have been placed on the Scrutinized Companies that Boycott Israel List, created pursuant to Section 215.4725, Florida Statutes or is engaged in a boycott of Israel.
- D. **Comply; Inoperative.** The Parties agree to comply with Section 287.135, Florida Statutes, as it may change from time to time during the Term. The contracting prohibitions in this Section become inoperative on the date that Federal law ceases to authorize the State of Florida to adopt and enforce such contracting prohibitions.

12. Discriminatory Vendor List, Convicted Vendor List, Antitrust Violator Vendor List. FIRM certifies and assures COUNTY that FIRM and its affiliate, if any and as defined under the pertinent statutes, has not been placed on the Discriminatory Vendor List pursuant to Section 287.134, Florida Statutes (2023), the Convicted Vendor List pursuant to Section 287.133, Florida Statutes (2023), and the Antitrust Violator Vendor List pursuant to Section 287.137, Florida Statutes (2023). FIRM acknowledges that absent certain conditions set forth in the respective statutes, those that have been placed on such lists may not submit a bid on a contract to provide any goods or services to a public entity, may not submit a bid on a contract with a public entity for the construction or repair of a public building or public work, may not submit bids on leases of real property to a public entity, may not be awarded or perform work

as a FIRM, supplier or subFIRM under a contract with a public entity, may not transact business with a public entity, and may not benefit from certain economic incentives.

13. **Sovereign Immunity.** Nothing in the Agreement shall be deemed to waive the sovereign immunity protections provided COUNTY pursuant to Florida law. Notwithstanding anything to the contrary set forth in the Agreement, COUNTY's obligation to indemnify FIRM, if any, for any reason or purpose, is limited and shall not exceed the limits set forth in Section 768.28, Florida Statutes (2023). All liability of COUNTY shall be limited to the limits set forth therein, whether sounding in contract, tort, or otherwise. This Section shall survive the termination of the Agreement.
14. **Mutual Indemnification.** Notwithstanding anything to the contrary set forth in the Agreement, each Party agrees to indemnify, defend and hold harmless the other, its officers, board members, agents, representatives and employees from and against any and all fines, suits, claims, demands, penalties, liabilities, costs or expenses, losses, settlements, judgments and awards and action of whatever kind or nature arising out of the Agreement, including attorney's fees and costs (and costs and fees on appeal as well as for litigating the issue of the amount of fees to be awarded), and damages (including, but not limited to, actual and consequential damages) arising from any negligent, willful or wrongful misconduct, knowing misrepresentation or breach of the Agreement by such Party, its officers, board members, agents, representatives or employees. This Section shall not be construed in any way to alter COUNTY's waiver of sovereign immunity or the limits established in Section 768.28, Florida Statutes (2023) with respect to actions in tort or contract. Pursuant to Section 768.28, Florida Statutes, nothing in the agreement may require COUNTY to indemnify or insure FIRM for FIRM's negligence.
15. **Rights of Third Parties.** Nothing in the Agreement, whether express or implied, is intended to confer any rights or remedies under or because of the Agreement on any persons other than the Parties hereto and their respective legal representatives, successors and permitted assigns. Nothing in the Agreement is intended to relieve or discharge the obligation or liability of any third persons to any Party to the Agreement, nor shall any provision give any third persons any right of subrogation or action over or against any Party to the Agreement.
16. **Waiver.** Notwithstanding anything set forth to the contrary in the Agreement, no waiver of any default by either Party shall constitute a waiver of any other default or breach, whether of the same or other covenant or condition. No waiver, benefit, privilege, or service voluntarily given or performed by either Party shall give the other Party any contractual right by custom, estoppel, or otherwise.
17. **Severability.** If any provision of the Agreement shall be held to be invalid or unenforceable for any reason, the remaining provisions shall continue to be valid and enforceable. If a court

finds that any provision of the Agreement is invalid or unenforceable, but that by limiting such provision it would become valid and enforceable, then such provision shall be deemed to be written, construed and enforced as so limited.

18. **Attorneys' Fees.** Notwithstanding anything to the contrary set forth in the Agreement, if a civil action or other legal proceeding is brought for the enforcement of the Agreement, or because of an alleged dispute, breach, default or misrepresentation in connection with any provision of the 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 or legal proceeding, in addition to any other relief to which such party or parties may be entitled. Attorney's fees shall include, without limitation, a reasonable attorneys' fees for litigating the issue of the amount of fees to be awarded, paralegal fees, investigative fees, administrative costs, sales and use taxes and all other charges that would be reasonably billed by the attorney to the prevailing party. Such award is limited to only those instances involving a legal proceeding, not a collection effort.
19. **Applicable Law/Jurisdiction/Venue.** The Agreement is being delivered in the State of Florida, and shall be construed and enforced in accordance with the laws of the State of Florida. Notwithstanding anything to the contrary set forth in the Agreement, the venue for any legal proceeding arising out of the Agreement, shall be in the State or Federal courts of Marion County, Florida.
20. **Waiver of Jury Trial.** EACH PARTY HEREBY AGREES THAT IN ANY LITIGATION OR PROCEEDING, WHETHER AT LAW OR IN EQUITY, WHICH ARISES OUT OF THE AGREEMENT, WHETHER SOUNDING IN CONTRACT, TORT, STRICT LIABILITY, OR OTHERWISE, TRIAL SHALL BE HAD BY A COURT OF COMPETENT JURISDICTION AND NOT TO A JURY. EACH PARTY IRREVOCABLY WAIVES ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY. EACH PARTY HAS READ AND UNDERSTANDS THE EFFECT OF THIS WAIVER.
21. **Survival.** Sections 13-20 of this ATC shall survive the termination of the Agreement, or any duties or obligations thereunder, and shall be fully binding until any proceeding which may be brought under this Agreement is barred by the applicable statute of limitations. In addition, any other provisions, or parts thereof, of this ATC which, by their nature, should survive termination or cancellation shall survive.
22. **Headings.** Section headings contained in this ATC are for convenience only and are not to be deemed or construed to be part of the Agreement.

23. **Authority to Execute Agreement.** The signature by any person to the Agreement and this ATC shall be deemed a personal warranty by that person that she/he has the full power and authority to bind the entity for which that person is signing.
24. **Transacting Business in Florida.** As of the date of entering this Agreement, FIRM represents that FIRM has been issued a certificate of authority issued by the Florida Department of State, required to transact business in Florida, pursuant to Section 607.1501, Florida Statutes, or a determination has been made by FIRM and its legal advisor that performance of this Agreement will not require any act constituting transacting business in Florida. In the event COUNTY, at its sole discretion, determines that FIRM is transacting business in Florida without a certificate of authority issued by the Florida Department of State, COUNTY may immediately terminate this Agreement. In the event of such termination, FIRM shall immediately repay all amounts provided to FIRM under this Agreement.
25. **No Other Negotiations or Changes.** No other terms or conditions of the Agreement are negated or changed as a result of this ATC.
26. **Entire Agreement.** The Agreement and this ATC collectively contain the entire agreement between the Parties related to the matters specified herein, and supersede any prior oral or written statements or agreements between the Parties related to such matters. Any amendment thereto shall be made in writing and signed by both Parties.

[This portion of page intentionally left blank. Signature page to follow.]

IN WITNESS WHEREOF, the Parties have entered this **ADDITIONAL TERMS AND CONDITIONS** on the date of the last signature below.

COUNTY

MARION COUNTY, a political subdivision of the State of Florida

By: _____

Printed Name: Kathy Bryant

Title: Chair

Date: _____

FOR USE AND RELIANCE OF MARION COUNTY ONLY, APPROVED AS TO FORM AND LEGAL SUFFICIENCY

MATTHEW G. MINTER
MARION COUNTY ATTORNEY

DATE

FIRM

Davenport Group, Inc.

By: BJ Bradley

Printed Name: BJ Bradley

Title: Chief Operating Officer

Date: 10/22/2024