

ASSIGNMENT OF CONTRACT

Subject to consent by the City of Tallahassee ("City") being set forth below, Assignor hereby assigns to Assignee, its successors and assigns, all of its rights, title, and interest in, and all monies due or to become due in and under, that certain Contract between Assignor and the City dated April 1, 2010 for furnishing certain construction, farm, and landscape equipment (City Contract No. 2232), and Assignee hereby accepts such assignment and agrees to undertake and carry out all responsibilities of the Assignor as set forth in such Contract and to be bound thereby to the City for performance of such obligations.

THE UNDERSIGNED Assignor and Assignee hereby agree that, subject to consent by the City, such assignment shall become effective April 25, 2014.

IN WITNESS WHEREOF, the Assignor and Assignee have executed this Assignment effective the day and year first above written.

Flint Equipment Company

Lacey Knight
Witness as to Assignor

By: [Signature]
TOM SHAW
(Print or type name and title of signatory)

Carol Adams
Witness as to Assignor

Beard Equipment Co.

Sheila Roe
Witness as to Assignee

By: [Signature]
Drew Delaney General Manager
(Print or type name and title of signatory)

Wendy Cole
Witness as to Assignee

CONSENT TO ASSIGNMENT

The City of Tallahassee, acting through its undersigned authority, hereby acknowledges and consents to the foregoing Assignment of Contract between the said Assignee and Assignor.

City of Tallahassee

By: [Signature]

APPROVED AS TO FROM:

[Signature]
City Attorney

Attest: [Signature]
James O. Cooke, IV
City Treasurer-Clerk

CONTRACT

No. 2232

THIS CONTRACT is executed this 1st day of April 2010, by and between the City of Tallahassee, a Florida municipal corporation, hereinafter called the "City" and Flint Equipment Company, hereinafter called the "Contractor",

WITNESSETH:

WHEREAS, the City issued RFP No. 0050-09-KR-RC ("RFP") seeking proposals for furnishing construction, farm and landscape equipment; and,

WHEREAS, the Contractor submitted a certain proposal submitted May 15, 2009 ("Proposal") in response to that RFP; and,

WHEREAS, the City and the Contractor desire to enter into a contract for the purchase, leasing, or rental of construction, farm and landscape equipment, including related components, tools, and accessories ("Equipment"), as more particularly set forth in this Contract,

NOW, THEREFORE, in consideration of the mutual promises and covenants, obligations, and terms hereinafter set forth, and other good and valuable considerations, the receipt and sufficiency of which are hereby acknowledged, City and Contractor hereby agree as follows:

SECTION 1 - PURCHASE EQUIPMENT

- 1.1 Contractor shall provide such pieces of Equipment as may be ordered from time to time by the City. All Equipment shall be priced, designed, constructed, and equipped in accordance with the specifications set forth in the Proposal and applicable Change Orders executed by the parties unless otherwise stated in this Contract. All Equipment shall conform and comply with all applicable federal, state, and local laws, statutes, ordinances, and regulations. Notwithstanding any provision of the Proposal to the contrary, neither this Contract, nor any provisions hereof, shall be subject to or conditioned upon the purchase, by the City, of any minimum dollar value of Equipment, parts, accessories, or components.
- 1.2 The Contractor and the City Fleet Management Division ("Fleet Division") shall schedule the following meetings with respect to each order received from the City:
 - (i) A pre-production meeting to completely review the specifications prior to commencing assembly or production. This meeting shall include the cab and chassis manufacturer, if applicable. The Contractor shall be represented by qualified technicians/engineers to properly facilitate the design and construction requirements. This meeting is normally held at Fleet Division facilities located at 400 Dupree Street, Tallahassee, Florida ("Fleet Facilities").

- (ii) A second meeting will be planned according to the needs of the Fleet Division at the Contractor's facilities.
- (iii) A final review and inspection when each piece of Equipment is considered by the Contractor to be complete. In addition to a complete inspection, City representatives will conduct a full performance test of each piece of Equipment and of all integral systems. The Contractor shall provide all technical information and representatives reasonably required to assist the City in these inspections and shall make available to the City all reasonably required third-party certifications. A technician shall be available to complete any needed repairs or to replace items not meeting specifications. At the option of the City, this meeting will be held either at Fleet Facilities or at the facilities of the Equipment manufacturer.

The Contractor shall coordinate arrangements for these meetings with the Fleet Division at least two (2) weeks prior to the scheduled meeting. The Contractor shall bear all costs related to participation of its representatives or personnel in these meetings and activities.

- 1.3 The City or the Contractor, at any time, may request changes in the specifications or requirements related to any particular piece of Equipment. No changes shall become effective until reduced to writing and signed by duly authorized representatives of each party. All such Change Orders shall include, as a minimum, the following information:
- (i) The specific changes to be made;
 - (ii) Changes, if any, in the time for delivery of Equipment; and,
 - (iii) Changes in the price of Equipment.

SECTION 2.0 - PURCHASE OF PARTS

- 2.1 The Contractor shall provide such parts for Equipment purchased by the City from the Contractor as may be ordered from time to time by the City. Such parts may be provided from consignment parts in accordance with Section 2.3, from parts held in stock locally by the Contractor, or by special order. The Contractor shall provide on-line parts ordering capability to the City, if available, and, upon request, will provide original manufacturer part numbers. Consignment parts will be held on-site at Fleet Facilities, Contractor-stocked parts shall be provided on the same day as order, and special order parts shall be delivered to the Fleet Facilities within thirty-six (36) hours from the time an order is placed. The City shall pay applicable freight charges only on special order parts, which amounts shall be added to the invoice for the particular part(s). The Contractor shall make deliveries of special order parts when received and shall make up to three (3) deliveries per day of Contractor-stocked parts.
- 2.2 The Contractor shall provide parts to the City for all Equipment purchased at the lesser of 30% above Contractor's cost or the lowest price offered by the Contractor

to any other customer. The City shall have the right to annually review and audit all Contractor records to verify that the Contractor is in compliance with this pricing requirement. If the Contractor is found not to be in compliance, the City will notify the Contractor, in writing, of such fact, and the Contractor, within thirty (30) days of receipt of the notice, shall pay to the City the applicable price differential for all affected parts and Equipment purchased by the City, plus interest thereon at the rate of six per cent (6%) for the period from the date of delivery of the affected parts through the date of such notice from the City.

- 2.3 The Contractor agrees to maintain an inventory of certain parts on-site at Fleet Facilities. Such parts shall be provided to the City on consignment, and the City shall pay the Contractor for such parts in accordance with this Section. The specific parts to be carried in such inventory, as well as minimum and maximum inventory levels for such parts, shall be determined by the Contractor, in consultation with Fleet Division, based generally on demand, or anticipated demand, within a rolling twelve-month period. Within thirty (30) days following the effective date of this Contract, the Contractor shall establish an inventory of consignment parts to support equipment of the same manufacture currently owned by the City. As each piece of Equipment is delivered under this Contract, the Contractor will establish adequate inventories of consignment parts to support such Equipment. The Contractor and Fleet Division will work together continuously to monitor and review the particular parts in inventory, as well as the minimum and maximum inventory levels, with the goal of ensuring that maintenance activities will not be delayed due to unavailability of parts and that parts in inventory do not exceed their shelf life or become obsolete. The parts for consignment inventory shall be delivered FOB to the City of Tallahassee at Fleet Facilities. The Contractor shall be responsible for timely replenishment of the consignment parts inventory. No less than monthly, the City will inventory all consignment parts and will provide copies of such inventories to the Contractor. The Contractor shall render periodic invoices to the City reflecting the particular parts, and related quantities, used by the City during the subject period, as determined by the differences between the beginning and ending inventories for the period; and the City shall pay such invoices in accordance with Section 4.5.
- 2.4 The provisions of this Section 2.0 shall not extend to any other governmental entity that may purchase Equipment pursuant to Section 10.11 except as may be specifically and separately agreed, in writing, between the Contractor and any such entity.

SECTION 3.0 - TERM

The Term of this Contract shall be a period of five (5) years, commencing on April 1, 2010, unless earlier terminated in accordance with the terms of this Contract. Such term may be extended for an additional five (5) year period, subject to mutual agreement of the parties.

SECTION 4.0 - CONTRACT PRICING AND PAYMENT

- 4.1 During the Term, the City shall pay the Contractor for Equipment ordered by the City based upon the Contractor's current pricing at the time a particular order is placed, provided, however, that such price shall not exceed the following:
- (i) initial prices as set forth in the Proposal,
 - (ii) any models or Equipment not quoted in the proposal a price will be set according to lowest price offered by the Contractor to any customer; and,
 - (iii) for subsequent model years, the purchase price paid for such model during the preceding model year plus the percentage increase/decrease in the Producers Price Index code, Construction Machinery (MFG PCU333120), published by the U.S. Department of Labor, Bureau of Labor Statistics, from the date of the Proposal to the latest value. Price increases associated with compliance with Federal EPA emission standards (Interim Tier IV and Tier IV) will be excluded from this provision.
- 4.2 All prices shall be F.O.B. City of Tallahassee, at Fleet Facilities. In addition to the limitations set forth in Section 4.1 above, the prices offered to the City during the term of this Contract shall be no greater than the lowest price offered by the Contractor to any customer. The City shall have the right to annually review and audit all Contractor contracts and sales records to verify that the Contractor is in compliance with this pricing requirement. If the Contractor is found not to be in compliance, the City will notify the Contractor, in writing, of such fact, and the Contractor, within thirty (30) days of its receipt of such notice, shall pay to the City the applicable price differential for all affected Equipment purchased by the City, plus interest thereon at the rate of six percent (6%), for the period from the date of delivery of the affected Equipment through the date payment is received by the City.
- 4.3 A standard warranty package (according to the proposal) is included in the price of Equipment and associated components. Extended warranties shall be made available to the City at the Contractor's cost from the manufacturer.
- 4.4 All Equipment and associated component prices shall be F.O.B. City of Tallahassee at Fleet Facilities.
- 4.5 All proper invoices shall be paid by the City in accordance with the Florida Prompt Payment Act, Section 218.70, Florida Statutes.
- 4.6 In addition to other remedies available under this Contract, the City shall have the right to deduct, offset against, or withhold from sums or payments otherwise due the Contractor any sums or amounts which the Contractor may owe to the City pursuant to provisions of this Contract, as a result of breach or termination of this Contract, or otherwise.

SECTION 5.0 - DELIVERY AND ACCEPTANCE

- 5.1 The Contractor shall deliver Equipment to the City in accordance with the schedule set forth in the Proposal or such other time period as may be agreed by the parties. The Contractor and the City agree that timely delivery by the Contractor is of the essence of this Contract, that the City will suffer damages in the event the Contractor fails to so perform, and that such damages may be difficult to precisely calculate or prove. As a result, the Contractor shall pay to the City, as liquidated damages and not as a penalty, the amount of \$100.00 per day, or portion thereof, for each day of delay in delivery of Equipment ordered by the City. Such liquidated damages shall be paid in addition to any other recourse that may be available to City in the event of such a breach.
- 5.2 The Contractor shall fully assemble, service, and adjust Equipment prior to delivery and shall demonstrate, to the satisfaction of the City, that each delivered Equipment is in perfect mechanical condition. In the event Equipment is shipped to another manufacturer's facility for accessory installation, the inspection and acceptance for the City shall be performed at the accepting plant under the direction and assistance of the Contractor. An inspection form approved by the City, provided by three accepting manufacturer, is to be completed by at that facility to establish receipt date and condition of the Equipment.
- 5.3 Delivery of Equipment to the City does not constitute acceptance for the purpose of payment or warranty start time. The City shall inspect and test delivered Equipment to determine whether it meets all specifications and requirements set forth in this Contract and within ten (10) days following delivery, the City shall notify the Contractor, in writing, or by verifiable e-mail of either its final acceptance of Equipment or the failure of Equipment to meet certain specifications and requirements. In the latter case, the Contractor, within ten (10) days following its receipt of written notice from the City, shall deliver to the City a detailed proposal and schedule for corrective action. If the proposed corrective action is acceptable to the City, the Contractor will be given a written notice to proceed, and a new inspection, testing, and notice process shall commence upon completion of corrective action. If the proposed corrective action or schedule is not acceptable, or if approved corrective action is not timely completed, the City may refuse Equipment. Each piece of Equipment shall remain the property and the responsibility of the Contractor, and the Contractor shall bear all risk of loss with respect thereto, until final acceptance by the City.
- 5.4 With Equipment, the Contractor shall deliver to the City, in an electronic format acceptable to the City, the following:
- (i) Three (3) copies of the technical and service manuals for each Equipment model (electronic or DVD version preferred);
 - (ii) A copy of the manufacturer's preventive maintenance schedule; and,

- (iii) The manufacturer's statement of origin, title application, and all warranty documents.

5.5 All Equipment delivered to the City shall be owned by the Contractor and shall be delivered free and clear of all liens and security interests of any kind.

SECTION 6.0 - INDEMNIFICATION

6.1 The Contractor shall indemnify and save harmless the City, its officials and employees, from all losses, damages, costs, expenses, liability, claims, actions, and judgments of any kind whatsoever, including reasonable attorney's fees and costs of litigation, to the extent arising out of or caused by any act or omission of the Contractor, its subcontractors, or their respective employees, officers, directors, or agents, in the performance under this Contract. The indemnification obligation under this clause shall not be limited in any way by any limitation on the amount or type of damages, compensation or benefits payable by or for the Contractor or any subcontractor under any Workers' Compensation Act, Disability Benefit Act, or other Employee Benefit Act.

6.2 The Contractor shall, at its sole expense, defend any claim, suit or proceeding brought against the City, its official or employees, to the extent such claim, suit or proceeding is based on a claim that any Equipment, parts, or accessories furnished under this Contract (collectively, "Infringing Work") constitutes infringement of any registered patent of the United States of America or county of manufacture, provided that City shall give the Contractor prompt written notice of any such claim, suit or proceeding and shall give the Contractor authority, information and assistance in a timely manner for the defense of the same. The Contractor shall indemnify and hold the City, its officials or employees, harmless from and against all costs and damages awarded, and all attorney's fees incurred or awarded, in any suit or proceeding so defended. The Contractor will not be responsible for any settlement or proceeding made without its prior written approval. In case said Infringing Work is held to constitute an infringement and the use of said Infringing Work is enjoined, the Contractor shall, at its own expense and at its option, either (a) procure for City the right to continue using said Infringing Work, (b) replace said Infringing Work with substantially equivalent, equally functional, non-infringing Work, parts or combination thereof, or (c) modify such Infringing Work so that it becomes non-infringing, while maintaining the same functionality.

SECTION 7.0 – INSURANCE

7.1 Prior to commencing work, Contractor shall procure and maintain at Contractor's own cost and expense for the duration of the Contract, the following insurance against claims for injuries to person or damages to property which may arise from or in connection with the performance of the Scope of Services hereunder by Contractor, its agents, representatives, employees or sub-consultants. The cost of such insurance shall be borne by Contractor.

- (a) Commercial General/Umbrella Liability Insurance - \$1,000,000 limit per occurrence for property damage and bodily injury. The service provider should indicate in its proposal whether the coverage is provided on a claims-made or preferably on an occurrence basis. The insurance shall include coverage for the following:
 - (i) Premise/Operations
 - (ii) Explosion, Collapse and Underground Property Damage Hazard (only when applicable to the project)
 - (iii) Products/Completed Operations
 - (iv) Contractual
 - (v) Independent Contractors
 - (vi) Broad Form Property Damage
 - (vii) Personal Injury
- (b) Business Automobile/Umbrella Liability Insurance - \$1,000,000 limit per accident for property damage and personal injury.
 - (i) Owned/Leased Autos
 - (ii) Non-owned Autos
 - (iii) Hired Autos
- (c) Workers' Compensation and Employers'/Umbrella Liability Insurance - Workers' Compensation statutory limits as required by Chapter 440, Florida Statutes. This policy should include Employers'/Umbrella Liability Coverage for \$1,000,000 per accident.

7.2 Other Insurance Provisions

- (a) Commercial General Liability and Automobile Liability Coverage
 - (i) City, members of its City Commission, boards, commissions and committees, officers, agents, employees and volunteers are to be covered as additional insureds as respects: liability arising out of activities performed by or on behalf of Contractor; products and completed operations of Contractor; premises owned, leased or used by Contractor or premises on which Contractor is performing Services on behalf of City. The coverage shall contain no special limitations on the scope of protection afforded to City, members of its City Commission,

boards, commissions and committees, officers, agents, employees and volunteers.

- (ii) The Contractor insurance coverage shall be primary insurance as respects City, members of its City Commission, boards, commissions and committees, officers, agents, employees, and volunteers. Any insurance or self-insurance maintained by City, members of its City Commission, boards, commissions and committees, officers, agents, employees, and volunteers shall be excess of Contractor insurance and shall not contribute with it.
- (iii) Any failure to comply with reporting provisions of the policies shall not affect coverage provided to City, members of its City Commission, boards, commissions and committees, officers, agents, employees, and volunteers.
- (iv) Coverage shall state that Contractor's insurance shall apply separately to each insured against whom a claim is made or suit is brought, except with respect to the limits of the insurer's liability.

(b) Workers' Compensation and Employers' Liability and Property Coverage

The insurer shall agree to waive all rights of subrogation against City, member of its City Commission, boards, commissions and committees, officers, agents, employees, and volunteers for losses arising from activities and operations of Contractor in the performance of Services under this Contract.

(c) All Coverage

- (i) Each insurance policy required by this Article shall be endorsed to state that coverage shall not be suspended, voided, canceled, reduced in coverage or in limits except after thirty (30) days prior written notice has been given to City in accordance with this Contract.
- (ii) If Contractor, for any reason, fails to maintain any insurance coverage that is required pursuant to this Contract, the same shall be deemed a material breach of contract. City, at its sole option, may terminate this Contract and obtain damages from Contractor resulting from said breach.
- (iii) Alternatively, City may purchase such required insurance coverage (but has no special obligation to do so), and without further notice to Contractor, City may deduct from sums due to Contractor any premium costs advanced by City for such insurance.

7.3. Deductibles and Self-Insured Retentions

Any deductibles or self-insured retentions must be declared to and approved by City. At the option of City, the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects City, members of its City Commission, boards, commissions and committees, officers, agents, employees and volunteers; or Contractor shall procure a bond guaranteeing payment of losses, related investigation, claim administration and defense expenses.

7.4. Acceptability of Insurers

Insurance is to be placed with Florida admitted insurers rated B+X or better by A.M. Best's rating service.

7.5. Verification of Coverage

Contractor shall furnish City with certificates of insurance and with original endorsements affecting coverage required by this clause. The certificates and endorsements for each policy are to be signed by a person authorized by that insurer to bind coverage on its behalf. The certificates and endorsements are to be submitted with the proposal as a first peer review. Upon execution of the contract documents, the certificates and endorsements are to be received and approved by City before work commences.

SECTION 8.0 - TERMINATION

- 8.1 The City or Contractor may, by written notice, terminate this Contract in whole or in part, either for the convenience of City, convenience of the Contractor, or because of failure of either party to fulfill its obligations.
- 8.2 If the termination is for the convenience of the City, the Contractor shall be paid for Equipment, parts, and associated components or accessories delivered and finally accepted as of the effective date of termination.
- 8.3 If the termination is due to the failure of the Contractor to fulfill its obligations under this Contract, the Contractor shall be liable to City for reasonable additional costs incurred by City as a result of such breach.
- 8.4 If, after notice of termination for failure to fulfill its obligations under this Contract, it is determined that Contractor has not so failed, the termination shall be deemed to be effected for the convenience of City.
- 8.5 The rights and remedies of the parties provided in this Section 8 are in addition to any other rights and remedies such party may have at law, in equity, or under this Contract.

SECTION 9.0 - WARRANTY AND MAINTENANCE

- 9.1 The Contractor hereby agrees to adhere to all warranty terms as outlined in the manufacturer's warranty for all Equipment set forth in its proposal and the individual warranty documents delivered with the Equipment. The Contractor will respond, on-site in Tallahassee, for all warranty repairs immediately following notice from the City. All Warranty work shall be performed by Contractor's technicians at the City of Tallahassee shop facility, in the field, or at the Contractor's branch location as determined necessary by the City of Tallahassee.
- 9.2 The Contractor shall provide technical training as provided for in the proposal. Available training includes online web based courses covering system diagnostics for electrical, hydrostatic, powertrain, and hydraulic functional groups.
- 9.3 The Contractor agrees to place at least one manufacture-trained technician on-site at Fleet Facilities no later than six (6) months after a written request to do so is delivered to the Contractor by the City. The labor rate of \$57.00 per hour will be paid for all non-warranty work provided by the Contractor and not covered by warranty. This rate will not increase more than the Contractor's actual cost for such labor and with the mutual agreement of the City for the duration of this contract. The City's Superintendent, Fleet Management, shall approve the technician. This technician shall facilitate and expedite both warranty related work and general repairs as directed by the Superintendent. Warranty and non-warranty work together shall not be more than forty (40) hours in any week unless requested by the City and agreed by the Contractor. This excludes weeks where vacations, holidays, sickness, or training to keep skills updated prevents the technician from an actual forty (40) hour week period. In cases where the amount of warranty work does not require forty (40) hours in a particular week the City shall provide non-warranty assignments. Until such time as the Contractor has a technician on-site at Fleet Facilities, the City will pay a labor rate of \$68.00 per hour for all non-warranty work performed by the Contractor.
- 9.4 The Contractor shall process all paper work in conjunction with warranty related work or claims. The City shall not be obligated to pay the Contractor for any warranty related repairs or replacements that are included in the manufacturer's terms of warranty coverage; however, the Contractor shall be entitled to receive any reimbursement or payment that may be offered by the manufacturer with respect to warranty repairs, replacements, or claims performed or paid by the Contractor.
- 9.5 The provisions of this Section 9.0 shall not extend to any other governmental entity that may purchase Equipment pursuant to Section 10.11 except as may be specifically and separately agreed, in writing, between the Contractor and any such entity.

SECTION 10.0 - MISCELLANEOUS PROVISIONS

- 10.1 Time shall be of the essence in performance of this Contract; provided, however, that either party shall be excused from timely performance under this Contract to the extent that, but only to the extent that, such delay is the result of any cause beyond

the reasonable control of, and not the result of negligence or the lack of diligence of, the party claiming such excuse from timely performance.

- 10.2 Failure to enforce or insist upon compliance with any of the terms or conditions of this Contract or failure to give notice or declare this Contract terminated shall not constitute a general waiver or relinquishment of the same or any other terms, conditions, or acts; but the same shall be and remain at all times in full force and effect.
- 10.3 If written notice to a party is required under this Contract, such notice shall be given by hand delivery, recognized overnight delivery service, or by first class mail, registered and return receipt requested or electronic messaging to Contractor as follows:

Flint Equipment Company
7566 West Tennessee Street
Tallahassee, Florida 32304
Attn: Mr. Tommy Slay

And to the City as follows:

City of Tallahassee
Fleet Management Division
400 Dupree Street
Tallahassee, Fl., 32304
Attn: Fleet Director

- 10.4 Contractor shall not assign any of their rights or obligations under this Contract without prior approval by the City
- 10.5 Contractor shall be responsible for the actions of any and all of their subcontractors and consultants. Neither subcontractors nor any consultants shall interface directly with the City.
- 10.6 This Contract and every question arising hereunder shall be construed, interpreted, or determined according to the laws of the State of Florida. Venue for any action brought in relation to this Contract shall be placed in a court of competent jurisdiction in Leon County, Florida.
- 10.7 As required by Section 287.133, (2) (a), Florida Statutes, a person or affiliate who has been placed on the convicted vendor list following a conviction for a public entity crime may not submit a proposal on a contract to provide any goods or services to a public entity, may not submit a proposal on a contract with a public entity for the construction or repair of a public building or a public work, may not submit proposals on leases of real property to a public entity, may not be awarded or perform work as a contractor, supplier, subcontractor, or consultant under a contract with any public entity, and may not transact business with any public entity in excess of the threshold amount provided in s.287.010 for CATEGORY TWO for a period of thirty-six (36) months from the date of being placed on the convicted vendor list. Any

person must notify the City within thirty (30) days after a conviction of a public entity crime applicable to that person or to an affiliate of that person.

- 10.8 The language of this Contract shall be construed according to its fair meaning, and not strictly for or against either City or Contractor. The section headings appearing herein are for the convenience of the parties and shall not be deemed to govern, limit, modify or in any manner affect the scope, meaning or intent of the provisions of this Contract. If any provision of this Contract is determined to be void by any court of competent jurisdiction, then such determination shall not affect any other provision of this Contract and all such other provisions shall remain in full force and effect; and it is the intention of the parties hereto that if any provision of this Contract is capable of two constructions, one of which would render the provision void and the other of which would render the provisions valid, then the provision shall have the meaning which renders it valid.
- 10.9 Contractor agrees that it will not discriminate against any employee or applicant for employment for work under this Contract because of race, color, religion, gender, age or national origin and will take affirmative steps to ensure that applicants are employed and employees are treated during employment without regard to race, creed, color, sex, marital status or national origin. The Contractor will post a copy of this pledge in a conspicuous place, available to all employees and job applicants and will place or cause to be placed a statement in all solicitations or advertisement for job applicants, including subcontracts, that the respondent is an "Equal Opportunity Employer".
- 10.10 Either party shall be excused from timely performance under this Agreement to the extent, but only to the extent, such delay is the result of any cause beyond the reasonable control of, and not the result of negligence or the lack of diligence on the part of, the party claiming such excuse from timely performance.
- 10.11 The Contractor shall make Equipment available to other entities on the same terms and conditions as set forth in this Contract. Should any such entity purchase Equipment on such basis, the Contractor shall report such purchases to the City and, within thirty (30) days following final payment for each such purchase, shall provide a credit to the City, which can be used toward the purchase of parts and Equipment from the Contractor, in the amount of 0.5% of the purchase price of such Equipment. This provision shall apply to all purchases initiated during the term of this Agreement, even if such purchase continues and payment is received after the expiration of such term.
- 10.12 The Contractor agrees to provide full maintenance agreements and purchase buy-back agreements should the City request such an agreement. The agreements shall be negotiated at that time and shall be mutually benefiting to both entities.
- 10.13 It is understood and agreed that this Contract, including exhibits and references (if any), is the entire Contract between the parties and supersedes all prior oral agreements and negotiations between the parties relating to the subject matter hereof. City and Contractor, by mutual agreement, may change or amend the terms

and conditions of this Contract. All such changes or amendments shall be set forth in a written amendment to this Contract.

10.14 If any portion of this Contract, or any Exhibit or portion thereof, is held to be invalid by a court of law, such provision shall be considered severable, and the remainder of this Contract shall be construed and enforced in a manner consistent with the intent of the Parties.

10.15 It is the intent of the parties that any provision of this Agreement that, by its terms or by any reasonable interpretation thereof, is intended to survive termination (whether by expiration, default, extinguishments or otherwise) of this Agreement including indemnity obligations, will do so.

IN WITNESS WHEREOF, the parties hereto have caused these presents to be executed by their duly authorized representatives, effective the date first above written.

Attest:

Gary Herndon
Gary Herndon
City Treasurer-Clerk

CITY OF TALLAHASSEE

By: *Cathy Kilpatrick Davis*
Cathy ~~Kilpatrick~~ Davis
Manager For Procurement Services

Sharon M. Callahan
Witness as to the Contractor
W. M. [Signature]
Witness as to the Contractor

FLINT EQUIPMENT COMPANY

By: *R. C. [Signature]*
PRESIDENT FLINT EQUIPMENT COMPANY
(Type or print name and title of signatory)

Approved as to form:

By: *[Signature]*
City Attorney

APPROVED BY CITY COMMISSION
September 10, 2009