

## Master Services Agreement

This Master Services Agreement is entered into on this 1 day of October 2020, and is by and between Florida Municipal Power Agency, a governmental joint action agency organized and existing pursuant to Florida law, with its office located at 8553 Commodity Circle, Orlando, Florida 32819, ("FMPA") and Lewis Tree Service, Inc., with its principle place of business located at 300 Lucius Gordon Drive, West Henrietta, NY 14586, ("Contractor").

FMPA is a municipal electric joint action agency formed pursuant to section 163.01, Florida Statutes, and exercises powers pursuant to section 163.01 and chapter 361, part II, Florida Statutes.

FMPA's members are 31 municipal electric systems within the state of Florida.

Lewis Tree Service, Inc. is a company offering Utility Tree Trimming and Vegetation Management Services.

The parties desire for Lewis Tree Service, Inc. to perform the services more fully described in this agreement and Schedule A.

Now therefore, for and in consideration of the premises and mutual covenants made herein, the parties agree as follows:

### Section 1. Scope of Services

FMPA is entering into this Master Services Agreement on behalf of its members for Lewis Tree Service, Inc. to provide its services as described in Schedule A to this agreement, which is attached hereto and incorporated into this agreement by this reference (the "Services"). For FMPA's members that desire for Lewis Tree Service, Inc. to furnish Services under this agreement ("Participating Members"), FMPA is acting as a "Solicitation Agent" only. Each Participating Member will issue a Purchase Order with project- specific technical specifications. In addition, the Participating Member's Purchase Order may carry additional terms and conditions as required by the Participating Member. All project-specific direction, guidance and invoicing will be conducted between the Participating Member and Lewis Tree Service, Inc.

In the event that any terms or conditions provided in Schedule A conflict with any terms or conditions of this agreement, or with the terms and conditions of a Participating Member's Purchase Order, the hierarchy will be as follows: 1) the terms of the Participating Member's Purchase Order, 2) the terms of this agreement, 3) the terms provided in Schedule A.

Notwithstanding any provision or specification of this agreement to the contrary, Lewis Tree Service, Inc. shall not be required to handle, store, transport, apply, or dispose of any product containing N-(phosphonomethyl) glycine (or "Glyphosate") or any of its chemical

derivatives as part of its performance obligations under this agreement; any subsequent amendment to this agreement or any document that is incorporated herein by reference and is contrary to the foregoing restriction shall only take effect upon the specific written approval of FMPA and Lewis Tree Service, Inc.'s Chief Financial Officer or Risk Manager, or his or her designee.

## **Section 2. Term & Termination**

This agreement shall become effective upon the date stated in the introductory clause of this agreement, and shall remain in effect for a period of five years from the effective date. Thereafter, this agreement may be renewed on an annual basis upon mutual consent of the parties, for up to two additional one-year terms. Either party wishing to extend this agreement must notify the other party in writing no later than 60 days prior to the end of the then-current contract term of its desire to renew. If the other party does not respond to the renewal notification within 30 days of receipt, it will be deemed that the party consents to the renewal of the agreement.

At any time, FMPA may terminate this contract, in whole or in part, for failure of Lewis Tree Service, Inc. to perform in accordance with the terms of this contract, or for any reason, at FMPA's sole discretion, upon 30 days prior written notice. Lewis Tree Service, Inc. may terminate this contract for cause upon 30 days prior written notice.

Any failure by Lewis Tree Service, Inc. to perform or comply with the terms and conditions of a Purchase Order issued under this agreement which continues for 10 calendar days after written notice from Participating Member to Lewis Tree Service, Inc. demanding that such failure to perform be cured, shall be deemed an event of default by Lewis Tree Service, Inc. Upon the occurrence of any such event of default, Participating Member may terminate the Purchase Order and pursue any remedies available at law or in equity. Participating Member shall have the right in its sole discretion to terminate by written notice, in whole or in part, the Purchase Order for its convenience. Participating Member shall pay Lewis Tree Service, Inc. for any Services performed under the Purchase Order prior to the termination date.

## **Section 3. Compensation and Payment**

Participating Members will through their own initiative issue project-specific Purchase Orders to Lewis Tree Service, Inc. For those Participating Members, FMPA is acting as a "Solicitation Agent" only and shall not be held liable for any costs or damages incurred pursuant to any Purchase Order entered into by them with Lewis Tree Service, Inc.

The total price for Services shall be as agreed to between Lewis Tree Service, Inc. and Participating Member(s) as set forth in the individual Purchase Order(s), which may include a not-to-exceed price set forth by the Participating Member(s). Lewis Tree Service, Inc. shall not exceed any such not-to-exceed price without the prior written agreement of the Participating Member(s).

Prices as stated in Schedule A will be firm for the first three years of this agreement, with pricing updates considered for years thereafter. Any price changes must be agreed to in writing at least 60 days prior to becoming effective.

#### **Section 4. Independent Contractor Status**

It is understood and agreed that Lewis Tree Service, Inc. is an independent contractor, is not an agent or employee of FMPA, and is not authorized to act on behalf of FMPA. Lewis Tree Service, Inc. agrees not to hold him or herself out as, or give any person any reason to believe that he or she is an employee, agent, or partner of FMPA. Lewis Tree Service, Inc. will not be eligible for any employee benefits, nor will FMPA make deductions from any amounts payable to Lewis Tree Service, Inc. for taxes or insurance. All payroll and employment taxes, insurance, and benefits shall be the sole responsibility of Lewis Tree Service, Inc. Lewis Tree Service, Inc. retains the right to provide services for others during the term of this Agreement and is not required to devote his or her services exclusively for FMPA. Lewis Tree Service, Inc. agrees that it shall bear the responsibility for verifying the employment status, under all applicable immigration laws, of all persons it employs in the performance of this contract. For purposes of this Section 4, the term FMPA includes FMPA's Participating Members.

#### **Section 5. Standard of Care**

The Services and any deliverables provided pursuant to this agreement shall be free from material defect. Lewis Tree Service, Inc. represents that the Services shall be performed with reasonable care in a diligent and competent manner and in accordance with generally accepted professional practices. Lewis Tree Service, Inc. will re-performing at Lewis Tree Service, Inc.'s expense any Services performed by Lewis Tree Service, Inc. which have failed to meet the above warranty, if such failure is promptly reported to Lewis Tree Service, Inc. not later than one (1) year following completion of the applicable Services. With respect to any equipment and/or materials provided pursuant to the Services, such shall be provided on an "as-is, where-is, with all-faults" basis, provided that Lewis Tree Service, Inc. shall pass through any manufacturer warranties available for assignment to FMPA and/or the applicable FMPA Participating Member with respect to any such equipment and/or materials. The foregoing remedy shall be client's sole remedy for any failure of company to comply with its warranty obligations.

#### **Section 6. Insurance**

The Lewis Tree Service, Inc. shall acquire and maintain at all times during the performance of Services the insurance coverage set forth below. Insurance Carrier Rating Coverages provided by the Lewis Tree Service, Inc. must be underwritten by an insurance company deemed acceptable by the Participating Member. Insurance coverage shall be provided by companies rated A- or better by Best's Insurance Rating. The Participating Member reserves the right to reject all or any insurance carrier(s) with an unacceptable financial rating. Lewis Tree Service, Inc. shall furnish Participating Members a copy of the insurance certificate prior to starting any work on site:

(a) **Workers Compensation and Employers Liability.** This insurance shall protect the Lewis Tree Service, Inc. against all claims under applicable state workers' compensation laws. Lewis Tree Service, Inc. shall also be protected against claims for injury, disease, or death to employees which, for any reason, may not fall within the provisions of a state workers compensation law. The policy shall include an "all states" or "other states" endorsement. The liability limits shall be, at a minimum, as follows: Workers' Compensation- Statutory; Employer's Liability- \$500,000 each.

(b) **Commercial General Liability.** This insurance shall be written on an occurrence type policy and shall protect the Lewis Tree Service, Inc. and the Participating Member (to the extent of Lewis Tree Service, Inc.'s indemnity obligations in this agreement) against claims for personal injury including bodily injury and death and property damage. This policy shall include a contractual liability endorsement to insure the contractual liability assumed by the Lewis Tree Service, Inc. under this agreement and a completed operations and products liability endorsement to remain in effect for 2 years after final payment. Limits of liability will not be less than \$2 million combined single limit per occurrence / \$4 million general annual aggregate for bodily injury and property damage.

(c) **Automobile Liability Policy.** This insurance shall be written on an occurrence type policy and shall protect the Lewis Tree Service, Inc. and the Participating Member (to the extent of Lewis Tree Service, Inc.'s indemnity obligations in this agreement) against all claims for injuries arising out of use of any auto including own, hired, or non-owned autos. Limits of liability will not be less than \$1 million in combined single limits for bodily injury and property damage.

(d) **Additional Insured.** All insurance coverages furnished under this contract, with the exception of workers compensation and employer's liability shall include the Participating Member as an additional insured with respect to the activities of the Lewis Tree Service, Inc. Any party named an additional insured pursuant to this Agreement shall be an additional insured where permissible by law but only to the extent the loss in question is caused by the negligent act or omission of the Lewis Tree Service, Inc., and only to the extent necessary to provide coverage for the indemnity obligations expressly assumed by Lewis Tree Service, Inc. under this Agreement, and not in respect to any act or omission or operation of the Participating Member. It is the express intent and understanding of the Parties that the insurance and indemnity obligations under this Agreement are dependent upon one another and are not separate and distinct.

(e) **Waiver of Subrogation.** The Lewis Tree Service, Inc. shall require their insurance carrier to waive all rights of subrogation against the Participating Member, their employees, directors and officers, where and to the extent permissible by law except to the extent the loss is caused by the negligence, gross negligence or willful misconduct of the Participating Member, or any indemnitee.

Lewis Tree Service, Inc. shall furnish Participating Member with certificates of insurance as evidence that the policies required under any applicable Purchase Order is in full force and effect.

## **Section 7. Indemnification**

To the fullest extent permitted by law, the Lewis Tree Service, Inc., its heirs, successors and assigns shall indemnify and hold harmless FMPA, its successors and assigns, and its employees, against any and all claims, suits or actions at law, including the bodily injury or death of Lewis Tree Service, Inc. during the performance of the Services regardless of cause and/or all damages, costs and judgments (including reasonable attorneys' fees), incurred by FMPA to the extent arising from the negligence, gross negligence, and/or intentional or willful misconduct of Lewis Tree Service, Inc. while performing work under this Agreement. The liability of the Lewis Tree Service, Inc. is full and complete in all respects and subcontracting any part of the work shall not relieve it of primary liability. The indemnity and hold harmless obligations, however, shall not apply to the extent of FMPA's or a Participating Member's negligence, gross negligence, and/or intentional or willful misconduct. Neither party shall be liable to the other party for any incidental, indirect, special, punitive or consequential damages (including without limitation any damages relating to lost profits, revenue or loss of use) arising in connection with this agreement or any Purchase Order. The Lewis Tree Service, Inc. and its affiliates' maximum liability shall not exceed the greater of (i) the price set forth in the applicable Purchase Order, or (ii) the sum of the insurance policy limits required herein.

## **Section 8. General Terms and Conditions**

- (a) Any notices given pursuant to this agreement shall be in writing, delivered to the address set forth in the introductory clause of this agreement, and shall be considered given when received.
- (b) No term of this agreement shall be deemed waived, and no breach of this agreement excused, unless the waiver or consent is in writing signed by the other party granting such waiver or consent.
- (c) If any provision of this agreement is determined to be illegal or unenforceable, such term or provision shall be deemed stricken, and all other terms and provisions shall remain in full force and effect.
- (d) This agreement shall be governed by the laws of the State of Florida. All controversies, claims or disputes arising out of this agreement shall be brought exclusively in appropriate court in Leon County, Florida.
- (e) In the event that either party is required to enforce the terms of this agreement by court proceedings or otherwise, the prevailing party of such proceedings shall be entitled to recover from the non-prevailing party all fees and costs incurred, including reasonable attorney's fees and costs and expenses for trial, alternative dispute resolution and appellate proceedings.

IN WITNESS WHEREOF, the parties have duly executed this agreement as of the date first stated in the introductory paragraph.

FLORIDA MUNICIPAL POWER AGENCY

LEWIS TREE SERVICE, INC.

Signature: Jacob Williams  
304752207C31407...

Signature: *Robert A. Petrone*

By: Jacob Williams  
Gen. Mgr. & CEO

By: Robert A. Petrone SVR/CEO