



1112 Manatee Ave. West
Bradenton, FL 34205
purchasing@mymanatee.org

Solicitation Addendum

Addendum No.: 1

Solicitation No.: 19-TA002896CD

Project No.:

Solicitation Title: Utility Locating Services

Addendum Date: 12/6/2018

Procurement Contact: Chris Daley; chris.daley@mymanatee.org

RFQ NO. 19-TA002896CD IS AMENDED AS SET FORTH HEREIN. RESPONSES TO QUESTIONS POSED BY PROSPECTIVE PROPOSERS ARE PROVIDED BELOW. THIS ADDENDUM IS HEREBY INCORPORATED IN AND MADE A PART OF RFQ NO. 19-TA002896CD.

Delete:

SECTION F, FORMS, FORM 9- INDEMNITY AND HOLD HARMLESS

Form 9 is deleted from this solicitation in its entirety.

Change to:

ATTACHMENT B, PROPOSAL RESPONSE, C. TAB 3- FORMS

A. TAB 3 – FORMS

Provide the completed and executed Forms listed below in Tab 3.

Form 1, Acknowledgement of Addenda

Form 2, Response Signature Form

Form 3, Public Contracting and Environmental Crimes Certification

Form 4, Conflict of Interest Disclosure

Form 5, Non-Collusion Affidavit

Form 6, Truth in Negotiation Certification

Form 7, Scrutinized Company Certification

Form 8, Insurance Statement

~~Form 9, Indemnity and Hold Harmless~~

Change to:

ATTACHMENT B, PROPOSAL RESPONSE, G. TAB 9- SIMILAR COMPLETED PROJECTS

Provide a list of up to fifteen (15) projects, particularly those in Florida, which Proposer has provided utility locating services, to include subsurface utility engineering services (SUE) since November 1, ~~2018~~ 2015. Include the following information:

- a. Client Organization name
- b. Client address (County/State)
- c. Service period (Start/End)
- d. Scope of work (Brief description)

NOTE: Representative photographs and exhibits supporting the above projects are permitted as an attachment to this section. (limit six pages).

Add:

The following item is attached to this Addendum 1 for informational purposes only:

1. Current Agreement for Utility Locating Services with McKim and Creed, Inc.

QUESTIONS AND RESPONSES:

Q1. What is the historical volume of one call tickets that need to be located?

R1. Some tickets are one mile in length while others are simply the front yard of a home owner. The exact volume measured by ticket number therefore will be adjusted daily by the Supervisor as to what can be done in a day's worth of work (8 hours). We expect a volume of 10 – 20 tickets to be completed in a day but it can be more on occasions. All of them will require the Locator to go out to the site and mark facilities.

Q2. Will the county pay for tickets by utility located or flat fee?

R2. The successful Proposer will be issued Work Assignments, as stated in Articles 9 and 10 of the sample agreement provided in the solicitation. The fee schedule will be negotiated with the successful Proposer that provides an hourly rate for each classification or job title needed for the services required in Attachment A.

Q3. Will clear tickets be paid? (overhead lines or private wells or none present)

R3. This is not applicable to the requested services outlined in this RFQ.

Q4. What is the historical demand for SUE services? (test holes)

R4. The historical demand for SUE services under the current agreement averages anywhere from zero to four per year.

Q5. Is the current or previous contract available for review?

R5. The current agreement is attached to this Addendum 1.

Q6. What is the current rate of payment per locate and per test hole?

R6. Payment is based on an hourly rate per classification required to perform the services.

Q7. What is your position in regard to plastic water systems?

R7. The Locator will be locating water, sewer, traffic, power/lighting, and other underground services as per attachment A, that includes plastic, metal or any other type of material.

Q8. What is the length of the contract (years)?

R8. The agreement will be for one year, with four renewals of one year each.

Q9. We are reviewing the Utility Locating Services RFQ and have a question on Form 9, indemnity and hold harmless. Is it possible to provide substitute language for the indemnification clause, or must it be accepted as presented?

R9. Form 9 has been removed from this solicitation. Indemnification is covered in Article 19 of the Sample Agreement, provided in the solicitation as Attachment C, that will be executed with the successful Proposer.

NOTE: Items that are ~~struck through~~ are deleted. Items that are underlined have been added or changed. All other terms and conditions remain as stated in the RFQ.

End of Addendum

INSTRUCTIONS:

Receipt of this addendum must be acknowledged as instructed in the solicitation document. Failure to acknowledge receipt of this Addendum may result in the response being deemed non-responsive.

AUTHORIZED FOR RELEASE: _____





AGREEMENT No. 12-0641BG

UTILITY LOCATING SERVICE

between

MANATEE COUNTY
(COUNTY)

and

McKIM AND CREED, INC.
(CONSULTANT)

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UTILITY LOCATING SERVICES

THIS AGREEMENT is made and entered into by and between the **COUNTY OF MANATEE**, a political subdivision of the State of Florida, hereinafter referred to as the "**COUNTY**", with offices located at 1112 Manatee Avenue West, Bradenton, Florida 34205-7804, and **McKIM AND CREED, INC.**, hereinafter called the "Consultant", duly authorized to conduct business in the State of Florida with offices located at 1365 Hamlet Avenue, Clearwater, FL 33756.

WHEREAS, the COUNTY has determined that it is necessary, expedient and in its best interest of the COUNTY to retain, obtain or employ the Consultant to render and perform UTILITY LOCATING SERVICES.

WHEREAS, the Consultant submitted a proposal, in response to Request for Proposal #12-0641BG, and the COUNTY conducted a competitive selection procedure in accordance with Manatee County Code of Laws

NOW THEREFORE, in consideration of the foregoing premises and the mutual covenants herein contained, it is agreed by and between the Parties hereto as follows:

ARTICLE 1. SCOPE OF SERVICES

The Consultant covenants and represents to the COUNTY that the Consultant shall provide UTILITY LOCATING SERVICES; as detailed in **Exhibit "A"**, "Scope of Services".

ARTICLE 2. AGREEMENT DOCUMENTS

The Agreement Documents consist of this Agreement and **Exhibits "A", "B", "C", and "D"** attached hereto and made a part of this Agreement.

Exhibit "A" Scope of Services

Exhibit "B" Fee Rate Schedule / Subconsultant List and Fee Schedule

Exhibit "C" Sample Work Assignment

Exhibit "D" Affidavit of No Conflict

In the event of a conflict between the terms and conditions provided in the Articles of this Agreement and any Exhibit, the provisions contained within these Articles shall prevail unless the term or provision in the Exhibit specifically states that it shall prevail.

ARTICLE 3. COMPENSATION

- A. Compensation payable to the Consultant for services rendered and expenditures incurred in providing the services identified in **Exhibit "A"** shall be established for each written Work Assignment issued in accordance with Article 7.
- B. Compensation to the Consultant shall be computed based on actual hours performed times fee rate of the individual performing the work, plus reimbursable expenses up to the maximum compensation authorized for each Work Assignment as defined in **Exhibit "A"**.
- C. The fee rates as shown on **Exhibit "B"** shall be the total compensation for the services and shall contain all costs to include salaries, office operation, transportation, equipment, overhead, general and administrative, incidental expenses, fringe benefits and operating margin.
- D. "Task," as used in this Agreement, refers to particular categories/groupings of services described in **Exhibit "A"**.

ARTICLE 4. INVOICES AND TIME OF PAYMENT

- A. Consultant shall provide the COUNTY with an invoice which shall include all compensation due Consultant as of the date of the invoice and in accordance with the following:
 - 1. The Integrated Fund Accounting System (IFAS) number assigned to this Agreement or Work Assignment. IFAS numbers will be provided to the Consultant upon approval of each Work Assignment and transmitted to the Consultant electronically. This number shall appear on all invoices.
 - 2. Total compensation to the Consultant for services and reimbursable expense shall not exceed the amounts provided in the Work Assignment.
 - 3. The COUNTY agrees to pay the Consultant for the herein described services at a rate of compensation according to the unit rates stated in the Fee Rate Schedule, **Exhibit "B"** attached hereto and made a part hereof and as detailed in the applicable Work Assignment, **Exhibit "C"**.

The COUNTY shall have the right to retain from any payment due the Consultant under this Agreement, an amount sufficient to satisfy any amount of damages due and owing to the COUNTY by the Consultant on any other Agreement between the Consultant and the COUNTY.

- 4. If any Work Assignment requires deliverables such as daily locate logs, then such logs must be received and accepted in writing by the Contract Manager prior to payment.

- B. All costs of providing the Scope of Services described in **Exhibit "A"** shall be the responsibility of the Consultant, with the exception of reimbursement by COUNTY for the following direct costs:
1. Expense of reproduction beyond the costs associated with providing reports and routine correspondence.
 2. Actual charges for long distance telephone calls, including applicable local, state and federal taxes, but excluding calls made to Manatee, Sarasota, Pinellas or Hillsborough Counties, as documented by copies of original invoices.
 3. Actual charges for fees not specifically identified to be paid by the COUNTY charged in the process of obtaining any required documents outlined in the Work as documented by copies of original invoices.
 4. Actual charges for courier service at the request of the COUNTY excluding delivery made to Manatee, Sarasota, Pinellas or Hillsborough Counties, at rates not to exceed \$12.00 per package, and shall be documented by copies of original invoices.
 5. The Consultant acknowledges and agrees that in order for both Parties to close their books and records, he/she will clearly state "Final Invoice" on the last billing to the COUNTY for each and every Work Assignment, which will indicate that all services have been performed and all charges and costs have been invoiced to the COUNTY under this Agreement.
- C. Except where **Exhibit "A"** provides that payment shall not be made until a task has been completed or for payment based on actual hours of work, Consultant and the COUNTY Contract Manager or his/her designee shall agree monthly on the percentage of completion for each task within the Work Assignment and the Consultant shall provide the COUNTY with an invoice based on that agreed percentage of completion.
- D. Any dispute between COUNTY and Consultant with regard to the percentage of the Work Assignment that has been completed or any other information contained on the Consultant's invoice shall be resolved pursuant to the dispute resolution procedures established by Manatee County Procurement Code and Article 11 of this Agreement.
- E. PAYMENT
1. The COUNTY shall remit payment for each invoice within forty-five (45) days after the receipt of an acceptable invoice.

2. The Consultant agrees to permit full and open inspection of payroll records and other expenditures in connection with all work upon the request of the COUNTY and to maintain all financial records related to this Agreement for a period of three (3) years after termination or completion of the performance of this Agreement.

ARTICLE 5. DURATION OF AGREEMENT

- A. Unless renewed or extended as provided herein, this Agreement shall remain in full force and effect for one (1) year from the date of COUNTY execution. However, the terms and conditions of this Agreement shall remain valid beyond any expiration date until all Work Assignments authorized during the effective period of this Agreement have been completed.
- B. This Agreement may be amended for four (4) additional periods, each of one (1) year duration.

ARTICLE 6. TERMINATION AND DEFAULT

- A. This Agreement may be terminated by the COUNTY in whole or in part at any time such termination is in the best interest of the COUNTY. This Agreement may be terminated by the Consultant only by mutual consent of both Parties.
- B. If the COUNTY determines that the performance of the Consultant is not satisfactory, the COUNTY shall have the option of 1) immediately terminating the Agreement, or 2) notifying the Consultant of the deficiency with a requirement that the deficiency be corrected within a specified time; otherwise the Agreement will be terminated at the end of such time. The Consultant shall be paid only for that work satisfactorily performed for which costs can be substantiated. All work in progress will become the property of the COUNTY and will be promptly delivered to the COUNTY by the Consultant.
- C. If the COUNTY requires termination of this Agreement for reasons other than unsatisfactory performance of the Consultant, the COUNTY shall notify the Consultant in writing of such termination, with instructions as to the effective date of termination, or specify the stage of work at which the Agreement is to be terminated.
- D. The Consultant shall be entitled to compensation for all services rendered or performed through the date of termination, together with all authorized costs and expenses incurred in connection therewith, provided the COUNTY has given the Consultant ten (10) days written notice in advance of the date of such termination and provided that services rendered and costs and expenses incurred do not exceed the maximum amount of compensation authorized for any phase of work based upon the percentage of the phase completed, or where applicable, any price established for a specific element of work.

ARTICLE 7. WORK ASSIGNMENTS

- A. The Consultant shall provide services only after receipt of a written Work Assignment issued in accordance with this Article and in accordance with the form provided in attached **Exhibit "C"**. Work Assignments shall be signed by the Consultant and the COUNTY and shall constitute supplemental Agreements entered into under the terms and conditions of this Agreement.
- B. Each Work Assignment shall establish the following:
1. A title for the project and a general description of the purpose for the work.
 2. The maximum total compensation and reimbursable expenses that will be paid to the Consultant by the COUNTY upon completion of the Work Assignment.
 3. A clear indication of the services to be furnished for a fixed fee and the services to be furnished based upon time and charges provided; however, where services are based upon time and charges, the Work Assignment shall establish the maximum compensation and the Consultant shall not exceed the maximum compensation established for such services.
 4. From the services listed on attached **Exhibit "A"**, the services to be provided under the Work Assignment shall include the unit prices shown in **Exhibit "B"** and the hours up to the not to exceed amount negotiated for each Work Assignment. Any specific services based upon the maximum compensation and billed based upon actual time and charges shall be clearly identified.
 5. There shall be an agreed to date of completion for each Work Assignment. Where identified services within a Work Assignment must be completed by a specific date prior to completion of the entire Work Assignment, such date shall be established.
 6. Any additional details that may be required to describe the duties and obligations of the Parties with respect to a particular Work Assignment.
 7. Any supplementary information, not in conflict with the provisions of this Agreement, such as technical specifications, deliverables associated with the Work Assignment, breakdown of the fees being charged by any Subconsultant or any service provider.
 8. The identity of the person(s) who will serve as the Consultant's Work Assignment Manager and the COUNTY's Work Assignment Manager if different from the Contract Manager identified in this Agreement.

9. When a Work Assignment calls for the preparation of maps and reports, these items as well as all data collected, together with summaries and charts shall be considered works made for hire and shall become the property of the COUNTY without restriction or limitation on their use; and shall be made available, upon request, to the COUNTY at any time. The Consultant shall not copyright any material or product developed under this Agreement. The COUNTY shall have the right to inspect the work of the Consultant at any time.
10. All final documents, reports, studies and other data prepared by the Consultant will bear the endorsement of a person in the full employ of the Consultant.
11. The COUNTY will be entitled at all times to be advised, at its request, as to the status of work being done by the Consultant and of the details thereof and communication shall be maintained by the Consultant with representatives of the COUNTY.
12. EXTENSION OF WORK ASSIGNMENTS. It shall be the responsibility of the Consultant to ensure at all times that sufficient time remains in the project schedule within which to complete services on the project. In the event there have been delays which would affect the Work Assignment completion date, the Consultant shall promptly submit a written request to the Contract Manager which identifies the reason(s) for the delay and the amount of time related to each reason. The Contract Manager will promptly review the request and make a determination as to granting all or part of the requested extension. If the Contract Manager determines that an extension of a Work Assignment deadline is appropriate, a recommendation for a Change Order shall be initiated.
13. Any Work Assignment, including reimbursable expenses, shall not be effective until one of the following conditions has occurred: 1) has been approved and signed by the Purchasing Official for assignments under one (1) million dollars, or 2) has been approved by the Board of County Commissioners for Work Assignments over one (1) million dollars.
14. Work Assignments shall not be artificially divided to increase the delegated authority provided to the COUNTY's Purchasing Official. Separate Work Assignments may be required for services which may be a part of the same project and the provision of two Work Assignments for such a project shall not be considered as an enlargement of the authority delegated to the COUNTY Purchasing Official.

ARTICLE 8. NEGOTIATION OF WORK ASSIGNMENT

For each Work Assignment, grouping of substantially similar locating services and activities for a group of projects, the COUNTY may negotiate each Work Assignment, if necessary based upon estimated hours and/or fee rates, projected by the Consultant and in accordance with the rate schedule provided in attached **Exhibit "B"**. Compensation for each Work Assignment shall be based on actual hours performed and/or fee rates, but in no event shall the Consultant be eligible for reimbursement in excess of the amount established in a Work Assignment. The COUNTY's Purchasing Official may authorize, in writing, in advance, adjustments in the compensation for particular phases or tasks established in the Work Assignment provided such adjustments do not exceed the maximum compensation and reimbursable expenditures authorized for the particular Work Assignment.

ARTICLE 9. COVENANTS OF THE COUNTY

The COUNTY hereby covenants and agrees:

- A. That the **Deputy Director of Utilities** is hereby appointed as the Contract Manager with respect to the services to be performed by the Consultant pursuant to this Agreement. The COUNTY Contract Manager shall have the authority to transmit instructions, receive information, interpret and define the policy of the COUNTY and make decisions pertinent to services covered by this Agreement. The COUNTY reserves the right to designate a different Contract Manager, provided that the Consultant is given written notice thereof.
- B. The COUNTY shall make available at no cost to the Consultant, information relative to the project that is useful in the performance of the Scope of Services.
- C. The COUNTY shall give prompt notice to the Consultant whenever the COUNTY observes or otherwise becomes aware of any defect in the performance of work under this Agreement.
- D. The COUNTY shall give careful and reasonable consideration to the findings and recommendations of the Consultant, and shall respond and issue notices to proceed in a timely manner so as not to unduly delay the Consultant's work called for by this Agreement.
- E. The COUNTY shall perform activities in this Article at no cost to the Consultant.

ARTICLE 10. COVENANTS OF THE CONSULTANT

Consultant hereby covenants and agrees:

- A. **Street Lee, P.E., Senior Vice President** is hereby appointed as Consultant's Agent with respect to the services to be performed by the Consultant pursuant to this Agreement. The Consultant's Agent shall have the authority without limitation, to make representations on behalf of Consultant, receive information, and interpret and define the needs of Consultant and make decisions pertinent to services covered by the Agreement. Consultant's Agent shall have the right, from time to time, to designate such other employees of Consultant's as they desire, to serve in their absence. Consultant reserves the right to designate a different agent, provided that the COUNTY is given written notice thereof.
- B. That the Work shall be performed in accordance with the terms and conditions of this Agreement.
- C. That all employees assigned to render services under this Agreement shall be duly qualified, registered, licensed or certified to provide the services required.
- D. That Consultant shall be responsible for collecting all existing data required for the successful completion of each Utility Locating task.
- E. That Consultant shall not knowingly engage in any contractual or professional obligations that create an appearance of a conflict of interest with respect to the service provided pursuant to this Agreement. Consultant attests to this via an Affidavit of No Conflict, **Exhibit "D"**.
- F. Consultant shall be entitled to rely upon that information which may be provided to them from time to time, from the COUNTY. However, Consultant shall call to the COUNTY's attention any errors or deficiencies noted in such information provided and assist, to the extent practicable, the COUNTY in the identification and resolution of same. Information referred to above includes, but is not limited to, additional services, consultations, investigations, and reports necessary for the execution of Consultant's work under this Agreement. The COUNTY shall, however, hold Consultant fully responsible for verifying, to the extent practicable, documents and information provided by the COUNTY and identifying the obvious deficiencies concerning documents and information provided. The Consultant agrees to incorporate the provisions of this paragraph in any subcontract into which it might enter with reference to the work performed under this Agreement.

ARTICLE 11. DISPUTE RESOLUTION

Disputes shall be resolved as follows: good faith negotiations by the designated agents of the Parties and if not resolved by such designated agents after ten (10) calendar days, Contractor shall submit its claim with the basis for the dispute, in writing, to the Manatee County Purchasing Official for a determination and handling in accordance with the provisions of the Manatee County Procurement Code.

ARTICLE 12. MAINTENANCE OF RECORDS; AUDITS

- A. Consultant shall maintain records, accounts, property records, and personnel records in accordance with generally accepted accounting principles, as deemed necessary by the COUNTY to assure proper accounting of funds and compliance with the provisions of this Agreement.
- B. Consultant shall provide the COUNTY all necessary information, records and contracts required by this Agreement as requested by the COUNTY for monitoring and evaluating services. The Consultant's information shall be made available to the COUNTY for audit, inspection or copying during normal business hours and as often as the COUNTY may deem necessary. The COUNTY shall have the right to obtain and inspect any audit pertaining to the performance of this Agreement or the Consultant made by any local, state or federal agency. The Consultant shall retain all of its records and supporting documents related to this Agreement in accordance with all applicable laws, rules and regulations. All records and supporting documents will be retained by the Consultant for at least three (3) years after the completion or termination of this Agreement.
- C. Reports and other documents prepared by the Consultant for the work are instruments of the Consultant's service for use solely with respect to the work and the Consultant shall be deemed the author of these documents and shall retain all common law, statutory and reserved rights, including the copyright.

The COUNTY shall be permitted to retain copies, including reproducible copies, of the Consultants' findings, reports, and other documents for information and reference in connection with the COUNTY's use. The Consultant's findings, reports, and other documents shall not be used by the COUNTY or others on other projects, for additions to projects or for completion of projects by others, unless the Consultant is adjudged to be in default under this Agreement. Submission or distribution of documents to meet official regulatory requirements or for similar purposes in connection with the projects is not to be construed as publication in derogation of the Consultant's reserved rights.

ARTICLE 13. LICENSES

The Consultant shall obtain any licenses required to provide the Scope of Services and maintain full compliance with any licensure requirements for the duration of the

Agreement. Copies of reports provided to or by any licensing or regulatory agency shall be forwarded to the COUNTY within ten (10) calendar days after receipt by the Consultant.

ARTICLE 14. CONTRACTUAL LIABILITY

- A. The relationship of the Consultant to the COUNTY shall be that of an independent Consultant. Nothing herein contained shall be construed as vesting or delegating to the Consultant or any of the officers, employees, personnel, agents, or Subconsultants of the Consultant any rights, interest or status as an employee of the COUNTY. The COUNTY shall not be liable to any person, firm or corporation that is employed by this Agreement or provides goods or services to the Consultant in connection with this Agreement or for debts or claims accruing to such Parties. The Consultant shall promptly pay, discharge or take such action as may be necessary and reasonable to settle such debts or claims.
- B. Records regarding payroll, costs and other expenditures incurred under terms of this Agreement shall be maintained and made available upon request to the COUNTY at all times during the period of this Agreement and for three (3) years after final payment is made. Copies of these documents and records shall be furnished to the COUNTY upon request. Records of costs incurred include the Consultant's general accounting records and the project records, together with supporting documents and records of the Consultant and all Subconsultants performing work on the project and all other records of the Consultant and Subconsultants considered necessary by the COUNTY for a proper audit of costs.

ARTICLE 15. INDEMNIFICATION

Consultant shall indemnify and hold harmless the County and its officers and employees, from liabilities, damages, losses, and costs, including but not limited to reasonable attorney's fees, to the extent caused by the negligence, recklessness, or intentionally wrongful conduct of the Consultant and other persons employed or utilized by the Consultant in the performance of this Agreement.

ARTICLE 16. NO WAIVER OF SOVEREIGN IMMUNITY

Nothing herein shall be interpreted as a waiver of the COUNTY of its rights, including the limitations of the waiver of immunity, as set forth in Florida Statutes 768.28, or any other statutes, and the COUNTY expressly reserves these rights to the full extent allowed by law.

ARTICLE 17. INSURANCE COVERAGE

- A. Before performing any Contract work, the Consultant shall procure and maintain, during the life of the Agreement, the insurance listed below. The policies of insurance shall be primary and written on forms acceptable to the COUNTY and placed with insurance carriers approved and licensed by the State of Florida.

1. Workers' Compensation - Consultant shall provide Workers' Compensation Insurance, on behalf of all employees who are to provide a service under this Agreement as required under Florida law, with Employers Liability not less than \$1,000,000.00.
 2. Commercial General Liability – Including but not limited to bodily injury, property damage, contractual, products and completed operations, and personal injury with limits of not less than \$1,000,000 per occurrence, and in aggregate covering all work performed under this Agreement.
 3. Umbrella Liability – With limits not less than \$1,000,000 per occurrence and in aggregate covering all work performed under this Agreement.
 4. Professional Liability – With limits of not less than \$1,000,000 for professional services rendered in accordance with this Agreement.
- B. Manatee County, a political subdivision of the State of Florida, shall be named as additional insured as their interest may appear under this Agreement. Insurer(s), with the exception of Professional Liability and Workers' Compensation, shall agree to waive all rights of subrogation against Manatee County, its commissioners, officers, agents, employees or volunteers.
- C. Each insurance policy required by this Agreement shall:
1. Be endorsed to state that coverage shall not be suspended, voided or canceled by either party except after thirty (30) calendar days prior, written notice by certified mail, return receipt requested, has been given to the Manatee County Purchasing Division.
- D. The procuring of required policies of insurance shall not be construed to limit the Consultant's liability or to fulfill the indemnification provisions and requirements of this Agreement.
- E. Certificates of Insurance evidencing claims made or occurrence from coverage and conditions of this Agreement, as well as the Contract number and description of work, are to be furnished to the COUNTY Purchasing Division prior to commencement of work. All insurance certificates shall be received by COUNTY Purchasing Division before the Consultant will be allowed to commence or continue work.
- F. CERTIFICATION OF INSURANCE AND COPIES OF POLICIES. Certificates of Insurance in triplicate evidencing the insurance coverage specified in the above paragraphs shall be filed with the Purchasing Official before operations are begun. The required certificates of insurance shall not only name the types of policy, policy number, date of expiration, amount of coverage, companies affording coverage, and also shall refer specifically to the Agreement number and title. Insurance shall remain in force at least three (3) years after completion and

acceptance of the project by the COUNTY in the amounts and types as stated herein, including coverage for all products and services completed under this Contract.

- G. On Certificate of Insurance the Certificate Holder should read: Manatee County Board of County Commissioners, or Board of County Commissioners of Manatee County.

ARTICLE 18. LITIGATION SERVICES

If notified by the Office of the County Attorney in writing, the Consultant agrees to provide litigation services up to and including the date of the completion of litigation as follows:

- A. Coordinate and communicate directly with the Office of the County Attorney.
- B. Provide any personnel performing services under this Agreement to testify in any litigation proceeding.
- C. Perform litigation services as directed by the Office of the County Attorney that may include but are not limited to:
 - 1. Predisposition, pretrial, or prehearing preparation.
 - 2. Preparation of court exhibits.
 - 3. Attendance and testimony at depositions, pretrial hearings, or other court hearings.
 - 4. Any other services deemed necessary by the assigned attorney to successfully litigate and defend the COUNTY's position in court.
- D. Compensation for litigation services shall not exceed the Consultant's Fee Rate Schedule listed in **Exhibit "B"**. The hourly billing rates shall contain all costs to include salaries, overhead, general and administrative, incidental expenses, fringe benefits and operating margin.
- E. The Consultant's travel expenses will be submitted and paid in accordance with Section 112.061, Florida Statutes, provided prior approval of the travel is obtained from the County Attorney or the County Attorney's designee.
- F. The Consultant shall submit monthly statements for litigation services rendered to the Office of the County Attorney for approval, providing detailed accounting sufficient for pre-audit and specifying services performed, the dates of the services, hours expended for each service, the name of the person who performed the service, the service and a breakdown of approved expenses incurred with all receipts and invoices attached.

ARTICLE 19. INFORMATION REPORTS

The Consultant shall provide all information and reports required by COUNTY policies, procedures, regulations, rules, orders and/or instructions. Where any information required of the Consultant is in the exclusive possession of another who fails or refuses to furnish the information, the Consultant shall certify such to the COUNTY, as appropriate, and shall set forth what efforts have been made to obtain the information.

ARTICLE 20. LEGAL RESTRAINTS AND LIMITATIONS

The Consultant acknowledges that the COUNTY is subject to restraints, limitations, regulations and controls imposed or administered pursuant to numerous applicable laws, ordinances, rules and regulations of federal, state, regional and certain local governmental agencies or authorities. The Consultant agrees that all services rendered or performed by the Consultant pursuant to the provisions of this Agreement, as amended, shall be in compliance with all applicable local, state and federal laws and ordinances.

ARTICLE 21. ASSIGNMENT AND SUBCONTRACTS

The Consultant shall not sublet, assign or transfer any work under this Agreement to another Consultant or Subconsultant without the prior written consent of the COUNTY.

ARTICLE 22. SOLICITATION OF AGREEMENT

The Consultant warrants that it has not employed or retained any company or person other than a bona fide employee working solely for the Consultant to solicit or secure this Agreement, and that it has not paid or agreed to pay any company or person other than an employee working solely for the Consultant, any fee, commission, percentage, brokerage fee, gift, contingent fee, or any other consideration contingent upon or resulting from the award or making of this Agreement. For breach or violation of this warranty, the COUNTY shall have the right to annul this Agreement without liability, or at its discretion, to deduct from the Agreement price or consideration or otherwise recover the full amount of such fee, commission, percentage, brokerage fee, gifts, or contingent fee.

ARTICLE 23. NOTICES

All notices, requests and authorizations provided for herein shall be in writing and shall be delivered by hand or mailed through the U.S. Mail, addressed as follows:

To the COUNTY: Manatee County Government, Utilities Department
 Attn: Deputy Director
 4410 - 66th Street West
 Bradenton, FL 34210
 Phone: (941) 792-8811

To the Consultant: McKim and Creed, Inc.
Attn: Street Lee, P.E., Vice President
1365 Hamlet Avenue.
Clearwater, FL 33756
Phone: (727) 442-7196

ARTICLE 24. GOVERNING LAW, JURISDICTION AND VENUE

This Agreement shall be governed by the laws of the State of Florida. Any action filed regarding this Agreement will be filed only in Manatee County, Florida, or if in Federal Court, the Middle District of Florida, Tampa Division.

ARTICLE 25. SUBCONSULTANTS

It is expected that the Consultant shall have standard in-house capability to provide all the services required by this Agreement. However, should the Consultant find it necessary to call upon the services of Subconsultants, the Consultant shall utilize the list and related fees contained in **Exhibit "B"**. The Consultant shall also require each Subconsultant to adhere to applicable provisions of this Agreement. The utilization of any Subconsultant by the Consultant shall not relieve the Consultant from any liability or responsibility to the COUNTY pursuant to the provisions of this Agreement, as amended, or obligate the COUNTY to the payment of any compensation to the Subconsultant or additional compensation to the Consultant. The Consultant is required to notify the COUNTY of any replacements or additions to **Exhibit "B"** and receive prior written approval of the replacements or additions before the use of the Subconsultant.

ARTICLE 26. NON-DISCRIMINATION

The Consultant will not discriminate against any employee or applicant for employment because of race, color, sex, creed, national origin, disability or age, and will take affirmative action to insure that all employees and applicants are afforded equal employment opportunities without discrimination because of race, color or national origin. Such action will be taken with reference to, but shall not be limited to, recruitment, employment, job assignment, promotion, upgrading, demotion, transfer, layoff or termination, rates of training or retraining (including apprenticeship and on-the-job training).

No person in the United States shall, on the grounds of race, color or national origin be excluded from participation in, be denied the proceeds of, or be subject to discrimination in the performance of this Agreement.

ARTICLE 27. KEY PERSONNEL

The following key personnel are hereby assigned to this Agreement by the Consultant and shall not be removed from the Agreement until alternate personnel acceptable to the COUNTY are approved, in writing, by the COUNTY:

Street Lee, P.E., Vice President

ARTICLE 28. PROFESSIONAL LIABILITY

The Consultant recognizes that the registered persons practicing services referred to in this Agreement as the Consultant, as provided by this Agreement or Florida Statutes, if any, are not relieved from personal liability for their negligent acts and that such personal liability shall not relieve Consultant or Consultant's association or corporation from liability.

ARTICLE 29. ETHICAL CONSIDERATIONS

The Consultant recognizes that in rendering the services pursuant to the provisions of this Agreement, the Consultant is working for the residents of Manatee County, Florida, subject to public observation, scrutiny and inquiry; and based upon said recognition the Consultant shall, in all of its relationships with the COUNTY pursuant to this Agreement, conduct itself in accordance with all of the recognized applicable ethical standards set by any related national societies, and the reasonable traditions to perform UTILITY LOCATING SERVICES.

ARTICLE 30. ACCEPTANCE

When the services of the Consultant required for any Work Assignment are complete, the Consultant shall notify the COUNTY in writing. Thereupon the COUNTY, within thirty (30) calendar days, shall either provide its written acceptance or give the Consultant written notice of any unfinished or improperly performed services to be finished or corrected. If such written notice of acceptance or exception is not given within such period of time, the services shall be deemed to have been accepted by the COUNTY. However, acceptance of the work performed by the Consultant shall not be construed to be an acceptance of improper, defective or deficient work.

ARTICLE 31. SEVERABILITY

It is understood and agreed by the Parties hereto that if any part, term or provision of this Agreement is held to be illegal or in conflict with any law, the validity of the remaining portions or provisions shall not be affected, and the rights and obligations of the Parties shall be construed and enforced as if the Agreement did not contain the particular part, term or provision held to be invalid.

ARTICLE 32. HEADINGS

All articles and descriptive headings of paragraphs of this Agreement are inserted for convenience only and shall not affect the construction or interpretation hereof.

ARTICLE 33. AUTHORITY TO EXECUTE

Each of the Parties hereto covenants to the other Party that it has lawful authority to enter into this Agreement.

ARTICLE 34. SUCCESSORS AND ASSIGNS

This Agreement shall be binding on successors, assigns, and legal representatives of and persons in privity of Agreement with the COUNTY or Consultant. Neither Party shall assign, sublet or transfer an interest in this Agreement without the written consent of the other. This shall survive completion or termination of this Agreement.

ARTICLE 35. ATTORNEY FEES

In the event of any litigation arising under the terms of this Agreement, each Party shall be responsible for their own attorney's fees, including appellate fees, regardless of the outcome of the litigation.

ARTICLE 36. NO CONFLICT

By accepting award of this Agreement, Consultant, which shall include its directors, officers and employees, represents that it presently has no interest in and shall acquire no interest in any business or activity which would conflict in any manner with the performance of duties or services required hereunder.

ARTICLE 37. PUBLIC RECORD

By accepting award of this Agreement, Consultant acknowledges that the portion of its books and records related to its contracting activities with COUNTY may become subject to inspection and copying under the Florida Public Records Act and that it will, in all respects, comply with any requirements of that Act.

ARTICLE 38. PUBLIC ENTITY CRIMES

Consultant has been made aware of the Florida Public Entity Crimes Act, § 287.133, Florida Statutes, specifically section 2(a), and the COUNTY's requirement that the Consultant comply with it in all respects prior to and during the term of this Agreement.

ARTICLE 39. NO THIRD-PARTY BENEFICIARIES

This Agreement is solely for the benefit of the Parties hereto, and no right, privilege, or cause of action shall by reason hereof accrue upon, to, or for the benefit

of any third party. Nothing in this Agreement is intended or shall be construed to confer upon or give any person, corporation, partnership, trust, private entity, COUNTY, or other governmental entity any right, privilege, remedy, or claim under or by reason of this Agreement or any provisions or conditions hereof.

ARTICLE 40. LEGAL REFERENCES

All references to statutory sections or chapters shall be construed to include subsequent amendments to such provisions, and to refer to the successor of any such provision. References to "applicable law" and "general law" shall be construed to include provisions of local, state and federal law, whether established by legislative action, administrative rule or regulation, or judicial decision. The table of contents and the headings of articles and sections are for convenience only and shall not modify rights and obligations created by this Agreement.

ARTICLE 41. FORCE MAJEURE

Neither Party shall be considered in default in performance of its obligations hereunder to the extent that performance of such obligations or any of them is delayed or prevented by Force Majeure.

Force Majeure shall include, but not be limited to, hostility, revolution, civil commotion, strike, epidemic, accident, fire, flood, wind, earthquake, hurricane, explosion, lack of or failure of transportation facilities, any law, proclamation, regulation, ordinance or other act of government, or any act of God or any cause whether of the same or different nature, existing or future; provided that the cause, whether or not enumerated in this Article, is beyond the control and without the fault or negligence of the party seeking relief under this Article.

ARTICLE 42. PATENT AND COPYRIGHT RESPONSIBILITY

The Consultant agrees that any material, design or supplied specified by the Consultant or supplied by the Consultant pursuant to this Agreement shall not knowingly infringe any patent or copyright, and the Consultant shall be solely responsible for securing any necessary licenses required for patented or copyrighted material utilized by the Consultant in the performance of the UTILITY LOCATING SERVICES.

ARTICLE 43. COMPLIANCE WITH APPLICABLE LAW

In performance of its obligations pursuant to this Agreement, Consultant shall comply with all applicable provisions of federal, state, and local law. All limits or standards set forth in this Agreement to be observed in the performance required under this Agreement are minimum requirements, and shall not affect the application of more restrictive federal, state, or local standards applied to the performance of the Agreement.

ARTICLE 44. AMENDMENTS

This Agreement and Exhibits referenced herein constitute the entire Agreement between the Parties. No amendment hereof shall be effective until and unless reduced to writing and executed by the Parties.

UTILITY LOCATING SERVICES

12-0641BG

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be duly executed by their authorized representatives.

CONSULTANT

McKim and Creed, Inc.
1365 Hamlet Avenue,
Clearwater, FL 33756

By: 

STREET LEE SR. VICE PRESIDENT
Print Name & Title of Above Signer

COUNTY OF MANATEE, FLORIDA

By: 

Melissa M. Wendel, CPPO
Purchasing Official

EXHIBIT A

SCOPE OF SERVICES

PURPOSE

Sunshine State One Call of Florida (SSOCOF) is a not-for-profit corporation formed by the Florida Legislature with the 1993 adoption of the Underground Facility Damage Prevention and Safety Act, Chapter 556, Florida Statutes. Its main purpose is to help prevent damages to underground facilities by administering a statewide notification system that notifies its members where excavation or demolition is scheduled. Member operators are persons or companies who furnish or transport materials (gas, water, sewage) or services (electricity, telephone, cable television, Internet access) using an underground facility. Membership in SSOCOF is mandatory for any entity that owns or operates underground facilities in Florida.

As part of our member obligations, Manatee County is responsible for responding to utility marking requests entered into the Sunshine State One Call of Florida (SSOCOF) system.

SCOPE OF SERVICES

The intent of this Agreement is to provide one (1) certified utility locating technician to assist Manatee County with meeting their obligations under the SSOCOF regulations. The specific project needs will be determined by Manatee County and the Consultant is reminded that this Agreement does not guarantee the amount of work, if any, available under the Agreement.

Consultant shall perform and provide the following tasks under this Agreement:

- Provide one (1) certified Locator, hereafter called "Locator", to serve as "Call Sunshine Locator" to respond to "Call Sunshine Tickets". Call Sunshine Tickets are requests by excavators to mark Manatee County utilities within the right-of-way. This applies only to Manatee County WATER, SEWER, RECLAIMED WATER, TRAFFIC LIGHTING, and FIBER facilities.
- Mark each utility within the locate ticket area with paint or flagging per American Public Works Association (APWA) color-coding. The level of locating provided by the Consultant shall be Quality Level "B", based upon those defined by the Florida Department of Transportation Utility Accommodation Manual.
- Provide the Locator with a truck dedicated to this Utility Locating service. The truck will be fully-equipped to locate metallic water mains and/or power cables with detection device that provide accurate locate results.

SCOPE OF SERVICES (CONTINUED)

- The truck will be provided with magnetic signs that indicate that the Consultant is serving Manatee County. These magnetic signs will accompany the Consultant's logo and phone number. The Locator shall possess a valid motor vehicle license with an acceptable driving record.
- Provide a laptop computer for field access to the internet based work order management system.
- Perform the utility locates, as assigned by the Manatee County Locate Supervisor.
- Per Florida Statute Chapter 556.102 Definitions, subsection 10, 556.105 Procedures and 556.116 Special procedures subsection C-2, the Consultant's Locator shall enter positive response information into the Positive Respond System before the response period expires.
- Provide a cell phone so that Manatee County can contact the Locator during normal working hours. In addition, the Consultant will provide the County a contact name and number in the event of an emergency.
- Subsurface Utility Engineering (SUE) investigations using vacuum excavate equipment, ground penetrating radar or other means, are covered under this Agreement and are only on an "as needed" basis.
- Pot-holing and probe-rod locating will be done to field-verify potential pipeline locations within pervious soil areas. Locations that require extensive and deep digging and field excavation (more than 2 hours per job site) will be referred back to the Manatee County Locate Supervisor to discuss options of SUE work with the County.
- The Consultant will comply with the OSHA Trench Safety Act under all conditions. Field crews will not be supplied with sheeting/shoring or trench boxes; therefore, pot-holing will be limited to three (3) feet in depth. Jobs requiring excavation beyond these limits will be referred by the locate staff to the Manatee County Locate Supervisor to discuss options of SUE.
- Utilities will be located in the field based upon best information available, provided in County records. The Consultant will not be liable for incomplete, incorrect or inaccurate information on County Records.
- Facilities will be located by the most evident information in the field (valves, hydrants, and meters). Accuracy of locates of traceable or metallic facilities will be within 24 inches of center.

SCOPE OF SERVICES (CONTINUED)

- The Consultant limits the accuracy of traceable or metallic facility locates to ten (10) feet in depth. If the facility resides deeper than that, the Manatee County Locate Supervisor will discuss other options for locating with the Locator.
- The Consultant will notify the County of any deficiencies discovered within the record information. Any inaccuracy discovered in the field will require that the Locator prepare a field sketch showing horizontal location referenced to a minimum of three (3) swing ties to physical structures existing in the field.

HOURS OF SERVICE

The County's normal working hours are between 7 a.m. and 5 p.m., Monday through Friday, except for holidays. County holidays are as follows:

- New Years Day
 - Martin Luther King Day
 - President's Day
 - Memorial Day
 - Independence Day
 - Labor Day
 - Veteran's Day
 - Thanksgiving Day
 - Thanksgiving Friday
 - Christmas Eve
 - Christmas Day
- The Locator's day will start and end at the Manatee County office, unless otherwise coordinated with the county's Locate Supervisor.
 - The Consultant's Locator will have a quota of routine locate tickets to mark per day, based on the incoming ticket volume and size of project. The overall average quota per day will be 10-20 tickets per Locator.
 - In the event inclement weather is declared by Manatee County, the Consultant will only be reimbursed for actual hours worked by Locator.

SCOPE OF SERVICES (CONTINUED)

RESPONSIBILITY OF THE COUNTY

The County will be responsible for the following:

- Manatee County will review all work and coordinate locate staff, both County as well as Consultant personnel. The Manatee County Locate Supervisor will also coordinate any additional non-routine projects and monitor staffing, accomplishments, quotas, and other needs and requests of the locate personnel.
- The Locate Supervisor will be the only authorized individual to coordinate with those SSOCOF requestors whose responses are delayed beyond the two (2) business day requirement.
- Receiving all Call Sunshine Tickets through Work Order Management System (IRTHNet).
- Sort tickets by: excavation, design, and survey.
- Sort tickets by service areas and non-serviced areas.
- Make copies of atlases and as-builts for each locate request when the system is down.
- Provide paint and flags as required to mark facilities in the field.
- Coordinate the completion of each locate job with Manatee County's Locate Supervisor and coordinate any incomplete locate jobs to next day's activities.
- Perform all emergency locates.
- Track and manage all County and Consultant personnel.
- Investigate utility damages and generate damage reports.
- Provide training to the ticket work order system and GIS mapping application.
- The County will coordinate with the Consultant on an as needed basis for locate services, depending on the ticket volume.

END SCOPE OF SERVICES

EXHIBIT "B"
UTILITY LOCATING SERVICES
(RFP 12-0641BG)
HOURLY FEE RATE SCHEDULE

CLASSIFICATION/JOB TITLE	FEE RATE (\$/HR)
SUE Project Manager	\$155.00
Senior SUE Office Technician	\$85.00
SUE Office Technician	\$68.00
SUE 3 Person Designate Crew - Includes Equipment and Crew	\$175.00
SUE 3 Person Locate Crew (Vacuum Excavation) - Includes Equipment and Crew	\$210.00
One-Call Utility Locator	\$65.00
Senior One-Call Utility Locator	\$80.00
Maintenance of Traffic (MOT) Crew when required by County	\$150.00
CADD Technician	\$65.00
Admin Assistant	\$65.00
Principal Professional Surveyor	\$134.00
Survey Project Manager	\$95.00
Professional Surveyor	\$84.00
Survey Technician	\$52.00
2-Person Field Survey Crew	\$93.00
3-Person Field Survey Crew	\$114.00
4-Person Field Survey Crew	\$125.00

Exhibit "B" (CONTINUED)
UTILITY LOCATING SERVICES
(RFP 12-0641BG)

SCHEDULE OF REIMBURSABLE & ADDITIONAL CHARGES

Expense of reproduction beyond the costs associated with providing monthly status, invoices, reports and routine correspondence:

Plan Sheet (24" x 36")	\$ <u>1.50</u> per sheet
Plan Sheet (oversize)	actual cost
Color Photo Copies (8-1/2" x 11")	\$ <u>.75</u> per page
Copy Machine Reproductions	\$ <u>.10</u> per copy

Actual charges for long distance telephone calls, including applicable local, state and federal taxes, but excluding those made to Manatee, Sarasota, Pinellas or Hillsborough Counties, as documented by copies of original invoices.

Travel at the written request of County to be reimbursed in accordance with the limitations provided in Florida Statute 112.061, excluding travel in Manatee, Sarasota, Pinellas or Hillsborough Counties.

Per Diem	\$ 36.00 per day
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Mileage	\$ 0.56.5 per mile
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Actual charges for application fees charged in the process of obtaining the permits outlined in the scope of work as documented by copies of original invoices.

Actual charges for Courier Service furnished at the request of County, at rates not to exceed \$ 12.00 per package and to be documented by copies of original invoices.

Actual time for computer modeling service (to include CAD, GIS, hydraulic modeling, process modeling, and CFD) at rates not to exceed \$ 12.00 per hour as documented by copies of records of service use.

Actual direct costs of subconsultants and subcontractors approved by the Contract Manager, plus a per Work Assignment negotiated administrative fee not to exceed 5%.

EXHIBIT "C"

WORK ASSIGNMENT NUMBER:

Pursuant to the Manatee County, Florida, Agreement for Architectural /Engineering services for Engineer of record entered into by and between the COUNTY OF MANATEE, hereinafter referred to as the "County" and _____ hereinafter referred to as the "Consultant," a determination has been made by the County that there is a need for the performance of or rendering of services by the Consultant of a certain "Work Assignment" under the purview of said Contract, and the Consultant is hereby authorized to perform or render the particular services of work described as follows:

TITLE OF THE PROJECT:

PHASES AND/OR TASKS OF PROFESSIONAL SERVICES AUTHORIZED:

Consultant shall perform tasks as more specifically detailed in Attachments _____ through _____ as follows:

<u>TASK NO.</u>	<u>TITLE</u>	<u>COMPENSATION</u>

Compensation to the CONSULTANT for rendering all of the above identified services and products shall not exceed \$_____. Compensation for the tasks shall not exceed the amounts shown.

Any modification to the project resulting in increases to prior cost estimate or potential overruns shall be communicated to Manatee County, in writing, prior to initiation of work, for approval of the Contract Manager.

COUNTY may authorize, in writing, in advance, adjustments in the compensation for particular tasks established above, provided such adjustments do not exceed the maximum compensation authorized for this Work Assignment.

Partial compensation may be requested on a monthly basis for unit prices and actual hours incurred but not to exceed the percentage of the task completed.

SIGNATURE PAGE FOR WORK ASSIGNMENT NUMBER _____

_____, Inc
_____, Street
_____, FL

By: _____

Print name & title of above signer

COUNTY OF MANATEE, FLORIDA

By:

Melissa Wendel, CPPO
Purchasing Official

EXHIBIT D

AFFIDAVIT OF NO CONFLICT

STATE OF FLORIDA

COUNTY OF Pinellas

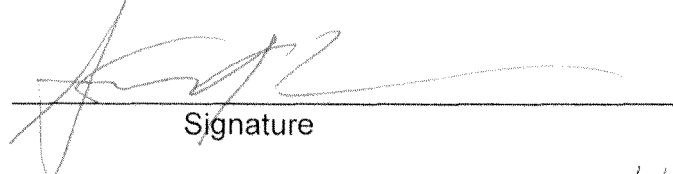
BEFORE ME, the undersigned authority, this day personally appeared Street Lee, a principal with full authority to bind McKim & Creed, Inc., hereinafter the "Consultant"), who being first duly sworn, deposes and says:

(a) is not currently engaged or will not become engaged in any obligations, undertakings or contracts that will require the Consultant to maintain an adversarial role against the County or that will impair or influence the advice, recommendations or quality of work provided to the County; and

(b) has provided full disclosure of all potentially conflicting contractual relationships and full disclosure of contractual relationships deemed to raise a question of conflict(s); and

(c) has provided full disclosure of prior work history and qualifications that may be deemed to raise possible question of conflict(s).

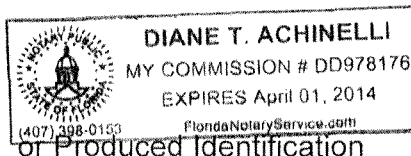
Affiant makes this affidavit for the purpose of inducing Manatee County, a political subdivision of the State of Florida, to enter into this Agreement for


Signature

SUBSCRIBED to and sworn before me this 14 day of FEBRUARY, 2013.


Notary Public

My commission expires:



Personally Known or Produced Identification

Type of Identification Produced _____