

TOTAL COST AGREEMENT

THIS TOTAL COST AGREEMENT entered into this _____ day of _____, 2006 by and between Florida Municipal Equipment, Inc. ("FME") and the CITY OF GAINESVILLE, Gainesville, Florida, a municipal corporation existing under the laws of the State of Florida ("CITY").

DEFINITIONS

The term "City" shall mean the City of Gainesville, Florida.

The term "FME" shall mean Florida Municipal Equipment, the dealer (business) who represents the manufacturer of the equipment being purchased.

The term "Fleet Management Director" shall mean the City Fleet Management Director or his designated representative wherein the equipment will be operated and maintained.

The term "FME Principal" shall mean the principal person or his designated representative of FME for whom this contract shall apply.

The term "business day" or "normal business day" shall mean a day which falls on or between Monday and Friday of the calendar week, 52 weeks a year, excluding City holidays. A list of all City holidays shall be supplied to FME from the City yearly upon request.

The term "normal working hours" shall mean the time period of a normal business day when the City's main equipment shop and/or maintenance facility is normally open for operation. The City shall supply FME with this information yearly upon request.

The term "in-service date" shall mean the date the City places the unit in operation. The City will notify the FME Principal of the in-service date.

The term "downtime" shall mean the period of time measured in normal workdays that the unit is unable or unsafe to perform those operations for which the unit was designed. FME supervising personnel, after inspection, will determine if the unit is inoperable or unsafe.

WITNESSETH:

1. FME hereby sells, and the CITY hereby purchases, subject to the terms and conditions set out herein, the following equipment:

One new Johnston J4000 Street Sweeper V.I.N. # _____
(to be inserted upon delivery)

2. City agrees to pay to FME the total cash purchase price of \$ 162,459.50 , (one hundred sixty two thousand, four hundred fifty nine dollars and fifty cents) F O B., Gainesville, Florida. FME will deliver a bill of sale acceptable to the CITY upon delivery of the equipment.

3. FME warrants that the equipment will be free from defect in design, workmanship and materials; and will be fit and sufficient for the purpose intended. All warranties shall survive inspections, tests, acceptance or payment by the CITY.

4. FME agrees to repurchase from the City the equipment described in paragraph 1 at the end of 8,000 hours of service (service meter hours) or four years from the in-service date, whichever comes first. FME agrees to pay to the City the sum of \$ 22,000.00 , cash on delivery. The parties agree that the exercise of this provision shall be at the sole option of the City. The City agrees to notify FME in writing no later than thirty (30) days prior to the four year in-service anniversary date. FME agrees to complete the repurchase on or about the four year anniversary of the in-service date or at another date mutually agreed upon by both parties. FME agrees to pay transportation charges to its place of business. The parties agree that the repurchase is not a trade-in value and is not contingent on the purchase of new or used equipment from FME thereafter. FME's obligation to accept the sweeper under this guaranteed buyback is subject to normal wear and tear for a comparable unit at this age. Damage as a result of accident, misuse, and/or abuse will either be corrected at the City's expense prior to exercising this buyback provision or an estimate for repairs will be submitted to the City and if agreed, deducted from the guaranteed buyback amount of **\$22,000.00**.

5. The City shall have the right to retain or to sell, loan, lease, trade, or otherwise dispose of the equipment, at its discretion. Upon the election of any of these options by the City, the City agrees to notify FME of this election within thirty (30) days of said election. Any such election by the City shall render the repurchase provisions of paragraph 4 null and void.

6. FME warrants that the total cost to the City for operation and maintenance of 8000 hours or four years, whichever comes first, from the in service date of the equipment, except for those repairs, maintenance and operating costs which are the responsibility of the City as set out in items # 8 & 9 below, shall not exceed the sum of \$23,500.00. FME agrees to incorporate all costs to repair and/or replace all parts and components normally consumed in the day-to-day operation, such as lubricating oil, filters of all types, grease, anti-freeze, batteries, glass breakage, cleaning, painting, and mechanical adjustment not necessitated by repairs into the total not to exceed total cost accrual. In determining whether the Guaranteed Maximum Cost of Repairs and Maintenance has been reached, the cost of repairs (including parts and labor) made under the four (4) year or 8,000 engine hour extended warranty described below shall not be included.

FME shall provide an extended warranty policy for a total period of four (4) years or 8,000 engine hours, whichever comes first. This extended warranty policy shall include the engine, drive train, suspension, steering system, braking system, electrical system, structural integrity, and all operational equipment necessary to perform the task for which the machine was designed,

excluding consumable items. Time will be measured in calendar years from the in-service date and the engine hours will be recorded on the hourmeter provided with the machine.

7. During the extended warranty period, FME will be responsible for 100% of parts and labor for all repairs covered under the extended warranty policy. The City will notify the FME Principal during normal working hours of necessary warranty repairs that are covered by the extended warranty policy. The City will assume full responsibility for repair costs due to theft, vandalism, accident, City personnel negligence, acts of God, or items not covered by the extended warranty policy.

At such time a warranty repair is reported, the City Fleet Management Director or his designee and the FME Principal will determine whether the repair will be made by one of the following methods:

A. In FME's service shop:

FME may, at their discretion, repair the machine at FME's designated service shop. Transport to and from the City will be at the expense of FME.

B. By FME's field service mechanic:

FME's field service mechanic will repair the machine at the City's maintenance facility or at a location mutually agreed upon by the City and the FME Principal. FME's field mechanic shall comply with State and Local safety regulations and general legal regulations and responsibility conditions when working on City property. Cost of repairs to the unit, travel expense of mechanic, mechanics hourly rate, per diem, and truck rental shall be at the expense of FME.

C. In City maintenance facility:

Upon request of FME, City service shop repairs may be made by City service personnel at the City maintenance facility. City maintenance facility repairs will only be made provided the City maintenance workloads, at the time of request, enable such repairs.

City maintenance facility repairs will be made during normal working hours by qualified City personnel. FME will supply all necessary repair parts at no cost to the City.

D. Any other method mutually agreed upon between the FME Principal and the City that results in no cost to the City.

In the event a minor warranty repair is immediately necessary to avoid a public hazard, the City may perform minor warranty repairs prior to FME notification. FME shall reimburse the City for the cost of such repairs in accordance with the actual time spent as long as deemed reasonable by FME.

City repairs authorized by the FME Principal shall be FME certified as equal to repairs made by FME. All parts removed by the City for replacement will be made available to FME, at FME's request, with no cost to the City. All City labor costs will be charged at a rate of \$55.00 per hour for shop or field labor. Service rates will be recalculated yearly and updated accordingly. FME will be notified by the City prior to service rate adjustments.

All repair parts, with the exception of major component assemblies shall be shipped from either FME's facility or the manufacturer's facility within two business days of when the order is placed. FME will be told that the part is "critical" when ordered, and the City understands express freight charges will be charged to its account. If parts do not ship within timeframe indicated above, said part(s) would be free of charge.

Service personnel will respond to commence repairs within a maximum of two business days from time of notification that unit is inoperable or unsafe and requires repair. If service isn't commenced within the timeframe above FME will reimburse the City \$200 per business day for each business day that said repair is not started.

If a breakdown is not a result of theft, vandalism, accident, City personnel negligence, or act of God, and five normal business days have passed since notification to FME without the vehicle being repaired and operable, FME, at their choice, shall either provide a comparable loaner sweeper or reimburse City at a rate of \$200 per business day for each business day beyond the five days that the repair is not completed.

8. The City agrees to assume the responsibility for all repair costs due to the City's negligence resulting from damage from fire, flood, windstorms, lightning, theft, vandalism, and City operator's and City mechanic's negligence.

9. Brooms and fuel are the City's responsibility and are not included in the guaranteed not to exceed total for repair and maintenance costs as described in Item #6. A further detailing of items denoting which ones are to be included in the not-to-exceed maintenance figure of **\$23,500.00** and which ones are excluded is attached as Appendix 1.

10. The City agrees to pay the wages of operators employed to operate the equipment and all Worker's Compensation Insurance.

11. The City agrees to pay the expense of maintaining insurance on the equipment.

12. The equipment purchased will be operated throughout the City by qualified City personnel. Equipment operation will consist of only those duties for which the machine was designed. Only City personnel qualified by the City as equipment operators will operate the equipment. The City will incorporate an operator training program for all total cost equipment under this contract.

13. When performing work, both FME and the City agree to maintain equipment in accordance with the manufacturer's recommendations which shall be supplied by FME. FME will retain the right to inspect the equipment and make recommendations for repairs at the City's convenience.

14. The City may, at its own expense, install or place in or on, or attach or affix to the equipment, such accessories as may be necessary or convenient to use the equipment for its intended purposes provided that such accessories do not impair the value or utility of the equipment. All such accessories may be removed by the City upon repurchase by FME, provided that any resulting damage shall be repaired at the City's expense. Any such equipment or accessories not removed shall become the property of FME.

15. At the termination of this agreement, FME will pay to the City the cost of repairs in excess of the amount set out in paragraph 6.

16. FME reserves the right to examine the City's cost records and will have ninety (90) days to contest the preceding year's parts and labor costs. Otherwise, the records for the year will be considered acceptable to both parties.

17. In the event of misunderstandings as to the interpretation of this Total Cost Agreement, or a particular section within, an arbitration board will be set up to arbitrate and resolve any misunderstanding and/or to help interpret this contract and its intent as the need may arise. The arbitration board will consist of one (1) City representative, one (1) FME representative, and one (1) neutral person selected jointly by the two (2) above members as the arbitrator. Arbitration shall occur during normal working hours and be conducted by a recognized arbitration association (Ref., American Arbitration Association). The requesting body shall pay arbitration fees. The ruling of any two members of the arbitration board will be binding on both parties.

18. FME agrees to indemnify, defend and hold the City and its agents, employees and officers harmless for any and all loss, liability, damages, claims or demands arising out of defective equipment provided under this agreement or negligent or unlawful acts, faulty work performance, or noncompliance with any local, state, or federal codes, ordinances, orders or statutes by FME or its employees or representatives.

19. FME shall provide City with evidence of general liability insurance and worker's compensation insurance acceptable to the City. City shall be named as an additional insured on the general liability policy.

20. Neither this agreement nor either party's rights hereunder shall be assigned except with written consent of the nonassigning party.

21. The parties hereto designate the following persons to be contacted regarding the performance of this agreement:

CITY: Will Massey, Fleet Operations Manager
City of Gainesville Fleet Management
P.O. Box 490, Mail Station 35
Gainesville, FL 32602
352-334-2258

FME: Mr. Dan Federico, President
Florida Municipal Equipment, Inc.
P.O. Box 540
Eaton Park, FL 33840-0540
941-665-2091

22. Nothing in this agreement shall be interpreted as a waiver of sovereign immunity as provided in Section 768.28 F.S.

23. The City, at its option, may send one (1) heavy equipment mechanic from the City's maintenance facility to Johnston's authorized school. This training shall be conducted at the manufacturer's place of business or at a location agreeable to both parties. Cost of the training, except for the trainee's transportation and per diem expense, is included in the purchase price.

24. Time is of the essence of this agreement.

IN WITNESS WHEREOF, the parties have executed this agreement this _____ day of _____, 2006.

WITNESS:

FLORIDA MUNICIPAL EQUIPMENT, INC.

Printed Name: _____

Joe Federico

Title: _____

General Manager

WITNESS:

CITY OF GAINESVILLE

Printed name: _____

Russ Blackburn,

Title: _____

City Manager

APPENDIX 1

CONSUMABLE ITEMS DEFINED

- A. Consumable items that are a part of the not-to-exceed \$23,500 calculations.
1. All lubricants, fluids, and filters for scheduled maintenance as indicated in the manufacturer's published instructions.
 2. All replaceable light bulbs and lenses.
 3. Glass breakage
 4. All batteries
 5. All replaceable engine "V" belts (fan belt, alternator belt, etc.)
 6. Replaceable brake pads and linings.
 7. Pneumatic tires and tire repairs.
 8. Street shoes and rubber wear strips.
 9. All replaceable squeegees or wiper blades
- B. Consumable Items Purchased by the City and Not a Part of the not-to-exceed \$23,500 Calculation.
1. Fuel
 2. Main pickup broom
 3. Replaceable gutter broom segments