Clay County Agreement/Contract No. 2019/2020-42

**FLEMING ISLAND HIGH SCHOOL HURRICANE RETROFIT 2019**

THIS CONTRACT for FLEMING ISLAND HIGH SCHOOL HURRICANE RETROFIT 2019 (the Contract) is entered into as of the 26th day of November 2019, by and between Clay County, a political subdivision of the State of Florida, by and through its Board of County Commissioners (the County), the School District of Clay County, Florida, by and through the Clay County School Board (the School District), and Charles Perry Partners, Inc. (the Contractor), whose address is 8200 N.W. 15th Place, Gainesville, Florida 32606.

SECTION 1. PURPOSE AND PROJECT

1-1. The Contractor, in consideration of the payments agreed to be made by the County, hereby covenants and agrees to furnish and deliver all material, and to perform all the work and labor required for the following project in accordance with this Contract and the governing documents identified below:

FLEMING ISLAND HIGH SCHOOL HURRICANE RETROFIT 2019 (the Project).

SECTION 2. GOVERNING DOCUMENTS

2-1. For purposes of this Contract, the "Bid Solicitation" shall mean the County's Bid No. 18/19-20 including all addendum and clarifications thereto. The "Specifications" shall mean the written specifications for the Project incorporated into the Bid Solicitation. The Contractor shall construct the Project all in accordance with the Specifications. In performing the work of the Project, the Contractor shall also comply with and conform to all requirements set forth in the bid instructions provided in the Bid Solicitation. The Contractor shall complete the Project and shall perform the work contemplated in this Contract in strict conformity with the following documents which are attached or if not, incorporated by reference and made a part hereof:

(a) The Bid Solicitation - Bid No. 18/19-20 and Addendum No. 1 issued July 9, 2019;

(b) The Contractor's Response to the Bid Solicitation dated July 15, 2019. Although, the entire Contractor's Response is included and adopted by reference to this Contract, for ease of reference a portion of Contractor's Response is attached as Exhibit A; and

(c) The Scrutinized Companies Certification (attached as Exhibit B).

All documents described above are kept on file in the office of the Clay County Purchasing Division. This Contract and all of the documents enumerated above together comprise this Contract.

SECTION 3. INDEMNIFICATION

3-1 The Contractor shall fully protect, indemnify and hold harmless the County and the School District and all of their principals, employees, officers, and servants (collectively, the Indemnitees), from and against any and all liabilities, damages, losses and costs, including, but not limited to, reasonable attorney's fees, to the extent caused by the negligence, recklessness, or intentional wrongful misconduct of Contractor and persons employed or utilized by Contractor in the performance of this Contract. The provisions of this paragraph shall survive any termination of this Contract.

3-2. With respect to any indemnification by the County provided under this Contract, any such indemnification shall be subject to and within the limitations set forth in Section 768.28, Florida Statutes, and to any other limitations, restrictions and prohibitions that may be provided by law, and shall not be deemed to operate as a waiver of the County's sovereign immunity. The School District shall not be required to indemnify any party to this Contract. Upon default of the Contractor, the County agrees to indemnify the School District for any loss or damage, including attorney's fees and costs, related to this Contract and shall ensure that the work which is the subject of this Contract shall be performed without any cost to the School District and that said work shall be completed as specified.

3-3. Nothing in this Contract or any of the documents identified in Section 2-1 shall be construed as providing any subcontractor, as defined in Section 9, with any rights or remedies against the County or the School District or any of their employees, principals, officers or agents for nonpayment or otherwise.

SECTION 4. CONTRACT AMOUNT

4-1. For purposes of this Contract, the Contract Amount is defined as the Contract Price set forth in subsection 4-2 as adjusted by approved supplemental Contracts (Supplemental Contracts).

4-2. In consideration of the premises, the County agrees to pay all associated construction costs, as identified in the Bid Solicitation and the Contractor's Response, to the Contractor for the Project herein when fully completed. The total price for the work of the Project is **$54,247.00** (the Contract Price.) Payments are to be made upon presentation of the proper certificates detailing the work completed to the County Representative upon the terms set forth in the Specifications provided in the Bid Solicitation.

4-3. Whenever any change or combination of changes in the Specifications results in an increase or decrease in the original quantities set forth in the Specifications or the Bid Solicitation, and the work added or eliminated is of the same general character as that shown on the original Specifications, the Contractor shall accept payment in full at the original Contract unit prices for the actual quantities of work performed.

4-4. Supplemental Contracts shall be used to clarify the Specifications to provide for major quantity differences which result in the Contractor's work effort exceeding the original Contract amount, to provide for unforeseen work, or alterations in the Specifications which could not reasonably have been contemplated or foreseen in the original Specifications, to provide a safe and functional facility, to settle Contract claims, and to make the Project functionally operational in accordance with the intent of the original Contract. No work covered by a Supplemental Contract shall be performed before the County Representative gives written authorization. Such written authorization shall set forth the prices agreed upon and other pertinent information and shall be reduced to a written Supplemental Contract promptly. No payment shall be made on a Supplemental Contract prior to County approval of the document. In addition, the County shall make no payment for any unauthorized work.

4-5. In that the County is a governmental agency exempt from sales and use taxes, the County shall pay no such taxes. The County shall provide proof of its exempt status upon reasonable request.

SECTION 5. TIMELY PERFORMANCE

5-1. The Contractor agrees to perform all necessary work as provided for in this Contract, the Specifications, and the Bid Solicitation.

5-2. The date on which days will begin to be charged to the Project (the Notice to Proceed Date) shall be either (1) the 10th calendar day from the date of issuance by the County Representative of the initial notice to begin work or, (2) the date on which the Contractor actually begins work, whichever date is the earlier.

5-3. The Contractor shall accomplish final completion of the Project on or before the 120$^{th}$ calendar day after the Notice to Proceed Date (the Final Completion Date). Any extension of the Final Completion Date will require a subsequent agreement of the parties.

5-4. The Contractor shall provide a certificate of insurance as required in the Bid Solicitation, naming Clay County, a political subdivision of the State of Florida and its Board of County Commissioners, and the School District of Clay County and its members of the School Board, as their interests may appear, as additional insureds under general liability.

5-5. A Supplemental Contract shall be used when a time extension is required due to any unforeseen circumstances; provided, Supplemental Contracts shall not be used for time extensions requested by the Contractor under circumstances or conditions attributable to the Contractor. Such Supplemental Contract shall set forth the agreed amount of time for such extension.

SECTION 6. DEFAULT

6-1. In case of default on the part of the Contractor, actions for all damages and expenses, including accounting, engineering and legal services, together with any and all other costs incurred in connection with such default, shall lie against the Contractor.

6-2. If the Contractor fails to begin the work under this Contract as of the Notice to Proceed Date or fails to perform the work with sufficient workmen and equipment or with sufficient materials to assure the prompt completion of this Contract or performs the work unsuitably or neglects or refuses to remove materials or to perform anew such work as may be rejected as unacceptable and unsuitable, or discontinues the prosecution of the work, or fails to resume work which has been discontinued within a reasonable time after notice to do so, or becomes insolvent or is declared bankrupt, or files for reorganization under the bankruptcy code, or commits any act of bankruptcy or insolvency, either voluntarily or involuntarily, or allows any final judgment to stand against it unsatisfied for a period of ten calendar days, or makes an assignment for the benefit of creditors, or for any other cause whatsoever fails to carry on the work in an acceptable manner, the County Representative will give notice in writing to the Contractor of such delay, neglect, default or opinion.

6-3. If the Contractor, within a period of ten calendar days after the notice described in subsection 6-2, shall not proceed to correct the conditions of which complaint is made the County shall, upon written certificate from the County Representative of the fact of such delay, neglect, default or opinion and the Contractor's failure to correct such conditions, have full power and authority, without violating this Contract, to take the prosecution of the work out of the hands of the Contractor and to declare this Contract to be in default.

6-4. This Contract is to be binding upon the County and upon the Contractor, their heirs, successors, administrators, or assigns and is voidable and may be terminated by the County if the provisions of the statutes and documents incorporated herein relative thereto are not complied with.

6-5. Termination of this Contract or a portion hereof under the provisions incorporated herein shall not relieve the Contractor of its responsibilities for the completed portion or concerning any just claims arising out of the work performed.

SECTION 7. TERMINATION

7-1. The County may terminate this Contract or any amendment hereto at its convenience without cause. In the event of termination the Contractor will be compensated for acceptable work authorized and completed prior to the date of termination.

SECTION 8. TIME

8-1. Time for completion of the work is of the essence. The parties hereto mutually

understand and agree that time is of the essence in the performance of this Contract for construction. The Contractor shall at all times carry out its duties and responsibilities as expeditiously as possible and shall begin, perform and complete its services so that the work is finally completed by the Completion Date.

SECTION 9. PARTIAL PAYMENTS

9-1. The Contractor may request payment no more than once monthly, based on the amount of work done or completed. All partial estimates and payments found to be in error shall be subject to correction in the estimates and payments subsequent thereto, and in the final estimate and payment. Payments will be made in accordance with the Local Government Prompt Payment Act. Payment requests by the Contractor shall be filed in accordance with the schedule provided by the County to match the meeting schedule of the Board.

9-2. The amount of such payments shall be the total value of the Project work completed to the date of the estimate, less an amount retained and less payments previously made. The amount retained shall be determined in accordance with Section 255.078, Florida Statutes, as follows:

(a) The County may withhold from each progress payment due to be made to the Contractor under this Contract an amount not to exceed 10 percent of said payment as retainage until 50 percent completion of the work of the Project has been achieved.

(b) After 50 percent of the work of the Project has been achieved, the County may withhold from each progress payment thereafter due to be made to the Contractor under this Contract an amount not to exceed 5 percent thereof as retainage. The term "50 percent completion" means the point at which the County has expended 50 percent of the Contract Amount as adjusted by approved Supplemental Contracts, together with all costs associated with existing change orders and other additions or modifications to the construction services provided for in this Contract.

(c) After 50 percent of the work of the Project has been achieved, the Contractor may present to the County a payment request for up to one-half of the retainage held by the County. The County shall promptly pay such amount to the Contractor, unless the County has grounds, pursuant to subsection (6) of Section 255.078, Florida Statutes, for withholding such payment of retainage.

9-3. Prior to submitting any request for payment, the Contractor shall certify that all subcontractors and suppliers performing any of the work or supplying any of the materials with respect to the Project have received their pro rata share of previous periodic payments to the Contractor for all work completed and materials supplied. This certification shall be in the form designated by the County. The Contractor shall within 10 days of receipt of progress payments pay all subcontractors and suppliers performing any of the work or supplying any of the materials with respect to the Project their pro

rata shares of the payment for all work completed and materials supplied. The term "subcontractor", as used herein, shall also include persons or firms supplying materials or equipment incorporated into the work or stockpiled in the vicinity of the Project for which partial payment has been made by the County, and work done under equipment rental Contracts.

9-4. Nothing in this Contract or in any of the documents identified in subsection 2-1 shall be construed as providing any subcontractor, as defined in subsection 9-3, with any rights or remedies against the County or any of its employees, principals, officers or agents for nonpayment or otherwise.

9-5. The Contractor acknowledges that in the budget for each fiscal year of the County during which the term of the Contract is in effect a limited amount of funds are appropriated which are available to make payments arising under the Contract. Any other provisions of the Contract to the contrary notwithstanding, and pursuant to the provisions of Section 129.07, Florida Statutes, the maximum payment that the County is obligated to make under the Contract from the budget of any fiscal year shall not exceed the appropriation for said fiscal year.

SECTION 10. RECOVERY RIGHTS AND RECORDS

10-1. The County reserves the right should an error be discovered in the partial or final estimates, or should proof of defective work or materials used by or on the part of the Contractor be discovered after the final payment has been made, to claim and recover from the Contractor by process of law, such sums as may be sufficient to correct the error or make good the defects in the work and materials.

10-2. All records pertaining to the Project shall be retained by the Contractor for a period of five years from the date of final acceptance of the Project. Upon request, all such records shall be made available to the County or its representatives. For the purposes of this Contract, records shall include all books of account, supporting documents and papers deemed necessary by the County to assure compliance with the provisions of this Contract. Any other provisions of this Contract or any of the documents identified in subsection 2-1 to the contrary notwithstanding, in the event litigation pertaining to this Contract is commenced during the five year period, the records retention period provided herein shall be extended until the litigation, including any appeal proceedings related thereto, is finally concluded.

10-3. The Contractor acknowledges the County's obligation under Art. 1, Section 24, Florida Constitution, and Chapter 119, Florida Statutes, as from time to time amended (together, the Public Records Laws), to release public records to members of the public upon request. The Contractor acknowledges that the County is required to comply with the Public Records Laws in the handling of the documents and materials created under the Contract and that the Public Records Laws control over any contrary terms in the Contract. In accordance with the requirements of Section 119.0701, Florida Statutes, the Contractor covenants to comply with the Public Records Laws, and in particular to:

(a) Keep and maintain public records required by the County to perform the services required under the Contract;

(b) Upon request from the County's custodian of public records, provide the County with a copy of the requested records or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided in Chapter 119, Florida Statutes, or as otherwise provided by law;

(c) Ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law for the duration of the Contract term and following completion of the Contract if the Contractor does not transfer the records to the County; and

(d) Upon completion of the Contract, transfer, at no cost, to the County all public records in possession of the Contractor or keep and maintain public records required by the County to perform the services. If the Contractor transfers all public records to the County upon completion of the Contract, the Contractor shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If the Contractor keeps and maintains public records upon completion of the Contract, the Contractor shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to the County, upon request from the County's custodian of public records, in a format that is compatible with the information technology systems of the County.

The Contractor's failure to comply with the requirements of paragraph 10 shall be deemed a material breach of the Contract, for which the County may terminate the Contract immediately upon written notice to the Contractor.

10-4 The Contractor acknowledges the provisions of Section 119.0701(3)(a), Florida Statutes, which, as applicable to the County and the Contractor, require as follows:

(a) A request to inspect or copy public records relating to the Contract must be made directly to the County. If the County does not possess the requested records, the County shall immediately notify the Contractor of the request, and the Contractor must provide the records to the County or allow the records to be inspected or copied within a reasonable time;

(b) If the Contractor does not comply with the County's request for records, the County shall enforce the contract provisions in accordance with the Contract; and

(c) If the Contractor fails to provide the public records to the County within a reasonable time, the Contractor may be subject to penalties under Section 119.10, Florida Statutes.

**IF THE CONTRACTOR HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE CONTRACTOR'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THE CONTRACT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT (904) 278-4754, publicrecords@claycountygov.com, POST OFFICE BOX 1366, GREEN COVE SPRINGS, FLORIDA 32043.**

SECTION 11. SUBCONTRACTORS

11-1. Subcontractors not listed in the Contractor's Response may only be utilized in connection with this Contract during the Contract period upon receiving PRIOR WRITTEN CONSENT from the County, and only for reasonable cause, as judged by the County.

SECTION 12. AUTHORITY TO SUSPEND WORK

12-1. The County Representative shall have the authority to suspend the work, wholly or in part, for such period or periods as may be deemed necessary, due to unsuitable weather or other conditions which are considered unfavorable for the prosecution of the work. Should the County be prevented or enjoined from proceeding with work either before or after the start of construction by reason of any litigation or other reason beyond the control of the County, the Contractor shall not be entitled to make or assert claim for damage by reason of said delay, but time for completion of the work will be extended to such reasonable time as the County may determine will compensate for time lost by such delay with such determination to be set forth in writing.

SECTION 13. PRESERVATION OF PROPERTY

13-1. The Contractor shall preserve from damage all property along the line of work, or which is in the vicinity of or is in any way affected by the work, the removal or destruction of which is not called for by the Specifications. This applies to public and private property and whenever such property is damaged as a result from the performance of the work, or through the negligence of the Contractor, it shall be immediately restored to a condition similar or equal to that existing before such damage or injury was done by the Contractor, and at its own expense, or it shall make good such damage or injury in an acceptable manner.

SECTION 14. FAILURE TO RESTORE DAMAGED PROPERTY

14-1. In case of failure on the part of the Contractor to restore such property, or to make good such damage or injury, the County Representative may upon 48 hours notice, proceed to repair, rebuild or otherwise restore such property, as may be deemed necessary, and the cost thereof will be deducted from any moneys due or which may become due the Contractor under the Contract. Nothing in this clause shall prevent the Contractor

from receiving proper compensation for the removal, damage or replacement of any public or private property as long as such work is authorized by the County Representative, provided that such property has not been damaged as a result from the performance of the work or through fault of the Contractor, its employees or agents.

SECTION 15. AUDIT OF CONTRACTOR'S RECORDS

15-1. The County reserves the right to conduct any audit of the Contractor's records pertaining to the Project deemed necessary by the County. Such an audit, or audits, may be conducted at any time prior to final payment, or thereafter pursuant to Section 10. The County may also require submittal of the records from either the Contractor, or any of its subcontractors or both. The Contractor shall make the aforementioned requirement a provision in its Contracts with all subcontractors. For purposes of this Contract, records shall include all books of account, supporting documents and papers deemed necessary by the County to assure compliance with the provisions of this Contract.

15-2. Failure of the Contractor or subcontractor to comply with these requirements may result in disqualification or suspension from quoting and bidding for future contracts or disapproval as a subcontractor at the option of the County.

15-3. The Contractor shall assure that each of its subcontractors will provide access to the subcontractor's records pertaining to the Project upon request by the County.

SECTION 16. HEADINGS

16-1. The headings of the sections contained in this Contract and in its attachments and other documents incorporated by reference are for the purpose of convenience only and shall not be deemed to expand, limit or change the provisions contained in such sections, attachments or incorporated documents.

SECTION 17. CHOICE OF LAW/FORUM

17-1. The terms and conditions hereof, and the subsequent performance hereunder, shall be construed and controlled exclusively in accordance with the laws of the State of Florida. Jurisdiction shall be limited to the courts of the State of Florida, and venue shall lie exclusively in Clay County, Florida.

17-2. In the event either party shall retain an attorney to litigate on its behalf against the other party regarding the enforcement or interpretation of this Contract or regarding the rights, remedies, obligations or liabilities of the parties arising under this Contract, or seeking damages or some other remedy pertaining to the Contract, the party prevailing on the majority of its claims, or which successfully defends against a majority of the other party's claims, shall be entitled to an award of reasonable attorney's fees and costs against the other party, including fees and costs incurred from the date of referral of the dispute to the prevailing party's attorney through the conclusion of litigation, or incurred in bankruptcy or on appeal.

SECTION 18. SEVERABILITY

18-1. In the event one or more provisions of this Contract are declared invalid, the balance of this Contract shall remain in full force and effect.

SECTION 19. ACCEPTANCE OF FINAL PAYMENT

19-1. The Contractor's acceptance of the final payment by the County hereunder shall be considered as a release in full of all claims against the County or any of its officers, principals, employees, members or agents arising out of or by reason of work done or material furnished under this Contract. The Contractor will then be released from further obligation except as provided in Sections 10 and 20.

The County shall not be obligated to remit final payment under this Contract until the following items have been submitted to and approved by the County in proper form and substance:

(a) Releases of Liens or equivalent proof of payments to subcontractors and suppliers;

(b) Completed punch-list generated from final inspection;

(c) Contractor's Warranty and any warranties from third parties; and

(d) Certificate of Final Payment.

SECTION 20. WARRANTY AND REPAIR COVENANT

20-1. The Contractor binds itself to use such materials and to so construct the work and improvements of the Project that same will be and remain in good repair and condition for a period of two years after the date of completion and acceptance of all improvements by the Clay County Board of County Commissioners, and agrees that it will repair or reconstruct said improvements at its sole expense necessitated within that time by any fault of materials, specifications, methods or processes employed in the construction thereof, and the Contractor further agrees and binds itself that said improvements for such term shall be and remain in good serviceable condition, free from any defects that will impair its usefulness and should same, at any time within said period, in the judgment of the Board of County Commissioners, whose judgment shall be final and conclusive, become defective and be not in a good serviceable condition, free from any defects that will impair its usefulness by reason of any defective materials, workmanship, specifications, methods, or processes, then the Board of County Commissioners shall cause to be served upon the Contractor a notice in writing to repair such improvements or portions thereof, or to reconstruct the same and put same in satisfactory and good condition, and the Contractor shall promptly comply therewith at its sole

expense.

Any warranty provided by the Contractor or for which the Contractor is responsible is limited only by such terms and conditions as may be expressly stated in the warranty document and the Contract.

SECTION 21. WASTE MATERIAL DISPOSAL

21-1. The Contractor shall make all arrangements necessary to accomplish off-site disposal of all debris or waste generated by the work of the Project, all at no additional cost to the County.

SECTION 22. COUNTERPARTS

22-1. This Contract may be executed simultaneously in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument and Contract.

SECTION 23. ASSIGNABILITY

23-1. The Contractor shall not assign any of its rights or duties under this Contract to any other party without the prior written consent of the County, which consent may be withheld by the County for any or no reason. Any such assignment attempted by the Contractor without such prior written consent shall be null and void. If the Contractor attempts to assign any such rights or duties without securing such prior written consent, this Contract may be declared terminated by the County.

SECTION 24. THIRD PARTY BENEFICIARIES

24-1. Any other provisions of this Contract to the contrary notwithstanding, no third party beneficiaries are intended or contemplated under this Contract or in any of the documents identified in subsection 2-1, and no third party shall be deemed to have rights or remedies arising under this Contract or such documents against either party to this Contract.

SECTION 25. SCRUTINIZED COMPANIES

25-1. In accordance with Section 287.135, Florida Statutes, the County shall have the option of terminating this Contract, if the Contractor is found to have submitted a false certification as provided under 287.135(5); been placed on the Scrutinized Companies that Boycott Israel List or is engaged in a boycott of Israel; been placed on the Scrutinized Companies with Activities in Sudan List or the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List; or been engaged in in business operations in Cuba or Syria.

SECTION 26. OWNER JOINDER AND AUTHORIZATION

26-1. The School District is the owner of Fleming Island High School. The School District

joins in this Contract for the purpose of authorizing the County and the Contractor to enter upon its property for the purpose of allowing the Contractor to perform the work contracted for in this Contract on the Fleming Island High School premises. Contractor agrees that it will look solely to the County for payment for the work performed under this Contract.

**IN WITNESS WHEREOF**, each of the parties has caused this Contract to have been executed on its behalf as of the day and year first above-written.

**CLAY COUNTY**, a political subdivision of the State of Florida, by and through its Board of County Commissioners

By: Mike Cella
Mike Cella
Its Chairman

ATTEST FOR THE COUNTY:

Howard Wanamaker, County Manager and Clerk of the Board of County Commissioners

**CHARLES PERRY PARTNERS, INC.**

By: Matthew Webster
MATTHEW WEBSTER
Its EXEC. VICE President/PRINCIPAL

**SCHOOL DISTRICT OF CLAY COUNTY, FLORIDA**, by and through the Clay County School Board

By:_____
Carol Studdard
Its Chairman

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EXHIBIT B

Scrutinized Companies Certification

[Clay County Bid No. 18/19-20, FLEMING ISLAND HIGH SCHOOL HURRICANE RETROFIT 2019]

Name of Company:[1] Charles Perry Partners, Inc.

In compliance with subsection (5) of Section 287.135(5), Florida Statutes (the Statute), the undersigned hereby certifies that the company named above is not participating in a boycott of Israel as defined in subsection (1) of the Statute; is not on the Scrutinized Companies with Activities in Sudan List or the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List as referred to in subsection (2) of the Statute; and is not engaged in business operations in Cuba or Syria as defined in subsection (1) of the Statute.

Insert Name of Company:

Charles Perry Partners, Inc.

(Seal)

By: _____
MATTHEW WEBSTER
EVP/PRINCIPAL

Its _____

[1] "Company" means a sole proprietorship, organization, association, corporation, partnership, joint venture, limited partnership, limited liability partnership, limited liability company, or other entity or business association, including all wholly owned subsidiaries, majority-owned subsidiaries, parent companies, or affiliates of such entities or business associations, that exists for the purpose of making profit.