



REGULAR CITY COUNCIL MEETING

6:30 PM – COUNCIL CHAMBERS – CITY HALL

MARCH 7, 2017

AGENDA

ALL CITIZENS DESIRING TO ADDRESS THE PORT ORANGE CITY COUNCIL DURING CITIZEN PARTICIPATION SHOULD COMPLETE A SPECIAL APPLICATION FORM WHICH IS LOCATED ON THE STANDS OUTSIDE THE COUNCIL CHAMBERS. AFTER COMPLETING THE FORM, PRESENT IT TO THE CITY CLERK.

A. OPENING

1. Pledge of Allegiance
2. Invocation by Fr. Rick Burhans of Grace Episcopal Church
3. Roll Call

B. CONSENT AGENDA

4. Public Comments on Consent Agenda Items Only
5. Agenda Approval
6. Approval of Minutes
 - a. February 21, 2017 - Regular City Council Meeting
7. Extend Contract with Applied Aquatic Management Inc. for Aquatic Treatment Services.
8. FY 2018 Budget Calendar
9. Approval of Lease Agreement Between the City of Port Orange and Representative Ron DeSantis
10. Major Special Event Request – Winner's Pub – 5934 South Ridgewood Avenue
11. Volusia County EMS Municipal Transport Program with Application Interlocal Agreement and Business Associate Agreement
12. Resolution No. 17-10 - Budget Appropriations
13. Resolution No. 17-11 - LAP Agreements for construction of the McDonald Road sidewalk and the Victoria Gardens Boulevard sidewalk
14. Resolution No 17-12 - Ratifying Connection Fees for Rains Drive and Lighthouse Shores Sewer Extension Project located in Ponce Inlet

15. City Attorney's Report FY17 - First Quarter

16. Crime Report

17. Other Post Employment Benefits Actuarial Valuation Report

C. CITIZEN PARTICIPATION (AGENDA)

18. 866 Chickadee Drive - Nik Foster

D. CITIZEN PARTICIPATION (Non-Agenda – 15 minutes)

E. COUNCIL COMMENTS

19. Comments/Concerns from Council Members

F. SPECIAL AWARDS, REPORTS, RECOGNITION AND PROCLAMATIONS

20. Port Orange South Daytona Chamber of Commerce Quarterly Report

21. Report from KemperSports on the Cypress Head Golf

G. BOARD APPOINTMENTS, INTERVIEWS, REPORTS

22. Citizen Advisory Committee for TPO

H. PUBLIC HEARING

23. First Reading - Ordinance No. 2017-5 – Cornerstone Grove PUD Master Development Agreement and Conceptual Development Plan, Case No. 16-40000007

I. REGULAR AGENDA

24. Discussion Regarding Lease with Smokey Hunt Club

25. Financial Report - January 2017

J. COMMENTS

26. City Attorney Comments

27. City Manager Comments

K. COUNCIL COMMITTEE REPORTS

28. City Council Committee Reports

a. River to Sea TPO

b. General Employees' Pension Plan

L. ADJOURNMENT

ANY PERSON WHO DECIDES TO APPEAL ANY DECISION MADE BY THE CITY COUNCIL WILL NEED A RECORD OF THE PROCEEDINGS, AND FOR SUCH PURPOSE HE OR SHE MAY NEED TO ENSURE AT HIS OR HER OWN EXPENSE FOR THE TAKING AND PREPARATION OF A VERBATIM RECORD OF ALL TESTIMONY AND EVIDENCE OF THE PROCEEDINGS UPON WHICH THE APPEAL IS TO BE BASED.

NOTE: IF YOU ARE A PERSON WITH A DISABILITY WHO NEEDS ANY ACCOMMODATION IN ORDER TO PARTICIPATE IN THIS PROCEEDING, YOU ARE ENTITLED, AT NO COST TO YOU, TO THE PROVISION OF CERTAIN ASSISTANCE. PLEASE CONTACT THE CITY CLERK FOR THE CITY OF PORT ORANGE, 1000 CITY CENTER CIRCLE, PORT ORANGE, FLORIDA 32129, TELEPHONE NUMBER 386-506-5563, WITHIN 2 WORKING DAYS OF YOUR RECEIPT OF THIS NOTICE OR 5 DAYS PRIOR TO THE MEETING DATE; IF YOU ARE HEARING OR VOICE IMPAIRED, CONTACT THE RELAY OPERATOR AT 1-800-955-8771.

ANY INVOCATION THAT IS OFFERED BEFORE THE OFFICIAL START OF THE CITY COUNCIL MEETING SHALL BE THE VOLUNTARY OFFERING OF A PRIVATE PERSON, TO AND FOR THE BENEFIT OF THE CITY COUNCIL. THE VIEWS OR BELIEFS EXPRESSED BY THE INVOCATION SPEAKER HAVE NOT BEEN PREVIOUSLY REVIEWED OR APPROVED BY THE CITY COUNCIL OR THE CITY STAFF, AND THE CITY IS NOT ALLOWED BY LAW TO ENDORSE THE RELIGIOUS BELIEFS OR VIEWS OF THIS, OR ANY OTHER SPEAKER. PERSONS IN ATTENDANCE AT THE CITY COUNCIL MEETING ARE INVITED TO STAND DURING THE OPENING INVOCATION AND PLEDGE OF ALLEGIANCE. HOWEVER, SUCH INVITATION SHALL NOT BE CONSTRUED AS A DEMAND, ORDER, OR ANY OTHER TYPE OF COMMAND. NO PERSON IN ATTENDANCE AT THE MEETING SHALL BE REQUIRED TO PARTICIPATE IN ANY OPENING INVOCATION THAT IS OFFERED. A PERSON MAY EXIT THE CITY COUNCIL CHAMBERS AND RETURN UPON COMPLETION OF THE OPENING INVOCATION IF A PERSON DOES NOT WISH TO PARTICIPATE IN OR WITNESS THE OPENING INVOCATION.

REGULAR CITY COUNCIL MEETING MINUTES
COUNCIL CHAMBERS – CITY HALL
1000 CITY CENTER CIRCLE
FEBRUARY 21, 2017

THE REGULAR CITY COUNCIL MEETING of the City of Port Orange was called to order by Mayor Don Burnette at 6:30 p.m.

Pledge of Allegiance

Silent Invocation

Roll Call:	Present:	Councilman Chase Tramont Councilman Drew Bastian Councilman Scott Stiltner Vice Mayor Bob Ford Mayor Don Burnette
	Also Present:	Jake Johansson, City Manager Margaret T. Roberts, City Attorney Robin Fenwick, City Clerk

CONSENT AGENDA

4. Public Comments on Consent Agenda Items Only

There were none.

Vice Mayor Ford pulled item #7(b) for further discussion, as well as item 7(d).

5. Agenda Approval

There were no agenda modifications requested.

6. Approval of Minutes

a. February 7, 2017 - Regular City Council Meeting

7. Bid Awards and Contract Items

a. Deductive change order (CO) to Quentin L. Hampton Associates for Virginia Avenue and Monroe Street Drainage Improvements Design Services

b. Award RFP #17-05 Road Pavement Inventory and Condition Evaluation

c. Contract award to Sunshine State Officials Inc.

d. Task Authorization to DMC

8. Resolution No. 17-7 - Approving the Renewal of FDOT Memorandum of Agreement

9. Resolution No. 17-8 - 2016 Edward Byrne Memorial Justice Assistance Grant (JAG) Program

10. Resolution No. 17-9 - Budget Appropriation - Police Grant
*\$8,652 Florida Department of Law Enforcement (FDLE) 2016 Edward Byrne Memorial Justice Assistance Grant (JAG)

11. Report of Hurricane Matthew Leak Adjustments
12. Major Special Event Request - Hold Fast Tattoo - 5153 South Ridgewood Avenue
13. Major Special Event Request – The Boat of Port Orange – 5395 South Ridgewood Avenue
14. Major Special Event Request - The Last Resort Bar - 5812 South Ridgewood Avenue
15. Major Special Event Request – First Turn Steakhouse & Lounge – 5236, 5204, & 5164 South Ridgewood Avenue
16. Approval to apply for an FDOT Grant

Motion to approve the Consent Agenda as amended was made by Vice Mayor Ford, and Seconded by Councilman Stiltner. Motion carried unanimously by roll call vote.

Item 7(b) - Award RFP #17-05 Road Pavement Inventory and Condition Evaluation

Vice Mayor Ford doesn't believe this is necessary and believes the money would be better placed repairing the roads.

Motion to approve was made by Vice Mayor Ford, and Seconded by Councilman Bastian.

Councilman Bastian was concerned with the company being from Illinois. Mr. Johansson said the project was competitively bid.

Councilman Stiltner said many years have gone by without a paving program and he doesn't know that the institutional knowledge is with current staff. He believes a current study is needed for a starting point.

Councilman Tramont is also concerned with the amount being spent but believes the starting point is needed. Mayor Burnette agreed.

Motion carried 4-1 by roll call vote with Vice Mayor Ford voting no.

Item 7(d) - Task Authorization to DMC

Vice Mayor Ford would like to know the estimated costs to repair the docks. He is concerned with the design costs, which he believes should not be greater than 8-9% of the total cost of the project. Susan Lovallo, Parks & Recreation Director, said the scope of the work is for design and construction management. The total cost of the project is \$1.2 million, which puts the design costs at approximately 5%.

Motion to approve was made by Councilman Stiltner, and Seconded by Councilman Bastian. Motion carried unanimously by roll call vote.

CITIZEN PARTICIPATION (Agenda)

17. 3893 Sunset Cove Drive-Requesting a reduction of high unexplained water consumption.

Mr. Johansson believes this water issue has been resolved. He will confirm and re-schedule if needed.

18. 3116 S. Peninsula Dr. – reconsider Hurricane Matthew leak adjustment

Doris Latinsky, property owner, requested an adjustment of her water bill that was high because of a leak due to Hurricane Matthew. She doesn't believe the four (4) days granted was enough. She believes they did everything possible to remedy the issue as quickly as possible.

Mr. Johansson said there were other homes in a similar situation that were granted only the four (4) days.

Vice Mayor Ford would like more information as to others that would be affected if they grant this request. Mayor Burnette believes each case should be taken separately because circumstances are different in each situation.

Motion to reduce the amount due by 50% was made by Councilman Bastian, and Seconded by Vice Mayor Ford.

Lori Clark asked how many properties were on beachside that had a mandatory evacuation.

Motion carried unanimously by voice vote.

Council agreed to grant a payment plan, if not and asked that her water not be shut off.

CITIZEN PARTICIPATION (Non-Agenda – 15 minutes)

Deb Cheslow and Brendan Galbreath, Aunt Catfish Restaurant, asked Council for forgiveness in not meeting the deadline for a permit for a 5K race. They believe it will have little impact. Ms. Cheslow said Final Mile will not be involved in the permitting in the future. Mayor Burnette asked if City Staff can accommodate this race. Mr. Johansson said no, additional people will have to be assigned because most staff will be working race traffic.

Motion to approve the request for a race permit for this weekend was made by Vice Mayor Ford, and Seconded by Councilman Tramont. Motion carried unanimously by voice vote.

COUNCIL COMMENTS

19. Comments/Concerns from Council Members

Councilman Tramont spoke regarding Mary Templeton who passed away this week. She invested her life in the community and was a teacher for 45 years. Vice Mayor Ford concurred.

Councilman Bastian said there is a hole in the wall behind BJ's Wholesale Club due to an accident. He asked Staff to work with the owner for quick repairs.

Mayor Burnette asked for a list of who's on the lists for the Wall of Honor and Veteran's Park so Council can nominate others as needed.

BOARD APPOINTMENTS, INTERVIEWS, REPORTS

20. Youth Advisory Board Appointment

Nicolas Franzini and Emma Dominguez introduced themselves.

Councilman Stiltner asked them to consider how the City can encourage teens to volunteer at events throughout the City, such as Family Days, etc.

Motion to nominate both to the Youth Advisory Board was made by Councilman Bastian, and Seconded by Councilman Tramont. Motion carried unanimously by voice vote.

21. Citizen Advisory Committee for TPO

Bobby Ball provided details from the meeting held recently. March 31, 2017 is the deadline for projects to be added to the list.

REGULAR AGENDA

22. First Step Shelter brief from Rev. Dr. L Ronald Durham, Daytona Beach Community Relations Manager

Rev. Dr. L. Ronald Durham thanked Council for their assistance last year and explained the need for further financial assistance for a comprehensive solution to the

homelessness. He asked Council to appoint one of them to the Board to help ensure this vision becomes a reality.

Councilman Tramont is not opposed to appointing a member but wants to ensure that doesn't require a financial contribution. He is concerned with individuals taking advantage of the facility and not going in with a desire to change. Councilman Stiltner suggested a Staff member serve on the Board rather than a Councilmember due to time constraints.

Vice Mayor Ford believes this issue needs to be funded by the County. He's concerned with the operating costs.

Jim Cameron, Daytona Regional Chamber, encouraged Council to address the issue. He believes the program has merit.

Mr. Johansson believes a Staff member could serve on the Board if Council is so inclined. Homeless issues in Port Orange are growing.

23. Intent to Award ITN No. 16-09 Biosolids Stabilization and Disposal Services to Shelley's Environmental Systems

Motion to approve was made by
Councilman Bastian, and Seconded by
Vice Mayor Ford.

Lynn Stevens, Public Utilities Director, explained how and why Shelley's Environmental Systems was chosen by the committee to award this bid.

Motion carried unanimously by roll call
vote.

24. Request to create new part-time, no benefit positions in Parks & Recreation

Motion to approve was made by Vice
Mayor Ford, and Seconded by
Councilman Bastian.

Ms. Lovallo provided details of the request for new positions. These positions are currently seasonal positions, hired by a temp agency. Staff's analysis shows a reduction in costs by making these positions part-time, no benefit positions in the Parks & Recreation Department. Savings in the first year will be approximately \$9,000.

Motion carried unanimously by roll call
vote.

25. License Agreement - Lot 2, Block 15, Deep Forest Village Subdivision; 954 Sandle Wood Drive

Motion to approve was made by Vice Mayor Ford, and Seconded by Councilman Stiltner.

Mr. Johansson advised that the recommendation from Staff is to deny the requests because of the increased risk.

Vice Mayor Ford asked what the difference is in the City's risk between pavers and citizens mowing the parkage.

Margaret Roberts, City Attorney, advised that the License Agreement the City uses runs with the person in the agreement, not the property. She does not believe the City's best interest is served and protected if the License Agreement runs with the property. Ms. Roberts has used the conservative method to allow permission to use the City's property but has not given any interest in the property to the property owner.

Mayor Burnette believes there is a way to make it go from person to person. Council wants to figure out a way to protect the City's interests but allow property owners to beautify their property.

Ms. Roberts explained the administrative side that is not being done because it is a burden on Staff. Each time the property changes ownership, the City should be contacting the new owner for a new License Agreement.

Councilman Stiltner is concerned with the pavers on the sidewalks because of the uneven surface for walkers, skateboards, etc. Councilman Tramont agreed.

Vice Mayor Ford doesn't believe this risk is more than the risk with faulty sidewalks. He asked if there have been any lawsuits. Ms. Roberts said no, not due to pavers.

Motion to table as the property owner is not present was made by Vice Mayor Ford, and Seconded by Councilman Tramont. Motion carried unanimously by voice vote.

26. License Agreement - 1263 Harbour Point Drive

Motion to approve was made by Vice Mayor Ford, and Seconded by Councilman Bastian.

Ralph Perez, contractor, spoke as to what other cities are doing for paver aprons and sidewalks. Port Orange is the only City having such a complex process. He provided

Council with the Release/Hold Harmless Agreement from the County of Volusia. He believes this Agreement will work for the City of Port Orange as well.

Dwight Black, property owner, explained his request due to cracks in his driveway.

Citizens spoke regarding their concerns with the City's process. Ms. Roberts advised that Council can move forward with status quo until a workshop is held to determine any changes Council may wish to do. Council agreed.

Motion carried unanimously by roll call vote.

27. License Agreement - 1261 Harbour Point Drive

Motion to approve as presented was made by Councilman Tramont, and Seconded by Vice Mayor Ford. Motion carried unanimously by roll call vote.

Motion to remove Item #25 from the table was made by Councilman Bastian, and Seconded by Vice Mayor Ford. Motion carried 4-1 by roll call vote with Councilman Stiltner voting no.

Motion to approve Item #25 - License Agreement - Lot 2, Block 15, Deep Forest Village Subdivision; 954 Sandle Wood Drive was made by Vice Mayor Ford, and Seconded by Councilman Tramont. Motion carried 3-2 by roll call vote with Councilman Stiltner and Mayor Burnette voting no.

28. City Manager Evaluation Discussion

Mayor Burnette laid the ground rules for the evaluation process. Councilman Bastian suggested a final evaluation at the April 4, 2017 meeting. Council agreed and wants to have one on one meetings with the City Manager before that meeting.

29. Financial Report-December 2016

Tracey Riehm, Finance Director, provided details of the Financial Report for December 2016. Increases were primarily related to Hurricane Matthew. She also discussed the Consolidated Golf Course Report.

COMMENTS

30. City Attorney Comments

Ms. Roberts announced the promotion of Grace Stewart as the City's Risk Manager.

31. City Manager Comments

Mr. Johansson asked Council if they would like to reschedule the workshop scheduled for March 14, 2017 relating to the feral cat program. They rescheduled the meeting to March 27, 2017.

COUNCIL COMMITTEE REPORTS

32. City Council Committee Reports

- a. Arthaus – Vice Mayor Ford was unable to attend the meeting.
- b. Port Orange/South Daytona Chamber of Commerce – Mayor Burnette reported on the most recent meeting held.
- c. Roundtable of Elected Officials – Mayor Burnette provided details from the meeting.

Councilman Bastian reported on the Police Pension Board meeting. Vice Mayor Ford reported on the Fire Pension Board meeting held this month.

ADJOURNMENT: 10:06 p.m.

Mayor Donald O. Burnette

Attest:

Robin Fenwick, CMC
City Clerk

CITY COUNCIL AGENDA ITEM

REQUESTED COUNCIL MEETING DATE 03/07/2017

Consent item: Yes

SUBJECT: (B7) Extend Contract with Applied Aquatic Management Inc. for Aquatic Treatment Services.

DEPARTMENT: Public Works

GOAL: 3 - Quality of Life

RECOMMENDED MOTION: Move to approve the fifth and final renewal option to extend the standard contract for services with Applied Aquatic Management, Inc. for a total cost of \$40,212.00, and authorize the Mayor and City Clerk to execute all required documents.

SUMMARY: The services for aquatic treatment of City lakes, retention ponds, canals, and ditches was competitively bid in calendar year 2012, and a contract was awarded to the lowest and responsive vendor, Aquatic Management Inc. The contract provided for an initial term of one year with five optional one year renewals upon written agreement of the parties.

Since contract award, Applied Aquatic Management Inc. has provided a very responsive and customer focused services at competitively stable prices for the past four years. Based on staff's significant knowledge of the market and pricing for aquatic treatment services, it can be confidently stated that the contract prices of Applied Aquatic Management Inc. are well below most of the market.

There are a total of 87 retention ponds, lakes, ditches and canals under contract which are sprayed on regular schedules. The contractor keeps monthly reports which are regularly provided to staff. The contractor also promptly addresses any safety or customer service issues.

Based on the quality of services and competitive and stable pricing, it is recommended that the City extend the contract for a fifth and final one year term effective May 1, 2017 through April 30, 2018.

This contract spans fiscal years. FY2018 funding is contingent upon approval of the FY2018 budget.

Project No.: Funding Account No.: 412-1800-541.34-14
001-4400-572.34-14

ATTACHMENTS:

1.	Extension Agreement	Extension Agreement.pdf
2.	2016-2017 Applied Aquatic Contract Extension	EXECUTED Applied Aquatic Mgmt Contract Extension thru April 2017.pdf
3.	2012 Bid Package Bid 12-26	Bid 12 26 Treatment of Lakes, Retention Ponds, Canals & Ditches.pdf
4.	Letter from Applied Aquatic to extend contract	Applied Aquatic Letter to extend contract 2017 to 2018.pdf
5.	Excel Spreadsheet Cost by Area	Applied Aquatic Management 2017 to 2018 Cost Sheet.pdf

Kynah Cockcroft	Created/Initiated - 02/14/2017
Alyssa Walker	Approved - 02/14/2017
Mike Silvey	Approved - 02/14/2017
Branford Adumuah	Approved - 02/15/2017
Diana Fye	Approved - 02/16/2017
Tracey Riehm	Approved - 02/23/2017
Susan Lovallo	Approved - 02/23/2017
Margaret Roberts	Approved - 02/23/2017
Jake Johansson	Approved - 02/24/2017
Robin Fenwick	Final Approval - 02/24/2017

**EXTENSION OF
AMENDED, RESTATED AND STANDARD CONTRACT FOR SERVICES**

THIS EXTENSION OF AMENDED, RESTATED AND RENEWED STANDARD CONTRACT FOR SERVICES ("Extension") is made and entered into the day and year set forth hereinafter by and between the **CITY OF PORT ORANGE, FLORIDA**, a Florida municipal corporation located at 1000 City Center Circle, Port Orange, Volusia County, Florida 32129-4144 (the "City"), and **APPLIED AQUATIC MANAGEMENT, INC.**, a Florida corporation whose principal address is 4305 Bomber Road, Bartow, Florida 33830 (the "Contractor"). (The City and the Contractor are hereinafter collectively referred to as the "Parties.")

WHEREAS, the Parties entered into a Standard Contract for Services on April 10, 2012 and an Amended, Restated and Renewed Standard Contract for Services on April 23, 2014 (collectively the "Contract"); and

WHEREAS, the Contract provides for an initial term of one year commencing on May 1, 2012 and continuing until April 30, 2013, with five (5) optional one year renewals upon written agreement of the parties; and

WHEREAS, on April 23, 2013, the parties exercised the first option to renew the Contract for a one year period commencing on May 1, 2013 and continuing until April 30, 2014; and

WHEREAS, on April 15, 2014, the parties exercised the second option to renew the Contract for a one year period commencing on May 1, 2014 and continuing until April 30, 2015; and

WHEREAS, on April 7, 2015, the parties exercised the third option to renew the Contract for a one year period commencing on May 1, 2015 and continuing until April 30, 2016 and amended the Contract to provide for public records compliance pursuant to Florida Statute; and

WHEREAS, the parties exercised the fourth option to renew the Contract for a one-year period commencing on May 1, 2016 and continuing until April 30, 2017; and

WHEREAS, the parties desire to exercise the fifth and final option to renew the Contract for a one-year period commencing on May 1, 2017 and continuing until April 30, 2018; and

WHEREAS, the Port Orange City Council has determined that the execution of this Extension is beneficial to the citizens of the City of Port Orange.

NOW, THEREFORE, the Parties, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, agree as follows:

1. Term: The term of the Contract is hereby extended for one (1) year, commencing May 1, 2017, and continuing until April 30, 2018.

2. City Obligations. In return for the services identified above, the City agrees to compensate Contractor at the prices set forth in Contractor's Total Base Bid submitted April 3, 2012, as amended by Exhibit "1" hereto, subject to a limit up to but not to exceed Forty Thousand, Two Hundred Twelve and 00/100 Dollars (\$40,212.00) during the period May 1, 2017 through April 30, 2018, subject to appropriation for each fiscal year. All payments shall be governed by the Local Government Prompt Payment Act as set forth in Sections 218.70 through 218.79, Florida Statutes, as amended.

3. Contract Construction. This Extension may be executed in one or more counterparts, each of which shall be deemed to be an original but all of which together shall constitute one and the same instrument. The delivery by facsimile or e-mail of an executed copy of this Extension shall be deemed valid as if an original signature was delivered. No contract shall be formed between Contractor and the City until both Parties have signed this Extension.

4. All other terms and conditions of the Contract shall remain in full force and effect.

IN WITNESS WHEREOF, the Parties hereto have signed, sealed, and delivered this Extension on the day and year stated hereinafter.

[remainder of page intentionally left blank]

Witnesses:

APPLIED AQUATIC MANAGEMENT, INC.

Printed Name:

By: _____
Linda W. Myers, Secretary

Printed Name:

Date: _____

STATE OF FLORIDA
COUNTY OF POLK

The foregoing instrument was acknowledged before me this ____ day of _____, 2017, by Linda W. Myers, as Secretary of Applied Aquatic Management, Inc., a Florida corporation, and who:

[Notary: Please select one]

- ☐ is personally known to me; or
☐ has produced _____ as identification.

Notary Public, State of Florida

Printed, typed or stamped name, commission and expiration:

Witnesses:

CITY OF PORT ORANGE

By: _____
Printed Name: _____ Donald O. Burnette, Mayor

Attest:

Printed Name: _____ Robin L. Fenwick, CMC, City Clerk

Date: _____

STATE OF FLORIDA
COUNTY OF VOLUSIA

The foregoing instrument was acknowledged before me this _____ day of _____, 2017, by Donald O. Burnette and Robin L. Fenwick, as Mayor and City Clerk, respectively, of the City of Port Orange, a Florida municipal corporation, on behalf of the city, and who are personally known to me.

Notary Public, State of Florida

Printed, typed or stamped name, commission and expiration:

Applied Aquatic Management

May 1, 2017 - April 30, 2018

	May	June	July	August	Sept	Oct	Nov	Dec	Jan	Feb	March	April	Total Annual Cost
1 Autumn Trail	1300	28.00	28.00	28.00	28.00	28.00	28.00	28.00	28.00	28.00	28.00	28.00	31,824.00
2 Cross Creek/Secret River Trail	1300	34.00	34.00	34.00	34.00	34.00	34.00	34.00	34.00	34.00	34.00	34.00	408.00
3 Hidden Lakes/Hidden Lakes Drive	1400	146.00	146.00	146.00	146.00	146.00	146.00	146.00	146.00	146.00	146.00	146.00	1,460.00
4 Willow Run sub/Thomasha Dr.	1300	13.00	13.00	13.00	13.00	13.00	13.00	13.00	13.00	13.00	13.00	13.00	130.00
5 Willow Run sub/Treacy Dr.	1300	13.00	13.00	13.00	13.00	13.00	13.00	13.00	13.00	13.00	13.00	13.00	78.00
6 Willow Run sub/Harms Way	1300	13.00	13.00	13.00	13.00	13.00	13.00	13.00	13.00	13.00	13.00	13.00	78.00
7 Southern Oaks/Squirrel Nest Lane	1300	13.00	26.00	26.00	26.00	13.00	13.00	13.00	13.00	13.00	13.00	13.00	208.00
8 Gatewood/Oak Forest Circle	1300	13.00	26.00	26.00	26.00	13.00	13.00	13.00	13.00	13.00	13.00	13.00	208.00
9 Foxboro/Miles Drive	1300	48.00	48.00	48.00	48.00	48.00	48.00	48.00	48.00	48.00	48.00	48.00	576.00
10 Deep Forest/Bushy/Saville Wood Dr.	1300	58.00	58.00	58.00	58.00	58.00	58.00	58.00	58.00	58.00	58.00	58.00	696.00
11 Foxboro/Crown Lane	1300	13.00	26.00	26.00	13.00	13.00	13.00	13.00	13.00	13.00	13.00	13.00	208.00
12 The Settling/Alstrum Drive	1300	13.00	13.00	13.00	13.00	13.00	13.00	13.00	13.00	13.00	13.00	13.00	156.00
13 Bent Oaks/Whippoorwill Drive	1300	13.00	13.00	13.00	13.00	13.00	13.00	13.00	13.00	13.00	13.00	13.00	156.00
14 Lone Oak/Lone Oak Drive	1300	72.00	72.00	72.00	72.00	72.00	72.00	72.00	72.00	72.00	72.00	72.00	864.00
15 Central Park/Central Park Blvd.	1300	85.00	85.00	85.00	85.00	85.00	85.00	85.00	85.00	85.00	85.00	85.00	1,020.00
16 Winter Park/Pelham Drive	1300	21.00	21.00	21.00	21.00	21.00	21.00	21.00	21.00	21.00	21.00	21.00	252.00
17 Falcon Crest/Champagne Circle	1300	13.00	13.00	13.00	13.00	13.00	13.00	13.00	13.00	13.00	13.00	13.00	156.00
18 City Hill / City Center Circle	1300	73.00	146.00	146.00	146.00	73.00	73.00	73.00	73.00	73.00	73.00	73.00	1,168.00
19 Amber Village/Amber Circle	1300	13.00	13.00	13.00	13.00	13.00	13.00	13.00	13.00	13.00	13.00	13.00	156.00
20 Fire Station #5 (added 5/1/14)	1300	40.00	40.00	40.00	40.00	40.00	40.00	40.00	40.00	40.00	40.00	40.00	480.00
21 Jackson Street Park	1300	127.00	254.00	254.00	254.00	127.00	127.00	127.00	127.00	127.00	127.00	127.00	2,032.00
22 Fire Station #2 (added 5/1/14)	1300	50.00	50.00	50.00	50.00	50.00	50.00	50.00	50.00	50.00	50.00	50.00	600.00
23 Monroe Street	1300	13.00	13.00	13.00	13.00	13.00	13.00	13.00	13.00	13.00	13.00	13.00	156.00
Lowest Street reviewed 4/2/14 to include 3 pond areas all based on 1st Designated Culvert and FOOT pond on St. Charles Rd.													
24 Oak Road	1300	178.00	178.00	178.00	178.00	178.00	178.00	178.00	178.00	178.00	178.00	178.00	2,136.00
25 Baywood Avenue	1300	25.00	25.00	25.00	25.00	25.00	25.00	25.00	25.00	25.00	25.00	25.00	300.00
26 Southwoods	1300	97.00	97.00	97.00	97.00	97.00	97.00	97.00	97.00	97.00	97.00	97.00	1,164.00
27 Nixon Lane	1300	25.00	25.00	25.00	25.00	25.00	25.00	25.00	25.00	25.00	25.00	25.00	300.00
28 Canalview Blvd.	1300	50.00	50.00	50.00	50.00	50.00	50.00	50.00	50.00	50.00	50.00	50.00	600.00
29 Sugar Grove/Sugar Grove Court	1300	25.00	25.00	25.00	25.00	25.00	25.00	25.00	25.00	25.00	25.00	25.00	300.00
30 Buschman Park	1300	132.00	132.00	132.00	132.00	132.00	132.00	132.00	132.00	132.00	132.00	132.00	1,584.00
31 Orange Boulevard	1300	25.00	25.00	25.00	25.00	25.00	25.00	25.00	25.00	25.00	25.00	25.00	300.00
32 Spruce Creek Rd. @ Acorn Ln.	1300	25.00	25.00	25.00	25.00	25.00	25.00	25.00	25.00	25.00	25.00	25.00	300.00
33 Fire Station #4 (Airport Rd.)	1300	25.00	25.00	25.00	25.00	25.00	25.00	25.00	25.00	25.00	25.00	25.00	300.00
34 Commonwealth/Westridge	1300	13.00	13.00	13.00	13.00	13.00	13.00	13.00	13.00	13.00	13.00	13.00	156.00
35 Nova Road Pond #1	1300	13.00	13.00	13.00	13.00	13.00	13.00	13.00	13.00	13.00	13.00	13.00	156.00
36 Nova Road Pond #2	1300	122.00	122.00	122.00	122.00	122.00	122.00	122.00	122.00	122.00	122.00	122.00	1,464.00
37 Nova Road Pond #3	1300	146.00	146.00	146.00	146.00	146.00	146.00	146.00	146.00	146.00	146.00	146.00	1,752.00
38 Nova Road Pond #4	1300	280.00	280.00	280.00	280.00	280.00	280.00	280.00	280.00	280.00	280.00	280.00	3,360.00
39 Nova Road Pond #5	1300	85.00	85.00	85.00	85.00	85.00	85.00	85.00	85.00	85.00	85.00	85.00	1,020.00
40 Hidden Village	1300	13.00	13.00	13.00	13.00	13.00	13.00	13.00	13.00	13.00	13.00	13.00	156.00
41 Commonwealth / Frederick	1300	13.00	13.00	13.00	13.00	13.00	13.00	13.00	13.00	13.00	13.00	13.00	156.00
42 Renegade Lane Ditch	1300	13.00	13.00	13.00	13.00	13.00	13.00	13.00	13.00	13.00	13.00	13.00	156.00
43 Fairbrook Retention Pond	1300	17.00	17.00	17.00	17.00	17.00	17.00	17.00	17.00	17.00	17.00	17.00	204.00
44 Devon Street Retention Pond	1300	13.00	13.00	13.00	13.00	13.00	13.00	13.00	13.00	13.00	13.00	13.00	156.00
45 Canal Sections	1300	220.00	220.00	220.00	220.00	220.00	220.00	220.00	220.00	220.00	220.00	220.00	2,640.00
46 Southport Retention Pond (add 4/1/09)	1300	19.00	19.00	19.00	19.00	19.00	19.00	19.00	19.00	19.00	19.00	19.00	228.00
47 Sleepy Hollow Retention Pond	1300	43.00	43.00	43.00	43.00	43.00	43.00	43.00	43.00	43.00	43.00	43.00	516.00
48 Summerlakes Road Retention Pond	1300	13.00	13.00	13.00	13.00	13.00	13.00	13.00	13.00	13.00	13.00	13.00	156.00
49 Airport Road Retention Pond	1300	23.00	23.00	23.00	23.00	23.00	23.00	23.00	23.00	23.00	23.00	23.00	276.00
50 Oakdale/Creek Rd FOOT Pond (first sale of)	1300	15.00	15.00	15.00	15.00	15.00	15.00	15.00	15.00	15.00	15.00	15.00	180.00
51 Sunset Meadows Drive retention pond add 11/1/12	1300	30.00	30.00	30.00	30.00	30.00	30.00	30.00	30.00	30.00	30.00	30.00	360.00
52 Causeway FOOT Pond	4400	13.00	13.00	13.00	13.00	13.00	13.00	13.00	13.00	13.00	13.00	13.00	156.00
53 Corral Spt/Complex Pond #1	4400	56.00	56.00	56.00	56.00	56.00	56.00	56.00	56.00	56.00	56.00	56.00	672.00
54 Corral Spt/Complex Pond #2	4400	35.00	35.00	35.00	35.00	35.00	35.00	35.00	35.00	35.00	35.00	35.00	420.00
55 Corral Spt/Complex ditch	4400	120.00	120.00	120.00	120.00	120.00	120.00	120.00	120.00	120.00	120.00	120.00	1,440.00
Golf Course Lakes	1300	440.00	440.00	440.00	440.00	440.00	440.00	440.00	440.00	440.00	440.00	440.00	5,280.00
D-1 Ditch/Golf Course	1300	35.00	35.00	35.00	35.00	35.00	35.00	35.00	35.00	35.00	35.00	35.00	420.00
Monthly Totals:		3,322.00	3,522.00	3,561.00	3,522.00	3,283.00	3,322.00	3,096.00	3,322.00	3,096.00	3,322.00	3,283.00	40,212.00

May 1, 2017 thru April 30, 2018
 Total Annual PW 31,824.00
 Total Annual GC 5,700.00
 Total Annual Parks 2,688.00
 Total Annual 40,212.00

May 2017 - September 2017
 Public Works 13,993.00
 Golf Course 2,375.00
 Parks Dept 1,120.00
 17,488.00

41218005413414
 41218005413414
 00144005723414

October 2017 - April 2018
 Public Works 17,831.00
 Golf Course 3,325.00
 Parks Dept 1,568.00
 22,724.00

41218005413414
 41218005413414
 00144005723414

Note: Golf Course portion of contract funded in Public Works account 41218005413414.

**EXTENSION OF
AMENDED, RESTATED AND STANDARD CONTRACT FOR SERVICES**

THIS EXTENSION OF AMENDED, RESTATED AND RENEWED STANDARD CONTRACT FOR SERVICES ("Extension") is made and entered into the day and year set forth hereinafter by and between the **CITY OF PORT ORANGE, FLORIDA**, a Florida municipal corporation located at 1000 City Center Circle, Port Orange, Volusia County, Florida 32129-4144 (the "City"), and **APPLIED AQUATIC MANAGEMENT, INC.**, a Florida corporation whose principal address is 4305 Bomber Road, Bartow, Florida 33830 (the "Contractor"). (The City and the Contractor are hereinafter collectively referred to as the "Parties.")

WHEREAS, the Parties entered into a Standard Contract for Services on April 10, 2012 and an Amended, Restated and Renewed Standard Contract for Services on April 23, 2014 (collectively the "Contract"); and

WHEREAS, the Contract provides for an initial term of one year commencing on May 1, 2012 and continuing until April 30, 2013, with five (5) optional one year renewals upon written agreement of the parties; and

WHEREAS, on April 23, 2013, the parties exercised the first option to renew the Contract for a one year period commencing on May 1, 2013 and continuing until April 30, 2014; and

WHEREAS, on April 15, 2014, the parties exercised the second option to renew the Contract for a one year period commencing on May 1, 2014 and continuing until April 30, 2015; and

WHEREAS, on April 7, 2015, the parties exercised the third option to renew the Contract for a one year period commencing on May 1, 2015 and continuing until April 30, 2016 and amended the Contract to provide for public records compliance pursuant to Florida Statute; and

WHEREAS, the parties desire to exercise the fourth option to renew the Contract for a one year period commencing on May 1, 2016 and continuing until April 30, 2017; and

WHEREAS, the Port Orange City Council has determined that the execution of this Extension is beneficial to the citizens of the City of Port Orange.

NOW, THEREFORE, the Parties, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, agree as follows:

1. Term: The term of the Contract is hereby extended for one (1) year, commencing May 1, 2016, and continuing until April 30, 2017.

2. City Obligations. In return for the services identified above, the City agrees to compensate Contractor at the prices set forth in Contractor's Total Base Bid submitted April 3, 2012, as amended by Exhibit "1" hereto, subject to a limit up to but not to exceed Forty Thousand, Two Hundred Twelve and 00/100 Dollars (\$40,212.00) during the period May 1, 2016 through April 30, 2017, subject to approval by City Council for the then-current fiscal year. All payments shall be governed by the Local Government Prompt Payment Act as set forth in Sections 218.70 through 218.79, Florida Statutes, as amended.

3. Contract Construction. This Extension may be executed in one or more counterparts, each of which shall be deemed to be an original but all of which together shall constitute one and the same instrument. The delivery by facsimile or e-mail of an executed copy of this Extension shall be deemed valid as if an original signature

4. All other terms and conditions of the Contract shall remain in full force and effect.

IN WITNESS WHEREOF, the Parties hereto have signed, sealed, and delivered this Extension on the day and year stated hereinafter.

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Witnesses:

BP Carpenter
Printed Name: BP Carpenter

Jamie Sellers
Printed Name: Jamie Sellers

APPLIED AQUATIC MANAGEMENT, INC.

By: Linda W. Myers
Linda W. Myers, President

Date: 02/15/16

STATE OF FLORIDA
COUNTY OF POLK

The foregoing instrument was acknowledged before me this 15 day of February, 2016, by Linda W. Myers, as President of Applied Aquatic Management, Inc., a Florida corporation, and who:

[Notary: Please select one]

☒ is personally known to me; or
☐ has produced _____ as identification.



Stephanie Brown
Notary Public, State of Florida
Printed, typed or stamped name, commission and expiration:

Witnesses:

CITY OF PORT ORANGE

Barbara J. Abbate
Printed Name: Barbara J. Abbate

By: Allen Green
Allen Green, Mayor

Kelly McQuillen
Printed Name: Kelly McQuillen

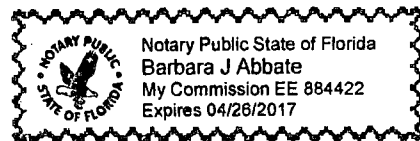
Attest: Robin L. Fenwick
Robin L. Fenwick, CMC, City Clerk

Date: 4/5/16

STATE OF FLORIDA
COUNTY OF VOLUSIA

The foregoing instrument was acknowledged before me this 5 day of April, 2016, by Allen Green and Robin L. Fenwick, as Mayor and City Clerk, respectively, of the City of Port Orange, a Florida municipal corporation, on behalf of the city, and who are personally known to me.

Barbara J. Abbate
Notary Public, State of Florida
Printed, typed or stamped name, commission and expiration:



May 1, 2016 - April 30, 2017

	May	June	July	August	Sept	Oct	Nov	Dec	Jan	Feb	March	April	Total Annual Cost
1 Autumn Trail	28.00	28.00	28.00	28.00	28.00	28.00	28.00	0.00	28.00	0.00	28.00	28.00	280.00
2 Cross Creek/Secret River Trail	34.00	34.00	34.00	34.00	34.00	34.00	34.00	0.00	34.00	0.00	34.00	34.00	408.00
3 Hidden Lakes/Hidden Lakes Drive	146.00	146.00	146.00	146.00	146.00	146.00	146.00	0.00	146.00	0.00	146.00	146.00	1,460.00
4 Willow Run sub/Thomasha Dr.	13.00	13.00	13.00	13.00	13.00	13.00	13.00	0.00	13.00	0.00	13.00	13.00	130.00
5 Willow Run sub/Tacey Dr.	13.00	13.00	13.00	13.00	13.00	13.00	13.00	0.00	13.00	0.00	13.00	13.00	130.00
6 Willow Run sub/Harris Way	13.00	13.00	13.00	13.00	13.00	13.00	13.00	0.00	13.00	0.00	13.00	13.00	130.00
7 Southern Oaks/Squirrel Nest Lane	13.00	13.00	13.00	13.00	13.00	13.00	13.00	0.00	13.00	0.00	13.00	13.00	130.00
8 Gatewood/Oak Forest Circle	13.00	13.00	13.00	13.00	13.00	13.00	13.00	0.00	13.00	0.00	13.00	13.00	130.00
9 Foxboro/Miles Drive	48.00	48.00	48.00	48.00	48.00	48.00	48.00	0.00	48.00	0.00	48.00	48.00	576.00
10 Deep Forest/Oakwood/Smith Wood Dr.	58.00	58.00	58.00	58.00	58.00	58.00	58.00	0.00	58.00	0.00	58.00	58.00	696.00
11 Foxboro/Crown Lane	13.00	13.00	13.00	13.00	13.00	13.00	13.00	0.00	13.00	0.00	13.00	13.00	130.00
12 The Settling/Alstern Drive	13.00	13.00	13.00	13.00	13.00	13.00	13.00	0.00	13.00	0.00	13.00	13.00	130.00
13 Bent Oaks/Whisperwill Drive	72.00	72.00	72.00	72.00	72.00	72.00	72.00	0.00	72.00	0.00	72.00	72.00	864.00
14 Lone Oak/Lone Oak Drive	13.00	13.00	13.00	13.00	13.00	13.00	13.00	0.00	13.00	0.00	13.00	13.00	130.00
15 Central Park/Central Park Blvd.	85.00	85.00	85.00	85.00	85.00	85.00	85.00	0.00	85.00	0.00	85.00	85.00	1,020.00
16 Winter Park/Pelham Drive	21.00	21.00	21.00	21.00	21.00	21.00	21.00	0.00	21.00	0.00	21.00	21.00	252.00
17 Falcon Crest/Champane Circle	13.00	13.00	13.00	13.00	13.00	13.00	13.00	0.00	13.00	0.00	13.00	13.00	130.00
18 City Hall / City Center Circle	73.00	73.00	73.00	73.00	73.00	73.00	73.00	0.00	73.00	0.00	73.00	73.00	876.00
19 Amber Village/Amber Circle	13.00	13.00	13.00	13.00	13.00	13.00	13.00	0.00	13.00	0.00	13.00	13.00	130.00
20 Fire Station #5 (labeled 5/1/14)	40.00	40.00	40.00	40.00	40.00	40.00	40.00	0.00	40.00	0.00	40.00	40.00	480.00
21 Jackson Street Park	127.00	127.00	127.00	127.00	127.00	127.00	127.00	0.00	127.00	0.00	127.00	127.00	1,524.00
22 Fire Station #2 (labeled 5/1/14)	50.00	50.00	50.00	50.00	50.00	50.00	50.00	0.00	50.00	0.00	50.00	50.00	600.00
23 Monroe Street	13.00	13.00	13.00	13.00	13.00	13.00	13.00	0.00	13.00	0.00	13.00	13.00	130.00
Union Street revised 5/1/14 to include 3 pond areas all lines by pipe, laydown, excavant and foot pond on 5/1 creek fill.													
24 Baywood Avenue	178.00	178.00	178.00	178.00	178.00	178.00	178.00	0.00	178.00	0.00	178.00	178.00	2,136.00
25 Southwinds	25.00	25.00	25.00	25.00	25.00	25.00	25.00	0.00	25.00	0.00	25.00	25.00	300.00
26 Nixon Lane	97.00	97.00	97.00	97.00	97.00	97.00	97.00	0.00	97.00	0.00	97.00	97.00	1,164.00
27 Canalew Blvd.	25.00	25.00	25.00	25.00	25.00	25.00	25.00	0.00	25.00	0.00	25.00	25.00	300.00
28 Sugar Grove/Sugar Grove Court	50.00	50.00	50.00	50.00	50.00	50.00	50.00	0.00	50.00	0.00	50.00	50.00	600.00
29 Buschman Park	25.00	25.00	25.00	25.00	25.00	25.00	25.00	0.00	25.00	0.00	25.00	25.00	300.00
30 Orange Boulevard	132.00	132.00	132.00	132.00	132.00	132.00	132.00	0.00	132.00	0.00	132.00	132.00	1,584.00
31 Spruce Creek Rd. @ Acorn Ln.	25.00	25.00	25.00	25.00	25.00	25.00	25.00	0.00	25.00	0.00	25.00	25.00	300.00
32 Fire Station #4 (Airport Rd.)	25.00	25.00	25.00	25.00	25.00	25.00	25.00	0.00	25.00	0.00	25.00	25.00	300.00
33 Commonweath/Wertridge	25.00	25.00	25.00	25.00	25.00	25.00	25.00	0.00	25.00	0.00	25.00	25.00	300.00
34 Nova Road Pond #1	13.00	13.00	13.00	13.00	13.00	13.00	13.00	0.00	13.00	0.00	13.00	13.00	130.00
35 Nova Road Pond #2	122.00	122.00	122.00	122.00	122.00	122.00	122.00	0.00	122.00	0.00	122.00	122.00	1,464.00
36 Nova Road Pond #3	146.00	146.00	146.00	146.00	146.00	146.00	146.00	0.00	146.00	0.00	146.00	146.00	1,752.00
37 Nova Road Pond #4	280.00	280.00	280.00	280.00	280.00	280.00	280.00	0.00	280.00	0.00	280.00	280.00	3,360.00
38 Nova Road Pond #5	85.00	85.00	85.00	85.00	85.00	85.00	85.00	0.00	85.00	0.00	85.00	85.00	1,020.00
39 Hidden Village	13.00	13.00	13.00	13.00	13.00	13.00	13.00	0.00	13.00	0.00	13.00	13.00	130.00
40 Commonweath / Frederick	13.00	13.00	13.00	13.00	13.00	13.00	13.00	0.00	13.00	0.00	13.00	13.00	130.00
41 Renegade Lane Ditch	13.00	13.00	13.00	13.00	13.00	13.00	13.00	0.00	13.00	0.00	13.00	13.00	130.00
42 Farnbrook Retention Pond	17.00	17.00	17.00	17.00	17.00	17.00	17.00	0.00	17.00	0.00	17.00	17.00	204.00
43 Devon Street Retention Pond	13.00	13.00	13.00	13.00	13.00	13.00	13.00	0.00	13.00	0.00	13.00	13.00	130.00
44 Southport Retention (labeled 4/1/09)	220.00	220.00	220.00	220.00	220.00	220.00	220.00	0.00	220.00	0.00	220.00	220.00	2,640.00
45 Sleepy Hollow Retention Pond	19.00	19.00	19.00	19.00	19.00	19.00	19.00	0.00	19.00	0.00	19.00	19.00	228.00
46 Summerlee Road Retention Pond	43.00	43.00	43.00	43.00	43.00	43.00	43.00	0.00	43.00	0.00	43.00	43.00	516.00
47 Airport Road Retention Pond	13.00	13.00	13.00	13.00	13.00	13.00	13.00	0.00	13.00	0.00	13.00	13.00	130.00
48 Dunlawton/Spruce Rd Foot Pond (West side of Spruce Rd)	23.00	23.00	23.00	23.00	23.00	23.00	23.00	0.00	23.00	0.00	23.00	23.00	276.00
49 West Spruce Rd Retention Pond (labeled 11/1/12)	15.00	15.00	15.00	15.00	15.00	15.00	15.00	0.00	15.00	0.00	15.00	15.00	180.00
50 Caseway FDOT Pond	30.00	30.00	30.00	30.00	30.00	30.00	30.00	0.00	30.00	0.00	30.00	30.00	360.00
51 Contact Sprt. Complex Pond #1	56.00	56.00	56.00	56.00	56.00	56.00	56.00	0.00	56.00	0.00	56.00	56.00	672.00
52 Contact Sprt. Complex Pond #2	35.00	35.00	35.00	35.00	35.00	35.00	35.00	0.00	35.00	0.00	35.00	35.00	420.00
53 Contact Sprt. Complex ditch	120.00	120.00	120.00	120.00	120.00	120.00	120.00	0.00	120.00	0.00	120.00	120.00	1,440.00
54 Golf Course Lakes	440.00	440.00	440.00	440.00	440.00	440.00	440.00	0.00	440.00	0.00	440.00	440.00	5,280.00
55 D-1 Ditch/Golf Course	35.00	35.00	35.00	35.00	35.00	35.00	35.00	0.00	35.00	0.00	35.00	35.00	420.00
Monthly Total	3,322.00	3,527.00	3,561.00	3,522.00	3,561.00	3,283.00	3,322.00	3,096.00	3,322.00	3,096.00	3,322.00	3,283.00	40,212.00

May 1, 2016 thru April 30, 2017

Total Annual PW 31,824.00
Total Annual GC 5,700.00
Total Annual Parts 2,688.00
Total Annual 40,212.00

May 2016 - September 2016

Public Works 41218005413414 13,993.00
Golf Course 00144005723414 2,375.00
Parks Dept 1,120.00
17,488.00

October 2016 - April 2017

Public Works 41218005413414 17,831.00
Golf Course 00144005723414 3,325.00
Parks Dept 22,724.00

Note: Golf Course portion of contract funded by Public Works account 41218005413414.

EXHIBIT "1"

CITY OF PORT ORANGE, FLORIDA

**Treatment of Lakes, Retention Ponds,
Canals & Ditches**

BID NO. 12-26



Prepared by:
City of Port Orange Purchasing Division
March 2012

Bid release date: **March 12, 2012**
Bid (Mandatory) pre-submittal meeting date & time: **March 21, 2012 at 10 a.m.**
Bid last day for questions: **March 28, 2012 5 p.m.**
Bid due date and time Envelope #1 and Envelope #2: **April 3, 2012 at 10:00 a.m.**

City of Port Orange, Florida
1000 City Center Circle
Port Orange, FL 32129
(386) 506-5501

Section 00020



Legal Notice

Notice to Bidders

Bid #12-26

Treatment of Lakes, Retention Ponds, Canals & Ditches

Notice is hereby given that the City of Port Orange is accepting bids for Treatment of lakes, retention ponds, canals & ditches. Bids will be accepted in the Purchasing Office, a division of the Finance Department, Port Orange City Hall, 1000 City Center Circle, Port Orange, Florida until **10:00 A.M., on April 3, 2012** or as addendum issued by the City. Two (2) envelopes, as described below, shall be submitted. Envelope #1 contains required forms, it will be evaluated and deemed responsive or non-responsive. All bids deemed non-responsive will be returned to the bidder and envelope #2 will not be opened. Envelope #2 contains technical and price information. Envelope #2 from all responsive bidders will be opened and read aloud at **2:00 P.M.**, the same day.

There will be a MANDATORY pre-bid meeting for the project at **10:00 A.M. (local time) on March 21, 2012**. The meeting will be held in the Council Chambers, located on the first floor of City Hall, 1000 City Center Circle, Port Orange, Florida. Attendance to the pre-bid meeting is mandatory.

DESCRIPTION: Treatment of Lakes, Retention Ponds, Canals & Ditches.

All bids are solicited and shall be made pursuant to the Code of Ordinances, City of Port Orange, Chapter 2, Article VI, Division 2, Section 2-256, and all bids will be evaluated in accordance with the provisions thereof. Code of Ordinances, City of Port Orange is on file in the Office of the City Clerk, City Hall, 1000 City Center Circle, Port Orange, Florida, and at www.municode.com

Copies of the bid documents, requirement, scope of service and all other pertinent information necessary to submit a complete package may be obtained electronically from Onvia (DemandStar) via their website at www.demandstar.com or from Tom Cinefro, Purchasing Coordinator, 500 Oak Street, Port Orange, Florida 32127 via email tcinefro@port-orange.org.

All questions should be directed **in writing** to the Purchasing Coordinator, Tom Cinefro, tcinefro@port-orange.org

A certified check or bank draft, payable to the City of Port Orange, Florida or a satisfactory bid bond executed by the Bidder and an acceptable surety, in an amount equal to five percent (5%) of the bid shall be submitted with each bid. **NO** bid shall be withdrawn for a period of ninety (90) days subsequent to the bid opening without the consent of the City of Port Orange, Florida. Upon award, the successful bidder will also be required to furnish and pay for a satisfactory contract one hundred percent (100%) Performance Bond to be recorded by the vendor, with the Clerk of the Circuit Court, Volusia County, Florida and to enter into a contract for services with the City of Port Orange.

All bidders are required to complete and submit an original or certified copy of Certificate of Liability Insurance, the Public Entity Crime Statement, the Anti-collusion Statement and the Drug Free Tie Bid Preference Statement.

No bids received after the time and date specified for the opening will be considered. The City of Port Orange, Florida reserves the right to reject any and all bids, to waive any and all non-substantial irregularity in bids received, whenever such waiver or rejection is in the best interest of the City.

Bids shall be addressed to Tom Cinefro, Purchasing Coordinator, Finance Department, City Hall, 1000 City Center Circle, Port Orange, Florida 32129 in **Two (2) SEALED ENVELOPES** plainly marked on the outside: **"Treatment of Lakes, Retention Ponds, Canals & Ditches, Bid No. 12-26."** -Envelope #1 and #2, respectively-

Tom Cinefro, Purchasing Coordinator

Legal Ad - One Time – **March 12, 2012**

SECTION 00025

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BID NO. 12-26

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SECTION 00030



City of Port Orange

Purchasing Division
1000 City Center Circle
Port Orange, Florida 32129
Telephone (386) 506-5704
Fax (386) 506-5711

BID 12-26

BIDDER ACKNOWLEDGEMENT FORM

THIS FORM MUST BE COMPLETED AND RETURNED WITH YOUR BID

BID TITLE: Treatment of Lakes, Retention Ponds, Canals & Ditches: Bid #12-26

BID RELEASE DATE: March 12, 2012

BID PRE-SUBMITTAL MEETING DATE & TIME: March 21, 2012 at 10 a.m. (MANDATORY) City Hall

BID DEADLINE FOR QUESTIONS: March 28, 2012 at 5 p.m.

BID DUE DATE & TIME, ENVELOPE #1 & #2: April 3, 2012 at 10:00 a.m.

Proposals Received After The Above Date And Time Will Not Be Accepted.

If returning as a "No Bid", please state reason (s): _____

BIDDER'S NAME: _____

BIDDER'S MAILING ADDRESS: _____

CITY-STATE-ZIP: _____

PHONE NUMBER: _____ EMAIL: _____

ACKNOWLEDGMENT OF ADDENDA: (Must circle each addendum issued) 1 2 3 4 5 6 7

I certify that this bid is made without prior understanding, agreement, or connection with any corporation, firm, or person submitting a bid for the same materials, supplies, or equipment, and is in all respects fair and made without collusion or fraud. I agree to abide by all conditions of this bid and certify that I am authorized to sign this bid for the bidder. In submitting a bid to the City of Port Orange, the bidder offers and agrees that if the bid is accepted, the bidder will convey, assign or transfer to the City of Port Orange all rights, title, and interest in and to all causes of action it may now or hereafter acquire under the Antitrust laws of the United States and the State of Florida for price fixing relating to the particular commodities or services purchased or acquired by the City of Port Orange. At the City's discretion, such assignment shall be made and become effective at the time the City tenders final payment to the bidder.

X _____
AUTHORIZED SIGNATURE (MANUAL)

NAME (TYPED)

TITLE

DATED

SECTION 00040



City of Port Orange

Purchasing Division
1000 City Center Circle
Port Orange, Florida 32129
Telephone (386) 506-5704
Fax (386) 506-5711

BIDDER'S CHECKLIST

The 10 Most Critical Things to Keep in Mind When Responding to a Bid for the City of Port Orange

1. _____ **Read the entire document.** Note critical items such as: mandatory requirements; Supplies and/or services required; submittal dates; number of copies required for submittal; funding amount and source; contract requirements (i.e., contract performance security, insurance requirements, performance and/or reporting requirements, etc.).
2. _____ **Note the Purchasing Coordinator's name, address, phone numbers and e-mail address.** This is the only person (or his designee) you are allowed to communicate with regarding the BID and is an excellent source of information for any questions you may have.
3. _____ **Attend the pre-bid conference** if one is offered. These conferences provide an opportunity to ask clarifying questions, obtain a better understanding of the project, or to notify the City of any ambiguities, inconsistencies, or errors in the Bid.
4. _____ **Take advantage of the "question and answer" period.** Submit your questions to the Purchasing Coordinator by the due date listed in the Bid and view the answers given in the formal "addenda" issued for the bid. All addenda issued for a Bid are posted on www.demandstar.com website and will include all questions asked and answered concerning the bid. It is the bidder's responsibility to be sure all addenda were received.
5. _____ **Follow the format required in the Bid** when preparing your response. Provide point-by-point responses to all sections in a clear and concise manner.
6. _____ **Provide complete answers/descriptions.** Read and answer **all** questions and requirements. Don't assume the City or evaluator/evaluation ranking committee will know what your company capabilities are or what items/services you can provide, even if you have previously contracted with the City. The proposals are evaluated based solely on the information and materials provided in your response.
7. _____ **Use the forms provided**, i.e., cover page, bid acknowledgment form, exhibits, etc.
8. _____ **Check the website for Bid addenda's.** Before submitting your response, check the DemandStar website at www.demandstar.com to determine whether any addenda were issued for the Bid. If so, you must circle for each addenda issued on the "Bidder acknowledgement form".
9. _____ **Review and read the Bid document again** to make sure that you have addressed all requirements. Your original response and the requested copies must be identical and be complete.
10. _____ **Submit your response on time.** Note all the dates and times listed in the Bid and within the document, and be sure to submit all required items on time. Late proposal responses are never accepted.

SECTION 00050

BIDDER'S SUBMITTAL CHECKLIST



City of Port Orange

Purchasing Division
1000 City Center Circle
Port Orange, Florida 32129
Telephone (386) 506-5704
Fax (386) 506-5711

This checklist is for the Bidder's use in preparing their Bid. It is not intended to include all details necessary to prepare a bid and it is not intended as a substitute for the requirements of the Specifications. Use of this checklist does not relieve the Bidder from the responsibility of meeting all requirements of the Specifications concerning the preparation of an acceptable bid.

Bidder's Submittal Checklist:

1. _____ **Envelope #1: "Forms"** (1) original and (2) copies of the bid (tabbed and indexed, must be in the following order)

Forms:

- ☐ 1: Bidder acknowledgement form: (Section 00030, page 4)
- ☐ 2: Insurance certificates: (Section 00090, page 25)
- ☐ 3: Bid Bond: (Section 00160, page 38)
- ☐ 4: List of chemicals: (Section 00090, page 23)
- ☐ 5: Statement of Bidder's qualifications (Section 00130, page 33)
- ☐ 6: Listing of previous experience: (Section 00140, page 35)
- ☐ 7: Equipment list: (Section 00150, page 36)
- ☐ 8: Personnel list: (Section 00155, page 37)
- ☐ 9: Anti-collusion statement (Section 00180, page 40)
- ☐ 10: Drug free/tie preference statement (Section 00190, page 41)
- ☐ 11: Public entity crime statement: (Section 00170, page 39)

2. _____ **Envelope #2: "Price"** (1) original and (2) copies of the bid (tabbed and indexed, must be in the following order)

Price:

- ☐ 1: Total base bid: (Section 00120, pages 30-32)

SECTION 00060

CITY OF PORT ORANGE PURCHASING DIVISION

STANDARD PURCHASE DEFINITIONS

The City will use the following definitions in instructions to bidders, terms and conditions, special provisions, technical specifications and any other solicitation documents.

1. Addendum means a written instrument issued by the Contract Awarding Authority that modifies or clarifies the Solicitation prior to the Due Date. "Addenda" is the plural form of the word.
2. Alternate Bid means multiple Bids with substantive variations from the same Bidder in response to a Solicitation.
3. Appropriate, Appropriated, or Appropriation means the adoption by the City Council of the City of a budget for a fiscal year that includes payments to be made under the Contract during the respective fiscal year.
4. Bid is a complete, properly signed response to an invitation for bid, which if accepted, would bind the Bidder to perform the resultant Contract.
5. Bidder is a person, firm, or entity that submits a Bid in response to a Solicitation. Any Bidder may be represented by an agent after submitting evidence demonstrating the agent's authority. The agent cannot certify as to his own agency status.
6. Bid Guaranty guarantees that the Bidder (a) will not withdraw the Bid within the period specified for acceptance, and (b) will execute a Contract and furnish required bonds and any necessary insurance within the time specified in the Solicitation, unless a longer time is allowed by the City. The guarantee will be returned to the Bidder upon execution of a Contract
7. Bids are responses to an Invitation for Bids.
8. City means the City of Port Orange.
9. Construction means the construction, repair, rehabilitation, alteration, conversion or extension of building, parks, utilities, streets or other improvements or alterations to real property.
10. Contractor means the person, firm or entity selling goods or services to the City under a Contract.
11. Deliverables means the goods, products, materials, and/or services to be provided to the City by a Bidder.
12. Due Date means the date and time specified for receipt of Bids.
13. Goods are supplies, materials, or equipment.
14. Invitation for Bid (IFB) or Bid means a Solicitation requesting pricing for a specified Good or Service which has been advertised for Bid in a newspaper.

15. Lowest Responsible Bid means the Bid meeting all requirements of the specifications, terms, and conditions of the Invitation for Bid resulting in the lowest cost to the City in a total cost concept or based solely on price, taking into consideration the financial and practical ability of the Bidder to perform the Contract, past performance of the Bidder, and compliance with all City ordinances concerning the purchasing process.
16. Lowest Responsible Bidder means the Bidder submitting Lowest Responsible Bid.
17. Non-Professional Services are services performed that are not of a professional nature such as lawn care, security, janitorial, etc.
18. Offer means a complete signed response submitted to the City in response to a Solicitation including, but not limited to, a Bid submitted in response to an Invitation for Bid, a proposal submitted in response to a Request for Proposal, a quote submitted in response to a Request for Quotation, or a statement of qualifications and interest submitted in response to a Request for Qualifications.
19. Pre-Bid Conference means a conference conducted by the Purchasing Office, held in order to allow Bidders to ask questions about the proposed Contract and particularly the Contract specifications.
20. Professional Services means services that use skills that are predominantly mental or intellectual, rather than physical or manual such as accounting, architecture, land surveying, law, medicine, optometry, professional engineering, etc.
21. Purchase Order is an order placed by the Purchasing Division for the purchase of Goods or Services written on the City's standard Purchase Order form and which, when accepted by the Bidder, becomes a contract. The Purchase Order is the Bidder's authority to deliver and invoice the City for Goods or Services specified, and the City's commitment to accept the Goods or Services for an agreed upon price.
22. Services include all work or labor performed for the City on an independent contractor basis other than construction.
23. Solicitation means, as applicable, an Invitation for Bid, Request for Proposal, Request for Qualifications or a Request for Quotation.
24. Subcontractor means a person, firm or entity providing goods or services to a Bidder to be used in the performance of the Bidder's obligations under the Contract.
25. Unbalanced Bid means a Bid that is based on prices which are significantly less than cost for some bid items and significantly more than cost for others.

SECTION 00070

CITY OF PORT ORANGE PURCHASING DIVISION

GENERAL REQUIREMENTS FOR BIDS

These instructions are standard for all contracts for commodities or services issued through the City of Port Orange Purchasing Division. General Requirements apply to all advertised bids; however, these may be superseded, whole or in part, by the SPECIAL REQUIREMENTS/INSTRUCTIONS OR OTHER DATA CONTAINED HEREIN. READ THIS ENTIRE DOCUMENT CAREFULLY. FOLLOW ALL INSTRUCTIONS. YOU ARE RESPONSIBLE FOR FULFILLING ALL REQUIREMENTS AND SPECIFICATIONS. BE SURE YOU UNDERSTAND THEM.

1. ACCEPTANCE BY CITY

The City shall have a reasonable time (but not less than 30 days) after receipt to inspect the goods and services tendered by vendor. The City at its option may reject all or any portion of such goods or services which do not, in City's sole discretion, comply in every respect with all terms and conditions of the contract. The City may elect to reject the entire goods and services tendered even if only a portion thereof is nonconforming. If the City elects to accept nonconforming goods and services, the City, in addition to its other remedies, shall be entitled to deduct a reasonable amount from the price thereof to compensate the City for the nonconformity. Any acceptance by the City, even if non-conditional, shall not be deemed a waiver or settlement of any defect in such goods and services. The material delivered as a result of this bid shall remain the property of the seller until a physical inspection and actual usage of the item(s) is made and thereafter deemed acceptable to the satisfaction of the City, in compliance with the terms and specifications contained herein. In the event that the item(s) supplied to the City is/are found to be defective, or does/do not conform to specifications, the City reserves the right to cancel the order upon written notice to the seller and return the item(s) to the seller at the seller's expense.

2. ADDENDA

When specifications are revised, the CITY of PORT ORANGE Purchasing Division will issue an addendum addressing the nature of the change. Bidders must acknowledge all addenda by circling the quantity of addenda received on the "bidder acknowledgment form" and include it in the returned bid package. It is the responsibility of the bidder to ensure all addenda have been received prior to submitting a bid. All Addenda shall be posted by the CITY on www.demandstar.com

3. ANTI-COLLUSION STATEMENT

By submitting this bid, the bidder affirms that this bid is without previous understanding, agreement, or connection with any person, business, or corporation submitting a bid for the same materials, supplies, or equipment, and that this bid is in all respects fair, and without collusion or fraud. Additionally, bidder agrees to abide by all conditions of this bid and certifies that they are authorized to sign this bid for the bidder. In submitting a bid to the City of Port Orange, the bidder offers and agrees that if the bid is accepted, the bidder will convey, sell, assign or transfer to the City of Port Orange all rights, title and interest in and to all causes of action it may now or hereafter acquire under the Anti-trust laws of the United States and the State of Florida for price fixing relating to the particular commodities or services purchased or acquired by the City of Port Orange. At the City's discretion, such assignment shall be made and become effective at the time the City tenders final payment to the bidder.

4. ASSIGNMENT

The successful vendor shall not sell, assign, transfer or convey this contract in whole or in part, without the prior written consent of the City of Port Orange. Any such assignment or transfer shall not release vendor from all contractual obligations.

5. AWARD OF CONTRACT

Any acquisition above the \$25,000 level must be done through one of the formal competitive methods and/or must have City Council approval. Only the Purchasing Coordinator and/or City Manager, have the authority to obligate the City by entering into a contract to purchase goods and/or services up to \$25,000.00. The City of Port Orange, Florida reserves the right to reject any and all bids, to waive any and all non-substantial irregularity in bids received, whenever such waiver or rejection is in the best interest of the City.

6. BID FORM COMPLETION, SUBMISSION AND RECEIPT OF BIDS

Unless otherwise specified, Bidder's shall use the bid forms supplied by the Purchasing Division. Bids will be accepted in the Purchasing Office, a division of the Finance Department, Port Orange City Hall, 1000 City Center Circle, Port Orange, Florida until 10:00 A.M., on the date indicated in the bid documents or as addendum issued by the City. Two (2) envelopes, as described below, shall be submitted. Envelope #1 contains required forms, it will be evaluated and deemed responsive or non-responsive. All bids deemed non-responsive will be returned to the bidder and envelope #2 will not be opened. Envelope #2 contains technical and price information. Envelope #2 from all responsive bidders will be opened and read aloud at 2:00 P.M., the same day.

Bids (Envelope #1 and #2, respectively) shall contain one (1) original and two (2) copies, unless otherwise indicated in the legal advertisement and shall be addressed to Tom Cinefro, Purchasing Coordinator, Finance Department, City Hall, 1000 City Center Circle, Port Orange, Florida 32129 in Two (2) SEALED ENVELOPES. The envelopes shall be plainly marked on the outside to include the bid project name and bid number. Hand deliveries of envelopes shall be made to the Clerk's Office, 1st floor City Hall, City of Port Orange, 1000 City Center Circle, Port Orange, FL 32129.

Bidders shall use the forms furnished by the City. Bids having any erasures or corrections must be initialed by the bidder in ink. Bid shall be typewritten or filled in with pen and ink. Manual signature must be in ink. Bids transmitted by facsimile or email will not be accepted.

7. BID RETURNS

Bidders shall return all completed bids to the CITY of PORT ORANGE, Purchasing Division, 1000 City Center Circle, Port Orange, Florida 32129 the date and time specified. Late bids will not be accepted and shall be returned to Bidders unopened.

8. BID PROTEST

Any actual or prospective bidder, offeror, or contractor who is aggrieved in connection with the solicitation of a bid or award of a contract may protest to the Purchasing Coordinator. The protest shall be submitted in writing within seventy-two (72) hours after such aggrieved person or firm knows or should have known of the facts thereto. The written protest included the name and address of the protestor, appropriate identification of the bid or contract, a statement of the reasons for the protest, and supporting exhibits (evidence or documents to prove any claims). To have it considered. The policy this City has established is as follows:

1. As soon as possible after receipt , the Purchasing Coordinator shall provide the written bid protest to City Manager or his written designee, City Attorney, Department Head involved and Supervisor directly involved in acquisition.
2. Purchasing Coordinator shall schedule an informal meeting with an appeals committee consisting of the above mentioned individuals and protestor. The intent of the meeting is to provide a review and/or solution prior to going before Council. After reviewing all relevant information, the City Manager renders a decision.
3. If the protestor disagrees, the protestor may appeal to the City Council at a formal council meeting. After reviewing the evidence, the City Council shall issue its decision. The City Council's decision shall be final. The protestor may seek review of the decision in the Circuit Court by appeal the administrative order of City Council. Such appeal shall be filed within thirty (30) days of the Council's written decision.

9. BID TABULATION

Bidders who wish to receive a copy of the bid tabulation may obtain it via www.demandstar.com or by contacting the City of Port Orange, Purchasing Coordinator at tcinefro@port-orange.org

10. BONDS

If this bid requires submission of bid guarantee and performance bond, there will be a separate page explaining those requirements. Bids submitted without the required bid bond or cashier's checks are not acceptable. When the Purchasing Coordinator deems it necessary, bid bond/deposits shall be prescribed and are advertised in the public notices inviting bids. Normally, if a bid bond/deposit is requested, it is in the amount of five percent (5%) of the bid amount. If Performance and Materials Bonds are requested for construction projects over \$60,000 and are done so in the amount equal to one hundred percent (100%) of the total contract amount. Performance and Material Bond must also be recorded at the bidder's expense in the Office of the Clerk of the Circuit Court, Volusia County, Florida. All bonds no matter which kind are advertised in the Invitation to Bid which appears in the newspaper. Unsuccessful bidders are entitled to the return of their surety where the Purchasing Coordinator has required such. A successful bidder shall forfeit any surety required by the Purchasing Coordinator upon failure on the bidder's part to enter into a contract within the time specified after the award of bid.

11. CHANGE ORDERS

No oral statement of any person shall modify or otherwise change, or affect the terms, conditions or specifications stated in the resulting contract. All change orders will be made in writing by the City of Port Orange Purchasing Division.

12. CONFLICT OF INTEREST

For purposes of determining any possible conflict of interest, all bidders must disclose if any City of Port Orange employee is also an owner, corporate officer, or employee of their business.

13. CONFLICT OF INSTRUCTIONS

If a conflict exists between the General Conditions and instructions contained herein, and the Specific Conditions and instructions contained herein, the specifics shall govern.

14. CONTRACT OBLIGATION

The CITY of PORT ORANGE City Council must award the contract and the Mayor or other person authorized by the Mayor must sign the contract before it becomes binding on the CITY of PORT ORANGE or the bidders. Department heads are NOT authorized to sign agreements for the CITY of PORT ORANGE. Binding agreements shall remain in effect until all products and/or services covered by this purchase have been satisfactorily delivered and accepted.

15. CONTRACT RENEWALS

Renewals may be made ONLY by written agreement between the CITY of PORT ORANGE and the bidder. Any price escalations are limited to those stated by the bidder on the original bid.

16. COOPERATIVE PURCHASING

The city manager may elect to purchase through or join with other governmental units in cooperative purchasing ventures when the best interest of the city would be served thereby, provided the same is in accordance with all applicable laws. In the event the city manager should elect to purchase through or join with other governmental agencies in cooperative purchasing ventures, all purchases in excess of twenty-five thousand dollars (\$25,000.00) would require council approval before the purchasing contracts are entered into. (Code 1981, § 8-33, Ord 1997-22, § 5)

17. COPYRIGHT AND PATENT RIGHTS

Bidder warrants that there has been no violation of copyrights or patent rights in manufacturing, producing and/or selling the item(s) ordered or shipped as a result of this bid, and successful bidder agrees to hold the City harmless from any and all liability, loss or expense by any such violation.

18. DEFAULT PROVISIONS

In the event of default by the bidder, the City reserves the right to procure the item(s) bid from other sources and hold the bidder responsible for excess costs incurred as a result. A contractor who defaults on a City contract may be banned from doing business with the City for a period of 36 months from the date of default.

19 DELIVERY OF GOODS/SERVICES

19.1. All materials are to be delivered F.O.B.; City of Port Orange's designated facility.

19.2. Delivery dates pertaining to this invitation must be clearly stated in the bid form where required and include weekends and holidays. Failure to comply with this requirement may be a cause for disqualification of bid. Unless otherwise specified, delivery at the earliest date is required. The bidder will clearly state in the bid the time required for delivery upon receipt of contract or purchase order. Proposed delivery time must be specific and such phrases "as required," "as soon as possible" or "prompt" may result in disqualification of the bid. Delivery time will be a factor for any orders placed as a result of this bid. The City reserves the right to cancel such order(s) or any part thereof, without obligation, if delivery is not made within the time(s) specified herein and hold the vendor in default.

19.3. Upon award of a contract, the vendor is obligated to deliver the goods to the destination specified in the Invitation for Bids or the Purchase Order and bears the risk of loss until delivery. If this Invitation for Bids or Purchase Order does not contain delivery instructions, bidders shall request instructions in writing from the Purchasing Coordinator. If the delivery instructions contained in the Invitation for Bids allocate delivery costs and risks in a manner contrary to this section, the provisions of this Invitation for Bids shall prevail.

19.4. When delivery is not met as provided for in the contract, the Purchasing Division reserves the right to make the purchase on the open market, with any cost in excess of the contract price paid by the vendor, in addition to any other damages, direct or consequential, incurred by the City as a result thereof. In addition, failure of the vendor to meet the contract delivery dates will be cause for removal of the vendor from the City's list of eligible bidders as determined by the Purchasing Division.

20. DETERMINATION OF LOWEST AND BEST BIDDER

In determining the lowest and best responsible bidder, in addition to price, there will be considered the following:

- (1) The ability, capacity and skill of the bidder to perform the contract.

- (2) Whether the bidder can perform the contract within the time specified, without delay or interference.
- (3) The character, integrity, reputation, judgment, experience, and efficiency of the bidder.
- (4) The quality of performance of previous contracts.
- (5) The previous and existing compliance by the bidder with laws and ordinances relating to the contract.
- (6) The sufficiency of the financial resources and ability of the bidder to perform the contract or provide the service.
- (7) The quality, availability and adaptability of the supplies or contractual services to the particular use required.
- (8) The ability of the bidder to provide further maintenance and service for the use of the subject of the contract.
- (9) The number and scope of conditions attached to the bid.
- (10) Such other factors as appear to the city council to be pertinent to the bid or the contract under all of the circumstances involved.

21. DISQUALIFICATION OF BIDDER

The Purchasing Coordinator shall maintain a current listing of qualified bidders. The Purchasing Coordinator may, from time to time remove any vendor's name from the list of qualified bidders. Normally the removal of a vendor from the vendor list is done after non response from that vendor for three (3) consecutive bids. Such action may also arise out of breach of contract, default, or irregular business practice, based on the Finance Director and City Attorney's recommendation. Any or all bids may be rejected if the CITY believes that collusion exists among the bidders. Bids in which the prices are obviously unbalanced may be rejected. If multiple bids are submitted by a bidder and after the bids are opened, one of the bids is withdrawn, the result will be that all of the bids submitted by that bidder will be withdrawn; however, nothing herein prohibits a vendor from submitting multiple bids for different products or services.

22. EVALUATION

Evaluation shall be used as a determinant as to which bid items or services are the most efficient and/or most economical for the CITY. It shall be based on all factors which have a bearing on price and performance of the items in the user environment. All bids are subject to tabulation by the CITY of PORT ORANGE Purchasing Division and recommendation to the governing body. Compliance with all bid requirements, delivery and needs of the using department are considerations in evaluating bids. Pricing is NOT the only criteria for making a recommendation. The CITY of PORT ORANGE Purchasing Division reserves the right to contact any bidder, at any time, to clarify, verify or request information with regard to any bid.

23. EXCEPTIONS TO SPECIFICATIONS

For purposes of evaluation, bidder must indicate any exception to the specifications, terms, and/or conditions, no matter how minor. This includes any agreement or contract forms supplied by the bidder that are required to be signed by the City. If exceptions are not stated by the bidder, in his bid, it will be understood that the item(s)/services fully comply with the specifications, terms and/or conditions stated by the City. Exceptions are to be listed by the bidder on an attachment included with his bid. The City will not determine exceptions based on a review of any attached sales or manufacturer's literature.

24. FACILITIES

The City reserves the right to inspect the bidder's facilities at any time.

25. FAILURE TO RESPOND

If you elect not to bid, please return enclosed "Bidder Acknowledgement Form" by the bid due date, and state your reason(s) for not bidding. Failure to respond, either by submitting a bid, or by submitting a "Statement of No Bid" card, three (3) times, shall result in your name being removed from our mailing list.

26. GOVERNING FORMS

In the event of any conflict between the terms and provisions of these requirements and the specifications, the specifications shall govern. In the event of any conflict of interpretation of any part of this overall document, the City's interpretation shall govern.

27. GOVERNING LAW

Bidders shall comply with all applicable federal, state and local laws and regulations. All bids are solicited and shall be made pursuant to the Code of Ordinances, City of Port Orange, Chapter 2, Article VI, Division 2, Section 2-256, and all bids will be evaluated in accordance with the provisions thereof. Code of Ordinances, City of Port Orange is on file in the Office of the City Clerk, City Hall, 1000 City Center Circle, Port Orange, Florida, and at www.municode.com

The City of Port Orange is also governed by Florida Statutes 286.055 the Consultants Competitive Negotiations Act, as the method of selecting architects, engineers and land surveyors. The City has expanded the Act to include Professional counselors, environmentalists, planners, general contractors, computer systems, designers, telecommunications consultants, maintenance technicians, financial services and other professional services.

Every acquisition equal to or greater than \$10,000.00 must have a signed, notarized "Public Entity Crimes Form to comply with Florida Statute Section 287.133 (3)(a). Every bid contains this State Form. Another State of Florida Form is the Drug Free Tie Bid Preference Form. This form is in accordance with Section 287.087, Florida Statutes.

28. GRANT FUNDING

Any contract entered into by the CITY that is to be paid from grant funds shall be limited to payment from the grant funding and the vendor/provider understands that the CITY has not set aside any CITY funds for the payment of obligations under a grant contract. If grant funding should become unavailable at any time for the continuation of services paid for by the grant, and further funding cannot be obtained for the contract, then *the sole recourse of the provider shall be to terminate any further services under the contract and the contract shall be null and void.*

29. HIPAA COMPLIANCE

Bidder agrees to comply with the Standards for Privacy of Individually Identifiable Health Information of the Health Insurance Portability and Accountability Act of 1996, PL 104-191, 45 CFR Parts 160-164, as amended, referred to as "HIPAA", to the extent that the Bidder uses, discloses or has access to protected health information as defined by HIPAA.

30. IDENTICAL TIE BIDS

In accordance with Section 287.087, State of Florida Statutes, preference shall be given to businesses with Drug-free Workplace Programs. Whenever two or more bids that are equal with respect to price, quality, and service are received for the procurement of commodities or contractual service, a bid received from a business that certifies that it has implemented a Drug-free Workplace Program shall be given preference in the award process.

31. INDEMNIFICATION

Contractor covenants and agrees that it will indemnify and hold harmless the City and all of the City's officers, agents, and employees from any claim, loss, damage, costs, charge or expense arising out of any act, action, neglect or omission by contractor during the performance of the contract, whether direct, or indirect, and whether to any person or property to which the City of said parties may be subject, except that neither the contractor nor any of its sub-contractors will be liable under this section for damages arising out of injury or damage to persons or property directly caused or resulting from the sole negligence of City or any of its officers, agents, or employees.

32. INDEPENDENT CONTRACTOR

It is expressly understood and agreed by both parties hereto that the City is contracting with the successful vendor as independent contractor. The parties hereto understand and agree that the City shall not be liable for any claims which may be asserted by any third party occurring in connection with the services to be performed by the successful vendor under this contract and that the successful vendor has no authority to bid the City.

33. INSPECTIONS & TESTING

City of Port Orange reserves the right to inspect any item(s) or service location for compliance with specifications and requirements and needs of the using department. If a bidder cannot furnish a sample of a bid item, where applicable, for review, or fails to satisfactorily show an ability to perform, the CITY can reject the bid as inadequate.

34. INSURANCE

If required, specific insurance provisions will be included in bid specifications. An original or certified copy of an insurance certificate must be submitted in the bid. The successful vendor will be required to maintain, at all times during performance of the contract, the insurance detailed in bid specifications. Failure to provide this document may result in disqualification of bid.

35. INVOICES AND PAYMENTS

All invoices should be sent to: City of Port Orange, Accounts Payable, 1000 City Center Circle, Port Orange, Florida, 32129. In accordance with Florida Statutes, Chapter 218, payment will be made within 45 days after receipt of merchandise and a proper invoice. The City will attempt to pay within fewer days if bidder offers a payment discount. The City cannot make advance payments, make deposits in advance of receipt of goods, or pay C.O.D. Bidders should state any payment discount in space provided on Proposal form.

36. MAINTENANCE

Maintenance required for equipment bid should be available in the CITY of PORT ORANGE by a manufacturer-authorized maintenance facility. Costs for this service shall be shown on the Pricing/Delivery Information form. If the CITY of PORT ORANGE opts to include maintenance, it shall be so stated in the purchase order and said cost will be included. Service will commence only upon expiration of applicable warranties and should be priced accordingly.

37. NAME BRANDS

Specifications may reference name brands and model numbers. It is not the intent of the CITY of PORT ORANGE to restrict these bids in such cases, but to establish a desired quality level of merchandise or to meet a pre-established standard due to like existing items. Bidders may offer items of equal stature and the burden of proof of such stature rests with bidders, unless otherwise specified by the CITY. The CITY of PORT ORANGE shall act as sole judge in determining equality and acceptability of products offered.

38. NON DISCRIMINATION

There shall be no discrimination as to race, color, religion, gender, national origin, ancestry, and physical or mental disability in the operations conducted under this contract. Included as applicable activities by the contractor under this section are the solicitation for, or purchase of, goods or services, or the subcontracting of work in performance of this contract.

39. NOTICE TO CONTRACTOR

The employment of unauthorized aliens by any contractor is considered a violation of Section 274A(e) of the Immigration and Nationality Act. If the contractor knowingly employs unauthorized aliens, such violation shall be cause for unilateral cancellation of the contract.

40. OPTIONAL CONTRACT USAGE

As provided in Section 287.042(17), Florida Statutes, State of Florida agencies may purchase from a contract resulting from this solicitation, provided the Department of Management Services, Division of Purchasing, has certified its use to be cost effective and in the best interest of the State. Contractor(s) may sell such commodities or services certified by the Division to State of Florida agencies at the contractor's option.

41. PATENTS/COPYRIGHTS

The successful vendor agrees to indemnify and hold the City harmless from any claim involving patent infringement or copyrights on goods supplied.

42. PRICING

Bidder certifies that prices, terms and conditions in the bid will be firm for acceptance for a period of sixty (60) days from the date of bid opening unless otherwise stated by the City. Bids may not be withdrawn before the expiration of sixty -(60) days. Prices shall be firm, with no escalator clauses unless specified by the City. Bids may be withdrawn after sixty- (60) days only upon written notification to the City. Prices for all goods and/or services shall be firm for the duration of this contract and shall be stated on the Pricing/Delivery Information form. Prices shall be all inclusive: No price changes, additions, or subsequent qualifications will be honored during the course of the contract. All prices must be written in ink or typewritten. Pricing on all transportation, freight, drayage and other charges are to be prepaid by the contractor and included in the bid prices. If there are any additional charges of any kind, other than those mentioned above, specified or unspecified, bidder shall indicate the items required and attendant costs or forfeit the right to payment for such items. Where unit pricing and extended pricing differ, unit pricing prevails.

43. PUBLIC ENTITY CRIMES

In accordance with Florida State Statute 287.133 (2)(a): A person or affiliate who has been placed on the convicted vendor list following a conviction for a public entity crime may not submit a bid on a contract to provide any goods or services to a public entity, may not submit a bid on a contract with a public entity for the construction or repair of a public building or public work, may not submit bids on leases of real property to a public entity, may not be awarded or perform work as a contractor, supplier, subcontractor or consultant under a contract with any public entity, and may not transact business with any public entity in excess of the threshold amount provided s. 287.017 for CATEGORY TWO for a period of 36 Months from the date of being placed on the convicted vendor list.

44. PUBLIC RECORDS EXEMPTION STATEMENT

Florida Statutes 119.071(1)(c) Any financial statement that an agency requires a prospective bidder to submit in order to prequalify for bidding or for responding to a proposal for a road or any other public works project is exempt from s. [119.07](#)(1) and s. 24(a), Art. I of the State Constitution. On June 2, 2011,

Governor Scott signed HB 7223 into law. This new legislation amends Florida's Public Records and Sunshine Laws, by expanding "exemptions" applicable to bids, proposals and replies to sealed competitive solicitations, and closes evaluation meetings from the public in certain instances. First, Section 119.071, Florida Statutes was amended to provide that sealed bids, proposals, or replies received by a Florida public agency shall remain exempt from disclosure until an intended decision is announced or until 30 days from the opening, whichever is earlier. This means that bidders will not be able to procure a copy of their competitor's bids until an intended decision is reached or 30 days has elapsed since the time of the bid opening. The prior version of the law provided for a 10 day exemption. Next, Section 286.0113, Florida Statutes was amended to provide that meetings of persons appointed to evaluate bids or proposals and negotiate contracts shall be closed in certain circumstances. Specifically, ***portions of such meetings*** may now be closed to the public during oral presentations made by a vendor, or where a vendor answers questions. In other words, neither bidders, nor the public will be permitted to sit in on meetings wherein their competitors are making presentations or discussing their bid or proposal with the committee members. The portions of these meetings must still be recorded and are subject to disclosure at the time of an intended award decision or within 30 days of the bid or proposal opening, whichever is earlier. Portions of the meetings that do not involve presentations, questions and answers, or negotiation strategy or negotiation sessions are still open to the public and competing bidders, but the new law makes it more difficult to observe the entire decision making process until after the records become available for inspection and copying.

45. PURCHASE ORDER AND DELIVERY

The successful bidder shall not deliver products or provide services without a CITY of PORT ORANGE Purchase Order, signed by an authorized agent of the CITY of PORT ORANGE. The fastest, most reasonable delivery time shall be indicated by the bidder. Any special information concerning delivery should also be included, on a separate sheet, if necessary. All items shall be shipped F.O.B. INSIDE DELIVERY unless otherwise stated in the specifications. This shall be understood to include bringing merchandise to the appropriate room or place designated by the using department. Every tender or delivery of goods must fully comply with all provisions of these requirements and the specifications including time, delivery and quality. Nonconformance shall constitute a breach which must be rectified prior to expiration of the time for performance. Failure to rectify within the performance period will be considered cause to reject future deliveries and cancellation of the contract by CITY of PORT ORANGE without prejudice to other remedies provided by law. Where delivery times are critical, the CITY of PORT ORANGE reserves the right to award accordingly.

46. QUESTIONS, INTERPRETATIONS

Questions regarding interpretation of bids, bid results or bid awards shall be directed in writing to the Purchasing Division and referenced by bid number no later than the last day for questions as specified in the bid documents. The City of Port Orange shall not be responsible for oral interpretations given by any City personnel or representative or others. The issuance of a written addendum is the only official method whereby interpretation, clarification or additional information can be given.

47. QUALITY

All materials used for the manufacture or construction of any supplies, materials or equipment covered by this bid shall be new. The items bid must be new, the latest model, of the best quality and highest grade workmanship unless otherwise specified in this bid by the City.

48. RECYCLED MATERIALS

CITY of PORT ORANGE encourages the use of products made of recycled materials.

49. REJECTING OF BIDS, REBIDDING

The City reserves the right to accept or reject any or all bids or parts of bids, to waive irregularities and technicalities, and to request re-bids. The City also reserves the right to award the contract on such items the City deems will best serve the interests of the City. The City further reserves the right to award the contract on a "split order" basis, or such combination as shall best serve the interests of the City unless otherwise specified.

The city council shall have the authority to reject any and all bids. If the lowest and best bid exceeds the budgeted amount and the city council does not make additional funds available, the purchasing agent with the help of the department head shall have the authority to re-advertise the article or articles for bidding after making sufficient changes in the plans or specifications to bring the cost within the limit of the money available. (Code 1981, § 8-28)

50. SAMPLES

Samples, when requested, must be furnished at, or before, bid opening, (unless otherwise specified), and will be delivered at no charge to the City. If not used and/or destroyed in testing, said sample(s) will, at bidder's request, be returned within thirty (30) days of bid award at bidder's expense. If requested by the City, samples and/or inspection of like items are to be made available in the southeast Florida area.

51. SEVERABILITY

If any section, subsection, paragraph, sentence, clause, phrase or word of these requirements or the specifications shall be held invalid, such holding shall not affect the remaining portions of these requirements and the specifications and it is hereby declared that such remaining portions would have been included in these requirements and the specifications as though the invalid portion had been omitted.

52. SIGNATURE REQUIRED

All bids must show the company name and be signed by a company officer or employee who has the authority to bind the company or firm by their signature. UNSIGNED BIDS WILL BE REJECTED. All manual signatures must be original - no rubber stamp, photocopy, etc.

53. SIGNED BID CONSIDERED AN OFFER

This signed bid is considered an offer on the part of the bidder, which offer shall be considered accepted upon approval by the City Council City of Port Orange (if required). The City of Port Orange will issue a purchase order or a letter of authorization to the successful bidder, as authorization for delivery of the items awarded subject to requirements of detailed specifications and those contained herein. In the event of default on the part of the bidder after such acceptance, the City may take such action as it deems appropriate including legal action for damages or specific performance.

54. SILENCE OF SPECIFICATIONS

The apparent silence of specifications as to any detail, or the apparent omission from it of a detailed description concerning any point, shall be regarded as meaning that only the best commercial practice is to prevail and that only material and workmanship of the finest quality are to be used. All interpretations of specifications shall be made on the basis of this statement. The items furnished under this contract shall be new, unused of the latest product in production to commercial trade and shall be of the highest quality as to materials used and workmanship. Manufacturer furnishing these items shall be experienced in design and construction of such items and shall be an established supplier of the item bid.

55. SUPPLEMENTAL MATERIALS

Bidders are responsible for including all pertinent product data in the returned bid package. Literature, brochures, data sheets, specification information, completed forms requested as part of the bid package

and any other facts which may affect the evaluation and subsequent contract award should be included. Materials such as legal documents and contractual agreements, which the bidder wishes to include as a condition of the bid, must also be in the returned bid package. Failure to include all necessary and proper supplemental materials may be cause to reject the entire bid.

56. TAXES

The CITY of PORT ORANGE is exempt from all federal excise, state and local taxes unless otherwise stated in this document. Tax Exemption Certificates will be furnished upon written request to the CITY of PORT ORANGE Purchasing Division.

57. TERM CONTRACTS

The CITY of PORT ORANGE acceptance of Bidder's offer shall be limited to the terms herein unless expressly agreed in writing by the CITY. If the contract is intended to cover a specific time period, the term will be given in the bid specifications.

58. TERMINATION

The CITY of PORT ORANGE reserves the right to terminate the contract for default if bidder breaches any of the terms therein, including warranties of bidder or if the bidder becomes insolvent or commits acts of bankruptcy. Such right of termination is in addition to and not in lieu of any other remedies which the CITY of PORT ORANGE may have in law or equity. Default may be construed as, but not limited to, failure to deliver the proper goods and/or services within the proper amount of time, and/or to properly perform any and all services required to the City's satisfaction and/or to meet all other obligations and requirements.

59. TERMINATION-NOTICE

Either party may cancel the contract at any time after award, unless otherwise specified. The City shall be required to give the vendor notice thirty days prior to the date of cancellation of the contract. The vendor shall be required to give the City written notice (60) sixty days prior to the date of cancellation of the contract. The CITY of PORT ORANGE may terminate the contract without cause upon thirty (30) days written notice.

60. TITLE TRANSFER

Title and Risk of Loss of goods shall not pass to CITY of PORT ORANGE until CITY of PORT ORANGE actually receives and takes possession of the goods at the point or points of delivery. Receiving times may vary with the using department. Generally, deliveries may be made between 8:30 a.m. and 3:00 p.m., Monday through Friday. Bidders are advised to consult the using department for instructions. The place of delivery shall be specified in the bid specification and/or on the Purchase Order as a "Deliver To:" address.

61. VARIANCES

For purposes of bid evaluation, Bidder's must indicate any variances, no matter how slight, contained in the bid. No variations or exceptions by a bidder will be considered or deemed a part of the bid submitted unless such variances or exceptions are listed in the bid and referenced in the space provided on the bid pages. If variances are not stated, or referenced as required, it will be assumed that the product or service complies with the City's terms, conditions and specifications. By receiving a bid, the City does not necessarily accept any variances contained in the bid. All variances submitted are subject to review and approval by the City. If any bid contains material variances that, in the City's sole opinion, make that bid conditional in nature, the City reserves the right to reject the bid or part of the bid that is declared, by the City as conditional.

62. WAIVER OF IRREGULARITIES

The city council shall have the authority to waive any and all non-substantial irregularities in any and all formal bids. (Code 1981, § 8-29)

63. WARRANTIES

Bidders shall furnish all data pertinent to warranties or guarantees which may apply to items in the bid. Bidders may not limit or exclude any implied warranties. Bidder warrants that product sold to the CITY shall conform to the standards established by the U.S. Department of Labor under the Occupational Safety and Health Act of 1970. In the event product does not conform to OSHA Standards, where applicable, CITY of PORT ORANGE may return the product for correction or replacement at the bidder's expense. If bidder fails to make the appropriate correction within a reasonable time, CITY of PORT ORANGE may correct at the bidder's expense.

SECTION 00080

CITY OF PORT ORANGE PURCHASING DIVISION

SPECIAL CONDITIONS

1.0 PURPOSE:

It is the intent of the City of Port Orange to solicit sealed competitive bids for treatment of lakes, retention ponds, canals and ditches.

2.0 AWARD:

2.1 All prices quoted will be firm. The contract will be awarded to the lowest responsive, responsible bidder.

2.2 In determining the lowest and best responsible bidder, in addition to price, there will be considered the following:

- (1) The ability, capacity and skill of the bidder to perform the contract.
- (2) Whether the bidder can perform the contract within the time specified, without delay or interference.
- (3) The character, integrity, reputation, judgment, experience, and efficiency of the bidder.
- (4) The quality of performance of previous contracts.
- (5) The previous and existing compliance by the bidder with laws and ordinances relating to the contract.
- (6) The sufficiency of the financial resources and ability of the bidder to perform the contract or provide the service.
- (7) The quality, availability and adaptability of the supplies or contractual services to the particular use required.
- (8) The ability of the bidder to provide further maintenance and service for the use of the subject of the contract.
- (9) The number and scope of conditions attached to the bid.
- (10) Such other factors as appear to the city council to be pertinent to the bid or the contract under all of the circumstances involved.
- (11) Qualifications and certifications of the Company and its personnel.
- (12) Types of chemicals the Company proposes to use in the treatment of all areas covered under this contract.
- (13) Types of guarantees provided by each Company.
- (14) Past performance and years of experience with other contracts similar to this one, such as other municipalities with treatment areas comparable in size and type of areas treated.

2.3 The City of Port Orange, Florida reserves the right to reject any and all bids, to waive any and all non-substantial irregularity in bids received, whenever such waiver or rejection is in the best interest of the City.

3.0 QUESTIONS/CLARIFICATIONS

3.1 Questions

All questions shall be directed to Tom Cinefro, Purchasing Coordinator (386) 506-5704. Bidders are encouraged to submit questions in writing only and no later than the last day for questions as specified in the bid documents. Send to the attention of Tom Cinefro, e-mail to tcinefro@port-orange.org

3.2 Addenda:

Any changes or supplemental instructions to this Invitation for Bid shall be in the form of written addenda. All addenda are downloadable from www.demandstar.com. Each bidder is responsible for determining that all addenda issued have been received and shall acknowledge receipt of all addenda in by circling the appropriate number in the "bidder acknowledgement form". Failure to acknowledge all addenda shall result in rejection of the bid. All addenda so issued shall become part of the IFB and any resulting contract documents.

4.0 PRICING:

4.1 Bidder warrants by virtue of bidding that prices, terms and conditions quoted in his bid will be firm for acceptance for a period of sixty (60) days from the date of bid opening.

4.2 Prices should be stated in units of quantity as specified in the bid form. In case of error in extension of prices in the bid, the unit price shall govern.

4.3 When a bid is for goods and/or services to be delivered on a one time only or staggered basis, only firm pricing shall be given consideration. General terms such as "price in effect at time of delivery" shall not be considered for award.

4.4 All prices bid shall be F.O.B. destination/delivered to the City of Port Orange, Florida.

5.0 CONFLICT IN TERMS:

Should there be any conflict between the Special Conditions and the Specifications, the Specifications shall prevail.

SECTION 00090

CITY OF PORT ORANGE PURCHASING DIVISION

SPECIFICATIONS / REQUIREMENTS

GENERAL DESCRIPTION:

The City of Port Orange is accepting bids for treatment of City lakes, canals, ditches and retention ponds. There is a **mandatory** pre-bid meeting for those submitting bids. All submittals will be reviewed and evaluated and a recommendation will be made to City Council for award of the contract.

ALL chemicals used to treat the retention areas under this contract **MUST** be registered and approved by the DEP. Each vendor must include a list of all chemicals they intend to use and where each will be applied in their treatment program.

Areas under contract are to be treated to control and maintain the undesirable (noxious) aquatic weeds and growth. Treatment methods that enhance conditions for diverse native plant growth must be implemented in mitigated areas and sites that contain desirable native plants. Tailored management plans, according to type of water-body, are required in order to control and maintain submersed weeds, floating and emersed plants and species including, but not limited to, plankton, blue green algae, bladderwort, cattails, water pennywort, chara, torpedo grass, bacopa, needle rush, primrose willows, duckweeds, hydrilla, southern naiad and shoreline grass.

There is a “minimum equipment” list; each vendor placing a bid shall possess *at minimum* the equipment listed in order to be eligible to bid on this contract.

Each vendor shall include a reference list of commercial clients (see form enclosed). List references that are able to attest to the quality of services provided and a description of services provided to them by your firm.

The vendor awarded this contract *shall submit a monthly report (City will provide form) that shows a summary of the condition of each lake, canal, ditch and retention pond covered under this contract and the date treatment was administered* (see “sample report” in bid package). Payment to the vendor for services provided under this contract will be made on a monthly basis; however payment will not be processed until the monthly report has been submitted by the vendor and reviewed by City staff.

Upon request by the City, the vendor awarded this contract must have tests for the following performed by an approved laboratory:

Dissolved oxygen	Temperature	Ammonia Nitrogen
Color	Alkalinity	Clarity
Chloride	Water level	pH level (units)
Phosphate	Nitrate	Hardness

The results of tests performed must be submitted to the City.

Should the City deem further testing necessary, the vendor shall be required to obtain State certified tests at their expense in order to diagnose the problem so that a remedy can be reached and exact knowledge of the cause can be ascertained.

CONTRACT TIME AND RENEWAL and CPI RATE INCREASE:

Contract will be for one (1) year (12 months from acceptance). Contract will be renewable for up to five (5) years, in annual increments, upon agreement of both parties.

If approved by Council, annual CPI rate increases will be applied October 1st of each year following the first year of the contract. The CPI rate increases will be adjusted by 75% of the Consumer Price Index of the Southern States multiplied by the previous year's contract price. This rate increase will be based on rates released in July by the United States Department of Labor, Bureau of Labor Statistics.

CONTRACT CANCELLATION:

The contractor shall be required to give the City written notice (60) sixty days prior to the date of cancellation of the contract. The CITY of PORT ORANGE may terminate the contract without cause upon thirty (30) days written notice.

PLEASE NOTE: The "approximate acreage" and "approximate feet" figures shown for each area on the bid submittal sheet **are approximations only**. It is recommended each vendor visit each location (maps to be provided at mandatory pre-bid) to be treated prior to submitting his or her bid. If any assistance is needed, please contact Chris Kucera, Public Works, (386) 506-5575.

CANAL SECTIONS:

AREA

LOCATION DESCRIPTION

B-19 Basin

Willow Run
Willow Run (north side)
Horizon Canal

South side of Willow Run Boulevard
From Chardonnay to B-19 Canal
South side of Willow Run I-95 to B-19 Canal

Cambridge Basin

Foxboro Canal
Cambridge Canal
Deep Forest Canal
Hensel Hill Canal

Foxboro Retention (Miles Drive to Taylor Road)
Taylor Road to Rose Bay
Nova Road to Timberwood Drive
Hensel Hill east to Taylor Road

Halifax Basin

Sleepy Hollow Canal Sleepy Hollow sub., north side (Publix to Shallowbrook)
Sanders Road Canal Spruce Creek Road to Halifax Canal
City Hall Pop-off canal, east of gymnasium

Reed Canal Basin

Madeline Ditch From Sugar House Drive to Nova Road (both sides of roadway).

Riverwood Basin

Spruce Creek Road Ditch From Cove Court to Golden Pond

Ditches along Newton Road, Gladys Street, Dalford Road and Renner Road

River Font Basin

Fox Place Canal

West end of Fleming to Public Works yard

MONTHLY REPORTS:

The contractor shall provide monthly reports to the City. See sample below.

City of Port Orange - Bid Sheet: Treatment for Lakes, Canals, Ditches and Retention Ponds

Lake Contract - Monthly Report (sample). City will provide form to contractor.

Treatment Month: May

Treatment Area	Treatment Schedule	Date of Treatment	Condition	Notes / Concerns
1. Autumn Trail / Brandy Hills subs.	Monthly except Dec./Feb.	05/09/11	Good	No notes of concern
2. Cross Creek sub., Secret River Trail	Monthly	05/09/11	Good	No notes of concern
2A Littoral Zone	May, July, Sept., Nov., Jan, March	05/09/11	Good	No notes of concern
3. Hidden Lakes sub., Hidden Lake Dr.	Monthly except Dec./Feb.	05/09/11	Fair	May need add'l visit (algae)
4. Willow Run sub., Thomasina Drive	Monthly excep Dec./Feb.	05/09/11	Good	No notes of concern
5. Willow Run sub., Tracy Drive	May, July, Sept., Nov., Jan, March	05/09/11	Good	Improved from last month (algae)
6. Willow Run sub., Harms Way	May, July, Sept., Nov., Jan, March	05/09/11	Good	No notes of concern

INSURANCE REQUIREMENTS:

An original or certified copy of an insurance certificate must be submitted in the bid. The successful vendor will be required to maintain, at all times during performance of the contract, the insurance detailed in bid specifications. Failure to provide this document may result in disqualification of bid.

The Contractor shall maintain insurance during the life of this agreement, and the City of Port Orange must be listed as additional insured on that insurance document. A waiver of subrogation must be added in all areas and shall suffice in lieu of additional insured on workers' compensation, in an amount and a form set forth herein, to insure against risks, which are identified herein. Insurance providers must be rated A or better by A.M. Best's rating:

Insurance	Standards	Comments
Workers' Compensation <u>Limits:</u> Additional Coverage: Special Conditions:	Coverage A - Statutory Coverage B - \$100,000 All States (Broad Form) Voluntary Compensation 30 days notice of cancellation to Governmental Entity, Waiver of subrogation in lieu of additional insured will suffice.	If the contract requires work on or about navigable waters, require Longshoreman's and Harbor Workers' Coverage. If vessels involved, require Jones Act coverage with limits of \$500,000.
Comprehensive General Liability (including Completed Operations and Contractual Liability) <u>Limits:</u>	Combined Single Limit Bodily Injury and Property damage \$500,000 occurrence \$1,000,000. Aggregate	When the Contract work on or under Railroad rights of way or properties, the Contractor shall take out and maintain during the life of the Contract, Railroad protective

<u>Special Conditions:</u>	30 day notice to Governmental Entity, Additional Insured, City to be added as Additional Insured	liability and property damage insurance in amounts as requested by the Railroad.
<u>Comprehensive Limits:</u> Business, Automobile Liability to include all automobiles. <u>Additional Coverage:</u> <u>Special Conditions:</u>	Auto Liability Body Injury: \$100,000 each person \$300,000 each occurrence. Property Damage Liability \$100,000 each occurrence. Non-Owned, Hired Car 30 days notice of cancellation to Governmental Entity.	Or \$500,000 Combined Single Limit for Bodily Injury and Property Damage
Property Insurance <u>Limits:</u> Builders Risk. <u>Additional Coverage:</u> <u>Special Conditions:</u>	Buildings - Completed value of contract. “All Risk” coverage on latest ISO form or its equivalent. Permission granted to occupy. Owner named as insured AIMA 30 days notice of cancellation to Owner, Additional insured.	If the Contract requires handling or installation of Owner’s equipment, coverage should be furnished on “All Risk” form, including transit and Owner shall be named.
Professional Liability Limits: (Errors & Omissions) <u>Special Conditions:</u>	Coverage- \$1,000,000.min. 30 days notice of cancellation to Owner, Additional insured.	

Policies other than Workers’ Compensation shall be issued only by companies authorized by subsisting certificates of authority issued to the companies by the Department of Insurance of the State of Florida to conduct business in the State of Florida and which maintain a Best’s Rating of “A” or better accordingly to the A.M. Best Company. Policies for Workers’ Compensation may be issued by companies authorized as a group self-insurer by F.S. 440.57

BID BONDS:

A certified check or bank draft, payable to the City of Port Orange, Florida or a satisfactory bid bond executed by the Bidder and an acceptable surety, in an amount equal to five percent (5%) of the bid shall be submitted with each bid. **NO** bid shall be withdrawn for a period of ninety (90) days subsequent to the bid opening without the consent of the City of Port Orange, Florida. Upon award, the successful bidder will also be required to furnish and pay for a satisfactory contract one hundred percent (100%) Performance Bond to be recorded by the vendor, with the Clerk of the Circuit Court, Volusia County, Florida and to enter into a contract for services with the City of Port Orange.

TIMELINE: The schedule for the bid is as follows:

Bid release date	March 12, 2012
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Bid pre-submittal meeting (mandatory)	March 21, 2012 10:00 a.m.
Bid deadline for questions	March 28, 2012 5:00 p.m.
Bid due date and time, Envelope #1 & #2	April 3, 2012 10:00 a.m.

BID SUBMISSION AND WITHDRAWAL::

Bidders are required to submit one (1) original and two (2) copies of all documents, sealed and marked on the outside of the package, “**RFP 12-26, Treatment of Lakes, Retention Ponds, Lakes & Ditches**”, delivered to the City of Port Orange Purchasing Division, Att: Tom Cinefro, Finance Department, 1000 City Center Circle, Port Orange, FL 32129 on or before **10:00 a.m. on April 3, 2012**. Any proposal received after **10:00 a.m. (local time), April 3, 2012** will not be considered. Bids, once received, become the property of the City, cannot be withdrawn, and will not be returned to the proposers. Upon opening, Bids become subject to public disclosure in accordance with Chapter 119, Florida Statutes.

Unless otherwise specified, Bidder’s shall use the bid forms supplied by the Purchasing Division. Bids will be accepted in the Purchasing Office, a division of the Finance Department, Port Orange City Hall, 1000 City Center Circle, Port Orange, Florida until **10:00 A.M.**, on the date indicated in the bid documents or as addendum issued by the City. Two (2) envelopes, as described below, shall be submitted. Envelope #1 contains required forms, it will be evaluated and deemed responsive or non-responsive. All bids deemed non-responsive will be returned to the bidder and envelope #2 will not be opened. Envelope #2 contains technical and price information. Envelope #2 from all responsive bidders will be opened and read aloud at **2:00 P.M.**, the same day.

Bids (Envelope #1 and #2, respectively) shall contain one (1) original and two (2) copies, unless otherwise indicated in the legal advertisement and shall be addressed to Tom Cinefro, Purchasing Coordinator, Finance Department, City Hall, 1000 City Center Circle, Port Orange, Florida 32129 in Two (2) SEALED ENVELOPES. The envelopes shall be plainly marked on the outside to include the bid project name and bid number.

Hand deliveries of envelopes shall be made to the *Clerk’s Office*, 1st floor City Hall, City of Port Orange, 1000 City Center Circle, Port Orange, FL 32129 on or before the due date indicated in the legal advertisement.

Due to the timing of mail service, the City cautions Bidders to assure actual delivery of proposals to the City prior to the deadline set for receiving proposals. Proposals received after the established deadline shall not be considered.

The contents of each envelope is described below:

Envelope #1 (tabbed and indexed, must be in the following order; 1 original and 2 copies)

<u>Section</u>	<u>Title</u>
00030	Bidder acknowledgement form (page 4)
00090	Insurance certificates (page 25)
00160	Bid Bond (page 38)
00090	List of all chemicals (page 23)
00130	Statement of Bidder’s qualifications (page 33)
00140	Listing previous experience (page 35)
00150	Equipment list (page 36)

00155	Personnel list (page 37)
00180	Anti-Collusion Statement (page 40)
00190	Drug Free/Tie Preference Statement (page 41)
00170	Public Entity Crime Statement (page 39)

Envelope #2 (tabbed and indexed, must be in the following order; 1 original and 2 copies)

<u>Section</u>	<u>Title</u>
00120	Total base bid (pages 30-32)

BID SUBMITTAL REQUIREMENTS:

The following is required of all contractors submitting bids for consideration and shall be submitted with bid submittal:

1. Bidder acknowledgement form: Filled out, signed and acknowledgement of each addenda issued.
2. Insurance: Must submit and original or certified copy of Certificates of Insurance which meets or exceeds insurance requirements as stated in bid package.
3. Bid Bond: A certified check or bank draft, payable to the City of Port Orange, Florida or a satisfactory bid bond executed by the Bidder and an acceptable surety, in an amount equal to five percent (5%) of the bid shall be submitted with each bid. Upon award, the successful bidder will also be required to furnish and pay for a satisfactory contract one hundred percent (100%) Performance Bond to be recorded by the vendor, with the Clerk of the Circuit Court, Volusia County, Florida and to enter into a contract for services with the City of Port Orange.
4. List of all chemicals: List of all chemicals intent to use.
5. Statement of Bidder Qualifications. Answer all questions, must be notarized.
6. Listing of Previous Experience. Recent projects, similar in nature and size. Minimum of (3) projects.
7. Equipment List.
8. Personnel List.
9. Anti-Collusion Statement. Filled out and signed.
10. Drug Free/Tie Preference Statement. Filled out and signed.
11. Public Entity Crime Statement. Filled out, signed and notarized.
12. Total Base Bid. Total annual price for all areas.

ADDITIONAL INFORMATION/ADDENDA

All questions concerning this Bid shall be submitted in writing no later than **5:00 p.m. on March 28, 2012** to:

Tom Cinefro, Purchasing Coordinator
 1000 City Center Circle, Port Orange, FL 32129
tcinefro@port-orange.org

The City will issue responses to inquiries and any other corrections or amendments it deems necessary in written addenda issued prior to the Bid Due Date. Bidders should not rely on any representations, statements or explanations other than those made in this Bid or in any addendum to this Bid. Where there appears to be a conflict between the Bid and any addenda issued, the last addendum issued will prevail.

It is the proposer's responsibility to be sure all addenda were received. The proposer should verify with the designated contact persons prior to submitting a proposal that all addenda have been received. Bidders are required to acknowledge the number of addenda received as part of their proposals.

It is the responsibility of the bidder to ensure all addenda have been received prior to submitting a bid.

Written responses, in the form of an addendum, will be provided via the Demand Star website at:
www.demandstar.com

Section 00120
Lake Contract - 2012 Total Base Bid Submittal Sheet

Company Submitting Bid: _____

	Treatment Area	Approx. Acreage	Approx. Feet	Number of Annual Visits	Monthly Schedule	Unit Cost	Annual Cost
1	Autumn Trail / Brandy Hills subs.	1.15		10	No treatments Dec. or Feb.		
2	Cross Creek sub., Secret River Trail	1.42		12	Monthly		
3	Hidden Lakes sub., Hidden Lake Dr.	6.00		10	No treatments Dec. or Feb.		
4	Willow Run sub., Thomasina Drive	0.15		10	No treatments Dec. or Feb.		
5	Willow Run sub., Tracy Drive	0.10		6	May, July, Sept., Nov., Jan., March		
6	Willow Run sub., Harms Way	0.25		6	May, July, Sept., Nov., Jan., March		
7	South. Oaks sub., Squirrel Nest Ln.	0.10		16	Monthly; 2X in June, July, Aug., Sept.		
8	Gatewood sub., Oak Forest Circle	0.15		16	Monthly; 2X in June, July, Aug., Sept.		
9	Foxboro sub., Miles Drive	1.00		24	Twice monthly		
10	Deep Forest/Foxboro subs., Sandle Wood Dr.	1.20		24	Twice monthly		
11	Foxboro sub., Crown Lane	0.50		16	Monthly; 2X in June, July, Aug., Sept.		
12	The Settings sub., Alstrum Drive	0.40		12	Monthly		
13	Bent Oaks sub., Whippoorwill Drive	0.20		12	Monthly		
14	Lone Oak sub., Lone Oak Drive	3.00		12	Monthly		
15	Central Park sub., Central Park Blvd.	3.50		12	Monthly		
16	Winter Park sub., Pelham Drive	0.67		12	Monthly		
17	Falcon Crest sub., Champagne Circle	0.40		12	Monthly		
18	City Hall, City Center Circle	3.00		16	Monthly; 2X in June, July, Aug., Sept.		
19	Amber Village, Amber Circle	0.10		6	May, July, Sept., Nov., Jan., March		
20	Countryside sub., Country Lane*	2.90		12	Monthly		
21	Jackson Street Park	5.20		16	Monthly; 2X in June, July, Aug., Sept.		
22	Dagwood Circle	0.25		12	Monthly		
23	Monroe Street	0.25		12	Monthly		
24	Locust Street (2 areas - east side, west side - 1.5 acres each)	3.00		12	Monthly		
25	Baywood Avenue	1.00		12	Monthly		
26	Southwinds sub. (1 area, 4 acre pond)	4.00		12	Monthly		
27	Nixon Lane	1.00		12	Monthly		
28	Canal View Blvd.	2.00		12	Monthly		
29	Sugar Grove sub., Sugar Grove Court	1.00		12	Monthly		

Company Submitting Bid: _____

	Treatment Area	Approx. Acreage	Approx. Feet	Number of Annual Visits	Monthly Schedule	Unit Cost	Annual Cost
30	Buschman	5.40		12	Monthly		
31	Orange Boulevard	1.00		12	Monthly		
32	Spruce Creek Road (at Acom Lane)	1.00		12	Monthly		
33	Fire Station #4 (Airport Road)	1.00		12	Monthly		
34	Commonwealth / Westridge	0.50		12	Monthly		
35	Nova Road Ponds #1 (2 ponds at this location)	0.50		12	Monthly		
36	Nova Road Pond #2 (south side Nova/w.of US1)	5.00		12	Monthly		
37	Nova Road Ponds #3 (behind Shell Station, 2 Ponds)	6.00		12	Monthly		
38	Nova Road Pond #4 (Woodlake)	12.00		12	Monthly		
39	Nova Road Pond #5 (Behind Auto Zone)	3.50		12	Monthly		
40	Hidden Village	0.15		12	Monthly		
41	Commonwealth / Frederick Retention Pond	0.50		12	Monthly		
42	Renegade Lane Ditch	0.30		12	Monthly		
43	Farmbrook Retention Pond (B-23/PhaseII)	0.70		12	Monthly		
44	Devon Street Retention Pond	0.33		12	Monthly		
45	Causeway Retention Pond	0.15		12	Monthly		
46	Sleepy Hollow Retention Pond	1.75		12	Monthly		
47	Southport Retention Pond	0.79		12	Monthly		
48	Summertrees Road Retention Pond	0.33		12	Monthly		
49	Airport Road Retention Pond	0.95		12	Monthly		
	Canal Sections (SEE "CANAL SECTIONS" list)			12	Monthly		
	Golf Course Lakes (17 areas)	20.00		24(each lake)	Twice monthly		
	D-1 Ditch at Golf Course		1,050	12	Monthly		
	State Certified Tests**	N/A	N/A	N/A	N/A		N/A

* Treatment area is approximately 1/2 of entire retention area.

** These tests are upon "City Request" only; bidders must enter a unit cost per test.

Total Annual Cost All Areas: \$ _____

Section 00120

TOTAL BASE BID

Treatment of lakes, retention ponds, canals & ditches - BID No. 12-26

The undersigned, as Bidder, hereby declares that the only person or persons interested in the Proposal, as principal or principals, Is or are named herein and that no other persons than herein mentioned has any interest in the Proposal or the Contract to which the work pertains; that this Proposal is made without connection or arrangement with any other person, company, or parties making a bid or proposal and that the Proposal is in all respects fair and made in good faith without collusion or fraud.

The Bidder further declares that he has examined the site of the work and that from personal knowledge and experience, or that he/she has made sufficient other investigations to fully satisfy self that such site is a correct and suitable one for this work and he/she assumes full responsibility therefore; that he/she is familiar with all legal requirements (Federal, State and local laws, ordinances, rules and regulations) pertaining to the Work; that he/she has examined the Drawings And Specifications for the work and from his/her own experience or from professional advice that the specifications are sufficient for the work to be done and he/she has examined the other contract documents and all addenda relating thereto, and that he/she has satisfied himself/herself fully, relative to all matters and conditions with respect to the work to which this Proposal pertains.

The Bidder proposes and agrees, if this Proposal is accepted, to contract with the City of Port Orange, (Owner) in the form of contract specified, to furnish all necessary materials, equipment, machinery, tools, apparatus, transportation, and labor and to perform all work necessary to complete the Work specified in the Proposal and other Contract Documents.

The undersigned offers to furnish all materials, equipment and labor for landscape maintenance for the City of Port Orange, Florida, complete in every respect in strict accordance with the specifications and any future changes therein. The Contractor shall perform these obligations for the prices listed attached and made a part of this Bid.

Company Name: _____

Submitted on: _____ / 2012

Contact Person / Title: _____

Mailing Address: _____ **State:** _____ **Zip:** _____

Phone: _____ **Fax:** _____ **E-mail:** _____

Signature: _____ **Title:** _____

TOTAL BASE BID ANNUAL COST FOR ALL AREAS:

(In Words)

Dollars \$ _____ **(In Figures)**

SECTION 00130

STATEMENT OF BIDDER'S QUALIFICATIONS

All questions must be answered and the data given must be clear and comprehensive. This statement must be notarized. If necessary, questions may be answered on separate attached sheets. The bidder may submit any additional information he desires.

- A. Name of bidder.
- B. Permanent main office address.
- C. Date organized.
- D. If a corporation, where incorporated.
- E. How many years have you been engaged in the contracting business under your present firm or trade name?
- F. Contracts on hand: (Schedule these, showing amount of each contract and the appropriate anticipated dates of completion.)
- G. General character of work performed by your company.
- H.⁽¹⁾ Have you ever failed to complete any work awarded to you? If so, where and why?
- H.⁽²⁾ Provide list of any lawsuits or judgments filed by or against your company in the last three years, indicating the nature and outcome.
- I. Have you ever defaulted on a contract? If so, where and why?
- J. List the more important projects recently completed by your company, stating the approximate cost for each and the month and year completed.
- K. List your major equipment currently owned or leased.
- L. Experience in work similar to this type of project.
- M. Background and experience of the principal members of your organization, including the officers.
- N. Credit currently available: \$_____

- O. Give bank reference: _____
- P. Will you, upon request, fill out a detailed financial statement and furnish any other information that may be required by the Owner?
- Q. The undersigned hereby authorizes and requests any person, firm, or corporation to furnish any information requested by the Owner in verification of the recitals comprising this Statement of Bidder's Qualifications.

Dated at _____ this _____ day of _____, 20____.

Name of Bidder

By: _____
Title

State of _____

County of _____

_____ being duly sworn deposes and says that
he is the _____ of _____ and that the
answers to the _____.

Name of Organization

foregoing questions and all statements therein contained are true and correct.

Subscribed and sworn to before me this _____ day of _____, 20____.

Notary Public

My commission expires:

SECTION 00140

LISTING OF PREVIOUS EXPERIENCE

Commercial Client List

The bidder proposes that he/she is qualified to perform the referenced work and has successfully done so on recent projects similar in nature and size. A minimum of three (3) projects must be listed below. The Owner reserves the right to check references and confirm information provided herein.

List all clients to whom you currently provide, or have in the past, aquatic treatment services equal or similar to those required under the City's contract and as outlined in this bid package. A minimum of three (3) projects must be listed below in order to bid on this contract. The Owner reserves the right to check references and confirm information provided herein.

	Contact Name	Phone	Current Client? Y or N	Number of years service provided	Description of service – provide number of acres treated and the frequency of treatment (weekly, monthly, annual)
1					
2					
3					

SECTION 00150

EQUIPMENT LIST

Minimum Equipment List

<u>Type of Equipment</u>	<u>Minimum Required to Bid</u>
Spray Truck - 50 gallon	
Minimum spray container	3
Backpack sprayer	3
Spray Boat – 12 foot minimum length	1
Air Boat	1
All-Terrain Vehicles (Mule, Gator, etc.)	2

Contractor's submitting bids must provide a list of major equipment, owned or leased. Contractor's must own or lease AT MINIMUM the equipment shown above in order to be eligible to bid on this contract.

SECTION 00155

Personnel List

Company Name: _____

List all individuals who will be providing service under this contract if awarded bid.

[illegible]

SECTION 00160

BID BOND

KNOW ALL MEN BY THESE PRESENTS, that we, _____ as Principal and _____ of the City of _____ State of _____, a corporation existing under the laws of the State of Florida, as Surety, are held and firmly bound unto the _____ hereinafter called the Owner, in the sum of _____ Dollars (\$_____) lawful money of the United States of America, for the payment of which sum well and truly to be made, we bind ourselves our heirs, executors, administrators and successors, jointly and severally, firmly by these presents. The condition of this obligation is such that whereas the Principal has submitted the accompanying Proposal or Bid, for the construction of:

12-26 Treatment of Lakes, retention Ponds, Canals & Ditches

NOW, THEREFORE, if the Principal shall not withdraw said Bid within **ninety (90)** days after the opening of the same and in the event of the acceptance of his proposal by the Owner, shall, within the period specified therefore, enter into a written contract with the Owner in accordance with the Bid as accepted, and give bond with good and sufficient surety or sureties, as may be required, for the faithful performance and proper fulfillment of such contract, or in the event of the withdrawal of said Bid within the period specified, of the failure to enter into such contract and give bonds within the time specified, if the Principal shall pay the Owner the difference between the amount specified in said Bid and the amount for which the Owner may procure the required work, if the latter amount be in excess of the former, then the above obligation shall be void and of no effect, otherwise to remain in full force and virtue. IN WITNESS WHEREOF, the above bounden parties have executed this instrument under their several seals this ____ day of _____, 20____, the name and corporate seal of each corporate body being hereto affixed and these presents duly signed by its undersigned representative, pursuant to authority of its governing body.

IN PRESENCE OF:

Witness

_____(Seal)

Name of Bidder

Signature of Officer

Corporate Principal

ATTEST:

President AFFIX
CORPORATE SEAL

By _____

AFFIX
CORPORATE SEAL

Corporate Surety

ATTEST:

Title

SECTION 00170

PUBLIC ENTITY CRIME STATEMENT

Any person or affiliate who has been placed on the convicted vendor list following a conviction to a public entity, may not submit a bid on a contract with a public entity for the construction or repair of a public building or public work may not submit bids on leases of real property to a public entity, may not be awarded or perform work as a contractor supplier, subcontractor or consultant under a contract with a public entity, and may not transact business with any public entity in excess of the threshold amount provided in Section 287.017 for CATEGORY TWO for a period of 36 months from the date of being placed on the convicted vendor list.

_____ Authorized Agent or Official for _____ by signing below hereby certifies that neither he/she nor the firm of _____ is or has been placed on the convicted vendor list, now or within the period of thirty-six (36) months.

Signed By: _____

President/Authorized Agent or Official

Witnessed By: _____

STATE OF _____

COUNTY OF _____

The foregoing instrument was acknowledged before me this _____ day of _____, 2012,

by _____, President, Authorized Agent or

Official of _____ a Florida Company, who is personally known to me or

who has produced _____ as identification and who did (did not) take an oath.

Notary Public, State of Florida

Commission No. _____

SECTION 00180

ANTI-COLLUSION FORM

ANTI-COLLUSION STATEMENT BID FORM:

By Signing this form, the bidder agrees that this bid is made without any other understanding, agreement, or connection with any person, corporation, or firm submitting a proposal for the same purpose and that the proposal is in all respects fair and without collusion or fraud.

SIGN in ink in the space provided below. Unsigned bids will be considered incomplete, and will be disqualified, and rejected.

IT IS AGREED BY THE UNDERSIGNED BIDDER THAT THE SIGNING AND DELIVERY OF THE BID REPRESENTS THE BIDDERS ACCEPTANCE OF THE TERMS AND CONDITIONS OF THE FOREGOING SPECIFICATIONS, CONTRACT AND PROVISIONS, AND IF AWARDED, THIS CONTRACT WILL REPRESENT THE AGREEMENT BETWEEN THE BIDDERS AND THE CITY OF PORT ORANGE.

NAME OF FIRM: _____

SIGNED BY: _____
(MUST BE SIGNED BY A COMPANY OFFICER OR AUTHORIZED AGENT)

PRINTED SIGNATURE: _____

TITLE: _____

ADDRESS: _____

CITY: _____ STATE: _____ ZIP CODE: _____

TELEPHONE: _____ FAX: _____

COMPLETION TIME: _____

F.E.I.N. UMBER: _____

NO bid may be withdrawn for a period of sixty- (60) days subsequent to the submittal of the bids, without the consent of the City of Port Orange.

NO BID (REASON):

SECTION 00190

DRUG FREE/TIE BID PREFERENCE STATEMENT

In the event of a tie bid a preference is given to vendors submitting a certification with their bid/proposal certifying they have a drug-free workplace in accordance with Section 287.087, Florida Statutes. This requirement affects all public entities of the State and becomes effective January 1, 1991. The special conditions are as follow:

IDENTICAL TIE BIDS - Preference shall be given to businesses with drug-free workplace programs. Whenever two or more bids which are equal with respect to price, quality, and service are received by the State or by any political subdivision for the procurement of commodities or contractual services, a bid received from a business that certifies that it has implemented a drug-free workplace program shall be given preference in the award process. Established procedures for processing tie bids will be followed if none of the tied vendors have a drug-free workplace program. In order to have a drug-free workplace program, a business shall:

1. Publish a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in the workplace and specifying the actions that will be taken against employees for violations of such prohibition.
2. Inform employees about the dangers of drug abuse in the workplace, the business's policy of maintaining a drug-free workplace, any available drug counseling, rehabilitation and employee assistance programs, and the penalties that may be imposed upon employees for drug abuse violations.
3. Give each employee engaged in providing the commodities or contractual services that are under bid a copy of the statement specified in subsection (1).
4. In the statement specified in subsection (1), notify the employees that, as a condition of working on the commodities or contractual services that are under bid, the employee will abide by the terms of the statement and will notify the employer of any conviction of, or plea of guilty or nolo contendere to, any violation of chapter 893 or of any controlled substance law of the United States or any state, for a violation occurring in the workplace no later than five (5) days after such conviction.
5. Impose a sanction on, or require the satisfactory participation in a drug abuse assistance or rehabilitation program if such is available in the employee's community, by any employee who is so convicted.
6. Make a good faith effort to continue to maintain a drug-free workplace through implementation of this section.

As the person authorized to sign the statement, I certify that this firm complies fully with the above requirements.

BIDDER'S SIGNATURE



SECTION 00200 CITY OF PORT ORANGE STANDARD CONTRACT FOR SERVICES

This Contract is entered into this _____ day of _____, 2012, by and between the **City of Port Orange, Florida**, or its authorized agents, located at 1000 City Center Circle, Port Orange, Florida 32129 and the Contractor identified below for materials and/or services identified herein, on the following terms and conditions.

1. Definitions.

(a) As used in this Contract, the term "City" shall mean the City of Port Orange, Florida.

(b) As used in this Contract, the term "Contractor" shall mean: _____.

2. Provision of Services.

(a) The Contractor hereby agrees to provide the following equipment, materials, labor and other such related services to the City of Port Orange as set forth in:

(i) **Bid #12-26 Treatment of Lakes, retention ponds, canals & ditches**

(b) The time, manner and place for performance of such services shall be: As outlined in **Bid #12-26**.

Time: **90 days** from the date set out in paragraph 3 below or upon receipt of Notice to Proceed.

Manner and Place: As outlined in **Bid #12-26**, in accordance with Standard Construction Details as required on all City owned facilities and properties (i.e. rights-of-way) and in a manner as required by all current Federal, State, County, Fire, Building and Land Development codes, laws, ordinances and regulations, and with applicable permits and licenses per the City Code of Ordinances.

(c) Contract Documents. The following forms are attached in **Section 00210** and must be completed, signed, witnessed and notarized as indicated, returned with the signed contract and the Payment and Performance Bond and are an integral part of this contract.

(1) Performance Bond

3. Time and Essence.

Commencement - On _____ /or upon receipt of an official "Notice to Proceed".

4. City Obligations.

In return for the services identified above, the City shall pay the Contractor the following: The sum of _____ as set forth in **Bid #12-26 award**.

5. Termination for Convenience of the City:

(a) The parties agree that the City may terminate this Contract, or any work or delivery required hereunder, from time to time either in whole or part, whenever the City Manager of Port Orange shall determine that such termination is in the best interest of the City.

(b) Termination, in whole or in part, shall be effected by delivery of a Notice of Termination signed by the City Manager or his designee, mailed or delivered to the Contractor, and specifically setting forth the effective date of termination.

(c) Upon receipt of such Notice, the Contractor shall:

(i) cease any further deliveries or work due under this Contract, on the date, and to the extent, which may be specified in the Notice.

(ii) place no further orders with any subcontractors except as may be necessary to perform that portion of this Contract not subject to the Notice.

(iii) terminate all subcontracts except those made with respect to contract performance not subject to the Notice.

(iv) settle all outstanding liabilities and claims which may arise out of such termination, with the ratification of the Finance Director of Port Orange; and

(v) use best efforts to mitigate any damages which may be sustained by the Contractor as a consequence of termination under this clause.

(d) After complying with the provisions of subparagraph (c), above, the Contractor shall submit a termination claim, in no event later than six (6) months after the effective date of termination, unless one or more extensions of three (3) months each are granted by the Finance Director.

(e) The Finance Director, with the approval of the City Manager, shall pay from the using department's budget, reasonable costs of termination, including a reasonable amount for profit on supplies or services delivered or work completed. In no event shall this amount be greater than the original contract price, reduced by any payments made prior to Notice of Termination, and further reduced by the price of the supplies not delivered or the services not provided. This Contract shall be amended accordingly, and the Contractor shall be paid the agreed amount.

(f) In the event that the parties cannot agree on the whole amount to be paid to the Contractor by reason of termination under this clause, the Finance Director shall pay the Contractor the amounts determined as follows, without duplicating any amounts which may have already been paid under the preceding paragraph of this clause:

- (i) With respect to all Contract performance prior to the effective date of Notice of Termination, the total of:
 - (1) the cost of work performed or supplies delivered;
 - (2) the cost of settling and paying any reasonable claims as provided in paragraph (c) (iv), above;
 - (3) a sum as profit on (a) determined by the Finance Director to be fair and reasonable.

(ii) The total sum to be paid under (i) above shall not exceed the contract price, as further reduced by the contract price of work or supplies not terminated.

(g) In the event that the Contractor is not satisfied with any payments which the Finance Director shall determine to be due under this clause, the Contractor may appeal any claim to the City Council in accordance with Paragraph 20 of this contract concerning disputes.

6. When termination for the convenience of the City is a provision of this contract, the Contractor shall include similar provisions in any subcontract, and shall specifically include a requirement that subcontractors make all reasonable efforts to mitigate damages which may be suffered. Failure to include such provisions shall bar the Contractor from any recovery from the City whatsoever of loss or damage sustained by a subcontractor as a consequence of termination for convenience.

7. Termination for Default.

Either party may terminate this Contract, without further obligation, for the default of the other party or its agents or employees with respect to any agreement or provision contained herein.

8. Examination of Records.

(a) The Contractor agrees that the City, or any duly authorized representative, shall, until the expiration of five (5) years after final payment hereunder, have access to and the right to examine and copy any pertinent books, documents, papers and records of the Contractor involving transactions related to this Contract.

(b) The Contractor further agrees to include in any subcontract for more than \$10,000 entered into as a result of this Contract, a provision to the effect that the subcontractor agrees that the City or any duly authorized representative shall, until the expiration of five (5) years after final payment under the subcontract, have access to and the right to examine and copy any pertinent books, documents, papers and records of such contractor involved in transactions related to such subcontract, or this Contract. The term subcontract as used herein shall exclude purchase orders for public utility services at rates established for uniform applicability to the general public.

(c) The period of access provided in subparagraphs (a) and (b) above for records, books, documents and papers which may relate to any arbitration, litigation, or the settlement of claims arising out of the performance of this contract or any subcontract shall continue until any appeals, arbitration, litigation or claims shall have been finally disposed of.

9. Termination for Non-Appropriation of Funds.

(a) If funds are not appropriated for any succeeding fiscal years subsequent to the one in which this contract is entered into, for the purpose of this Contract, then the City may terminate this Contract upon thirty (30) days prior written notice to the Contractor. Should termination be accomplished in accordance with this Section, the City shall be liable only for payments due through the date of termination.

(b) The City agrees that should it terminate in accordance with this Section, it shall not obtain services which are substantially equal to or similar to those for which this contract was entered into. This provision shall survive any termination of the Contract.

10. The Contractor shall maintain insurance during the life of this agreement, and the City of Port Orange must be listed as additional insured on that insurance document, a waiver of subrogation on the workers compensation shall suffice in lieu of additional insured, in an amount and a form set forth herein, to insure against risks which are identified herein. Insurance companies shall be rated by A.M. Best A rating or better.

Insurance	Standards	Comments
Workers' Compensation <u>Limits:</u> Additional Coverage: Special Conditions:	Coverage A - Statutory Coverage B - \$100,000 All States (Broad Form) Voluntary Compensation 30 days notice of cancellation to Governmental Entity, Waiver of subrogation in lieu of additional insured will suffice.	If the contract requires work on or about navigable waters, require Longshoreman's and Harbor Workers' Coverage. If vessels involved, require Jones Act coverage with limits of \$500,000.
Comprehensive General Liability (including Completed Operations and Contractual Liability) <u>Limits:</u>	Combined Single Limit Bodily Injury and Property damage \$500,000 occurrence \$1,000,000. Aggregate	When the Contract work on or under Railroad rights of way or properties, the Contractor shall take out and maintain during the life of

<u>Special Conditions:</u>	30 day notice to Governmental Entity, Additional Insured, City to be added as Additional Insured	the Contract, Railroad protective liability and property damage insurance in amounts as requested by the Railroad.
<u>Comprehensive Limits:</u> Business, Automobile Liability to include all automobiles. <u>Additional Coverage:</u> <u>Special Conditions:</u>	Auto Liability Body Injury: \$100,000 each person \$300,000 each occurrence. Property Damage Liability \$100,000 each occurrence. Non-Owned, Hired Car 30 days notice of cancellation to Governmental Entity.	Or \$500,000 Combined Single Limit for Bodily Injury and Property Damage
Property Insurance <u>Limits:</u> Builders Risk. <u>Additional Coverage:</u> <u>Special Conditions:</u>	Buildings - Completed value of contract. “All Risk” coverage on latest ISO form or its equivalent. Permission granted to occupy. Owner named as insured AIMA 30 days notice of cancellation to Owner, Additional insured.	If the Contract requires handling or installation of Owner’s equipment, coverage should be furnished on “All Risk” form, including transit and Owner shall be named.
Professional Liability Limits: (Errors & Omissions) <u>Special Conditions:</u>	Coverage- \$1,000,000.min. 30 days notice of cancellation to Owner, Additional insured.	

Policies other than Workers’ Compensation shall be issued only by companies authorized by subsisting certificates of authority issued to the companies by the Department of Insurance of the State of Florida to conduct business in the State of Florida and which maintain a Best’s Rating of “A” or better accordingly to the A.M. Best Company. Policies for Workers’ Compensation may be issued by companies authorized as a group self-insurer by F.S. 440.57

11. A Contract for the purchase of supplies shall be governed by the City of Port Orange Code of Ordinances, as amended, and such supplies shall be deemed "goods", as defined therein.

12. Assignability of Contract:

Neither this contract, nor any part thereof, may be assigned by the Contractor to any other party without the express written approval of the City Council.

13. Modifications or Changes to this Contract:

(a) Change orders. The Finance Director, with the concurrence of the City’s signatory to this Contract, shall without notice to any sureties, have the authority to order changes in this Contract which affect the cost or time of

performance. Such changes shall be ordered in writing specifically designated to be a change order. Such orders shall be limited to reasonable changes in the services to be performed or the time of the performance; provided that no Contractor shall be excused from performance under the changed contract by failure to agree to such changes, and it is the express purpose of this provision to permit unilateral changes in the Contract subject to the conditions and limitations herein.

(b) If any change under this clause causes an increase or decrease in the contractor's cost of, or time required for the performance of the work hereunder, the contractor shall receive an equitable adjustment in accordance with subparagraph (d), which shall include all compensation to the contractor, or the City, of any kind in connection with such change, including all costs and damages related to or incidental to such change. Failure to agree to any adjustment shall not excuse a contractor from proceeding with the contract as changed.

(c) The Contractor need not perform any work described in any change order unless it has received a certification from the City that there are funds budgeted and appropriated sufficient to cover the cost of such changes.

(d) The Contractor shall make a demand for payment for changed work within thirty (30) days of receipt of a change order, unless such time period is extended in writing, or unless the Finance Director requires submission of a cost proposal prior to the initiation of any changed work or supplies. Later notification shall not bar the honoring of such claim or demand unless the City is prejudiced by such delay.

(e) No claim for changes ordered hereunder shall be considered if made after final payment in accordance with the Contract.

14. Warranties:

Contractor warrants that (1) the supplies to be provided to the City pursuant to this Agreement are fit and sufficient for the purpose intended; (2) the supplies are merchantable, of good quality, and free from defects, whether patent or latent, in material or workmanship, and (3) the supplies sold to the City pursuant to this Agreement conform to the standards required by this Contract.

The Contractor further warrants that the Contractor has title to the supplies provided, and that the supplies are free and clear of all liens encumbrances, and security interests. All warranties made in this Agreement, together with service warranties and guarantees, shall run to the City and its successors and assigns.

15. Additional Warranties:

Contractor further expressly warrants that materials and workmanship are warranted from defect for a one-year period. This is a minimum acceptable warranty.

16. Additional Bond Security:

If any surety bond furnished in connection with this Contract becomes unacceptable to the City, the Contractor shall promptly furnish such additional security as may be required from time to time to protect the interests of the City and a person supplying labor and materials in the prosecution of work contemplated by this Contract. Contractor expressly acknowledges that if the work to be performed hereunder is a public work, a Payment and Performance Bond, in accordance with Florida Statutes Section 255.05, in a form acceptable to the City, shall be provided and recorded with the Clerk of Volusia County at Contractors expense.

17. Inspection:

(a) All supplies (which term throughout this clause includes without limitation raw materials, components, intermediate assemblies, and their products) shall be subject to inspection and test by the City, to the extent practicable at all times and places including the place of manufacturer, and in any event prior to acceptance.

(b) In case any supplies or lots of supplies are defective in material or workmanship, or otherwise not in conformity with the requirements of this Contract, the City shall have the right either to reject them (with or without instructions as to their disposition) or to require their correction. Supplies or lots of supplies which have been rejected or

required to be corrected shall be removed or, if permitted or required by the Finance Director, corrected in place by and at the expense of the Contractor promptly after notice, and shall not thereafter be tendered for acceptance unless the former rejection or requirement of correction is disclosed. If the Contractor fails promptly to remove such supplies or lots of supplies which are required to be removed or promptly to replace or correct such supplies or lots of supplies, the City may either (i) by Contract or otherwise replace or correct such supplies and charge the Contractor the cost for such replacement or correction; or (ii) may terminate this Contract for default as provided in the clause of this Contract entitled "Termination for Default". Unless the Contractor corrects or replaces such supplies within the delivery schedule, the Finance Director may require the delivery of such supplies at a reduction in price, which is equitable under the circumstances. Acceptance or rejection of the supplies shall be made as promptly as practicable after delivery, except as otherwise provided in this Contract failure to inspect and accept or reject supplies shall neither relieve the Contractor from responsibility for such supplies as are not in accordance with the Contract requirements nor impose liability on the City therefor.

(c) The inspection and test by the City of any supplies or lots thereof does not relieve the Contractor from any responsibility regarding defects or other failures to meet the Contract requirements, which may be discovered prior to acceptance. Except as otherwise provided in this Contract, acceptance shall be conclusive except as regards latent defects, fraud, or such gross mistakes as amount to fraud.

(d) Contract Administration--Delegation of Authority. **The Assistant Public Works Director** will perform contract administration of this Contract. The specific individual assigned to administer this contract is: **Mike Silvey, Assistant public Works Director**, City of Port Orange, Florida. See paragraph 23 for notice. The contract administrator is not authorized to approve changes to this contract unless such authority has been delegated to the contract administrator in writing and has been approved by the City's signatories to this Contract. The City will not be held liable for any changes, which have not been properly authorized and approved in accordance with this Contract.

18. Liability for Loss or Damage:

The Contractor shall be liable for any loss of, or damage to, City property caused by the negligence, recklessness, or intended wrongful misconduct of the Contractor, his agents, servants and employees and shall indemnify and save the City harmless against all actions, proceedings, claims, demands, costs, damages and expenses, including attorney's fees, by reason of any suit or action brought for any actual or alleged injury to or death of any person or damage to property other than City property, resulting from the performance of the Contract by the Contractor his agents, servants and employees. The Contractor shall submit to the Finance Director within twenty-four (24) hours following the occurrence of such damage, loss or injury, a full written report.

19. Non-discrimination:

During the performance of this Contract, Contractor agrees as follows:

(a) The Contractor will not discriminate against any employee or applicant for employment because of race, religion, color, sex, disability, marital status, age or national origin, except where such is a bona-fide occupational qualification reasonably necessary to the normal operation of the Contractor. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this non-discrimination clause. The Contractor agrees and fully supports and complies with the Americans with Disabilities Act of 1990.

(b) Contract shall state in all solicitations or advertisements for employees placed by or on behalf of Contractor that Contractor is an equal opportunity employer.

(c) Notices, advertisements and solicitations placed in accordance with federal law, rule or regulation shall be deemed sufficient compliance with this provision. Contractor shall include the provisions of the foregoing subparagraphs (a), (b), and (c) in every subcontract or purchase order of over \$10,000 so that the provisions will be binding upon each subcontractor or vendor.

20. Disputes:

The Finance Director, who shall reduce his decision to writing and mail or otherwise furnish a copy thereof to the Contractor, shall decide disputes with respect to this Contract in the first instance. The decision shall be final and binding unless, within thirty-(30) days from the date of such decision, the Contractor mails or otherwise furnishes to the Finance Director a written appeal addressed to the City Manager. The decision by the City Manager shall be final and binding unless, within ten (10) days from the date of receipt of the decision of the City Manager, appeal is made to the City Council. The decision of the City Council shall be final and binding unless set aside by a court of competent jurisdiction as fraudulent, capricious, arbitrary, or so grossly erroneous as necessary to imply bad faith, or not to be supported by any evidence. Pending a final determination of a properly appealed decision of the Finance Director, the Contractor shall proceed diligently with the performance of the Contract in accordance with that decision.

21. Additional Provisions.

As may have been outlined in: **Bid #12-26**, any Attachments or Exhibits to this contract whether delivered herewith or subsequently approved as a part hereof, such as drawings or technical specifications prepared in the performance of this work.

22. Integration

This Contract and the documents incorporated herein by reference shall constitute the whole agreement between the parties. There are no promises, terms, conditions, or obligations other than those contained herein, and this Contract shall supersede all previous communications, representations, or agreements, written or verbal, between the parties hereto.

23. Notice: For purposes of this agreement, notices shall be sent as follows:

City of Port Orange
Kenneth W. Parker, City Manager
1000 City Center Circle
Port Orange, FL 32129

Copy to: City of Port Orange
Mike Silvey, Assistant Public Works Director
1000 City Center Circle
Port Orange, Florida 32129


Contractor

[remainder of this page left intentionally blank]

CITY OF PORT ORANGE, FLORIDA

By: _____
Allen Green, Mayor

Date: _____

Attest: _____
Kenneth W. Parker, City Manager

STATE OF FLORIDA

COUNTY OF VOLUSIA

The foregoing instrument was acknowledged before me this _____ day of _____, 2012, by Allen Green, Mayor and by Kenneth W. Parker, City Manager, of the City of Port Orange, Florida, on behalf of the City. They are personally known to me and did not take an oath.

Notary Public, State of Florida

Commission No. _____

CONTRACTOR

_____.

BY: _____

Print name

Authorized Official or Company Representative

STATE OF _____

COUNTY OF _____

The foregoing instrument was acknowledged before me this _____ day of _____, 2012, by _____ Authorized Official or Authorized Representative of _____, who is personally known to me or who has produced _____ as identification and who did (did not) take an oath.

Notary Public, State of Florida

Commission No. _____

SECTION 00210
PERFORMANCE AND GUARANTEE BOND

KNOW ALL PERSONS BY THESE PRESENTS THAT

(Legal Title and Address of Contractor)

as Principal (hereinafter referred to as "Principal"), and

(Legal Title and Address of Surety)

as Surety (hereinafter referred to as "Surety"), are held and firmly bound unto the City of Port Orange as Obligor
(hereinafter referred to as "Obligor"), in the amount of _____

Dollars (\$ _____), to which payment Principal and Surety
(hereinafter referred to collectively as "Obligors") bind themselves, their heirs, executors, administrators, successors and assigns, jointly and severally,
firmly by these presents.

WHEREAS, Principal and Obligor have entered into a written agreement dated _____
(hereinafter referred to as the "Contract"), to perform certain work for _____

(Insert Name of Job/Project)
hereinafter referred to as the "Project"), as evidenced by the Agreement (Contract) between the parties incorporated therein, all of which is hereby referred
to and made a part hereof.

NOW, THEREFORE THE CONDITION OF THIS BOND is such that

1. Principal shall:
 - (a) Promptly and faithfully perform at the times and manner prescribed each and all of the terms, conditions, and provisions of the Contract, in strict accordance with its terms, as those terms may be modified or amended from time to time, and timely complete the Project in accordance with the terms thereof; and
 - (b) Indemnify, save and hold harmless Obligor and all of its officers, agents and employees from any and all losses, liability and damages, claims, judgments, liens, costs, and fees of every description, whether in contract or in tort, whether imposed by law or equity, which may be caused Obligor by reason of the failure or default on the part of Principal to perform any and all of the terms of the Contract, including all modifications and amendments thereto, and any warranties or guarantees required thereunder.
2. If all duties owing to Obligor under the Contract and the guarantees provided herein are not performed, which shall include, but not limited to, Principal's breach or default of the Contract, then, upon delivery of written notice from Obligor to Surety, Obligor shall be permitted to remedy the default or breach of Principal at the expense of the Surety, which expense shall be promptly paid or reimbursed by Surety to Obligor.
3. Surety shall not assert solvency of its Principal or its Principal's denial of default as justification for its failure to guarantee the obligations of the Principal, denying its liability to Obligor under this bond or for denying its liability for any portion of the damages claimed hereunder, including any delay damages.
4. Surety, for value received, hereby estimates and agrees that no changes, substitutions, extensions of time, alterations or additions to the terms of the Contract or to the work to be performed thereunder, shall in any way affect its obligation on this bond, and it does hereby waive notice of any such changes, substitutions, extensions of time, alterations or additions to the terms of the Contract or to work to be performed thereunder, and agrees that these changes, substitutions, and additions shall become provisions of the Contract. Surety further agrees that compliance and noncompliance with any formalities connected with the Contract or change does not affect the Surety's obligation under this bond.
5. Surety further agrees, as part of its obligation, to pay all damages of any kind that may result from a failure in any respect to perform and complete the Contract in a timely manner, including but not limited to, all delay damages, the Obligor shall be entitled to recover from Surety all attorney's and other legal fees and litigation costs, including the cost of any appeal, incurred by Obligor.

6. Surety agree that, other than as provided in this bond, it may not demand of Obligee that Obligee shall: (a) perform anything or act, (b) give any notice, (c) furnish any clerical assistance, (d) render any service, (e) furnish any papers or documents, or (f) take any action of any nature or description which is not required of Obligee to be done under the Contract or related documents.

This performance bond is a common law bond and the notice and time limits of § 95.11(2)(6), Florida Statute, apply to actions for performance of this contract. Contractor shall execute and provide one (1) of the following:

Signature, corporate seal, attesting secretary; or

Signature, two (2) witnesses; or

Signature, Notary.

_____	_____
Attest Secretary or Witness	Name of Firm
_____	_____ (SEAL)
Witness	President, Owner/Partner
_____	(Sign as on contract)
Witness	
State of _____	
County of _____	
On this _____ day of _____, 20____	_____
	Print name(s) of signers

Personally appeared before me, as the signer(s) of the attached instrument, and he/she/they signed the instrument voluntarily for the purpose expressed in it, who is personally known to me or has produced

_____	_____
Type of Identification ID/Expiration Date	Signature of Notary

	Printed Name of Notary
IN THE PRESCENCE OF	
_____	BY: _____
	Attorney-In-Fact
_____	_____
As to Surety	Florida Resident Agent
State of _____	
County of _____	
On this _____ day of _____, 20____	_____
	Print name(s) of signers

Personally appeared before me, as the signer(s) of the attached instrument, and he/she/they signed the instrument voluntarily for the purpose expressed in it, who is personally known to me or has produced

_____	_____
Type of Identification ID/Expiration Date	Signature of Notary

	Printed Name of Notary

NOTE: If both Principal and Surety are corporations, the respective corporate seals shall be affixed and attached. Power of Attorney to be attached.



Post Office Box 1469
Eagle Lake, FL 33839-1469

TF :: (800) 408-8882 T :: (863) 533-8882 F :: (863) 534-3322

February 7, 2017

Michael Silvey
Assistant Director
City of Port Orange
Public Works
407 Virginia Ave
Port Orange, FL 32127

RE: Lake Treatment Contract Renewal

Dear Mr. Silvey

Applied Aquatic Management, Inc. accepts the renewal of Bid #12-26 Treatment of Lakes, Retention Ponds, Canals & Ditches for another year at the fifth renewal price terms, requirements, specifications and terms and conditions.

Sincerely,



Jennifer L Myers
CFO

Applied Aquatic Management

May 1, 2017 - April 30, 2018

		May	June	July	August	Sept	Oct	Nov	Dec	Jan	Feb	March	April	Total Annual Cost
1	Autumn Trail	1800	28.00	28.00	28.00	28.00	28.00	28.00	0.00	28.00	0.00	28.00	28.00	280.00
2	Cross Creek/Secret River Trail	1800	34.00	34.00	34.00	34.00	34.00	34.00	34.00	34.00	34.00	34.00	34.00	408.00
3	Hidden Lakes/Hidden Lakes Drive	1800	146.00	146.00	146.00	146.00	146.00	146.00	0.00	146.00	0.00	146.00	146.00	1,460.00
4	Willow Run sub./Thomasina Dr.	1800	13.00	13.00	13.00	13.00	13.00	13.00	0.00	13.00	0.00	13.00	13.00	130.00
5	Willow Run sub./Tracy Dr.	1800	13.00	0.00	13.00	0.00	13.00	0.00	13.00	0.00	13.00	0.00	0.00	78.00
6	Willow Run sub./Harms Way	1800	13.00	0.00	13.00	0.00	13.00	0.00	13.00	0.00	13.00	0.00	0.00	78.00
7	Southern Oaks/Squirrel Nest Lane	1800	13.00	26.00	26.00	26.00	26.00	13.00	13.00	13.00	13.00	13.00	13.00	208.00
8	Gatewood/Oak Forest Circle	1800	13.00	26.00	26.00	26.00	26.00	13.00	13.00	13.00	13.00	13.00	13.00	208.00
9	Foxboro/Miles Drive	1800	48.00	48.00	48.00	48.00	48.00	48.00	48.00	48.00	48.00	48.00	48.00	576.00
10	Deep Forest&Foxboro/Sandle Wood Dr.	1800	58.00	58.00	58.00	58.00	58.00	58.00	58.00	58.00	58.00	58.00	58.00	696.00
11	Foxboro/Crown Lane	1800	13.00	26.00	26.00	26.00	26.00	13.00	13.00	13.00	13.00	13.00	13.00	208.00
12	The Settings/Alstrum Drive	1800	13.00	13.00	13.00	13.00	13.00	13.00	13.00	13.00	13.00	13.00	13.00	156.00
13	Bent Oaks/Whippoorwill Drive	1800	13.00	13.00	13.00	13.00	13.00	13.00	13.00	13.00	13.00	13.00	13.00	156.00
14	Lone Oak/Lone Oak Drive	1800	72.00	72.00	72.00	72.00	72.00	72.00	72.00	72.00	72.00	72.00	72.00	864.00
15	Central Park/Central Park Blvd.	1800	85.00	85.00	85.00	85.00	85.00	85.00	85.00	85.00	85.00	85.00	85.00	1,020.00
16	Winter Park/Pelham Drive	1800	21.00	21.00	21.00	21.00	21.00	21.00	21.00	21.00	21.00	21.00	21.00	252.00
17	Falcon Crest/Champagne Circle	1800	13.00	13.00	13.00	13.00	13.00	13.00	13.00	13.00	13.00	13.00	13.00	156.00
18	City Hall / City Center Circle	1800	73.00	146.00	146.00	146.00	146.00	73.00	73.00	73.00	73.00	73.00	73.00	1,168.00
19	Amber Village/Amber Circle	1800	13.00	0.00	13.00	0.00	13.00	0.00	13.00	0.00	13.00	0.00	0.00	78.00
20	Fire Station #5 (added 5/1/14)	1800	40.00	40.00	40.00	40.00	40.00	40.00	40.00	40.00	40.00	40.00	40.00	480.00
21	Jackson Street Park	1800	127.00	254.00	254.00	254.00	254.00	127.00	127.00	127.00	127.00	127.00	127.00	2,032.00
22	Fire Station #2 (added 5/1/14)	1800	50.00	50.00	50.00	50.00	50.00	50.00	50.00	50.00	50.00	50.00	50.00	600.00
23	Monroe Street	1800	13.00	13.00	13.00	13.00	13.00	13.00	13.00	13.00	13.00	13.00	13.00	156.00
24	Locust Street-revised 5/1/14 to include 3 pond areas all linked by pipe; Dagwood Cr,Locust and FDOT pond on Sp Cree& Rd.	1800	178.00	178.00	178.00	178.00	178.00	178.00	178.00	178.00	178.00	178.00	178.00	2,136.00
25	Baywood Avenue	1800	25.00	25.00	25.00	25.00	25.00	25.00	25.00	25.00	25.00	25.00	25.00	300.00
26	Southwinds	1800	97.00	97.00	97.00	97.00	97.00	97.00	97.00	97.00	97.00	97.00	97.00	1,164.00
27	Nixon Lane	1800	25.00	25.00	25.00	25.00	25.00	25.00	25.00	25.00	25.00	25.00	25.00	300.00
28	Canalview Blvd.	1800	50.00	50.00	50.00	50.00	50.00	50.00	50.00	50.00	50.00	50.00	50.00	600.00
29	Sugar Grove/Sugar Grove Court	1800	25.00	25.00	25.00	25.00	25.00	25.00	25.00	25.00	25.00	25.00	25.00	300.00
30	Buschman Park	1800	132.00	132.00	132.00	132.00	132.00	132.00	132.00	132.00	132.00	132.00	132.00	1,584.00
31	Orange Boulevard	1800	25.00	25.00	25.00	25.00	25.00	25.00	25.00	25.00	25.00	25.00	25.00	300.00
32	Spruce Creek Rd. @ Acorn Ln.	1800	25.00	25.00	25.00	25.00	25.00	25.00	25.00	25.00	25.00	25.00	25.00	300.00
33	Fire Station#4(Airport Rd.)	1800	25.00	25.00	25.00	25.00	25.00	25.00	25.00	25.00	25.00	25.00	25.00	300.00
34	Commonwealth/Westridge	1800	13.00	13.00	13.00	13.00	13.00	13.00	13.00	13.00	13.00	13.00	13.00	156.00
35	Nova Road Pond #1	1800	13.00	13.00	13.00	13.00	13.00	13.00	13.00	13.00	13.00	13.00	13.00	156.00
36	Nova Road Pond #2	1800	122.00	122.00	122.00	122.00	122.00	122.00	122.00	122.00	122.00	122.00	122.00	1,464.00
37	Nova Road Pond #3	1800	146.00	146.00	146.00	146.00	146.00	146.00	146.00	146.00	146.00	146.00	146.00	1,752.00
38	Nova Road Pond #4	1800	280.00	280.00	280.00	280.00	280.00	280.00	280.00	280.00	280.00	280.00	280.00	3,360.00
39	Nova Road Pond #5	1800	85.00	85.00	85.00	85.00	85.00	85.00	85.00	85.00	85.00	85.00	85.00	1,020.00
40	Hidden Village	1800	13.00	13.00	13.00	13.00	13.00	13.00	13.00	13.00	13.00	13.00	13.00	156.00
41	Commonwealth / Frederick	1800	13.00	13.00	13.00	13.00	13.00	13.00	13.00	13.00	13.00	13.00	13.00	156.00
42	Renegade Lane Ditch	1800	13.00	13.00	13.00	13.00	13.00	13.00	13.00	13.00	13.00	13.00	13.00	156.00
43	Farmbrook Retention Pond	1800	17.00	17.00	17.00	17.00	17.00	17.00	17.00	17.00	17.00	17.00	17.00	204.00
44	Devon Street Retention Pond	1800	13.00	13.00	13.00	13.00	13.00	13.00	13.00	13.00	13.00	13.00	13.00	156.00
45	Canal Sections	1800	220.00	220.00	220.00	220.00	220.00	220.00	220.00	220.00	220.00	220.00	220.00	2,640.00
46	Southport Retention (add 4/1/09)	1800	19.00	19.00	19.00	19.00	19.00	19.00	19.00	19.00	19.00	19.00	19.00	228.00
47	Sleepy Hollow Retention Pond	1800	43.00	43.00	43.00	43.00	43.00	43.00	43.00	43.00	43.00	43.00	43.00	516.00
48	Summertrees Road Retention Pond	1800	13.00	13.00	13.00	13.00	13.00	13.00	13.00	13.00	13.00	13.00	13.00	156.00
49	Airport Road Retention Pond	1800	23.00	23.00	23.00	23.00	23.00	23.00	23.00	23.00	23.00	23.00	23.00	276.00
50	Dunlawton/Sp.Creek Rd FDOT Pond (west side of Sp.Creek Rd)	1800	15.00	15.00	15.00	15.00	15.00	15.00	15.00	15.00	15.00	15.00	15.00	180.00
51	West Bayshore Drive retention pond add 11/1/12	1800	30.00	30.00	30.00	30.00	30.00	30.00	30.00	30.00	30.00	30.00	30.00	360.00
52	Causeway FDOT Pond	4400	13.00	13.00	13.00	13.00	13.00	13.00	13.00	13.00	13.00	13.00	13.00	156.00
53	Coracci Sprt.Complex Pond #1	4400	56.00	56.00	56.00	56.00	56.00	56.00	56.00	56.00	56.00	56.00	56.00	672.00
54	Coracci Sprt.Complex Pond #2	4400	35.00	35.00	35.00	35.00	35.00	35.00	35.00	35.00	35.00	35.00	35.00	420.00
55	Coracci Sprt.Complex ditch	4400	120.00	120.00	120.00	120.00	120.00	120.00	120.00	120.00	120.00	120.00	120.00	1,440.00
	Golf Course Lakes	1800	440.00	440.00	440.00	440.00	440.00	440.00	440.00	440.00	440.00	440.00	440.00	5,280.00
	D-1 Ditch/Golf Course	1800	35.00	35.00	35.00	35.00	35.00	35.00	35.00	35.00	35.00	35.00	35.00	420.00
	Monthly Totals		3,322.00	3,522.00	3,561.00	3,522.00	3,561.00	3,283.00	3,322.00	3,096.00	3,322.00	3,096.00	3,322.00	40,212.00

May 1, 2017 thru April 30, 2018

Total Annual PW	31,824.00
Total Annual GC	5,700.00
Total Annual Parks	2,688.00
Total Annual	40,212.00

May 2017 - September 2017

Public Works	41218005413414	13,993.00
Golf Course	41218005413414	2,375.00
Parks Dept	00144005723414	1,120.00
		17,488.00

October 2017 - April 2018

Public Works	41218005413414	17,831.00
Golf Course	41218005413414	3,325.00
Parks Dept	00144005723414	1,568.00
		22,724.00

Note: Golf Course portion of contract funded in Public Works account 41218005413414.



CITY COUNCIL AGENDA ITEM

REQUESTED COUNCIL MEETING DATE 03/07/2017

Consent item: No

SUBJECT: (B8) FY 2018 Budget Calendar

DEPARTMENT: Finance

GOAL:

RECOMMENDED MOTION: Move to approve FY2017-2018 Budget Calendar

SUMMARY: We have planned enough time between calendar events to adjust to guidance and deconflicted between school board and County Council meetings. In an effort to get a head start we have instructed staff to concentrate on limiting personnel increases to only those employees necessary to keep up with city growth (boots on the ground workers, no upper management) ,maintain the current millage rate and rely on increased growth revenue to fund growth related expenses. Attached is the proposed calendar to work through this year's budget.

Project No.: Funding Account No.:

ATTACHMENTS:

1.	FY 2018 Budget Calendar	FY17-FY18 Budget Calendar.pdf
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Tracey Riehm
Tracey Riehm
Jake Johansson
Robin Fenwick

Created/Initiated - 02/16/2017
Approved - 02/20/2017
Approved - 02/22/2017
Final Approval - 02/23/2017

FY 17-18 Budget Calendar

Date	Action
July 2016	Council Strategic Planning Session. A summary of what is discussed at this session will be provided to Departments for guidance while developing their budget.
Monday, January 23	Finance Distributes CIP documents to Departments.
Tuesday, February 7	Human Resources sends current Personnel Roster to Departments.
Tuesday, March 7	Budget Calendar submitted to Council for approval at their Regular Meeting.
Monday, March 14	Community Development provides a list of new development, for revenue estimating purposes, to Finance.
Friday, February 24	Departments submit CIP requests to Finance. Finance and internal service departments review CIP requests. All requests should tie to the Strategic Plan.
Tuesday, March 7	Departments verify and submit current personnel rosters to Human Resources.
March 6 th – March 10 th	Finance meets with Departments to discuss CIP.
March 6 – March 20	Departments work with Human Resources to develop additional personnel recommendations. All requests for additional personnel should tie to Strategic Plan.
Monday, March 20	Departments submit new personnel requests to Human Resources, copying Finance. Related forms requesting Fleet and IT equipment for additional positions must be completed.
Wednesday, March 22	Finance meets with Departments to Review Budget Process and distribute Budget Packets.
Friday, March 24	HTE opens to Departments
Monday, March 27	Finance finalizes initial CIP review and sends to City Manager for review.
March 27 th – 31 st	City Manager reviews CIP requests with Finance and Departments.
Tuesday, April 18 th	Finance sends Draft CIP to City Manager and City Council (3 months prior to adoption)
March 29 – April 21	Finance Meets with Departments to provide assistance with Budget.
March 29 – April 12	Departments develop new program requests. All requests should tie to Strategic Plan.
Wednesday April 12	Departments submit new program requests to Finance. Departments must remember to put these requests in the HTE system as part of their budget s well.
Friday, April 21	HTE system closes for department line item entries.

April 12 th – May 3 rd	Finance/HR/Fleet/IT work together to review new position and program requests.
Monday, May 8 th	Finance submits consolidated position/position program requests to City Manager.
May 8 th – May 12 th	City Manager and Finance review new position/program requests with Departments.
May 12 th – June 23 rd	Finance creates preliminary draft budgets.
Friday, June 2 nd	Finance submits preliminary revenue estimates to City Manager
Tuesday, June 27	City Council conducts workshop on CIP.
Friday, June 23	Finance submits preliminary draft budget to City Manager and departments.
June 26 th – 30 th	City Manager reviews preliminary operating and capital budgets with Department Heads.
Beginning of July (TBD)	Property Appraiser releases preliminary tax roll. Form DR420
July 3 rd – 5 th	Council provides City Manager guidance.
July 5 th – 7 th	Finance adjusts budget as needed.
Friday, July 7	Preliminary proposed budget submitted to City Manager
Tuesday, July 18	Budget workshop on all operating and capital budgets • City Council sets proposed millage rate. • City Council sets public hearing dates for tentative and final adoption (1st hearing date must be within 80 days after certification of values and cannot conflict with County or School Board hearing dates).
Tuesday, August 1	• Deadline for submitting proposed millage rate to Property Appraiser, and time, date, and place of 1st Public Hearing to Property Appraiser (Form DR-420).
Tuesday, August 8	City Council adopts CIP Program in concept. (Must be on or before August 15 th).
Friday, August 25	Post proposed budget on website.
Tuesday, September 5	1 st Public Hearing to adopt tentative millage (must be within 80 days but no earlier than 65 days after certification of values, 09/3-09/18, cannot conflict with County or School Board hearing dates)
Friday, September 8	Advertise 2 nd Public Hearing with Budget Summary (within 15 days after the tentative budget hearing)
Tuesday, September 19	• Public Hearing to adopt final budget and millage resolutions (Must be within 20 days of first Public Hearing and cannot conflict with County or School Board hearing dates)



CITY COUNCIL AGENDA ITEM

REQUESTED COUNCIL MEETING DATE 03/07/2017

Consent item: No

SUBJECT: (B9) Approval of Lease Agreement Between the City of Port Orange and Representative Ron DeSantis

DEPARTMENT: City Manager

GOAL: N/A

RECOMMENDED MOTION: Move to approve Lease Agreement Between the City of Port Orange and Representative Ron DeSantis

SUMMARY:

Representative Ron DeSantis has leased office space on the second floor of City Hall since January 3, 2013. The most recent lease expired on January 2, 2017. The Representative's Office provided a new draft lease document to the City on February 2, 2017. The new lease is for the period of January 3rd, 2017 through January 2, 2019 (Corresponding to the dates of the 115th Congress). The monthly rent for the space is \$100, which is identical to the prior lease.

Council must approve leases of City property and staff is requesting that approval through this item.

Project No.: Funding Account No.: 001-0000-362.00-00

ATTACHMENTS:

1.	Lease Agreement	DeSantis Office Lease.pdf
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Alan Rosen
Tracey Riehm
Margaret Roberts
Jake Johansson
Robin Fenwick

Created/Initiated - 02/03/2017
Approved - 02/20/2017
Approved - 02/24/2017
Approved - 02/24/2017
Final Approval - 02/24/2017

District Office Lease Attachment- Instructions

The District Office Lease Attachment must accompany *every* Lease or District Office Lease Amendment that is submitted for a Member/Member-Elect's District Office.

NO LEASE, AMENDMENT OR ATTACHMENT CAN BE SIGNED BEFORE THEY HAVE BEEN APPROVED BY THE ADMINISTRATIVE COUNSEL.

The term of a District Office Lease or Amendment for the 115th Congress may not commence prior to January 3, 2017.

Members should endeavor to lease space through the last day of a congressional term rather than the last day of a calendar year. For the 115th Congress, leases should end on January 2, 2019, not December 31, 2018.

A few things to keep in mind:

- A. The Member/Member-Elect is required to personally sign the documents.
- B. The Member/Member-Elect must indicate in Section A ("Lease Amenities") of the Attachment whether the proposed leased space will serve as a flagship district office.
- C. The Lessor must complete the amenities checklist in Section A ("Lease Amenities"), unless the checkbox at the top of the amenities checklist is marked to indicate that amenities are listed elsewhere in the Lease.
- D. Broadband/cable availability can be confirmed by visiting www.broadbandmap.gov and entering the address of the proposed leased space.
- E. Section B ("Additional Terms and Conditions") of the Attachment **SHALL NOT** have any provisions deleted or changed.
- F. Even if rent is zero, an Attachment is still required.
- G. Prior to either party signing a Lease or Amendment, the Member/Member-Elect must submit the proposed Lease or Amendment, accompanied by a copy of the Attachment, to the Administrative Counsel for review and approval. If the Administrative Counsel determines that the proposed terms and conditions of the Lease or Amendment are in compliance with applicable law and House Rules and Regulations, the Administrative Counsel will notify the Member/Member-Elect that (s)he may proceed with the execution of the Lease or Amendment. Please submit the proposed Lease or Amendment and Attachment either by e-mail in PDF form (leases@mail.house.gov) or by fax (202-225-6999).
- H. Once signed by both parties, the Lease or Amendment and the Attachment must be submitted to the Administrative Counsel for final approval. The Attachment should be submitted at the same time the Lease or Amendment is sent to the Administrative Counsel. They may be sent by email in PDF form or faxed to (202-225-6999).
- I. Without a properly signed and submitted Attachment, the Lease or Amendment cannot be approved and payments will not be made. The parties agree that any charges for default, early termination or cancellation of the Lease or Amendment which result from actions taken by or on behalf of the Lessee shall be the sole responsibility of the Lessee, and are not reimbursable from the Member's Representational Allowance.
- J. Lessor shall provide a copy of any assignment, estoppel certificate, notice of a bankruptcy or foreclosure, or notice of a sale or transfer of the leased premises to the Administrative Counsel by e-mail in PDF form (leases@mail.house.gov).

District Office Lease Attachment
(Page 1 of 5 – 115th Congress)

District Office Lease Attachment

(Page 2 of 5 – 115th Congress)

SECTION B **(Additional Terms and Conditions)**

1. **Incorporated District Office Lease Attachment.** Lessor (Landlord) and Lessee (Member/Member-Elect of the U.S. House of Representatives) agree that this District Office Lease Attachment ("Attachment") is incorporated into and made part of the Lease ("Lease") and, if applicable, District Office Lease Amendment ("Amendment") to which it is attached.
2. **Performance.** Lessor expressly acknowledges that neither the U.S. House of Representatives (the "House") nor its Officers are liable for the performance of the Lease. Lessor further expressly acknowledges that payments made by the Chief Administrative Officer of the House (the "CAO") to Lessor to satisfy Lessee's rent obligations under the Lease – which payments are made solely on behalf of Lessee in support of his/her official and representational duties as a Member of the House – shall create no legal obligation or liability on the part of the CAO or the House whatsoever. Lessee shall be solely responsible for the performance of the Lease and Lessor expressly agrees to look solely to Lessee for such performance.
3. **Modifications.** Any amendment to the Lease must be in writing and signed by the Lessor and Lessee. Lessor and Lessee also understand and acknowledge that the Administrative Counsel for the CAO ("Administrative Counsel") must review and give approval of any amendment to the Lease prior to its execution.
4. **Compliance with House Rules and Regulations.** Lessor and Lessee understand and acknowledge that the Lease shall not be valid, and the CAO will not authorize the disbursement of funds to the Lessor, until the Administrative Counsel has reviewed the Lease to determine that it complies with the Rules of the House and the Regulations of the Committee on House Administration, and approved the Lease by signing the last page of this Attachment.
5. **Payments.** The Lease is a fixed term lease with monthly installments for which payment is due in arrears on or before the end of each calendar month. In the event of a payment dispute, Lessor agrees to contact the Office of Finance of the House at 202-225-7474 to attempt to resolve the dispute before contacting Lessee.
6. **Void Provisions.** Any provision in the Lease purporting to require the payment of a security deposit shall have no force or effect. Furthermore, any provision in the Lease purporting to vary the dollar amount of the rent specified in the Lease by any cost of living clause, operating expense clause, pro rata expense clause, escalation clause, or any other adjustment or measure during the term of the Lease shall have no force or effect.
7. **Certain Charges.** The parties agree that any charge for default, early termination or cancellation of the Lease which results from actions taken by or on behalf of the Lessee shall be the sole responsibility of the Lessee, and shall not be paid by the CAO on behalf of the Lessee.
8. **Death, Resignation or Removal.** In the event Lessee dies, resigns or is removed from office during the term of the Lease, the Clerk of the House may, at his or her sole option, either: (a)

U.S. House of Representatives
Washington, D.C. 20515

District Office Lease Attachment
(Page 3 of 5 – 115th Congress)

terminate the Lease by giving thirty (30) days' prior written notice to Lessor; or (b) assume the obligation of the Lease and continue to occupy the premises for a period not to exceed sixty (60) days following the certification of the election of the Lessee's successor. In the event the Clerk elects to terminate the Lease, the commencement date of such thirty (30) day termination notice shall be the date such notice is delivered to the Lessor or, if mailed, the date on which such notice is postmarked.

9. **Term.** The term of the Lease may not exceed the constitutional term of the Congress to which the Lessee has been elected. The Lease may be signed by the Member-Elect before taking office. Should the Member-Elect not take office to serve as a Member of the 115th Congress, the Lease will be considered null and void.
10. **Early Termination.** If either Lessor or Lessee terminates the Lease under the terms of the Lease, the terminating party agrees to promptly file a copy of any termination notice with the Office of Finance, U.S. House of Representatives, O'Neill Federal Building, Suite 3220, Attn: Levi Matthews, Washington, D.C. 20515, and with the Administrative Counsel by e-mail at leases@mail.house.gov.
11. **Assignments.** Lessor shall not have the right to assign (by operation of law or otherwise) any of its rights, interests and obligations under the Lease, in whole or in part, without providing thirty (30) days prior written notice to Lessee, and any such purported assignment without such notice shall be void. Lessor shall promptly file a copy of any such assignment notice with the Administrative Counsel by e-mail at leases@mail.house.gov.
12. **Sale or Transfer of Leased Premises.** Lessor shall provide thirty (30) days prior written notice to Lessee in the event (a) of any sale to a third party of any part of the leased premises, or (b) Lessor transfers or otherwise disposes of any of the leased premises, and provide documentation evidencing such sale or transfer in such notice. Lessor shall promptly file a copy of any such sale or transfer notice with the Administrative Counsel by e-mail at leases@mail.house.gov.
13. **Bankruptcy and Foreclosure.** In the event (a) Lessor is placed in bankruptcy proceedings (whether voluntarily or involuntarily), (b) the leased premises is foreclosed upon, or (c) of any similar occurrence, Lessor agrees to promptly notify Lessee in writing. Lessor shall promptly file a copy of any such notice with the Office of Finance, U.S. House of Representatives, O'Neill Federal Building, Suite 3220, Attn: Levi Matthews, Washington, D.C. 20515, and with the Administrative Counsel by e-mail at leases@mail.house.gov.
14. **Estoppel Certificates.** Lessee agrees to sign an estoppel certificate relating to the leased premises (usually used in instances when the Lessor is selling or refinancing the building) upon the request of the Lessor. Such an estoppel certificate shall require the review of the Administrative Counsel, prior to Lessee signing the estoppel certificate. Lessor shall promptly provide a copy of any such estoppel certificate to the Administrative Counsel by e-mail at leases@mail.house.gov.

District Office Lease Attachment

(Page 4 of 5 – 115th Congress)

15. **Maintenance of Common Areas.** Lessor agrees to maintain in good order, at its sole expense, all public and common areas of the building including, but not limited to, all sidewalks, parking areas, lobbies, elevators, escalators, entryways, exits, alleys and other like areas.
16. **Maintenance of Structural Components.** Lessor also agrees to maintain in good order, repair or replace as needed, at its sole expense, all structural and other components of the premises including, but not limited to, roofs, ceilings, walls (interior and exterior), floors, windows, doors, foundations, fixtures, and all mechanical, plumbing, electrical and air conditioning/heating systems or equipment (including window air conditioning units provided by the Lessor) serving the premises.
17. **Lessor Liability for Failure to Maintain.** Lessor shall be liable for any damage, either to persons or property, sustained by Lessee or any of his or her employees or guests, caused by Lessor's failure to fulfill its obligations under Sections 15 and 16.
18. **Initial Alterations.** Lessor shall make any initial alterations to the leased premises, as requested by Lessee and subject to Lessor's consent, which shall not be unreasonably withheld. The cost of such initial alterations shall be included in the annual rental rate.
19. **Federal Tort Claims Act.** Lessor agrees that the Federal Tort Claims Act, 28 U.S.C. §§ 2671-80, satisfies any and all obligations on the part of the Lessee to purchase private liability insurance. Lessee shall not be required to provide any certificates of insurance to Lessor.
20. **Limitation of Liability.** Lessor agrees that neither Lessee nor the House nor any of the House's officers or employees will indemnify or hold harmless Lessor against any liability of Lessor to any third party that may arise during or as a result of the Lease or Lessee's tenancy.
21. **Compliance with Laws.** Lessor shall be solely responsible for complying with all applicable permitting and zoning ordinances or requirements, and with all local and state building codes, safety codes and handicap accessibility codes (including the Americans with Disabilities Act), both in the common areas of the building and the leased space of the Lessee.
22. **Electronic Funds Transfer.** Lessor agrees to accept monthly rent payments by Electronic Funds Transfer and agrees to provide the Office of Finance, U.S. House of Representatives, with all banking information necessary to facilitate such payments.
23. **Refunds.** Lessor shall promptly refund to the CAO, without formal demand, any payment made to the Lessor by the CAO for any period for which rent is not owed because the Lease has ended or been terminated.
24. **Conflict.** Should any provision of this Attachment be inconsistent with any provision of the attached Lease or attached Amendment, the provisions of this Attachment shall control, and those inconsistent provisions of the Lease or the Amendment shall have no force and effect to the extent of such inconsistency.

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Washington, D.C. 20515

District Office Lease Attachment

(Page 5 of 5 - 115th Congress)

25. **Construction.** Unless the clear meaning requires otherwise, words of feminine, masculine or neuter gender include all other genders and, wherever appropriate, words in the singular include the plural and vice versa.
26. **Fair Market Value.** The Lease or Amendment is entered into at fair market value as the result of a bona fide, arms-length, marketplace transaction. The Lessor and Lessee certify that the parties are not relatives nor have had, or continue to have, a professional or legal relationship (except as a landlord and tenant).
27. **District Certification.** The Lessee certifies that the office space that is the subject of the Lease is located within the district the Lessee was elected to represent unless otherwise authorized by Regulations of the Committee on House Administration.
28. **Counterparts.** This Attachment may be executed in any number of counterparts and by facsimile copy, each of which shall be deemed to be an original but all of which together shall be deemed to be one and the same instrument.
29. **Section Headings.** The section headings of this Attachment are for convenience of reference only and shall not be deemed to limit or affect any of the provisions hereof.

IN WITNESS WHEREOF, the parties have duly executed this District Office Lease Attachment as of the later date written below by the Lessor or the Lessee.

_____ <i>Print Name of Lessor/Landlord</i> By: _____ <i>Lessor Signature</i> Name: _____ Title: _____ _____ <i>Date</i>	Hon. Ron DeSantis _____ <i>Print Name of Lessee</i>  _____ <i>Lessee Signature</i> 2/2/17 _____ <i>Date</i>
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From the Member's Office, who is the point of contact for questions?			
Name <i>Mini Ictibus</i>	Phone (202) 225-2706	E-mail <i>mini</i>	@mail.house.gov

This District Office Lease Attachment and the attached Lease or Amendment have been reviewed and are approved, pursuant to Regulations of the Committee on House Administration.

Signed _____ Date _____, 20____
(Administrative Counsel)

Send completed forms to: Administrative Counsel, 217 Ford House Office Building, Washington, D.C. 20515. Copies may also be faxed to 202-225-6999.

District Office Lease Amendment – Instructions

NO LEASE AMENDMENT OR ATTACHMENT CAN BE SIGNED BEFORE THEY HAVE BEEN APPROVED BY THE ADMINISTRATIVE COUNSEL.

The term for a District Office Lease Amendment for the 115th Congress may not commence prior to January 3, 2017.

Members should endeavor to lease space through the last day of a congressional term rather than the last day of a calendar year. For the 115th Congress, leases should end on January 2, 2019, not December 31, 2018.

- A. Section 1 has three blank lines to be filled in:
 - 1. the term of the previous lease that is being amended or extended;
 - 2. street address of office being leased; and
 - 3. city, state and ZIP where office is being leased.
- B. Section 2 requires the new ending date (if the lease is going to be extended), which must be on or before January 2, 2019. If the lease is not going to be extended, write "N/A" in the space provided.
- C. Section 3 requires the monthly rent amount for the extended term, and if any other provision is changed, the blank space beneath Section 3 is provided for any changes or additions. If there are no other changes to your existing lease write "NONE" in the space provided.
- D. **The Member/Member-Elect is required to personally sign the documents.**
- E. A District Office Lease Attachment for the 115th Congress must accompany this District Office Lease Amendment ("Amendment").
- F. **Prior to either party signing an Amendment, the Member/Member-Elect must submit the proposed Amendment, accompanied by a copy of the District Office Lease Attachment for the 115th Congress, to the Administrative Counsel for review and approval. If the proposed terms and conditions of the Amendment are determined to be in compliance with applicable law and House Rules and Regulations, the Administrative Counsel will notify the Member/Member-Elect that (s)he may proceed with the signing of the Amendment. Please submit the proposed Amendment and District Office Lease Attachment either by e-mail in PDF form (leases@mail.house.gov) or fax (202-225-6999).**
- G. Once signed by both parties, the Amendment and District Office Lease Attachment must be submitted to the Administrative Counsel for final approval. They may be sent by email in PDF form or faxed to 202-225-6999.
- H. If approved, Administrative Counsel will send them to Finance so that payment can begin. If there are errors, you will be contacted and required to correct them before the Amendment is approved.
- I. If you have any additional questions about District Office Leases, please contact the Office of the Administrative Counsel by e-mail (leases@mail.house.gov).

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Washington, D.C. 20515

District Office Lease Amendment

(Page 1 of 2 – 115th Congress)

1. **Prior Lease Term.** The undersigned Landlord ("Lessor") and Member of the U. S. House of Representatives ("Lessee") agree that they previously entered into a District Office Lease ("Lease") (along with the District Office Lease Attachment), which covered the period from 1/3/2016 to 1/2/2017 for the lease of office space located at 1000 City Center Circle in the city, state and ZIP of Port Orange, FL 32129.
2. **Extended Term.** If applicable, the above referenced Lease is extended through and including January 2, 20¹⁹. (This District Office Lease Amendment ("Amendment") may not provide for an extension beyond January 2, 2019, which is the end of the constitutional term of the 115th Congress.)
3. **Rent and Any Other Changes.** The monthly rent for the extended term of the Lease shall now be \$100. All other provisions of the existing Lease shall remain unchanged and in full effect, except for the following additional terms, which are modified as indicated in the space below [If no additional terms are to be modified, write the word "NONE" below].

NONE
4. **District Office Lease Attachment for 115th Congress.** This Amendment shall have no force and effect unless and until accompanied by an executed District Office Lease Attachment for the 115th Congress and the District Office Lease Attachment for the 115th Congress attached hereto supersedes and replaces any prior District Office Lease Attachment.
5. **Counterparts.** This Amendment may be executed in any number of counterparts and by facsimile copy, each of which shall be deemed to be an original but all of which together shall be deemed to be one and the same instrument.
6. **Section Headings.** The section headings of this Amendment are for convenience of reference only and shall not be deemed to limit or affect any of the provisions hereof.

[Signature page follows.]

U.S. House of Representatives

Washington, D.C. 20515

District Office Lease Amendment

(Page 2 of 2 – 115th Congress)

IN WITNESS WHEREOF, the parties have duly executed this District Office Lease Amendment as of the later date written below by the Lessor or the Lessee.

Print Name of Lessor/Landlord/Company

By: _____

Lessor Signature

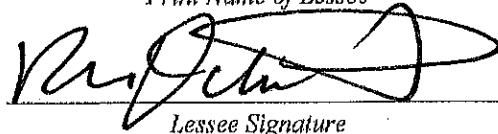
Name:

Title:

Date

Hon. Ron DeSantis

Print Name of Lessee



Lessee Signature

2/2/17

Date

*This District Office Lease Amendment must be accompanied with an executed
District Office Lease Attachment.*



CITY COUNCIL AGENDA ITEM

REQUESTED COUNCIL MEETING DATE 03/07/2017

Consent item: Yes

SUBJECT: (B10) Major Special Event Request – Winner's Pub – 5934 South Ridgewood Avenue

DEPARTMENT: Community Development

GOAL: N/A

RECOMMENDED MOTION: Move to approve the ten day Special Event request for Winner's Pub located at 5934 South Ridgewood Avenue, subject to the conditions outlined in the attached report.

SUMMARY: Mr. David Fox, owner of Winner's Pub, requests approval of a Special Event to be held during Bike Week 2017. The proposed event is planned for a ten (10) day period from Friday, March 10, through Sunday, March 19, 2017. The proposed hours for the event are from 8:00 a.m. until 2:00 a.m., daily with outside music ending at 10:00 p.m. This will be the first Special Event for Winner's Pub in 2017.

The dates of Bike Week as recognized by the Daytona Regional Chamber of Commerce are Friday, March 10, 2017, through Sunday March 19, 2017.

The cost of the surety bond is determined by City Council as outlined in Chapter 58, Article III of the City of Port Orange Code of Ordinances, and has generally been set at \$250.00 when required for past events. City Council has required staff to secure payment of the surety bond in recent years and the staff conditions require it.

Project No.: Funding Account No.:

ATTACHMENTS:

1.	Staff Report	Staff Report - Winners Pub - Bike Week 2017.pdf
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Amanda Bonin
Wayne Clark
Thomas Grimaldi
Jake Johansson
Robin Fenwick

Created/Initiated - 02/07/2017
Approved - 02/07/2017
Approved - 02/13/2017
Approved - 02/14/2017
Final Approval - 02/14/2017



STAFF REPORT

Major Special Event Request

REQUEST: Major Special Event – Bike Week 2017

OWNER/APPLICANT: David Fox

EVENT LOCATION: Winner’s Pub - 5934 South Ridgewood Ave.

STAFF CONTACT: Amanda Bonin, Code Enforcement Officer

CITY COUNCIL DATE: March 7, 2017

INTRODUCTION:

David Fox, owner of Winner’s Pub, 5934 South Ridgewood Avenue, requests approval for a Special Event to be held during Bike Week 2017. The proposed event is planned for a ten (10) day period from Friday, March 10, through Sunday, March 19, 2017. The requested hours for the event are from 8:00 a.m. to 2:00 a.m., daily with outside music ending at 10:00 p.m. The event is planned for the property currently occupied by Winner’s Pub at 5934 South Ridgewood Avenue.

CASE BACKGROUND:

Normal operations of Winner’s Pub will continue. Ten (10) vendors have been requested and may be in place throughout the site. Vendors are required to obtain a Temporary Merchant License from the City for \$250 to participate in this event. The outdoor activities for this event, intended to target the crowd attending Bike Week 2017, include the sale of T-shirts, leather, bike accessories, food, and alcohol along with private security provided by the bar.

Chapter 42, Article IV. Noise Regulations, Section 42-80. General Restrictions of the City of Port Orange Code of Ordinances describe the acceptable sound level limit dBA. It shall be the responsibility of the permit holder to monitor for noise violations. Winner’s Pub shall take care in the placement of speakers for amplified music by adjusting them away from residential areas.

A warning may be issued and if not corrected or the violation recurs, the Special Event may be terminated. All previous noise violations will be taken into account before permitting future events. Based on the City Council’s previous approvals for Bike Week, it is staffs’ understanding that all outdoor music shall cease by 10:00 p.m.

DISCUSSION/ANALYSIS:

The subject proposal has been reviewed by the Police, Fire, Public Works and Community Development departments.

This event is being held in conjunction with the community-wide special event, Bike Week 2017, with recognized dates Friday, March 10, through Sunday, March 19, 2017. This is the first Special Event for Winner's Pub in 2017.

Port Orange Code of Ordinances prohibits the serving of alcohol outdoors and indoors past 2:00 a.m.

CODE VIOLATIONS:

There were no apparent code violations at the time of pre-inspection.

SPECIAL NOTES:

Staff recommends approval of Winner's Pub Special Event request, subject to the following conditions:

1. Hours for the event shall be from 8:00 a.m. to 2:00 a.m. with outside music ending at 10:00 p.m. Winner's Pub also shall not serve alcohol indoors or outdoors past 2:00 a.m., as required by *Port Orange Code of Ordinances*.
2. Where fences are required to delineate outdoor alcohol serving areas, as well as parking areas for automobiles, motorcycles and the handicapped, a four (4)-foot high orange construction fence shall be erected to enclose the event area. All fencing must be in place prior to the site inspection for the event.
3. All outdoor cooking equipment involving liquefied petroleum gas and/or storage cylinders shall comply with *NFPA #58 Liquefied Petroleum Gas Code* and be approved by the Fire Marshal.
4. A copy of Winner's Pub liquor license for outdoor sales of alcohol during this event shall be obtained from the Department of Business and Professional Regulation, Division of Alcoholic Beverages and Tobacco, prior to the event.
5. Winner's Pub shall be responsible for all participating vendors with respect to any permit conditions or compliance with applicable state, county and city laws, rules, regulations, codes and ordinances. Therefore, Winner's Pub must screen all participating vendors to ensure compliance with but not limited to the following:
 - a. *Article VI, Chapter 18, Port Orange Code of Ordinances*, relating to peddlers and transient merchants.
 - b. Temporary event permits issued by the Department of Business and Professional Regulation, Division of Hotels and Restaurants for all food vendors.

- c. Required liquor license for a temporary event shall be obtained from the Department of Business and Professional Regulation, Division of Alcoholic Beverages and Tobacco.
 - d. Coordination with the Port Orange Police Department, Volusia County and/or the Florida Department of Transportation with respect to traffic control devices or plans.
 - e. Provisions and Standards of the City's *Body Art Ordinance*.
 - f. Provisions and Standards of the City's *Sexually Oriented Businesses Code*.
 - g. *Special Event Fee Resolution* establishing Temporary Merchant Fee.
6. Tents or canopies being used in association with this event shall comply with the requirements set forth in *NFPA 101 Chapter 11.11 (Tents) Standards for Tents and Membrane Structures*. Tents or canopies cannot be erected more than forty-eight (48) hours prior to the event, and must be removed within twenty-four (24) hours after the duration of the event. All tents/canopies must maintain at least two (2) exit ways in an unobstructed fashion to allow for a continuous path of travel.
 7. If any outdoor lighting or other structural features are to be installed in association with this event, Winner's Pub shall obtain the proper Building Permits from the Community Development Department. Such lighting must be a minimum of twenty (20) foot candles to provide a safe environment at night.
 8. Temporary electrical wiring shall be installed by a certified electrician and shall comply with Article 590 of the current adopted *NFPA #70 National Electrical Code*. This includes (F) Lamp protection. Any temporary lamps shall be protected from accidental contact or breakage by a suitable fixture or lamp holder with a guard.
 9. Fire extinguishers shall be provided as outlined in accordance with the *NFPA #10, Standard for Portable Fire Extinguishers*.
 10. All exits and means of egress shall remain accessible and unobstructed and it shall be the responsibility of Winner's Pub to maintain access for emergency vehicles.
 11. Winner's Pub shall provide two (2) port-o-let facilities, with one (1) for females and one (1) for males during the event. *A minimum of five percent (5%) of the portable toilets, but no less than one (1), shall comply with Section 603 of FBCA as required per Section 213.2 FBCA for handicapped-accessible facilities.*
 12. All areas being used for this special event shall be handicapped-accessible. Handicapped parking is to remain open and accessible for this event.

13. Tripping hazards shall be removed or isolated from pedestrian traffic. Vehicle areas, including parking, shall be physically separated from pedestrian areas.
14. Based on the City Council's previous approvals for Bike Week, it is staff's understanding that all outdoor music shall cease by 10:00 p.m. Winner's Pub shall take care in the placement of speakers for amplified music by adjusting them away from residential areas.
15. If there are calls for police service, or if security threats develop, the Police Department shall require additional officers to provide security for this event. The additional officers will be hired at the expense of Winner's Pub at the rate of \$40.00 per hour with a minimum of three hours.
16. Winner's Pub shall hire a police officer to cross pedestrians and monitor congestion during periods of heavy traffic flow, if an event traffic plan is in operation. The anticipated dates, times, and charges for such detail and traffic control devices will be agreed upon by Winner's Pub and the Police Department and paid to the City prior to issuance of the permit.
17. The City's *Code of Ordinances* prohibits the exposure of any sexual organs at commercial establishments that serve alcoholic beverages. Furthermore, *Florida Statutes* prohibit any type of public nudity at such an event.
18. A temporary sign permit shall be required for the one (1) banner permitted for this event.
19. No trees shall be removed and care shall be taken to protect landscaped areas.
20. Winner's Pub shall contact the Community Development Department to schedule an inspection of the property prior to the start of the event to ensure that the construction fence and any canopies or tents are well secured, and that all other safety measures are in place.
21. Any disturbance of public right-of-way shall be the sole responsibility of Winner's Pub.
22. It is Winner's Pubs' responsibility to contact the Community Development Department for an inspection of debris removal within 48 hours after the event.
23. No more than the requested ten (10) vendors shall be on this site.
24. Winner's Pub shall comply with the approved maximum capacity occupancy requirements within the confines of the facility.
25. Camping on premises prohibited by code; includes, but not limited to, tents, motor homes, travel trailers, or other vehicles.
26. The \$250.00 surety bond must be paid in full before issuance of permit.

DISTRIBUTION LIST

Beau Gardner, Interim Fire Marshal

Sgt. Steven Braddock, Police Dept.

Allan Tischler, Building

Gwen Perney, Planner

Mike Silvey, Public Works

File



CITY COUNCIL AGENDA ITEM

REQUESTED COUNCIL MEETING DATE 03/07/2017

Consent item: Yes

SUBJECT: (B11) Volusia County EMS Municipal Transport Program with Application Interlocal Agreement and Business Associate Agreement

DEPARTMENT: Fire/Rescue Services

GOAL: 1 - Public Safety

RECOMMENDED MOTION: Move 1) to approve the draft Municipal Transport Agreement with Volusia County EMS; 2) to delegate to the city manager the authority to modify and approve the final interlocal agreement as agreed to by Volusia County County Manager for the purposes of EMS transport, subject to appropriation and any other requirements of city council and 3) to authorize the Mayor and City Clerk to execute the required documents.

SUMMARY: This is a Municipal Transport agreement between Volusia County EMS and the city of Port Orange/Port Orange Fire & Rescue. The use of the counties Certificate of Public Convenience and Necessity (COPCN) license through this agreement will allow Port Orange Fire & Rescue to provide emergency and non-emergency patient transport, using ambulances, to supplement Volusia County EMS when there is an escalated demand for service. This program is known as the PLUS program (Peak Load Utilization System) and will allow Port Orange Fire & Rescue to offer the same capabilities as all our neighboring departments.

Chief Fustin recommends implementation of the program on or about June 1, 2017. In the interim the following actions will be completed: 1) The County of Volusia will act to approve the Interlocal with the city, 2) the department will commence training current staff for the clinical and administrative obligations relating to transport, 3) the department will secure all necessary equipment through city interlocal with sister agencies or through purchase, and 4) the city shall secure insurance protection covering the services intended to be performed by the city. The Fire Chief shall closely monitor program start up costs for Fiscal Year 2017 impact, but will make every attempt to make it budget neutral.

Legal review has determined that the Application is an Interlocal Agreement and that a Business Associate Agreement is required. A revision has been made to specify the effective date and appropriation for the program fee will be confirmed prior to execution by the city council. Legal recommends that the agreement be approved subject to council's authorization for the city manager to approve any modifications as required by Volusia County or otherwise reasonably necessary to effectuate the purposes of this program within the City of Port Orange.

Project No.: Funding Account No.:

ATTACHMENTS:

1.	Municipal Transport Program	Municipal Transport Program.pdf
2.	Business Associate Agreement	Business Associate Agreement.pdf
3.	Comments from original item	Previous comments EMS Agreement.pdf

Robin Fenwick	Created/Initiated - 02/03/2017
Ken Fustin	Approved - 02/03/2017
Margaret Roberts	Approved - 02/07/2017
Jake Johansson	Approved - 02/07/2017
Tracey Riehm	Approved - 02/20/2017
Robin Fenwick	Final Approval - 02/20/2017

MUNICIPAL TRANSPORT PROGRAM



Division of Emergency Medical Administration
125 West New York Avenue, Suite 182
DeLand, Florida 32720-5415

Northeast Volusia (386) 248-8149 Southeast Volusia: (386) 423-3307
West Volusia: (386) 740-5201 Facsimile: (386) 626-6618

Instructions

SUBMISSION OF THE APPLICATION

Applicants are required to submit:

- 1) A printed hard copy of the completed application, including original signature page and
- 2) Executed Business Associate Agreement.

Once the application is completed, print a hard copy. The application shall be executed by the Chief Administrative Officer of the applicant. The hard copy and the original signature page shall be submitted to:

County of Volusia
Division of Emergency Medical Administration
125 West New York Avenue, Suite 182
DeLand, Florida 32720-5415

The applicant should retain a copy for their records.

Municipal Transport Program Application

NAME OF ORGANIZATION City of Port Orange Port Orange Fire & Rescue Department		DATE
ADDRESS 1000 City Center Circle		
CITY Port Orange	STATE Florida	ZIP 32129
FIRE CHIEF NAME Ken Fustin	TELEPHONE NUMBER (386) 506-5902	EMAIL kfustin@port-orange.org
EMS MANAGER NAME Bryan Smith Joe Wulfing	TELEPHONE NUMBER (386) 506-5904	EMAIL jwulfing@port-orange.org

As a condition of participation as a municipal transport provider, the applicant agrees to:

1. Operate under the *Certificate of Public Convenience and Necessity, Advanced Life Support Transport* issued to the County of Volusia.
2. Operate within the parameters outlined below, or amended in writing by the County of Volusia:
 - a. Contingency emergency medical transport: The approved provider has identified the presence of an unstable emergency medical condition through appropriate assessment and prehospital care, consistent with *Volusia County Prehospital Standing Orders and Treatment Protocols*, has been initiated for an appropriate amount of time (ten minutes) and coordination between the municipal transport unit and the county transport unit has occurred via radio and municipal transport is deemed mutually appropriate due to patient's condition and an extended response by the responding CTU.
 - b. Peak Load Utilization System (PLUS): The municipal provider has been requested to respond and be prepared to transport by the VCEMS system Status Coordinator in the communications center. The City and the County acknowledge the goal and intent of the program is for the City to supplement the available number of transport units within their municipal boundaries during periods when the emergency medical system is experiencing a peak in demand for service and not to take over the County's responsibility to provide ambulance service. The county may adjust posts in geographically difficult to reach areas to allow for city units to respond to calls.
 - c. As the system evolves, the county and the city will work together to adjust for the needs of the citizens as necessary.
3. Approved municipal transport units shall be presumed available to provide transport unless the city has notified the communications center otherwise. The city shall advise the communications center of any changes in unit availability or location.
4. The city may not commence emergency or non-emergency transport outside its municipal boundary unless requested to do so by the VCEMS System Status Coordinator within the communications center. If accepted and approved by the county, this application shall

become a binding interlocal agreement between the city and the county authorizing the city to conduct emergency or non-emergency transport outside its municipal boundaries pursuant to the terms and conditions contained herein.

5. Vehicles identified in this application shall be staffed and equipped consistent with all applicable statutes and regulations promulgated there under and in accordance with local requirements established by the EMS Medical Director.
6. The Applicant agrees to participate in and fully cooperate with all clinical and/or operational quality review and improvement activities as deemed necessary by the Volusia County Public Protection Department, the EMS Medical Director and/or Emergency Medical Administration Division. Emergency Medical Administration Division shall review each transport to determine whether it adheres to program guidelines. If the determination involves any clinical element, the Volusia County EMS Medical Director shall be responsible for determining the appropriateness of the transport. Inappropriate decision making regarding transport will be addressed to the Agency Chief.
7. If municipal transport is initiated, the provider will be responsible for patient care throughout transport, including transference of patient care to hospital staff.
8. The applicant shall notify the Emergency Medical Administration Division in writing of any problems associated with, or deviations from, the routine delivery of transport services no later than the following business day.
9. The applicant shall ensure that the Emergency Medical Administration Division has current employment data on all employees eligible to participate in the Municipal Transport Program. Data will include employer verification of employee's cleared criminal background check, review and clearance of the OIG Exclusion List, verification of a current vehicle operator's license. Such information shall be provided in a format acceptable to the division.
10. The applicant shall indemnify and hold harmless the County of Volusia for claims that may arise from the applicant's negligent provision or failure of provision of services under this program. Such indemnification shall include, damages; costs; attorney's fees; expense of defense and investigation; and any other cost expense of whatsoever nature caused by the negligence of the applicant. Regardless of the foregoing, both the city and the county expressly retain all rights, benefits, and immunities of sovereign immunity in accordance with § 768.28, Florida Statutes, including any limitations as to their respective liabilities contained therein, and the city's indemnification obligations hereunder shall not be interpreted or construed as requiring the city to insure or indemnify the county for the county's negligence or to assume any liability for the county's negligence in contravention of the requirements of § 768.28(19), Florida Statutes.
11. The city shall utilize the electronic patient care reporting software, licensed to the County of Volusia, for recording all transport incidents, including all appropriate attachments and identifying the paramedic-in-charge. The completed report shall be finalized in the ePCR system within twenty-four (24) hours of the time the vehicle was originally dispatched. Billing submissions will be subject to review and approval by the County. The city will provide and maintain the requisite hardware and software.
12. The County shall provide billing services.
13. Reimbursement for transports, to the extent permissible under state and local law, performed within the established parameters of the program shall be based on the actual

fee collected for the subject transport less an administrative fee of ten percent (10%). In the event a transport occurs outside of the established program parameters, the county reserves the right to withhold a portion or all of reimbursement. Fees for services are set by the Volusia County Council.

14. As a condition of participation under the Municipal Transport Program, the applicants shall execute a separate business agreement (see attached) with the County of Volusia to allow for sharing of protected health information in accordance with federal and state law.
15. In the event that either party determines that this agreement is not in their agency's best interest they have the right to terminate this agreement provided that a 90 day notice of termination is provided.

The AUTHORIZATION page within this application shall be signed by the chief administrative officer for the local government and be notarized.

By the below signature on this application, the applicant affirms all of the above requirements have been met and will be maintained for the duration of the municipality's participation in the Municipal Transport Program.

CHIEF ADMINISTRATIVE OFFICER (PRINT)	CHIEF ADMINISTRATIVE OFFICER (SIGNATURE)	DATE
M.H. Johansson		

**STATE OF FLORIDA
COUNTY OF VOLUSIA**

Before me, the above signed authority, M.H. Johansson, personally appeared as City Manager, who is personally known to me and, after being duly sworn, did there upon say that the information and statements contained in the foregoing instrument are true and correct to the best of his or her knowledge, information and belief.

NOTARY PUBLIC
STATE OF FLORIDA
AT LARGE

DATE

MY COMMISSION EXPIRES
(AFFIX SEAL)

BUSINESS ASSOCIATE AGREEMENT

This BUSINESS ASSOCIATE AGREEMENT (the "Agreement"), is entered by and between the City of _____ ("Business Associate"), with the address of _____ and the **County of Volusia** ("Covered Entity"), a Florida political subdivision with the address of 125 W. New York Avenue, Suite 182, DeLand, Florida 32720-5415 (collectively referred to as "Parties"), for the purpose of: Municipal Transport Program.

WITNESSETH

WHEREAS, Covered Entity is a health care provider and a "covered entity" as defined in the Health Insurance Portability and Accountability Act of 1996 and related regulations, as amended from time to time ("HIPAA"); and

WHEREAS, Business Associate is a "business associate" as defined in HIPAA; and

WHEREAS, Covered Entity wishes to commence or continue a business relationship with Business Associate that shall be/has been memorialized in a separate agreement (the "Underlying Agreement"), and the nature of the Underlying Agreement may involve the exchange of Protected Health Information ("PHI") as that term is defined in HIPAA; and

WHEREAS, the HIPAA Privacy Standards, as amended from time to time (the "Privacy Rule"), require Covered Entity to obtain and document satisfactory assurances from the Business Associate that the Business Associate shall appropriately safeguard PHI through a written contract; and

WHEREAS, the HIPAA Security Standards, as amended from time to time (the "Security Rule"), govern the security of PHI obtained, created or maintained electronically by covered entities and business associates as defined in HIPAA; and

WHEREAS, the Health Information Technology for Economic and Clinical Health ("HITECH") Act, found in Titles XIII and XIV of the American Recovery and Reinvestment Act of 2009, modifies certain provisions of HIPAA relating to the privacy and security of PHI; and

WHEREAS, the parties acknowledge that, in the event of a violation of HIPAA or the HITECH Act by Business Associate, Business Associate may be subject to the same civil and criminal penalties as Covered Entity would be for such violation by Covered Entity; and

WHEREAS, the parties desire to enter into this Agreement for the purpose of ensuring compliance with the requirements of HIPAA, its implementing regulations, the HITECH Act and Florida law.

NOW THEREFORE, in consideration of their mutual promises made herein, and the foregoing recitals which are material to this Agreement and incorporated hereby together with other good and valuable consideration, receipt of which is hereby acknowledged by each party, the Parties, intending to be legally bound, herein agree as follows:

1. **Definitions For Use in This Agreement.** Capitalized terms and acronyms used but not otherwise defined in this Agreement shall have the same meaning ascribed to those terms in HIPAA, the HITECH Act, and any current and future regulations promulgated under HIPAA or the HITECH Act.
2. **Obligations and Activities of Business Associate.** Upon request by Covered Entity, Business Associate shall provide to Covered Entity evidence of the performance of an information security assessment as required by the HIPAA Security Rule, which evidence shall be satisfactory to Covered Entity.
 - a. Upon request by Covered Entity, Business Associate shall provide to Covered Entity a copy

of its written policies and procedures relating to the security of PHI and the name of the person responsible for implementing the HIPAA Security Rule and this Agreement on behalf of Business Associate.

- b. Except as otherwise limited in this Agreement, Business Associate may use or disclose PHI to perform functions, activities or services for, or on behalf of, Covered Entity as specified in the Underlying Agreement provided that such use or disclosure would not violate the Privacy Rule. Business Associate agrees to not use or disclose PHI other than as permitted or required by this Agreement or as Required by Law, as that term is defined in HIPAA, the HITECH Act and/or applicable regulations.
- c. Business Associate agrees to use appropriate safeguards to prevent use or disclosure of PHI other than as provided for by this Agreement.
- d. Business Associate shall implement administrative, physical, and technical safeguards that reasonably and appropriately protect the confidentiality, integrity and availability of PHI that it creates, receives, maintains or transmits on behalf of the Covered Entity.
- e. Business Associate agrees to mitigate, to the extent practicable, any harmful effect known to Business Associate of its use or disclosure of PHI in violation of the requirements of this Agreement and/or the Privacy Rule.
- f. Business Associate agrees to report in writing to Covered Entity any use or disclosure of PHI not provided for by this Agreement within ten (10) calendar days after becoming aware of such use or disclosure.
- g. Business Associate shall report to Covered Entity within ten (10) calendar days after becoming aware of any "security incident," as that term is defined in the HIPAA Security Rule. In its report to Covered Entity, the Business Associate shall identify: the date of the security incident, the scope of the security incident, the Business Associate's response to the security incident and the identification of the party responsible for causing the security incident, if known.
- h. Business Associate shall report in writing to Covered Entity any breach involving PHI, as the term "breach" is defined in the HITECH Act, by completing the Breach Notification form attached hereto as Exhibit "A" and by reference made a part hereof. Business Associate shall provide said notification to Covered Entity of any such breach within 10 calendar days after such breach.
- i. Business Associate shall indemnify, hold harmless, and reimburse Covered Entity for any costs incurred by the Covered Entity as a result of a "breach," as defined in the HITECH Act, by Business Associate, including but not limited to the cost of notification to individuals made by Covered Entity pursuant to 45 C.F.R. § 164.404 and the cost of remedial actions taken to protect individuals whose information was disclosed in violation of this Agreement HIPAA, the HITECH Act, or the regulations promulgated thereunder. Business Associate further agrees to defend, indemnify, and hold harmless Covered Entity, its officers, directors, employees, and agents, from and against all claims, liabilities, suits, judgments, fines, assessments, penalties, damages, costs, and other expenses of any kind or nature whatsoever, including without limitation, attorney's fees, expert witness fees, and costs of investigation, litigation or dispute resolution, related in any manner to or arising out of any material breach of this Agreement by Business Associate, its agents, representatives, officers, directors, employees, or subcontractors. These indemnities shall continue in full force and effect subsequent to and notwithstanding the expiration or termination of the Agreement.

- j. Business Associate agrees to ensure that any agent, including a subcontractor, to whom it provides PHI received from, created by, or received by Business Associate on behalf of Covered Entity agrees to the same restrictions and conditions that apply through this Agreement to Business Associate with respect to such information.
 - k. Within ten (10) business days after a written request from Covered Entity, Business Associate agrees to provide access to PHI in a Designated Record Set ("DRS"), as that term is defined in HIPAA, to Covered Entity or, as directed by Covered Entity, to an Individual, as that term is defined in HIPAA, in order to meet the requirements under 45 CFR §164.524. In the event any Individual requests access to PHI directly from Business Associate, Business Associate shall forward written notice of such request to Covered Entity within ten business (10) days after such request. Any denials of access to the PHI requested shall be the responsibility of Covered Entity.
 - l. Business Associate agrees to make any amendment(s) to PHI in a DRS that the Covered Entity directs or agrees to pursuant to 45 CFR §164.526 at the written request of Covered Entity or an Individual, within twenty (20) business days of the written request.
 - m. Business Associate agrees to make internal practices, books, and records, including policies and procedures and PHI, relating to the use and disclosure of PHI received from, or created or received by Business Associate on behalf of Covered Entity, available to the Covered Entity and to the Secretary, within fifteen (15) business days after notice of the Secretary's request or in the time and manner designated by the Secretary, for purposes of the Secretary determining Covered Entity's compliance with the Privacy Rule and the Security Rule.
 - n. Business Associate agrees to document disclosures of PHI and information related to such disclosures as would be required for Covered Entity to respond to a request by an Individual for an accounting of disclosures of PHI in accordance with 45 CFR §164.528.
 - o. Business Associate agrees to provide to Covered Entity, or to an Individual at the request of the Covered Entity, or to the Individual if the request is made directly to the Business Associate by the Individual within fifteen (15) business days of written notice from Covered Entity to Business Associate, information collected in accordance with Section 2.o. of this Agreement, to permit Covered Entity to respond to a request by an Individual for an accounting of disclosures of in accordance with 45 CFR §164.528.
 - p. Business Associate shall comply with the privacy, security and security breach notification provisions applicable to a business associate under the HITECH Act and any regulations promulgated thereunder, including but not limited to compliance with each of the Standards and Implementation Specifications of 45 §§ C.F.R. 164.308 (Administrative Safeguards), 164.310 (Physical Safeguards), 164.312 (Technical Safeguards), 164.316 (Policies and Procedures and Documentation Requirements), and 164.410 (Notification by a Business Associate).
3. Permitted Uses and Disclosures by Business Associate - General Use and Disclosure Provisions. Except as otherwise limited in this Agreement, Business Associate may use or disclose PHI to perform functions, activities, or services for, or on behalf of, Covered Entity as specified in the Agreement, provided that such use or disclosure would not violate the Privacy Rule if done by Covered Entity or the minimum necessary policies and procedures of Covered Entity.
4. Permitted Uses and Disclosures by Business Associate - Specific Use and Disclosure Provisions.
- a. Except as otherwise limited in this Agreement, Business Associate may use PHI for the proper management and administration of Business Associate or to carry out Business

Associate's legal responsibilities.

- b. Except as otherwise limited in this Agreement, Business Associate may disclose PHI for the proper management and administration of Business Associate, provided that disclosures are Required By Law or Business Associate obtains reasonable assurances from the person to whom the information is disclosed that it will remain confidential and used or further disclosed only as Required By Law or for the purpose for which it was disclosed to the person, and the person notifies Business Associate of any instances of which it is aware in which the confidentiality of the information has been breached.
- c. Except as otherwise limited in this Agreement, Business Associate may use PHI to provide Data Aggregation services to Covered Entity as permitted by 42 C.F.R. §164.504(e)(2)(i)(B).
- d. Business Associate may use PHI to report violations of law to appropriate Federal and State authorities, consistent with 42 C.F.R. §164.502(j)(1).

5. Provisions for Covered Entity to Inform Business Associate of Privacy Practices and Restrictions.

- a. Covered Entity shall notify Business Associate of any limitation(s) in its notice of privacy practices of Covered Entity in accordance with 45 CFR §164.520, to the extent that such limitation(s) may affect Business Associate's use or disclosure of PHI.
- b. Covered Entity shall notify Business Associate of any changes in, or revocation of permission by Individual to use or disclose PHI, to the extent that such changes may affect Business Associate's use or disclosure of PHI.
- c. Covered Entity shall notify Business Associate of any restriction on the use or disclosure of PHI that Covered Entity has agreed to in accordance with 45 CFR §164.522, to the extent that such restriction may affect Business Associate's use or disclosure of PHI.

6. Permissible Requests by Covered Entity. Covered Entity shall not request Business Associate to use or disclose PHI in any manner that would not be permissible under the Privacy Rule if done by Covered Entity.

7. Term and Termination. * upon execution of the Parties

Initials DOB JTD

- a. Term. The commencement date for the term of this Agreement shall be *
This Agreement shall terminate when all of the PHI provided by Covered Entity to Business Associate, or created or received by Business Associate on behalf of Covered Entity, is destroyed or returned to Covered Entity, or, if it is infeasible to return or destroy PHI, protections are extended to such information in accordance with the termination provisions in this Section.
- b. Termination for Cause. Upon Covered Entity's knowledge of a material breach by Business Associate, Covered Entity shall:
 - 1) Provide an opportunity for Business Associate to cure the breach or end the violation within thirty (30) days after written notice and, if Business Associate does not cure the breach or end the violation within that time, terminate this Agreement; or
 - 2) Immediately terminate this Agreement upon written notice if Business Associate has breached a material term of this Agreement and cure is not possible as determined at the sole discretion of Covered Entity; or
 - 3) If neither termination nor cure is feasible, report the violation to the Secretary of the

Department of Health and Human Services.

c. Effect of Termination.

- 1) Except as provided in paragraph (2) of this subsection, upon termination of this Agreement, for any reason, Business Associate shall return or destroy all PHI received from Covered Entity, or created or received by Business Associate on behalf of Covered Entity. This provision shall apply to PHI that is in the possession of any subcontractors or agents of Business Associate, and Business Associate has the duty to ensure that any and all of its subcontractors or agents comply with these termination provisions. Neither Business Associate, nor any of its subcontractors or agents, shall retain any copies of PHI upon termination of this Agreement.
- 2) In the event that Business Associate determines that returning or destroying the PHI is infeasible, Business Associate shall provide to Covered Entity written notification of the conditions that make return or destruction infeasible thirty (30) calendar days prior to the termination of the Agreement or within thirty (30) calendar days of Business Associate's receipt of notice from Covered Entity of a material breach of this Agreement by Business Associate. Upon mutual agreement of the parties that return or destruction of PHI is infeasible, Business Associate shall extend the protections of this Agreement to such PHI and limit further uses and disclosures of such PHI to those purposes that make the return or destruction infeasible, for so long as Business Associate maintains such PHI.

8. Effect on Prior Business Associate Agreements: This Agreement supersedes and replaces any existing Business Associate Agreement in effect between Business Associate and Covered Entity. Any PHI Business Associate has received from Covered Entity prior to, on, or after the date of this Agreement is subject to the terms and conditions of this Agreement.

9. Miscellaneous.

- a. Regulatory References. A reference in this Agreement to a section in the Privacy Rule means the section as in effect or as amended.

- b. Amendment. The Parties agree to take such action as is necessary to amend this Agreement from time to time as is necessary for Covered Entity to comply with the requirements of the Privacy Rule and HIPAA; amendments are not effective unless in writing, signed by both Parties.

Survival. The respective rights and obligations of Business Associate under Section 7.c., "Effect of Termination," and Section 2.j., regarding Indemnification, of this Agreement shall survive the termination of this Agreement.

- c. Interpretation. Any ambiguity in this Agreement shall be resolved to permit Covered Entity to comply with the Privacy Rule.

- d. Notice. Any notice required under this Agreement shall be sent by certified mail, return receipt requested or by hand delivery to the following persons:

Covered Entity:

James T. Dinneen, County Manager

County of Volusia

123 West Indiana Avenue

DeLand, Florida 32720

With copies to:

Donna DePeyster, Chief Financial Officer
County of Volusia
123 West Indiana Avenue
DeLand, Florida 32720

Mark Wolcott, Emergency Medical Administration Director
County of Volusia
3825 Tiger Bay Road
Daytona Beach, Florida 32124

Business Associate:

- e. Retroactivity. Business Associate warrants that there have been no violations of HIPAA or HITECH Act from the date of execution of the Underlying Agreement through the commencement date of this Agreement.
- f. Limitation of Liability / Sovereign Immunity. Both parties expressly retain all rights, benefits and immunities of sovereign immunity in accordance with § 768.28, Florida Statutes. Regardless of anything set forth in any section of this Agreement to the contrary, nothing in this Agreement shall be deemed as a waiver of sovereign immunity or the limits of liability of the Covered Entity or the Business Associate beyond any statutory limited waiver of immunity or limits of liability which may be or may have been adopted by the Florida Legislature, and the cap on the amount and liability of each party for damages, regardless of the number or nature of claims in tort, equity, or contract, shall not exceed the dollar amount set by the legislature for tort. Nothing in this Agreement shall inure to the benefit of any third party for the purpose of allowing any claim against any of the parties, which would otherwise be barred under the doctrine of sovereign immunity or by operation of law, nor shall anything in this Agreement, including any indemnification provisions contained herein, be interpreted or otherwise construed as requiring one party to this Agreement to insure or indemnify the other for the other party's negligence or to assume any liability for the other party's negligence in contravention of the requirements of § 768.28(19), Florida Statutes.

IN WITNESS THEREOF, the parties have caused this Business Associate Agreement to be duly executed by their duly authorized representatives on the respective dates under each signature.

County of Volusia

Name of Business Associate

By: _____
Authorized Representative Signature

By: _____
Authorized Representative Signature

JAMES T. DINNEEN
Printed Name

Printed Name

COUNTY MANAGER

Title

Title

Date

Date

Exhibit A
Form of Notification to Covered Entity of
Breach of Unsecured PHI

Business Associate hereby notifies Covered Entity that there has been a breach of unsecured protected health information (PHI) that Business Associate has used or has had access to under the terms of the Business Associate Agreement.

Description of the breach: _____

Date of the breach: _____

Date of the discovery of the breach: _____

Name of each individual affected by the breach: _____

The types of unsecured PHI that were involved in the breach (such as full name, Social Security number, date of birth, home address, account number, or disability code): _____

Description of what Business Associate is doing to investigate the breach, to mitigate losses, and to protect against any further breaches: _____

Contact information to ask questions or learn additional information:

Name: _____

Title: _____

Address: _____

Email Address: _____

Phone Number: _____

Agenda Name: Regular City Council Meeting

Item Name: Volusia County EMS Agreement for Municipal Transport Program

Comment By	Date/Time	Comment
Robin Fenwick	2/3/2017 8:07:53 AM	Moving this item from Contract Management to the Council agenda does not allow for all fields that the Council needs. I have copied this item to a new item for Council approval to include all appropriate fields. I have print the comments below and will add them to the new item. This item is moving to "unassigned".
Margaret Roberts	2/2/2017 8:22:09 PM	This is a multi-documents approval. Please split the agenda item by adding paragraphs a. Municipal Program Transport Application Agreement a/k/a PLUS Interlocal Agreement for Transport, b. Business Associate Agreement and c. _____ Agreement. The Fire Chief will attach the third agreement for legal review.
Margaret Roberts	1/26/2017 3:45:45 PM	Department head and the legal team are discussing legal questions. The information obtained in the responses to the questions will enable legal to advise management and council on the impacts to the city for risk management and associated legal costs. Legal requests that this item be deferred to another agenda to complete full legal review or that legal review be deferred for future analysis. Full legal review is recommended for any interlocal agreements..
Robin Fenwick	1/13/2017 10:02:26 AM	I moved this item to the council agenda per CA's request.
Sandra Largent	1/11/2017 3:06:09 PM	Margaret has reviewed the Municipal Transport Agreement and has advised that the matter will need to go to City Council for approval. E-Mail sent to department advising further information.
Sandra Largent	1/10/2017 8:17:11 AM	Business Associate Agreement received/uploaded 1/9/17.



CITY COUNCIL AGENDA ITEM

REQUESTED COUNCIL MEETING DATE 03/07/2017

Consent item: Yes

SUBJECT: (B12) Resolution No. 17-10 - Budget Appropriations

DEPARTMENT: Finance

GOAL:

RECOMMENDED MOTION: Move to approve Resolution No. 17-10.

SUMMARY: *ArtFest 2017 Budget in Special Events

*Merge pogTV Division 001-7000 budget into the City Manager Division 001-1200 budget which will assist in funding the Public Information Officer (PIO) position

*Tree Mitigation Funds

*Move 25% of YMCA Rental Revenue Budget from the 106 Recreation Facilities Fund to the 001 General Fund

*Correct the budget on Riverwalk Project AIO004

*Fund an additional \$75,000 for Inspector Services in Building Special Revenue Fund 109

*Correct the budget on Ryanwood Drainage Improvement Project DIP062

*Budget for Insurance Proceeds in the 504 Risk Management Fund

Project No.: Funding Account No.:

ATTACHMENTS:

1.	Reso. No. 17-10	Reso. No. 17-10.pdf
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Lisa Pallante
Tracey Riehm
Margaret Roberts
Jake Johansson
Robin Fenwick

Created/Initiated - 02/20/2017
Approved - 02/20/2017
Approved - 02/23/2017
Approved - 02/24/2017
Final Approval - 02/24/2017

RESOLUTION NO. 17-10

A RESOLUTION OF THE CITY OF PORT ORANGE,
VOLUSIA COUNTY, FLORIDA, APPROPRIATING
OPERATING AND CAPITAL FUNDS TO BUDGET FOR
ART FEST 2017; MERGE POGTV DIVISION BUDGET
INTO THE CITY MANAGER'S DIVISION BUDGET;
TREE MITIGATION FUNDS RECEIVED; ADJUST
WHERE 25% OF THE RENTAL REVENUE FROM THE
YMCA IS BEING RECORDED; CORRECT THE
BUDGET ON THE RIVERWALK PROJECT; FUND AN
INCREASE IN BUILDING INSPECTION CONTRACT
SERVICES; CORRECT THE BUDGET ON RYANWOOD
DRAINAGE IMPROVEMENT PROJECT; AND
BUDGET FOR INSURANCE PROCEEDS RECEIVED;
SETTING FORTH REVENUES AND EXPENDITURES;
AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the City Council desires to budget for Art Fest 2017; and

WHEREAS, the City Council desires to merge the pogTV General Fund Division
budget into the City Manager General Fund Division budget; and

WHEREAS, the City Council desires to move the revenue budget associated with
25% of the YMCA's rental revenue, that was being recorded in the 106 Recreation
Facilities Fund and instead is now being recorded in the 001 General Fund, in accordance
with the lease; and

WHEREAS, the City Council desires to budget for tree mitigation funds received
from Badcock Furniture and More; and

WHEREAS, the City Council desires to correct the budget between the Tax
Increment Town Center Fund 103 and the 2014 Capital Improvement Bond Construction
Fund 320 as it relates to Riverwalk project AIO004; and

WHEREAS, the City Council desires to fund an increase in building inspection contract services needed due to increased inspections resulting primarily from Hurricane Matthew; and

WHEREAS, the City Council desires to correct the budget between the Capital Projects Fund 301 and the Drainage Utility Fund 412 as it relates to Ryanwood Drainage Improvement project DIP062; and

WHEREAS, the City Council desires to budget for insurance proceeds received as of February 14, 2017; and

WHEREAS, the City Council desires to appropriate the funds related to various operating and capital items, and to set forth, appropriate and change appropriations of certain revenues and expense.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF PORT ORANGE, VOLUSIA COUNTY, FLORIDA:

Section 1. The funds for the City operating and capital items are hereby appropriated as set forth in Composite Exhibit A, attached hereto, which reflects revenues and corresponding expenditures for the designated projects.

Section 2. The Budget item adopted in the preceding section shall govern the expenditures relating to such operations for the City during the current fiscal year effective October 1, 2016 through September 30, 2017.

Section 3. Supplemental appropriations, reductions of appropriations, emergency appropriations, and interdepartmental transfers of appropriations may be effected by the City Council and the City Manager as deemed necessary in strict compliance with the procedures specified in Chapter 2, Article VI, Division 3, Code of Ordinances, City of Port Orange, Florida.

Section 4. This resolution shall become effective immediately upon adoption.

MAYOR DONALD O. BURNETTE

ATTEST:

Robin L. Fenwick, CMC City Clerk

Adopted on the day of

Reviewed and Approved: _____
Margaret T. Roberts, City Attorney

FY2017 General Fund 001
Prepared: February 16, 2017
Finance: Lisa Pallante

	Budget Increase / (Decrease)
<u>Revenues:</u>	
Art Fest Revenue	\$ 13,620
Rent & Royalties / YMCA Rental	33,750
Miscellaneous Revenue - Tree Mitigation	8,838
Appropriated Equity	(33,750)
Total Revenues:	\$ 22,458

<u>Expenditures:</u>	
Recreation - Special Events (Art Fest)	\$ 13,620
Administration - pogTV	(21,911)
City Manager	21,911
Non-Departmental	8,838
Total Expenditures:	\$ 22,458

*To budget additional revenue and expense for Art Fest 2017

*Merge pogTV Division 001-7000 into City Manager Division 001-1200 as a portion of this funding will fund the Public Information Officer position

*To move the revenue budget associated with 25% of the YMCA's rental revenue (\$2,812.50/month or \$33,750/year) that was being recorded in the 106 Recreation Facilities Fund and is now going to the General Fund 001 in accordance with the lease.

*To budget for funds received from Badcock Furniture and More store for Tree Mitigation (City Project ZCV002)

FY2017 Tax Increment Town Center Fund 103**Prepared: February 16, 2017****Finance: Lisa Pallante**

	<u>Budget Increase / (Decrease)</u>
<u>Revenues:</u>	
Appropriated Equity	\$ 5,000

Total Revenues:	<u><u>\$ 5,000</u></u>
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<u>Expenditures:</u>	
Non-Departmental	\$ 5,000

Total Expenditures:	<u><u>\$ 5,000</u></u>
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*To correct the budget in the 103 Fund (increase it) and the 320 Fund (decrease it) for Riverwalk Project AIO004.

FY2017 Recreation Facilities Fund 106

Prepared: February 16, 2017

Finance: Lisa Pallante

	<u>Budget Increase / (Decrease)</u>
<u>Revenues:</u>	
Charges for Services - Rental	\$ (33,750)
Appropriated Equity	33,750
Total Revenues:	<u><u>\$ -</u></u>
<u>Expenditures:</u>	
	\$ -
Total Expenditures:	<u><u>\$ -</u></u>

*To move the revenue budget associated with 25% of the YMCA's monthly rental revenue (\$2,812.50/month or \$33,750/year) that was being recorded in the 106 Recreation Facilities Fund and is now going to the General Fund 001 in accordance with the lease. An appropriation of equity is now needed to fund the FY17 expense budget.

Resolution No. 17-10

	Budget Increase / (Decrease)
<u>Revenues:</u>	
Appropriated Equity	\$ 75,000
Total Revenues:	<u>\$ 75,000</u>
<u>Expenditures:</u>	
Community Development - Building Division	\$ 75,000
	-
	-
	-
Total Expenditures:	<u>\$ 75,000</u>

To fund an additional \$75,000 for construction inspection services due to an increase in inspections primarily related to Hurricane Matthew.

FY2017 **Capital Projects Fund 301**
Prepared: **February 16, 2017**
Finance: **Lisa Pallante**

		Budget Increase / (Decrease)
<u>Revenues:</u>		
Appropriated Equity	\$	(18,352)
Total Revenues:		<u><u>\$ (18,352)</u></u>
 <u>Expenditures:</u>		
Public Works	\$	(18,352)
Total Expenditures:		<u><u>\$ (18,352)</u></u>

*To correct the budget in the 301 Fund (decrease it) and the 412 Fund (increase it) for Ryanwood Drainage Improvement Project DIP062.

FY2017 **2014 Capital Improvement Bond Construction Fund 320**
Prepared: **February 16, 2017**
Finance: **Lisa Pallante**

	<u>Budget Increase / (Decrease)</u>
<u>Revenues:</u>	
Appropriated Equity	\$ (5,000)
Total Revenues:	<u><u>\$ (5,000)</u></u>
<u>Expenditures:</u>	
Non-Departmental	\$ (5,000)
Total Expenditures:	<u><u>\$ (5,000)</u></u>

*To correct the budget in the 103 Fund (increase it) and the 320 Fund (decrease it) for Riverwalk Project AIO004.

FY2017 Drainage Utility Fund 412
Prepared: February 16, 2017
Finance: Lisa Pallante

	Budget Increase / (Decrease)
<u>Revenues:</u>	
Appropriated Equity	\$ 18,352
Total Revenues:	\$ 18,352
<u>Expenditures:</u>	
Drainage Utility	\$ 18,352
Total Expenditures:	\$ 18,352

*To correct the budget in the 301 Fund (decrease it) and the 412 Fund (increase it) for Ryanwood Drainage Improvement Project DIP062.

FY2017 Risk Management Fund 504
Prepared: February 16, 2017
Finance: Lisa Pallante

	<u>Budget Increase / (Decrease)</u>
<u>Revenues:</u>	
Insurance Proceeds	\$ 24,426
Total Revenues:	\$ 24,426
<u>Expenditures:</u>	
Non-Departmental	\$ 24,426
Total Expenditures:	\$ 24,426

*To budget for insurance proceeds received through February 14, 2017.



CITY COUNCIL AGENDA ITEM

REQUESTED COUNCIL MEETING DATE 03/07/2017

Consent item: Yes

SUBJECT: (B13) Resolution No. 17-11 - LAP Agreements for construction of the McDonald Road sidewalk and the Victoria Gardens Boulevard sidewalk

DEPARTMENT: Community Development

GOAL: 3 - Quality of Life

RECOMMENDED MOTION: Move to approve Resolution No. 17-11, approving the Local Agency Program (LAP) Agreements for construction of the McDonald Road sidewalk and the Victoria Gardens Boulevard sidewalk and authorize the Mayor and City Clerk to execute the Agreements and Resolution.

SUMMARY: The Florida Department of Transportation (FDOT) has requested the City execute the attached Local Agency Program (LAP) Agreements and Resolution for construction of two sidewalk projects.

The McDonald Road sidewalk consists of a 5' wide sidewalk along the west side of McDonald Road from Sauls Street to 6th Street. The project length is approximately 0.5 miles (2,700 linear feet). The River to Sea Transportation Planning Organization (R2CTPO) and FDOT have agreed to fund \$350,000 of the estimated \$392,330 construction and construction engineering and inspection (CEI) costs for this sidewalk.

The Victoria Gardens sidewalk consists of an 8' wide sidewalk along the east/south side of Victoria Gardens Boulevard from Applevue Way to Clyde Morris Boulevard. The project length is approximately 0.32 miles (1,675 linear ft.). The R2CTPO and FDOT have agreed to fund \$317,803 of the estimated \$369,215 construction and CEI costs for this sidewalk.

Once the LAP agreements are executed by the City and FDOT a Notice to Proceed will be issued allowing the projects to be bid for construction. The bid award is anticipated to come before City Council in early May. Both projects are on schedule to be built during the summer while school is out.

Project No.: <u>OMI019</u>	Funding Account No.: <u>312-4300-541.63-97</u>
<u>OMI018</u>	<u>312-4300-541.63-97</u>
	<u>312-4300-541.99-10</u>
<u>OMI019</u>	<u>312-4310-541.63-97</u>
<u>OMI018</u>	<u>312-4310-541.63-97</u>

ATTACHMENTS:

1.	Reso. No. 17-11	Reso. No. 17-11.pdf
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Margaret Tomlinson	Created/Initiated - 02/10/2017
Wayne Clark	Approved - 02/10/2017
Tracey Riehm	Approved - 02/23/2017
Margaret Roberts	Approved - 02/23/2017
Jake Johansson	Approved - 02/24/2017
Robin Fenwick	Final Approval - 02/24/2017

RESOLUTION NO. 17-11

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF PORT ORANGE, VOLUSIA COUNTY, FLORIDA; APPROVING THE LOCAL AGENCY PROGRAM AGREEMENT FPN 435500-1-58-01; FOR THE CONSTRUCTION OF THE MCDONALD ROAD SIDEWALK PROJECT; AND LOCAL AGENCY PROGRAM AGREEMENT FPN 435536-1-58-01; FOR THE CONSTRUCTION OF THE VICTORIA GARDENS SIDEWALK PROJECT; AUTHORIZING THE MAYOR AND CITY CLERK TO EXECUTE AND ATTEST THE AGREEMENTS, RESPECTIVELY, WITH THE FLORIDA DEPARTMENT OF TRANSPORTATION; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the State of Florida Department of Transportation and the City of Port Orange desire to facilitate the Local Agency Program Agreements for the construction of the McDonald Road and Victoria Gardens sidewalk project; and

WHEREAS, the State of Florida Department of Transportation has requested the City of Port Orange to execute and deliver to the State of Florida Department of Transportation the Local Agency Program Agreements for the aforementioned project, FPN 435500-1-58-01 and 435536-1-58-01.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF PORT ORANGE, VOLUSIA COUNTY, FLORIDA:

Section 1. The City Council of the City of Port Orange, Florida, hereby approves and authorizes the Mayor and City Manager to make, execute, and deliver to the State of Florida Department of Transportation the Local Agency Program Agreements for the project FPN 435500-1-58-01, copy of which are attached hereto as **Exhibit "1"** and FPN 435536-1-58-01, copy attached hereto as **Exhibit "2"**.

Section 2. This resolution shall become effective immediately upon adoption.

MAYOR DONALD O. BURNETTE

ATTEST:

Robin L. Fenwick, CMC, City Clerk

Adopted on the day of

Reviewed and Approved: _____
Margaret T. Roberts, City Attorney

Exhibit "1"

STATE OF FLORIDA DEPARTMENT OF TRANSPORTATION LOCAL AGENCY PROGRAM AGREEMENT

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FPN: <u>435500-1-58-01</u>	Fund: <u>ACSU</u>	FLAIR Approp: <u>088717</u>
Federal No: <u>D517-013-B</u>	Org Code: <u>55054010508</u>	FLAIR Obj: <u>780000</u>
FPN: <u>435500-1-68-01</u>	Fund: <u>LF</u>	FLAIR Approp: _____
Federal No: _____	Org Code: _____	FLAIR Obj: _____
FPN: _____	Fund: _____	FLAIR Approp: _____
Federal No: _____	Org Code: _____	FLAIR Obj: _____
County No: <u>79</u>	Contract No: _____	Vendor No: <u>F596-000-412-003</u>
FDOT Data Universal Number System (DUNS) No: <u>80-939-7102</u> Local Agency DUNS No: <u>80-082-7082</u>		
Catalog of Federal Domestic Assistance (CFDA): <u>20.205 Highway Planning and Construction</u>		

THIS LOCAL AGENCY PROGRAM AGREEMENT ("Agreement"), is made and entered into this _____ day of _____, 2017 between the State of Florida, Department of Transportation, an agency of the State of Florida ("Department"), and the CITY OF PORT ORANGE, 1000 City Center Circle, Port Orange, FL 32129 ("Agency").

NOW, THEREFORE, in consideration of the mutual covenants, promises and representations in this Agreement, the parties agree as follows:

1. **Authority:** The Agency, by Resolution No. _____ dated the _____ day of _____, 2017, a copy of which is attached as Exhibit "F" and made a part of this Agreement, has authorized its officers to execute this Agreement on its behalf. The Department has the authority pursuant to Section 339.12, Florida Statutes, to enter into this Agreement.
2. **Purpose of Agreement:** The purpose of this Agreement is to provide for the Department's participation in the construction of the McDonald Road Sidewalk from Sauls Street to 6th Street, as further described in Exhibit "A", Project Description and Responsibilities attached to and incorporated in this Agreement ("Project"), to provide Department financial assistance to the Agency, state the terms and conditions upon which Department funds will be provided, and to set forth the manner in which the Project will be undertaken and completed.
3. **Term of Agreement:** The Agency agrees to complete the Project on or before January 31, 2018. If the Agency does not complete the Project within this time period, this Agreement will expire on the last day of the scheduled completion as provided in this paragraph unless an extension of the time period is requested by the Agency and granted in writing by the Department prior to the expiration of this Agreement. Expiration of this Agreement will be considered termination of the Project. The cost of any work performed after the expiration date of this Agreement will not be reimbursed by the Department.
4. **Project Cost:**
 - A. The total cost of the Project is \$ 392,330.00. This amount is based upon the schedule of funding in Exhibit "B", Schedule of Funding attached to and incorporated in this Agreement. The Agency agrees to bear all expenses in excess of the total cost of the Project and any deficits involved. The schedule of funding may be modified by mutual agreement as provided for in paragraph 5.1.
 - B. The Department agrees to participate in the Project cost up to the maximum amount of \$350,000.00 and as more fully described in Exhibit "B". This amount includes Federal-aid funds which are limited to the actual amount of Federal-aid participation.
 - C. Project costs eligible for Department participation will be allowed only from the date of this Agreement. It is understood that Department participation in eligible Project costs is subject to:
 - i. Legislative approval of the Department's appropriation request in the work program year that the Project is scheduled to be committed;

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- ii. Availability of funds as stated in subparagraphs 5.L. and 5.M. of this Agreement;
- iii. Approval of all plans, specifications, contracts or other obligating documents and all other terms of this Agreement; and
- iv. Department approval of the Project scope and budget at the time appropriation authority becomes available.

5. Requisitions and Payments:

- A. The Agency shall provide quantifiable, measurable, and verifiable units of deliverables. Each deliverable must specify the required minimum level of service to be performed and the criteria for evaluating successful completion. The Project and the quantifiable, measurable, and verifiable units of deliverables are described more fully in Exhibit "A".
- B. Invoices shall be submitted by the Agency in detail sufficient for a proper pre-audit and post-audit based on the quantifiable, measurable and verifiable units of deliverables as established in Exhibit "A". Deliverables must be received and accepted in writing by the Department's Project Manager prior to payments.
- C. The Agency shall charge to the Project account all eligible costs of the Project except costs agreed to be borne by the Agency or its contractors and subcontractors. Costs in excess of the programmed funding or attributable to actions which have not received the required approval of the Department shall not be considered eligible costs. All costs charged to the Project, including any approved services contributed by the Agency or others, shall be supported by properly executed payrolls, time records, invoices, contracts or vouchers evidencing in proper detail the nature and propriety of the charges.
- D. Supporting documentation must establish that the deliverables were received and accepted in writing by the Agency and must also establish that the required minimum level of service to be performed based on the criteria for evaluating successful completion as specified in Exhibit "A" was met.
- E. Bills for travel expenses specifically authorized in this Agreement shall be submitted on the Department's Contractor Travel Form No. 300-000-06 and will be paid in accordance with Section 112.061, Florida Statutes and the most current version of the Disbursement Handbook for Employees and Managers.
- F. Payment shall be made only after receipt and approval of goods and services unless advance payments are authorized by the Chief Financial Officer of the State of Florida under Chapters 215 and 216, Florida Statutes. If the Department determines that the performance of the Agency is unsatisfactory, the Department shall notify the Agency of the deficiency to be corrected, which correction shall be made within a time-frame to be specified by the Department. The Agency shall, within five days after notice from the Department, provide the Department with a corrective action plan describing how the Agency will address all issues of contract non-performance, unacceptable performance, failure to meet the minimum performance levels, deliverable deficiencies, or contract non-compliance. If the corrective action plan is unacceptable to the Department, the Agency shall be assessed a non-performance retainage equivalent to 10% of the total invoice amount. The retainage shall be applied to the invoice for the then-current billing period. The retainage shall be withheld until the Agency resolves the deficiency. If the deficiency is subsequently resolved, the Agency may bill the Department for the retained amount during the next billing period. If the Agency is unable to resolve the deficiency, the funds retained may be forfeited at the end of the Agreement's term.
- G. Agencies providing goods and services to the Department should be aware of the following time frames. Inspection and approval of goods or services shall take no longer than 20 days from the Department's receipt of the invoice. The Department has 20 days to deliver a request for payment (voucher) to the Department of Financial Services. The 20 days are measured from the latter of the date the invoice is received or the goods or services are received, inspected, and approved.

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If a payment is not available within 40 days, a separate interest penalty at a rate as established pursuant to **Section 55.03(1), F.S.**, will be due and payable, in addition to the invoice amount, to the Agency. Interest penalties of less than one (1) dollar will not be enforced unless the Agency requests payment. Invoices that have to be returned to an Agency because of Agency preparation errors will result in a delay in the payment. The invoice payment requirements do not start until a properly completed invoice is provided to the Department.

A Vendor Ombudsman has been established within the Department of Financial Services. The duties of this individual include acting as an advocate for Agencies who may be experiencing problems in obtaining timely payment(s) from a state agency. The Vendor Ombudsman may be contacted at (850) 413-5516.

- H. Records of costs incurred under the terms of this Agreement shall be maintained and made available upon request to the Department at all times during the period of this Agreement and for five years after final payment is made. Copies of these documents and records shall be furnished to the Department upon request. Records of costs incurred include the Agency's general accounting records and the project records, together with supporting documents and records, of the contractor and all subcontractors performing work on the project, and all other records of the Contractor and subcontractors considered necessary by the Department for a proper audit of costs.
- I. Prior to the execution of this Agreement, a Project schedule of funding shall be prepared by the Agency and approved by the Department. The Agency shall maintain said schedule of funding, carry out the Project, and shall incur obligations against and make disbursements of Project funds only in conformity with the latest approved schedule of funding for the Project. The schedule of funding may be revised by execution of a Local Agency Program ("LAP") Supplemental Agreement between the Department and the Agency. The Agency acknowledges and agrees that funding for this project may be reduced upon determination of the agency's contract award amount. If revised, a copy of the Supplemental Agreement shall be forwarded to the Department's Comptroller. No increase or decrease shall be effective unless it complies with fund participation requirements of this Agreement and is approved by the Department's Comptroller.
- J. If, after Project completion, any claim is made by the Department resulting from an audit or for work or services performed pursuant to this Agreement, the Department may offset such amount from payments due for work or services done under any agreement which it has with the Agency owing such amount if, upon demand, payment of the amount is not made within 60 days to the Department. Offsetting any amount pursuant to this paragraph shall not be considered a breach of contract by the Department.
- K. The Agency must submit the final invoice on the Project to the Department within 120 days after the completion of the Project. Invoices submitted after the 120-day time period may not be paid.
- L. The Department's performance and obligation to pay under this Agreement is contingent upon an annual appropriation by the Legislature. If the Department's funding for this Project is in multiple fiscal years, funds approval from the Department's Comptroller must be received each fiscal year prior to costs being incurred. See Exhibit "B" for funding levels by fiscal year. Project costs utilizing these fiscal year funds are not eligible for reimbursement if incurred prior to funds approval being received. The Department will notify the Agency, in writing, when funds are available.
- M. In the event this Agreement is in excess of \$25,000 and has a term for a period of more than one year, the provisions of Section 339.135(6)(a), Florida Statutes, are hereby incorporated:

"The Department, during any fiscal year, shall not expend money, incur any liability, or enter into any contract which, by its terms, involves the expenditure of money in excess of the amounts budgeted as available for expenditure during such fiscal year. Any contract, verbal or written, made in violation of this subsection is null and void, and no money may be paid on such contract. The Department shall require a statement from the comptroller of the Department that funds are available prior to entering into any such contract or other binding commitment of funds. Nothing herein contained shall prevent the making of contracts for periods exceeding 1 year, but any contract so made shall be

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executory only for the value of the services to be rendered or agreed to be paid for in succeeding fiscal years, and this paragraph shall be incorporated verbatim in all contracts of the Department which are for an amount in excess of \$25,000 and which have a term for a period of more than 1 year."

6. Department Payment Obligations: Subject to other provisions of this Agreement, the Department will honor requests for reimbursement to the Agency pursuant to this Agreement. However, notwithstanding any other provision of this Agreement, the Department may elect by notice in writing not to make a payment if:

- A. The Agency shall have made misrepresentation of a material nature in its application, or any supplement or amendment to its application, or with respect to any document or data furnished with its application or pursuant to this Agreement;
- B. There is any pending litigation with respect to the performance by the Agency of any of its duties or obligations which may jeopardize or adversely affect the Project, the Agreement or payments to the Project;
- C. The Agency shall have taken any action pertaining to the Project which, under this Agreement, requires the approval of the Department or has made a related expenditure or incurred related obligations without having been advised by the Department that same are approved;
- D. There has been any violation of the conflict of interest provisions contained in paragraph 16.J.; or
- E. The Agency has been determined by the Department to be in default under any of the provisions of the Agreement.

The Department may suspend or terminate payment for that portion of the Project which the Federal Highway Administration ("FHWA"), or the Department acting in lieu of FHWA, may designate as ineligible for Federal-aid.

In determining the amount of the payment, the Department will exclude all Project costs incurred by the Agency prior to the Department's issuance of a Notice to Proceed ("NTP"), costs incurred after the expiration of the Agreement, costs which are not provided for in the latest approved schedule of funding in Exhibit "B" for the Project, costs agreed to be borne by the Agency or its contractors and subcontractors for not meeting the Project commencement and final invoice time lines, and costs attributable to goods or services received under a contract or other arrangements which have not been approved in writing by the Department.

7. General Requirements: The Agency shall complete the Project with all practical dispatch, in a sound, economical, and efficient manner, and in accordance with the provisions in this Agreement, and all applicable laws. The Project will be performed in accordance with all applicable Department procedures, guidelines, manuals, standards, and directives as described in the Department's Local Agency Program Manual, which by this reference is made a part of this Agreement. Time is of the essence as to each and every obligation under this Agreement.

- A. A full time employee of the Agency, qualified to ensure that the work being pursued is complete, accurate, and consistent with the terms, conditions, and specifications of this Agreement shall be in responsible charge of the Project, which employee should be able to perform the following duties and functions:
 - i. Administers inherently governmental project activities, including those dealing with cost, time, adherence to contract requirements, construction quality and scope of Federal-aid projects;
 - ii. Maintains familiarity of day to day Project operations, including Project safety issues;
 - iii. Makes or participates in decisions about changed conditions or scope changes that require change orders or supplemental agreements;
 - iv. Visits and reviews the Project on a frequency that is commensurate with the magnitude and complexity of the Project;

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- v. Reviews financial processes, transactions and documentation to ensure that safeguards are in place to minimize fraud, waste, and abuse;
 - vi. Directs Project staff, agency or consultant, to carry out Project administration and contract oversight, including proper documentation;
 - vii. Is aware of the qualifications, assignments and on-the-job performance of the Agency and consultant staff at all stages of the Project.
- B. Once the Department issues the NTP for the Project, the Agency shall be obligated to submit an invoice or other request for reimbursement to the Department on a quarterly basis, beginning from the day the NTP is issued. If the Agency fails to submit quarterly invoices to the Department, and in the event the failure to timely submit invoices to the Department results in the "FHWA" removing any unbilled funding or the loss of State appropriation authority (which may include the loss of state and federal funds, if there are state funds programmed to the Project), then the Agency will be solely responsible to provide all funds necessary to complete the Project and the Department will not be obligated to provide any additional funding for the Project. The Agency waives the right to contest such removal of funds by the Department, if the removal is related to FHWA's withdrawal of funds or if the removal is related to the loss of State appropriation authority. In addition to the loss of funding for the Project, the Department will also consider the de-certification of the Agency for future LAP Projects. No cost may be incurred under this Agreement until after the Agency has received a written NTP from the Department. The Agency agrees to advertise or put the Project out to bid thirty (30) days from the date the Department issues the NTP to advertise the Project. If the Agency is not able to meet the scheduled advertisement, the District LAP Administrator should be notified as soon as possible.
- C. If all funds are removed from the Project, including amounts previously billed to the Department and reimbursed to the Agency, and the Project is off the state highway system, then the Department will have to request repayment for the previously billed amounts from the Agency. No state funds can be used on off-system projects, unless authorized pursuant to Exhibit "G", State Funds Addendum, which will be attached to and incorporated in this Agreement in the event state funds are used on the Project.
- D. In the event that any election, referendum, approval, permit, notice or other proceeding or authorization is required under applicable law to enable the Agency to enter into this Agreement or to undertake the Project or to observe, assume or carry out any of the provisions of the Agreement, the Agency will initiate and consummate, as provided by law, all actions necessary with respect to any such matters.
- E. The Agency shall initiate and prosecute to completion all proceedings necessary, including Federal-aid requirements, to enable the Agency to provide the necessary funds for completion of the Project.
- F. The Agency shall submit to the Department such data, reports, records, contracts, and other documents relating to the Project as the Department and FHWA may require. The Agency shall use the Department's Local Agency Program Information Tool and applicable information systems as required.
- G. Federal-aid funds shall not participate in any cost which is not incurred in conformity with applicable federal and State laws, the regulations in 23 Code of Federal Regulations (C.F.R.) and 49 C.F.R., and policies and procedures prescribed by the Division Administrator of FHWA. Federal funds shall not be paid on account of any cost incurred prior to authorization by FHWA to the Department to proceed with the Project or part thereof involving such cost (23 C.F.R. 1.9 (a)). If FHWA or the Department determines that any amount claimed is not eligible, federal participation may be approved in the amount determined to be adequately supported and the Department shall notify the Agency in writing citing the reasons why items and amounts are not eligible for federal participation. Where correctable non-compliance with provisions of law or FHWA requirements exists. Federal funds may be withheld until compliance is obtained. Where non-compliance is not correctable, FHWA or the Department may deny participation in parcel or Project costs in part or in total. For any amounts determined to be ineligible for federal reimbursement for which the Department has advanced payment, the Agency shall promptly reimburse the Department for all such amounts within 90 days of written notice.

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- H. For any project requiring additional right-of-way, the Agency must submit to the Department an annual report of its real property acquisition and relocation assistance activities on the project. Activities shall be reported on a federal fiscal year basis, from October 1 through September 30. The report must be prepared using the format prescribed in 49 C.F.R. Part 24, Appendix B, and be submitted to the Department no later than October 15 of each year.

8. Audit Reports: The administration of resources awarded through the Department to the Agency by this Agreement may be subject to audits and/or monitoring by the Department. The following requirements do not limit the authority of the Department to conduct or arrange for the conduct of additional audits or evaluations of federal awards or limit the authority of any State agency inspector general, the State of Florida Auditor General or any other State official. The Agency shall comply with all audit and audit reporting requirements as specified below.

- A. In addition to reviews of audits conducted in accordance with OMB Circular A-133, for fiscal years beginning before December 26, 2014, and in accordance with 2 CFR Part 200, Subpart F – Audit Requirements, for fiscal years beginning on or after December 26, 2014, monitoring procedures may include but not be limited to on-site visits by Department staff and/or other procedures including, reviewing any required performance and financial reports, following up, ensuring corrective action, and issuing management decisions on weaknesses found through audits when those findings pertain to federal awards provided through the Department by this Agreement. By entering into this Agreement, the Agency agrees to comply and cooperate fully with any monitoring procedures/processes deemed appropriate by the Department. The Agency further agrees to comply and cooperate with any inspections, reviews, investigations, or audits deemed necessary by the Department, State of Florida Chief Financial Officer (CFO) or State of Florida Auditor General.
- B. The Agency, a non-federal entity as defined by OMB Circular A-133, for fiscal years beginning before December 26, 2014, and as defined by 2 CFR Part 200, Subpart F – Audit Requirements, for fiscal years beginning on or after December 26, 2014, as a subrecipient of a federal award awarded by the Department through this Agreement is subject to the following requirements:
 - i. In the event the Agency expends a total amount of federal awards equal to or in excess of the threshold established by OMB Circular A-133, for fiscal years beginning before December 26, 2014, and established by 2 CFR Part 200, Subpart F – Audit Requirements, for fiscal years beginning on or after December 26, 2014, the Agency must have a federal single or program-specific audit for such fiscal year conducted in accordance with the provisions of OMB Circular A-133, for fiscal years beginning before December 26, 2014, and in accordance with the provisions of 2 CFR Part 200, Subpart F – Audit Requirements, for fiscal years beginning on or after December 26, 2014. **Exhibit "1", Federal Financial Assistance (Single Audit Act)** to this Agreement provides the required federal award identification information needed by the Agency to further comply with the requirements of OMB Circular A-133, for fiscal years beginning before December 26, 2014, and the requirements of 2 CFR Part 200, Subpart F – Audit Requirements, for fiscal years beginning on or after December 26, 2014. In determining federal awards expended in a fiscal year, the Agency must consider all sources of federal awards based on when the activity related to the federal award occurs, including the federal award provided through the Department by this Agreement. The determination of amounts of federal awards expended should be in accordance with the guidelines established by OMB Circular A-133, for fiscal years beginning before December 26, 2014, and established by 2 CFR Part 200, Subpart F – Audit Requirements, for fiscal years beginning on or after December 26, 2014. An audit conducted by the State of Florida Auditor General in accordance with the provisions of OMB Circular A-133, for fiscal years beginning before December 26, 2014, and in accordance with 2 CFR Part 200, Subpart F – Audit Requirements, for fiscal years beginning on or after December 26, 2014, will meet the requirements of this part.
 - ii. In connection with the audit requirements, the Agency shall fulfill the requirements relative to the auditee responsibilities as provided in OMB Circular A-133, for fiscal years beginning before December 26, 2014, and as provided in 2 CFR Part 200, Subpart F – Audit Requirements, for fiscal years beginning on or after December 26, 2014.

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- iii. In the event the Agency expends less than the threshold established by OMB Circular A-133, for fiscal years beginning before December 26, 2014, and established by 2 CFR Part 200, Subpart F – Audit Requirements, for fiscal years beginning on or after December 26, 2014, in federal awards, the Agency is exempt from federal audit requirements for that fiscal year. However, the Agency must provide a single audit exemption statement to the Department at FDOTSingleAudit@dot.state.fl.us no later than nine months after the end of the Agency's audit period for each applicable audit year. In the event the Agency expends less than the threshold established by OMB Circular A-133, for fiscal years beginning before December 26, 2014, and established by 2 CFR Part 200, Subpart F – Audit Requirements, for fiscal years beginning on or after December 26, 2014, in federal awards in a fiscal year and elects to have an audit conducted in accordance with the provisions of OMB Circular A-133, for fiscal years beginning before December 26, 2014, and in accordance with 2 CFR Part 200, Subpart F – Audit Requirements, for fiscal years beginning on or after December 26, 2014, the cost of the audit must be paid from non-federal resources (*i.e.*, the cost of such an audit must be paid from the Agency's resources obtained from other than federal entities).
- iv. The Agency must electronically submit to the Federal Audit Clearinghouse (FAC) at <https://harvester.census.gov/facweb/> the audit reporting package as required by OMB Circular A-133, for fiscal years beginning before December 26, 2014, and as required by 2 CFR Part 200, Subpart F – Audit Requirements, for fiscal years beginning on or after December 26, 2014, within the earlier of 30 calendar days after receipt of the auditor's report(s) or nine months after the end of the audit period. The FAC is the repository of record for audits required by OMB Circular A-133, for fiscal years beginning before December 26, 2014, and for audits required by 2 CFR Part 200, Subpart F – Audit Requirements, for fiscal years beginning on or after December 26, 2014, and this Agreement. However, the Department requires a copy of the audit reporting package also be submitted to FDOTSingleAudit@dot.state.fl.us within the earlier of 30 calendar days after receipt of the auditor's report(s) or nine months after the end of the audit period as required by OMB Circular A-133, for fiscal years beginning before December 26, 2014, and as required by 2 CFR Part 200, Subpart F – Audit Requirements, for fiscal years beginning on or after December 26, 2014.
- v. Within six months of acceptance of the audit report by the FAC, the Department will review the Agency's audit reporting package, including corrective action plans and management letters, to the extent necessary to determine whether timely and appropriate action on all deficiencies has been taken pertaining to the federal award provided through the Department by this Agreement. If the Agency fails to have an audit conducted in accordance with OMB Circular A-133, for fiscal years beginning before December 26, 2014, and in accordance with 2 CFR Part 200, Subpart F – Audit Requirements, for fiscal years beginning on or after December 26, 2014, the Department may impose additional conditions to remedy noncompliance. If the Department determines that noncompliance cannot be remedied by imposing additional conditions, the Department may take appropriate actions to enforce compliance, which actions may include but not be limited to the following:
 - 1. Temporarily withhold cash payments pending correction of the deficiency by the Agency or more severe enforcement action by the Department;
 - 2. Disallow (deny both use of funds and any applicable matching credit for) all or part of the cost of the activity or action not in compliance;
 - 3. Wholly or partly suspend or terminate the federal award;
 - 4. Initiate suspension or debarment proceedings as authorized under 2 C.F.R. Part 180 and federal awarding agency regulations (or in the case of the Department, recommend such a proceeding be initiated by the federal awarding agency);
 - 5. Withhold further federal awards for the Project or program;
 - 6. Take other remedies that may be legally available.
- vi. As a condition of receiving this federal award, the Agency shall permit the Department, or its designee, the CFO or State of Florida Auditor General access to Agency's records including

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financial statements, the independent auditor's working papers and project records as necessary. Records related to unresolved audit findings, appeals or litigation shall be retained until the action is complete or the dispute is resolved.

vii. The Department's contact information for requirements under this part is as follows:

Office of Comptroller, MS 24
605 Suwannee Street
Tallahassee, Florida 32399-0450
FDOTSingleAudit@dot.state.fl.us

- C. The Agency shall retain sufficient records demonstrating its compliance with the terms of this Agreement for a period of five years from the date the audit report is issued and shall allow the Department, or its designee, the CFO or State of Florida Auditor General access to such records upon request. The Agency shall ensure that the audit working papers are made available to the Department, or its designee, the CFO, or State of Florida Auditor General upon request for a period of five years from the date the audit report is issued unless extended in writing by the Department.

9. Termination or Suspension of Project: The Department may, by written notice to the Agency, suspend any or all of the Agency's obligations under this Agreement until such time as the event or condition resulting in such suspension has ceased or been corrected or the Department may terminate this Agreement in whole or in part at any time the interest of the Department requires such termination.

- A. If the Department determines that the performance of the Agency is not satisfactory, the Department shall notify the Agency of the deficiency in writing with a requirement that the deficiency be corrected within thirty (30) days of such notice. Such notice shall provide reasonable specificity to the Agency of the deficiency that requires correction. If the deficiency is not corrected within such time period, the Department may either (1) immediately terminate the Agreement as set forth in paragraph 9.B. below, or (2) take whatever action is deemed appropriate by the Department to correct the deficiency. In the event the Department chooses to take action and not terminate the Agreement, the Agency shall, upon demand, promptly reimburse the Department for any and all costs and expenses incurred by the Department in correcting the deficiency.
- B. If the Department terminates the Agreement, the Department shall notify the Agency of such termination in writing, with instructions to the effective date of termination or specify the stage of work at which the Agreement is to be terminated.
- C. If the Agreement is terminated before the Project is completed, the Agency shall be paid only for the percentage of the Project satisfactorily performed for which costs can be substantiated. Such payment, however, shall not exceed the equivalent percentage of the contract price. All work in progress on Department right-of-way will become the property of the Department and will be turned over promptly by the Agency.
- D. The Department reserves the right to unilaterally cancel this Agreement for refusal by the Agency or any contractor, sub-contractor or materials vendor to allow public access to all documents, papers, letters or other material subject to the provisions of Chapter 119, Florida Statutes, and made or received in conjunction with this Agreement unless the records are exempt.
- E. Upon receipt of any final termination or suspension notice under this paragraph 9., the Agency shall proceed promptly to carry out the actions required in such notice, which may include any or all of the following: (a) necessary action to terminate or suspend, as the case may be, Project activities and contracts and such other action as may be required or desirable to keep to a minimum the costs upon the basis of which the financing is to be computed; or (b) furnish a statement of the Project activities and contracts and other undertakings the cost of which are otherwise includable as Project costs. The termination or suspension shall be carried out in conformity with the latest schedule, plan, and cost as approved by the Department or upon the basis of terms and conditions imposed by the Department upon

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the failure of the Agency to furnish the schedule, plan, and estimate within a reasonable time. The closing out of federal financial participation in the Project shall not constitute a waiver of any claim which the Department may otherwise have arising out of this Agreement.

10. Contracts of the Agency:

- A. Except as otherwise authorized in writing by the Department, the Agency shall not execute any contract or obligate itself in any manner requiring the disbursement of Department funds, including consultant or construction contracts or amendments thereto, with any third party with respect to the Project without the written approval of the Department. Failure to obtain such approval shall be sufficient cause for nonpayment by the Department. The Department specifically reserves the right to review the qualifications of any consultant or contractor and to approve or disapprove the employment of such consultant or contractor.
- B. It is understood and agreed by the parties to this Agreement that participation by the Department in a project with the Agency, where said project involves a consultant contract for engineering, architecture or surveying services, is contingent on the Agency's complying in full with provisions of Section 287.055, Florida Statutes, Consultants' Competitive Negotiation Act, the federal Brooks Act, 23 C.F.R. 172, and 23 U.S.C. 112. At the discretion of the Department, the Agency will involve the Department in the consultant selection process for all projects funded under this Agreement. In all cases, the Agency shall certify to the Department that selection has been accomplished in compliance with the Consultants' Competitive Negotiation Act and the federal Brooks Act.
- C. The Agency shall comply with, and require its consultants and contractors to comply with applicable federal law pertaining to the use of Federal-aid funds. The Agency shall comply with the provisions in the FHWA-1273 form as set forth in Exhibit "C", FHWA 1273 attached to and incorporated in this Agreement. The Agency shall include FHWA-1273 in all contracts with consultants and contractors performing work on the Project.

11. Disadvantaged Business Enterprise (DBE) Policy and Obligation: It is the policy of the Department that DBE's, as defined in 49 C.F.R. Part 26, as amended, shall have the opportunity to participate in the performance of contracts financed in whole or in part with Department funds under this Agreement. The DBE requirements of applicable federal and state laws and regulations apply to this Agreement.

The Agency and its contractors agree to ensure that DBE's have the opportunity to participate in the performance of this Agreement. In this regard, all recipients and contractors shall take all necessary and reasonable steps in accordance with applicable federal and state laws and regulations to ensure that the DBE's have the opportunity to compete for and perform contracts. The Agency and its contractors and subcontractors shall not discriminate on the basis of race, color, national origin or sex in the award and performance of contracts, entered pursuant to this Agreement.

12. Compliance with Conditions and Laws: The Agency shall comply and require its contractors and subcontractors to comply with all terms and conditions of this Agreement and all federal, state, and local laws and regulations applicable to this Project. Execution of this Agreement constitutes a certification that the Agency is in compliance with, and will require its contractors and subcontractors to comply with, all requirements imposed by applicable federal, state, and local laws and regulations, including the "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion – Lower Tier Covered Transactions," in 49 C.F.R. Part 29, and 2 C.F.R. Part 200 when applicable.

13. Performance Evaluations: Agencies are evaluated on a project-by-project basis. The evaluations provide information about oversight needs and provide input for the recertification process. Evaluations are submitted to the Agency's person in responsible charge or designee as part of the Project closeout process. The Department provides the evaluation to the Agency no more than 30 days after final acceptance.

- A. Each evaluation will result in one of three ratings. A rating of Unsatisfactory Performance means the Agency failed to develop the Project in accordance with applicable federal and state regulations, standards and procedures, required excessive District involvement/oversight, or the Project was brought in-house by the Department. A rating of Satisfactory Performance means the Agency developed the

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Project in accordance with applicable federal and state regulations, standards and procedures, with minimal District involvement/oversight. A rating of Above Satisfactory Performance means the Agency developed the Project in accordance with applicable federal and state regulations, standards and procedures, without District involvement/oversight.

- B. The District will determine which functions can be further delegated to Agencies that continuously earn Satisfactory and Above Satisfactory evaluations.

14. Restrictions, Prohibitions, Controls, and Labor Provisions: During the performance of this Agreement, the Agency agrees as follows, and agrees to require its contractors and subcontractors to include in each subcontract the following provisions:

- A. The Agency will comply with all the requirements imposed by Title VI of the Civil Rights Act of 1964, the regulations of the U.S. Department of Transportation issued thereunder, and the assurance by the Agency pursuant thereto. The Agency shall include the attached Exhibit "E", Title VI Assurances in all contracts with consultants and contractors performing work on the Project that ensure compliance with Title VI of the Civil Rights Act of 1964, 49 C.F.R. Part 21, and related statutes and regulations.
- B. The Agency will comply with all the requirements as imposed by the ADA, the regulations of the Federal government issued thereunder, and assurance by the Agency pursuant thereto.
- C. A person or affiliate who has been placed on the convicted vendor list following a conviction for a public entity crime may not submit a bid on a contract to provide any goods or services to a public entity; may not submit a bid on a contract with a public entity for the construction or repair of a public building or public work; may not submit bids on leases of real property to a public entity; may not be awarded or perform work as a contractor, supplier, subcontractor or consultant under a contract with any public entity; and may not transact business with any public entity in excess of the threshold amount provided in Section 287.017, Florida Statutes, for CATEGORY TWO for a period of 36 months from the date of being placed on the convicted vendor list.
- D. In accordance with Section 287.134, Florida Statutes, an entity or affiliate who has been placed on the Discriminatory Vendor List, kept by the Florida Department of Management Services, may not submit a bid on a contract to provide goods or services to a public entity; may not submit a bid on a contract with a public entity for the construction or repair of a public building or public work; may not submit bids on leases of real property to a public entity; may not be awarded or perform work as a contractor, supplier, subcontractor or consultant under a contract with any public entity; and may not transact business with any public entity.
- E. An entity or affiliate who has had its Certificate of Qualification suspended, revoked, denied or have further been determined by the Department to be a non-responsible contractor may not submit a bid or perform work for the construction or repair of a public building or public work on a contract with the Agency.
- F. Neither the Agency nor any of its contractors or their subcontractors shall enter into any contract, subcontract or arrangement in connection with the Project or any property included or planned to be included in the Project in which any member, officer or employee of the Agency or the locality during tenure or for 2 years thereafter has any interest, direct or indirect. If any such present or former member, officer or employee involuntarily acquires or had acquired prior to the beginning of tenure any such interest, and if such interest is immediately disclosed to the Agency, the Agency, with prior approval of the Department, may waive the prohibition contained in this paragraph provided that any such present member, officer or employee shall not participate in any action by the Agency or the locality relating to such contract, subcontract or arrangement. The Agency shall insert in all contracts entered into in connection with the Project or any property included or planned to be included in any Project, and shall require its contractors to insert in each of their subcontracts, the following provision:

"No member, officer or employee of the Agency or of the locality during his tenure or for 2 years thereafter shall have any interest, direct or indirect, in this contract or the proceeds thereof."

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The provisions of this paragraph shall not be applicable to any agreement between the Agency and its fiscal depositories or to any agreement for utility services the rates for which are fixed or controlled by a governmental agency.

- G. No member or delegate to the Congress of the United States shall be admitted to any share or part of this Agreement or any benefit arising therefrom.

15. Indemnification and Insurance:

- A. It is specifically agreed between the parties executing this Agreement that it is not intended by any of the provisions of any part of this Agreement to create in the public or any member thereof, a third party beneficiary under this Agreement, or to authorize anyone not a party to this Agreement to maintain a suit for personal injuries or property damage pursuant to the terms or provisions of this Agreement. The Agency guarantees the payment of all just claims for materials, supplies, tools, or labor and other just claims against the Agency or any subcontractor, in connection with this Agreement. Additionally, the Agency agrees to include the following indemnification in all contracts with contractors/subcontractors, or consultants/subconsultants who perform work in connection with this Agreement:

"To the fullest extent permitted by law, the Agency's contractor shall indemnify and hold harmless the Agency, the State of Florida, Department of Transportation, 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 intentional wrongful misconduct of the contractor and persons employed or utilized by the contractor in the performance of this Contract."

This indemnification shall survive the termination of this Contract. Nothing contained in this paragraph is intended to nor shall it constitute a waiver of the State of Florida and the Agency's sovereign immunity.

To the fullest extent permitted by law, the Agency's consultant shall indemnify and hold harmless the Agency, the State of Florida, Department of Transportation, 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 intentional wrongful misconduct of the consultant and persons employed or utilized by the consultant in the performance of this Contract.

This indemnification shall survive the termination of this Contract. Nothing contained in this paragraph is intended to nor shall it constitute a waiver of the State of Florida and the Agency's sovereign immunity."

- B. The Agency shall, or cause its contractor or consultant to carry and keep in force, during the term of this Agreement, a general liability insurance policy or policies with a company or companies authorized to do business in Florida, affording public liability insurance with combined bodily injury limits of at least \$200,000 per person and \$300,000 each occurrence, and property damage insurance of at least \$200,000 each occurrence, for the services to be rendered in accordance with this Agreement. The Agency shall also, or cause its contractor or consultant to carry and keep in force Workers' Compensation Insurance as required by the State of Florida under the Workers' Compensation Law. With respect to any general liability insurance policy required pursuant to this Agreement, all such policies shall be issued by companies licensed to do business in the State of Florida. The Agency shall provide to the Department certificates showing the required coverage to be in effect with endorsements showing the Department to be an additional insured prior to commencing any work under this Agreement. Policies that include Self Insured Retention will not be accepted. The certificates and policies shall provide that in the event of any material change in or cancellation of the policies reflecting the required coverage, thirty days advance notice shall be given to the Department or as provided in accordance with Florida law.

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16. Miscellaneous Provisions:

- A. The Agency will be solely responsible for compliance with all applicable environmental regulations, for any liability arising from non-compliance with these regulations, and will reimburse the Department for any loss incurred in connection therewith. The Agency will be responsible for securing any applicable permits. The Agency shall include in all contracts and subcontracts for amounts in excess of \$150,000, a provision requiring compliance with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401-7671q) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251-1387).
- B. The Department shall not be obligated or liable hereunder to any individual or entity not a party to this Agreement.
- C. In no event shall the making by the Department of any payment to the Agency constitute or be construed as a waiver by the Department of any breach of covenant or any default which may then exist on the part of the Agency and the making of such payment by the Department, while any such breach or default shall exist, shall in no way impair or prejudice any right or remedy available to the Department with respect to such breach or default.
- D. If any provision of this Agreement is held invalid, the remainder of this Agreement shall not be affected. In such an instance, the remainder would then continue to conform to the terms and requirements of applicable law.
- E. By execution of the Agreement, the Agency represents that it has not paid and, also agrees not to pay, any bonus or commission for the purpose of obtaining an approval of its application for the financing hereunder.
- F. Nothing in the Agreement shall require the Agency to observe or enforce compliance with any provision or perform any act or do any other thing in contravention of any applicable state law. If any of the provisions of the Agreement violate any applicable state law, the Agency will at once notify the Department in writing in order that appropriate changes and modifications may be made by the Department and the Agency to the end that the Agency may proceed as soon as possible with the Project.
- G. In the event that this Agreement involves constructing and equipping of facilities, the Agency shall submit to the Department for approval all appropriate plans and specifications covering the Project. The Department will review all plans and specifications and will issue to the Agency a written approval with any approved portions of the Project and comments or recommendations covering any remainder of the Project deemed appropriate. After resolution of these comments and recommendations to the Department's satisfaction, the Department will issue to the Agency a written approval with said remainder of the Project. Failure to obtain this written approval shall be sufficient cause of nonpayment by the Department.
- H. Upon completion of right-of-way activities on the Project, the Agency must certify compliance with all applicable federal and state requirements. Certification is required prior to authorization for advertisement for or solicitation of bids for construction of the Project, including if no right-of-way is required.
- I. The Agency will certify in writing, prior to Project closeout that the Project was completed in accordance with applicable plans and specifications, is in place on the Agency's facility, adequate title is in the Agency's name, and the Project is accepted by the Agency as suitable for the intended purpose.
- J. The Agency agrees that no federally-appropriated funds have been paid, or will be paid by or on behalf of the Agency, to any person for influencing or attempting to influence any officer or employee of any federal agency, a Member of Congress, an officer or employee of Congress or an employee of a Member of Congress in connection with the awarding of any federal contract, the making of any federal grant, the making of any federal loan, the entering into of any cooperative agreement, and the extension,

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continuation, renewal, amendment or modification of any federal contract, grant, loan or cooperative agreement. If any funds other than federally-appropriated funds have been paid by the Agency to any person for influencing or attempting to influence an officer or employee of any federal agency, a Member of Congress, an officer or employee of Congress or an employee of a Member of Congress in connection with this Agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions. The Agency shall require that the language of this paragraph be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly. No funds received pursuant to this contract may be expended for lobbying the Legislature, the judicial branch or a state agency.

- K. The Agency may not permit the Engineer of Record to perform Construction, Engineering and Inspection services on the Project.
- L. The Agency agrees to maintain any project not on the State Highway System constructed under this Agreement. If the Agency constructs any improvement on Department right-of-way, the Agency ☒ will ☐ will not maintain the improvements made for their useful life.
- M. The Agency shall comply with all applicable federal guidelines, procedures, and regulations. If at any time a review conducted by Department and or FHWA reveals that the applicable federal guidelines, procedures, and regulations were not followed by the Agency and FHWA requires reimbursement of the funds, the Agency will be responsible for repayment to the Department of all funds awarded under the terms of this Agreement.
- N. The Agency:
 - i. shall utilize the U.S. Department of Homeland Security's E-Verify system to verify the employment eligibility of all new employees hired by Agency during the term of the contract; and
 - ii. shall expressly require any contractor and subcontractors performing work or providing services pursuant to the state contract to likewise utilize the U.S. Department of Homeland Security's E-Verify system to verify the employment eligibility of all new employees hired by the subcontractor during the contract term.
- O. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which shall constitute the same Agreement. A facsimile or electronic transmission of this Agreement with a signature on behalf of a party will be legal and binding on such party.
- P. The Parties agree to comply with s.20.055(5), Florida Statutes, and to incorporate in all subcontracts the obligation to comply with s.20.055(5), Florida Statutes.
- Q. If the Project is procured pursuant to Chapter 255 for construction services and at the time of the competitive solicitation for the Project 50 percent or more of the cost of the Project is to be paid from state-appropriated funds, then the Agency must comply with the requirements of Section 255.0991, Florida Statutes.
- R. Exhibits
 - i. Exhibit "A", Project Description and Responsibilities, is attached and incorporated into this Agreement.
 - ii. Exhibit "B", Schedule of Funding, is attached and incorporated into this Agreement.
 - iii. ☒ If this Project includes Phase 58 (construction) activities, then Exhibit "C", FHWA FORM 1273, is attached and incorporated into this Agreement.

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- iv. ☐ An Alternative Pay Method is used on this Project. If an alternative Pay Method is used on this Project, then Exhibit "D", Alternative Pay Method, is attached and incorporated into this Agreement.
- v. Exhibit "E", Title VI Assurances is attached and incorporated into this Agreement.
- vi. Exhibit "F", the Agency Resolution authorizing entry into this Agreement, is attached and incorporated into this Agreement.
- vii. ☐ State Funds are used on this Project. If State Funds are used on this Project, then Exhibit "G", State Funds Addendum, is attached and incorporated into this Agreement.
- viii. ☐ This Project is located off the State Highway System and includes funding for landscaping. If this Project is located off the State Highway System and includes funding for landscaping, then Exhibit "L" is attached and incorporated into this Agreement.
- ix. ☐ This Project utilizes Advance Project Reimbursement. If this Project utilizes Advance Project Reimbursement, then Exhibit "R" is attached and incorporated into this Agreement.
- x. ☐ This Project includes funding for a roadway lighting system. If the Project includes funding for roadway lighting system, Exhibit "RL" is attached and incorporated into this Agreement.
- xi. ☐ This Project includes funding for traffic signals and/or traffic signal systems. If this Project includes funding for traffic signals and/or traffic signals systems, Exhibit "T" is attached and incorporated into this Agreement.
- xii. Exhibit "1", Federal Financial Assistance (Single Audit Act) is attached and incorporated into this Agreement.
- xiii. ☐ State Funds are used on this Project. If State Funds are used on this Project, then Exhibit "2", State Financial Assistance (Florida Single Audit Act), is attached and incorporated into this Agreement.

The remainder of this page intentionally left blank.

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IN WITNESS WHEREOF, the parties have executed this Agreement on the day and year written above.

AGENCY CITY OF PORT ORANGE

STATE OF FLORIDA, DEPARTMENT OF TRANSPORTATION

By: _____
Name:
Title:

By: _____
Name:
Title: Director of Transportation Development

Attest: _____
Title:

Legal Review:

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EXHIBIT "A"

PROJECT DESCRIPTION AND RESPONSIBILITIES

FPN: 435500-1-58/68-01

This exhibit forms an integral part of the Local Agency Program Agreement between the State of Florida, Department of Transportation and

the City of Port Orange, 1000 City Center Circle, Port Orange, FL 32129

PROJECT LOCATION:

- ☐ The project is on the National Highway System.
- ☐ The project is on the State Highway System.

PROJECT LENGTH AND MILE POST LIMITS: ~0.5 miles; from Sauls Street to 6th Street

PROJECT DESCRIPTION:

The McDonald Road Sidewalk project is located in City of Port Orange. The project includes the installation of 4-inch thick, 5-foot wide concrete sidewalk. The sidewalk will be placed along the west side of McDonald Road from Sauls Street to 6th Street. Project elements include ADA compliant sidewalk, handrail, gravity wall, minor drainage improvements, minor milling and resurfacing, 6" driveway reconstruction, curb ramps, detectable warning surfaces, signage, and thermoplastic striping to include special emphasis crosswalks. Two rectangular rapid flashing beacons (RRFB) are proposed at McDonald Road and Sauls Street. In addition, mobilization, maintenance of traffic (MOT), erosion control, clearing and grubbing, and sodding are also included as part of this project.

All sidewalk construction includes fiberglass reinforcement and 3,000 psi strength concrete. Fiberglass reinforcement and concrete strength exceeding 2,500 psi are considered upgrades for sidewalks. The City will be reimbursed for the basic 2,500 psi concrete, while the upgrades will be paid through local funds.

SPECIAL CONSIDERATIONS BY AGENCY:

The audit report(s) required in the Agreement shall include a Schedule of Project Assistance that will reflect the Department's contract number, the Financial Project Number (FPN), the Federal Authorization Number (FAN), where applicable, the amount of state funding action (receipt and disbursement of funds), any federal or local funding action, and the funding action from any other source with respect to the project.

Invoices shall be submitted on a quarterly basis and progress reports shall be submitted as requested to:

Vince Vacchiano, Construction Manager
Florida Department of Transportation
719 South Woodland Boulevard, MS 3-506
DeLand, Florida 32720

The Agency shall commence the project's activities subsequent to the execution of this Agreement and shall perform in accordance with the following schedule:

- a) Study to be completed by N/A.
- b) Design to be completed by N/A.
- c) Right-of-Way requirements identified and provided to the Department by N/A.
- d) Right-of-Way to be certified by N/A.

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EXHIBIT "A"

PROJECT DESCRIPTION AND RESPONSIBILITIES

- e) Construction contract to be let by April 24, 2017.
- f) Construction to be completed by September 12, 2017.

If this schedule cannot be met, the Agency will notify the Department in writing with a revised schedule or the project is subject to the withdrawal of federal funding.

SPECIAL CONSIDERATIONS BY DEPARTMENT:

The project funding may be reduced to an amount equal to the award amount and/or the actual contract costs.

Invoice payments will be made on a pro-rata basis as a percentage of the federal funding amount compared to the actual award amount. The City is locally funding concrete upgrades and CEI Services. The combined local funding meets and exceeds the River-to-Sea TPO match requirement. No further pro-ration for match purposes is required.

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EXHIBIT "B"

SCHEDULE OF FUNDING

AGENCY NAME & BILLING ADDRESS City of Port Orange 1000 City Center Circle Port Orange, FL 32129	FPN: 435500-1-58/68-01
---	-------------------------------

TYPE OF WORK By Fiscal Year	FUNDING			
	(1) TOTAL PROJECT FUNDS	(2) LOCAL FUNDS	(3) STATE FUNDS	(4) FEDERAL FUNDS
Planning-18 FY: _____ FY: _____ FY: _____	_____ _____ _____	_____ _____ _____	_____ _____ _____	_____ _____ _____
Total Planning Cost				
Project Development & Environment (PD&E) - 28 FY: _____ FY: _____ FY: _____	_____ _____ _____	_____ _____ _____	_____ _____ _____	_____ _____ _____
Total PD&E Cost				
Design - 38 FY: _____ FY: _____ FY: _____	_____ _____ _____	_____ _____ _____	_____ _____ _____	_____ _____ _____
Total Design Cost				
Right-of-Way - 48 FY: _____ FY: _____ FY: _____	_____ _____ _____	_____ _____ _____	_____ _____ _____	_____ _____ _____
Total Right-of-Way Cost				
Construction-58 FY: 2016-2017 FY: _____ FY: _____ FY: _____	<u>\$361,390.00</u> _____ _____ _____	<u>\$11,390.00</u> _____ _____ _____	<u>\$0.00</u> _____ _____ _____	<u>\$350,000.00</u> _____ _____ _____
Total Construction Cost	\$361,390.00	\$11,390.00	\$0.00	\$350,000.00
Construction Engineering and Inspection (CEI) - 68 FY: 2016-2017 FY: _____ FY: _____	<u>\$30,940.00</u> _____ _____	<u>\$30,940.00</u> _____ _____	<u>\$0.00</u> _____ _____	<u>\$0.00</u> _____ _____
Total CEI Cost	\$30,940.00	\$30,940.00	\$0.00	\$0.00
Operations – 88 FY: _____ FY: _____ FY: _____	_____ _____ _____	_____ _____ _____	_____ _____ _____	_____ _____ _____
Total Operations Costs				
TOTAL COST OF THE PROJECT	\$392,330.00	\$42,330.00	\$0.00	\$350,000.00

The Department's fiscal year begins on July 1. For this project, funds are not projected to be available until after the 1st of July of each fiscal year. The Department will notify the Agency, in writing, when funds are available.

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EXHIBIT "C"

**FHWA FORM 1273
FEDERAL RESOURCES AWARDED PURSUANT TO THIS AGREEMENT ARE AS FOLLOWS:**

**LEGAL REQUIREMENTS AND RESPONSIBILITY TO THE PUBLIC –
COMPLIANCE WITH FHWA 1273.**

The FHWA-1273 version dated May 1, 2012 is appended in its entirety to this Exhibit. FHWA-1273 may also be referenced on the Department's website at the following URL address:

<http://www.fhwa.dot.gov/programadmin/contracts/1273/1273.pdf>

Sub-recipients of federal grants awards for Federal-Aid Highway construction shall take responsibility to obtain this information and comply with all provisions contained in FHWA-1273.

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Exhibit "E"
TITLE VI ASSURANCES

During the performance of this contract, the consultant or contractor, for itself, its assignees and successors in interest (hereinafter collectively referred to as the "contractor") agrees as follows:

- (1.) **Compliance with REGULATIONS:** The contractor shall comply with the Regulations relative to nondiscrimination in federally-assisted programs of the U.S. Department of Transportation (hereinafter, "USDOT") *Title 49, Code of Federal Regulations, Part 21*, as they may be amended from time to time, (hereinafter referred to as the **REGULATIONS**), which are herein incorporated by reference and made a part of this contract.
- (2.) **Nondiscrimination:** The Contractor, with regard to the work performed by it during the contract, shall not discriminate on the basis of race, color, national origin, or sex in the selection and retention of sub-contractors, including procurements of materials and leases of equipment. The contractor shall not participate either directly or indirectly in the discrimination prohibited by **Section 21.5** of the **REGULATIONS**, including employment practices when the contract covers a program set forth in **Appendix B** of the **REGULATIONS**.
- (3.) **Solicitations for Sub-contractors, including Procurements of Materials and Equipment:** In all solicitations either by competitive bidding or negotiation made by the contractor for work to be performed under sub-contract, including procurements of materials or leases of equipment, each potential sub-contractor or supplier shall be notified by the contractor of the contractor's obligations under this contract and the **REGULATIONS** relative to nondiscrimination on the basis of race, color, national origin, or sex.
- (4.) **Information and Reports:** The contractor shall provide all information and reports required by the **REGULATIONS** or directives issued pursuant thereto, and shall permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the *Florida Department of Transportation* or the *Federal Highway Administration, Federal Transit Administration, Federal Aviation Administration, and Federal Motor Carrier Safety Administration* to be pertinent to ascertain compliance with such **REGULATIONS**, orders and instructions. Where any information required of a contractor is in the exclusive possession of another who fails or refuses to furnish this information the contractor shall so certify to the *Florida Department of Transportation*, or the *Federal Highway Administration, Federal Transit Administration, Federal Aviation Administration, or Federal Motor Carrier Safety Administration* as appropriate, and shall set forth what efforts it has made to obtain the information.
- (5.) **Sanctions for Noncompliance:** In the event of the contractor's noncompliance with the nondiscrimination provisions of this contract, the Florida Department of Transportation shall impose such contract sanctions as it or the *Federal Highway Administration, Federal Transit Administration, Federal Aviation Administration*, or

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Federal Motor Carrier Safety Administration may determine to be appropriate, including, but not limited to:

- a. withholding of payments to the contractor under the contract until the contractor complies, and/or
- b. cancellation, termination or suspension of the contract, in whole or in part.

(6.) **Incorporation of Provisions:** The contractor shall include the provisions of paragraphs (1) through (7) in every sub-contract, including procurements of materials and leases of equipment, unless exempt by the **REGULATIONS**, or directives issued pursuant thereto. The contractor shall take such action with respect to any sub-contract or procurement as the *Florida Department of Transportation* or the *Federal Highway Administration, Federal Transit Administration, Federal Aviation Administration, or Federal Motor Carrier Safety Administration* may direct as a means of enforcing such provisions including sanctions for noncompliance, provided, however, that, in the event a contractor becomes involved in, or is threatened with, litigation with a sub-contractor or supplier as a result of such direction, the contractor may request the *Florida Department of Transportation* to enter into such litigation to protect the interests of the *Florida Department of Transportation*, and, in addition, the contractor may request the United States to enter into such litigation to protect the interests of the United States.

(7.) **Compliance with Nondiscrimination Statutes and Authorities:** Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d et seq., 78 stat. 252), (prohibits discrimination on the basis of race, color, national origin); and 49 CFR Part 21; The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, (42 U.S.C. § 4601), (prohibits unfair treatment of persons displaced or whose property has been acquired because of Federal or Federal-aid programs and projects); Federal-Aid Highway Act of 1973, (23 U.S.C. § 324 et seq.), (prohibits discrimination on the basis of sex); Section 504 of the Rehabilitation Act of 1973, (29 U.S.C. § 794 et seq.), as amended, (prohibits discrimination on the basis of disability); and 49 CFR Part 27; The Age Discrimination Act of 1975, as amended, (42 U.S.C. § 6101 et seq.), (prohibits discrimination on the basis of age); Airport and Airway Improvement Act of 1982, (49 USC § 471, Section 47123), as amended, (prohibits discrimination based on race, creed, color, national origin, or sex); The Civil Rights Restoration Act of 1987, (PL 100-209), (Broadened the scope, coverage and applicability of Title VI of the Civil Rights Act of 1964, The Age Discrimination Act of 1975 and Section 504 of the Rehabilitation Act of 1973, by expanding the definition of the terms "programs or activities" to include all of the programs or activities of the Federal-aid recipients, sub-recipients and contractors, whether such programs or activities are Federally funded or not); Titles II and III of the Americans with Disabilities Act, which prohibit discrimination on the basis of disability in the operation of public entities, public and private transportation systems, places of public accommodation, and certain testing entities (42 U.S.C. §§ 12131 – 12189) as implemented by Department of Transportation regulations at 49 C.F.R. parts 37 and 38; The Federal Aviation Administration's Non-discrimination statute (49 U.S.C. § 47123) (prohibits discrimination on the basis of race, color, national origin, and sex); Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, which ensures non-discrimination against minority populations by discouraging programs, policies, and activities with disproportionately high and adverse human health or environmental effects on minority and low-income populations; Executive Order 13166, Improving Access to Services for Persons with Limited English Proficiency, and resulting agency guidance, national origin discrimination includes discrimination because of limited English proficiency (LEP). To ensure compliance with Title VI, you must take reasonable steps to ensure that LEP persons have meaningful access to your programs (70 Fed. Reg. at 74087 to 74100); Title IX of the Education Amendments of 1972, as amended, which prohibits you from discriminating because of sex in education programs or activities (20 U.S.C. 1681 et seq.).

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EXHIBIT "F"

AGENCY RESOLUTION

The agency Resolution authorizing entry into this Agreement is attached and incorporated into this Agreement.

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EXHIBIT 1

FEDERAL FINANCIAL ASSISTANCE (SINGLE AUDIT ACT)

FEDERAL RESOURCES AWARDED PURSUANT TO THIS AGREEMENT ARE AS FOLLOWS:

CFDA No.: 20.205
CFDA Title: Highway Planning and Construction
Federal-Aid Highway Program, Federal Lands Highway Program
CFDA Program Site: <https://www.cfda.gov/>
Award Amount: \$350,000.00
Awarding Agency: Florida Department of Transportation
Award is for R&D: No
Indirect Cost Rate: N/A

FEDERAL RESOURCES AWARDED TO THE RECIPIENT PURSUANT TO THIS AGREEMENT CONSIST OF THE FOLLOWING:

2 CFR Part 200 – Uniform Administrative Requirements, Cost Principles & Audit Requirements for Federal Awards
<http://www.ecfr.gov/>

OMB Circular A-133, *Audits of States, Local Governments and Non-Profit Organizations*
http://www.whitehouse.gov/sites/default/files/omb/assets/a133/a133_revised_2007.pdf

OMB Circular A-133 Compliance Supplement 2014
http://www.whitehouse.gov/omb/circulars/a133_compliance_supplement_2014

FEDERAL RESOURCES AWARDED PURSUANT TO THIS AGREEMENT MAY ALSO BE SUBJECT TO THE FOLLOWING:

OMB Circular A-87 (Revised), *Cost Principles for State, Local and Indian Tribal Governments*
http://www.whitehouse.gov/omb/circulars_a087_2004/

OMB Circular A-102, *Grants and Cooperative Agreements with State and Local Governments*
http://www.whitehouse.gov/omb/circulars_a102/

Title 23 – Highways, United States Code
<http://uscode.house.gov/browse/prelim@title23&edition=prelim>

Title 49 – Transportation, United States Code
<http://uscode.house.gov/browse/prelim@title49&edition=prelim>

Map-21 – Moving Ahead for Progress in the 21st Century, Public Law 112-141
<http://www.gpo.gov/fdsys/pkg/PLAW-112publ141/pdf/PLAW-112publ141.pdf>

Federal Highway Administration – Florida Division
<http://www.fhwa.dot.gov/fldiv/>

Federal Funding Accountability and Transparency Act (FFATA) Sub-award Reporting System (FSRS)
<https://www.fsrs.gov/>

Exhibit "2"

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FPN: <u>435536-1-58-01</u>	Fund: <u>ACTU</u>	FLAIR Approp: <u>088717</u>
Federal No: <u>D517-017-B</u>	Org Code: <u>55054010508</u>	FLAIR Obj: <u>780000</u>
FPN: <u>435536-1-68-01</u>	Fund: <u>LF</u>	FLAIR Approp: _____
Federal No: _____	Org Code: _____	FLAIR Obj: _____
FPN: _____	Fund: _____	FLAIR Approp: _____
Federal No: _____	Org Code: _____	FLAIR Obj: _____
County No: <u>79</u>	Contract No: _____	Vendor No: <u>F596-000-412-003</u>
FDOT Data Universal Number System (DUNS) No: <u>80-939-7102</u> Local Agency DUNS No: <u>80-082-7082</u>		
Catalog of Federal Domestic Assistance (CFDA): <u>20.205 Highway Planning and Construction</u>		

THIS LOCAL AGENCY PROGRAM AGREEMENT ("Agreement"), is made and entered into this _____ day of _____, 2017 between the State of Florida, Department of Transportation, an agency of the State of Florida ("Department"), and the CITY OF PORT ORANGE, 1000 City Center Circle, Port Orange, FL 32129 ("Agency").

NOW, THEREFORE, in consideration of the mutual covenants, promises and representations in this Agreement, the parties agree as follows:

1. **Authority:** The Agency, by Resolution No. _____ dated the _____ day of _____, 2017, a copy of which is attached as Exhibit "F" and made a part of this Agreement, has authorized its officers to execute this Agreement on its behalf. The Department has the authority pursuant to Section 339.12, Florida Statutes, to enter into this Agreement.

2. **Purpose of Agreement:** The purpose of this Agreement is to provide for the Department's participation in the construction of the Victoria Gardens Sidewalk from Clyde Morris Boulevard to Appleview Way, as further described in Exhibit "A", Project Description and Responsibilities attached to and incorporated in this Agreement ("Project"), to provide Department financial assistance to the Agency, state the terms and conditions upon which Department funds will be provided, and to set forth the manner in which the Project will be undertaken and completed.

3. **Term of Agreement:** The Agency agrees to complete the Project on or before January 31, 2018. If the Agency does not complete the Project within this time period, this Agreement will expire on the last day of the scheduled completion as provided in this paragraph unless an extension of the time period is requested by the Agency and granted in writing by the Department prior to the expiration of this Agreement. Expiration of this Agreement will be considered termination of the Project. The cost of any work performed after the expiration date of this Agreement will not be reimbursed by the Department.

4. **Project Cost:**

A. The total cost of the Project is \$ \$369,215.00. This amount is based upon the schedule of funding in Exhibit "B", Schedule of Funding attached to and incorporated in this Agreement. The Agency agrees to bear all expenses in excess of the total cost of the Project and any deficits involved. The schedule of funding may be modified by mutual agreement as provided for in paragraph 5.I.

B. The Department agrees to participate in the Project cost up to the maximum amount of \$317,803.00 and as more fully described in Exhibit "B". This amount includes Federal-aid funds which are limited to the actual amount of Federal-aid participation.

C. Project costs eligible for Department participation will be allowed only from the date of this Agreement. It is understood that Department participation in eligible Project costs is subject to:

- i. Legislative approval of the Department's appropriation request in the work program year that the Project is scheduled to be committed;

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- ii. Availability of funds as stated in subparagraphs 5.L. and 5.M. of this Agreement;
- iii. Approval of all plans, specifications, contracts or other obligating documents and all other terms of this Agreement; and
- iv. Department approval of the Project scope and budget at the time appropriation authority becomes available.

5. Requisitions and Payments:

- A. The Agency shall provide quantifiable, measurable, and verifiable units of deliverables. Each deliverable must specify the required minimum level of service to be performed and the criteria for evaluating successful completion. The Project and the quantifiable, measurable, and verifiable units of deliverables are described more fully in Exhibit "A".
- B. Invoices shall be submitted by the Agency in detail sufficient for a proper pre-audit and post-audit based on the quantifiable, measurable and verifiable units of deliverables as established in Exhibit "A". Deliverables must be received and accepted in writing by the Department's Project Manager prior to payments.
- C. The Agency shall charge to the Project account all eligible costs of the Project except costs agreed to be borne by the Agency or its contractors and subcontractors. Costs in excess of the programmed funding or attributable to actions which have not received the required approval of the Department shall not be considered eligible costs. All costs charged to the Project, including any approved services contributed by the Agency or others, shall be supported by properly executed payrolls, time records, invoices, contracts or vouchers evidencing in proper detail the nature and propriety of the charges.
- D. Supporting documentation must establish that the deliverables were received and accepted in writing by the Agency and must also establish that the required minimum level of service to be performed based on the criteria for evaluating successful completion as specified in Exhibit "A" was met.
- E. Bills for travel expenses specifically authorized in this Agreement shall be submitted on the Department's Contractor Travel Form No. 300-000-06 and will be paid in accordance with Section 112.061, Florida Statutes and the most current version of the Disbursement Handbook for Employees and Managers.
- F. Payment shall be made only after receipt and approval of goods and services unless advance payments are authorized by the Chief Financial Officer of the State of Florida under Chapters 215 and 216, Florida Statutes. If the Department determines that the performance of the Agency is unsatisfactory, the Department shall notify the Agency of the deficiency to be corrected, which correction shall be made within a time-frame to be specified by the Department. The Agency shall, within five days after notice from the Department, provide the Department with a corrective action plan describing how the Agency will address all issues of contract non-performance, unacceptable performance, failure to meet the minimum performance levels, deliverable deficiencies, or contract non-compliance. If the corrective action plan is unacceptable to the Department, the Agency shall be assessed a non-performance retainage equivalent to 10% of the total invoice amount. The retainage shall be applied to the invoice for the then-current billing period. The retainage shall be withheld until the Agency resolves the deficiency. If the deficiency is subsequently resolved, the Agency may bill the Department for the retained amount during the next billing period. If the Agency is unable to resolve the deficiency, the funds retained may be forfeited at the end of the Agreement's term.
- G. Agencies providing goods and services to the Department should be aware of the following time frames. Inspection and approval of goods or services shall take no longer than 20 days from the Department's receipt of the invoice. The Department has 20 days to deliver a request for payment (voucher) to the Department of Financial Services. The 20 days are measured from the latter of the date the invoice is received or the goods or services are received, inspected, and approved.

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If a payment is not available within 40 days, a separate interest penalty at a rate as established pursuant to **Section 55.03(1), F.S.**, will be due and payable, in addition to the invoice amount, to the Agency. Interest penalties of less than one (1) dollar will not be enforced unless the Agency requests payment. Invoices that have to be returned to an Agency because of Agency preparation errors will result in a delay in the payment. The invoice payment requirements do not start until a properly completed invoice is provided to the Department.

A Vendor Ombudsman has been established within the Department of Financial Services. The duties of this individual include acting as an advocate for Agencies who may be experiencing problems in obtaining timely payment(s) from a state agency. The Vendor Ombudsman may be contacted at (850) 413-5516.

- H. Records of costs incurred under the terms of this Agreement shall be maintained and made available upon request to the Department at all times during the period of this Agreement and for five years after final payment is made. Copies of these documents and records shall be furnished to the Department upon request. Records of costs incurred include the Agency's general accounting records and the project records, together with supporting documents and records, of the contractor and all subcontractors performing work on the project, and all other records of the Contractor and subcontractors considered necessary by the Department for a proper audit of costs.
- I. Prior to the execution of this Agreement, a Project schedule of funding shall be prepared by the Agency and approved by the Department. The Agency shall maintain said schedule of funding, carry out the Project, and shall incur obligations against and make disbursements of Project funds only in conformity with the latest approved schedule of funding for the Project. The schedule of funding may be revised by execution of a Local Agency Program ("LAP") Supplemental Agreement between the Department and the Agency. The Agency acknowledges and agrees that funding for this project may be reduced upon determination of the agency's contract award amount. If revised, a copy of the Supplemental Agreement shall be forwarded to the Department's Comptroller. No increase or decrease shall be effective unless it complies with fund participation requirements of this Agreement and is approved by the Department's Comptroller.
- J. If, after Project completion, any claim is made by the Department resulting from an audit or for work or services performed pursuant to this Agreement, the Department may offset such amount from payments due for work or services done under any agreement which it has with the Agency owing such amount if, upon demand, payment of the amount is not made within 60 days to the Department. Offsetting any amount pursuant to this paragraph shall not be considered a breach of contract by the Department.
- K. The Agency must submit the final invoice on the Project to the Department within 120 days after the completion of the Project. Invoices submitted after the 120-day time period may not be paid.
- L. The Department's performance and obligation to pay under this Agreement is contingent upon an annual appropriation by the Legislature. If the Department's funding for this Project is in multiple fiscal years, funds approval from the Department's Comptroller must be received each fiscal year prior to costs being incurred. See Exhibit "B" for funding levels by fiscal year. Project costs utilizing these fiscal year funds are not eligible for reimbursement if incurred prior to funds approval being received. The Department will notify the Agency, in writing, when funds are available.
- M. In the event this Agreement is in excess of \$25,000 and has a term for a period of more than one year, the provisions of Section 339.135(6)(a), Florida Statutes, are hereby incorporated:

"The Department, during any fiscal year, shall not expend money, incur any liability, or enter into any contract which, by its terms, involves the expenditure of money in excess of the amounts budgeted as available for expenditure during such fiscal year. Any contract, verbal or written, made in violation of this subsection is null and void, and no money may be paid on such contract. The Department shall require a statement from the comptroller of the Department that funds are available prior to entering into any such contract or other binding commitment of funds. Nothing herein contained shall prevent the making of contracts for periods exceeding 1 year, but any contract so made shall be

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executory only for the value of the services to be rendered or agreed to be paid for in succeeding fiscal years, and this paragraph shall be incorporated verbatim in all contracts of the Department which are for an amount in excess of \$25,000 and which have a term for a period of more than 1 year."

6. Department Payment Obligations: Subject to other provisions of this Agreement, the Department will honor requests for reimbursement to the Agency pursuant to this Agreement. However, notwithstanding any other provision of this Agreement, the Department may elect by notice in writing not to make a payment if:

- A. The Agency shall have made misrepresentation of a material nature in its application, or any supplement or amendment to its application, or with respect to any document or data furnished with its application or pursuant to this Agreement;
- B. There is any pending litigation with respect to the performance by the Agency of any of its duties or obligations which may jeopardize or adversely affect the Project, the Agreement or payments to the Project;
- C. The Agency shall have taken any action pertaining to the Project which, under this Agreement, requires the approval of the Department or has made a related expenditure or incurred related obligations without having been advised by the Department that same are approved;
- D. There has been any violation of the conflict of interest provisions contained in paragraph 16.J.; or
- E. The Agency has been determined by the Department to be in default under any of the provisions of the Agreement.

The Department may suspend or terminate payment for that portion of the Project which the Federal Highway Administration ("FHWA"), or the Department acting in lieu of FHWA, may designate as ineligible for Federal-aid.

In determining the amount of the payment, the Department will exclude all Project costs incurred by the Agency prior to the Department's issuance of a Notice to Proceed ("NTP"), costs incurred after the expiration of the Agreement, costs which are not provided for in the latest approved schedule of funding in Exhibit "B" for the Project, costs agreed to be borne by the Agency or its contractors and subcontractors for not meeting the Project commencement and final invoice time lines, and costs attributable to goods or services received under a contract or other arrangements which have not been approved in writing by the Department.

7. General Requirements: The Agency shall complete the Project with all practical dispatch, in a sound, economical, and efficient manner, and in accordance with the provisions in this Agreement, and all applicable laws. The Project will be performed in accordance with all applicable Department procedures, guidelines, manuals, standards, and directives as described in the Department's Local Agency Program Manual, which by this reference is made a part of this Agreement. Time is of the essence as to each and every obligation under this Agreement.

- A. A full time employee of the Agency, qualified to ensure that the work being pursued is complete, accurate, and consistent with the terms, conditions, and specifications of this Agreement shall be in responsible charge of the Project, which employee should be able to perform the following duties and functions:
 - i. Administers inherently governmental project activities, including those dealing with cost, time, adherence to contract requirements, construction quality and scope of Federal-aid projects;
 - ii. Maintains familiarity of day to day Project operations, including Project safety issues;
 - iii. Makes or participates in decisions about changed conditions or scope changes that require change orders or supplemental agreements;
 - iv. Visits and reviews the Project on a frequency that is commensurate with the magnitude and complexity of the Project;

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- v. Reviews financial processes, transactions and documentation to ensure that safeguards are in place to minimize fraud, waste, and abuse;
 - vi. Directs Project staff, agency or consultant, to carry out Project administration and contract oversight, including proper documentation;
 - vii. Is aware of the qualifications, assignments and on-the-job performance of the Agency and consultant staff at all stages of the Project.
- B. Once the Department issues the NTP for the Project, the Agency shall be obligated to submit an invoice or other request for reimbursement to the Department on a quarterly basis, beginning from the day the NTP is issued. If the Agency fails to submit quarterly invoices to the Department, and in the event the failure to timely submit invoices to the Department results in the "FHWA" removing any unbilled funding or the loss of State appropriation authority (which may include the loss of state and federal funds, if there are state funds programmed to the Project), then the Agency will be solely responsible to provide all funds necessary to complete the Project and the Department will not be obligated to provide any additional funding for the Project. The Agency waives the right to contest such removal of funds by the Department, if the removal is related to FHWA's withdrawal of funds or if the removal is related to the loss of State appropriation authority. In addition to the loss of funding for the Project, the Department will also consider the de-certification of the Agency for future LAP Projects. No cost may be incurred under this Agreement until after the Agency has received a written NTP from the Department. The Agency agrees to advertise or put the Project out to bid thirty (30) days from the date the Department issues the NTP to advertise the Project. If the Agency is not able to meet the scheduled advertisement, the District LAP Administrator should be notified as soon as possible.
- C. If all funds are removed from the Project, including amounts previously billed to the Department and reimbursed to the Agency, and the Project is off the state highway system, then the Department will have to request repayment for the previously billed amounts from the Agency. No state funds can be used on off-system projects, unless authorized pursuant to Exhibit "G", State Funds Addendum, which will be attached to and incorporated in this Agreement in the event state funds are used on the Project.
- D. In the event that any election, referendum, approval, permit, notice or other proceeding or authorization is required under applicable law to enable the Agency to enter into this Agreement or to undertake the Project or to observe, assume or carry out any of the provisions of the Agreement, the Agency will initiate and consummate, as provided by law, all actions necessary with respect to any such matters.
- E. The Agency shall initiate and prosecute to completion all proceedings necessary, including Federal-aid requirements, to enable the Agency to provide the necessary funds for completion of the Project.
- F. The Agency shall submit to the Department such data, reports, records, contracts, and other documents relating to the Project as the Department and FHWA may require. The Agency shall use the Department's Local Agency Program Information Tool and applicable information systems as required.
- G. Federal-aid funds shall not participate in any cost which is not incurred in conformity with applicable federal and State laws, the regulations in 23 Code of Federal Regulations (C.F.R.) and 49 C.F.R., and policies and procedures prescribed by the Division Administrator of FHWA. Federal funds shall not be paid on account of any cost incurred prior to authorization by FHWA to the Department to proceed with the Project or part thereof involving such cost (23 C.F.R. 1.9 (a)). If FHWA or the Department determines that any amount claimed is not eligible, federal participation may be approved in the amount determined to be adequately supported and the Department shall notify the Agency in writing citing the reasons why items and amounts are not eligible for federal participation. Where correctable non-compliance with provisions of law or FHWA requirements exists. Federal funds may be withheld until compliance is obtained. Where non-compliance is not correctable, FHWA or the Department may deny participation in parcel or Project costs in part or in total. For any amounts determined to be ineligible for federal reimbursement for which the Department has advanced payment, the Agency shall promptly reimburse the Department for all such amounts within 90 days of written notice.

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- H. For any project requiring additional right-of-way, the Agency must submit to the Department an annual report of its real property acquisition and relocation assistance activities on the project. Activities shall be reported on a federal fiscal year basis, from October 1 through September 30. The report must be prepared using the format prescribed in 49 C.F.R. Part 24, Appendix B, and be submitted to the Department no later than October 15 of each year.

8. Audit Reports: The administration of resources awarded through the Department to the Agency by this Agreement may be subject to audits and/or monitoring by the Department. The following requirements do not limit the authority of the Department to conduct or arrange for the conduct of additional audits or evaluations of federal awards or limit the authority of any State agency inspector general, the State of Florida Auditor General or any other State official. The Agency shall comply with all audit and audit reporting requirements as specified below.

- A. In addition to reviews of audits conducted in accordance with OMB Circular A-133, for fiscal years beginning before December 26, 2014, and in accordance with 2 CFR Part 200, Subpart F – Audit Requirements, for fiscal years beginning on or after December 26, 2014, monitoring procedures may include but not be limited to on-site visits by Department staff and/or other procedures including, reviewing any required performance and financial reports, following up, ensuring corrective action, and issuing management decisions on weaknesses found through audits when those findings pertain to federal awards provided through the Department by this Agreement. By entering into this Agreement, the Agency agrees to comply and cooperate fully with any monitoring procedures/processes deemed appropriate by the Department. The Agency further agrees to comply and cooperate with any inspections, reviews, investigations, or audits deemed necessary by the Department, State of Florida Chief Financial Officer (CFO) or State of Florida Auditor General.
- B. The Agency, a non-federal entity as defined by OMB Circular A-133, for fiscal years beginning before December 26, 2014, and as defined by 2 CFR Part 200, Subpart F – Audit Requirements, for fiscal years beginning on or after December 26, 2014, as a subrecipient of a federal award awarded by the Department through this Agreement is subject to the following requirements:
- i. In the event the Agency expends a total amount of federal awards equal to or in excess of the threshold established by OMB Circular A-133, for fiscal years beginning before December 26, 2014, and established by 2 CFR Part 200, Subpart F – Audit Requirements, for fiscal years beginning on or after December 26, 2014, the Agency must have a federal single or program-specific audit for such fiscal year conducted in accordance with the provisions of OMB Circular A-133, for fiscal years beginning before December 26, 2014, and in accordance with the provisions of 2 CFR Part 200, Subpart F – Audit Requirements, for fiscal years beginning on or after December 26, 2014. **Exhibit "1", Federal Financial Assistance (Single Audit Act)** to this Agreement provides the required federal award identification information needed by the Agency to further comply with the requirements of OMB Circular A-133, for fiscal years beginning before December 26, 2014, and the requirements of 2 CFR Part 200, Subpart F – Audit Requirements, for fiscal years beginning on or after December 26, 2014. In determining federal awards expended in a fiscal year, the Agency must consider all sources of federal awards based on when the activity related to the federal award occurs, including the federal award provided through the Department by this Agreement. The determination of amounts of federal awards expended should be in accordance with the guidelines established by OMB Circular A-133, for fiscal years beginning before December 26, 2014, and established by 2 CFR Part 200, Subpart F – Audit Requirements, for fiscal years beginning on or after December 26, 2014. An audit conducted by the State of Florida Auditor General in accordance with the provisions of OMB Circular A-133, for fiscal years beginning before December 26, 2014, and in accordance with 2 CFR Part 200, Subpart F – Audit Requirements, for fiscal years beginning on or after December 26, 2014, will meet the requirements of this part.
 - ii. In connection with the audit requirements, the Agency shall fulfill the requirements relative to the auditee responsibilities as provided in OMB Circular A-133, for fiscal years beginning before December 26, 2014, and as provided in 2 CFR Part 200, Subpart F – Audit Requirements, for fiscal years beginning on or after December 26, 2014.

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- iii. In the event the Agency expends less than the threshold established by OMB Circular A-133, for fiscal years beginning before December 26, 2014, and established by 2 CFR Part 200, Subpart F – Audit Requirements, for fiscal years beginning on or after December 26, 2014, in federal awards, the Agency is exempt from federal audit requirements for that fiscal year. However, the Agency must provide a single audit exemption statement to the Department at FDOTSingleAudit@dot.state.fl.us no later than nine months after the end of the Agency's audit period for each applicable audit year. In the event the Agency expends less than the threshold established by OMB Circular A-133, for fiscal years beginning before December 26, 2014, and established by 2 CFR Part 200, Subpart F – Audit Requirements, for fiscal years beginning on or after December 26, 2014, in federal awards in a fiscal year and elects to have an audit conducted in accordance with the provisions of OMB Circular A-133, for fiscal years beginning before December 26, 2014, and in accordance with 2 CFR Part 200, Subpart F – Audit Requirements, for fiscal years beginning on or after December 26, 2014, the cost of the audit must be paid from non-federal resources (*i.e.*, the cost of such an audit must be paid from the Agency's resources obtained from other than federal entities).
- iv. The Agency must electronically submit to the Federal Audit Clearinghouse (FAC) at <https://harvester.census.gov/facweb/> the audit reporting package as required by OMB Circular A-133, for fiscal years beginning before December 26, 2014, and as required by 2 CFR Part 200, Subpart F – Audit Requirements, for fiscal years beginning on or after December 26, 2014, within the earlier of 30 calendar days after receipt of the auditor's report(s) or nine months after the end of the audit period. The FAC is the repository of record for audits required by OMB Circular A-133, for fiscal years beginning before December 26, 2014, and for audits required by 2 CFR Part 200, Subpart F – Audit Requirements, for fiscal years beginning on or after December 26, 2014, and this Agreement. However, the Department requires a copy of the audit reporting package also be submitted to FDOTSingleAudit@dot.state.fl.us within the earlier of 30 calendar days after receipt of the auditor's report(s) or nine months after the end of the audit period as required by OMB Circular A-133, for fiscal years beginning before December 26, 2014, and as required by 2 CFR Part 200, Subpart F – Audit Requirements, for fiscal years beginning on or after December 26, 2014.
- v. Within six months of acceptance of the audit report by the FAC, the Department will review the Agency's audit reporting package, including corrective action plans and management letters, to the extent necessary to determine whether timely and appropriate action on all deficiencies has been taken pertaining to the federal award provided through the Department by this Agreement. If the Agency fails to have an audit conducted in accordance with OMB Circular A-133, for fiscal years beginning before December 26, 2014, and in accordance with 2 CFR Part 200, Subpart F – Audit Requirements, for fiscal years beginning on or after December 26, 2014, the Department may impose additional conditions to remedy noncompliance. If the Department determines that noncompliance cannot be remedied by imposing additional conditions, the Department may take appropriate actions to enforce compliance, which actions may include but not be limited to the following:
 - 1. Temporarily withhold cash payments pending correction of the deficiency by the Agency or more severe enforcement action by the Department;
 - 2. Disallow (deny both use of funds and any applicable matching credit for) all or part of the cost of the activity or action not in compliance;
 - 3. Wholly or partly suspend or terminate the federal award;
 - 4. Initiate suspension or debarment proceedings as authorized under 2 C.F.R. Part 180 and federal awarding agency regulations (or in the case of the Department, recommend such a proceeding be initiated by the federal awarding agency);
 - 5. Withhold further federal awards for the Project or program;
 - 6. Take other remedies that may be legally available.
- vi. As a condition of receiving this federal award, the Agency shall permit the Department, or its designee, the CFO or State of Florida Auditor General access to Agency's records including

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financial statements, the independent auditor's working papers and project records as necessary. Records related to unresolved audit findings, appeals or litigation shall be retained until the action is complete or the dispute is resolved.

vii. The Department's contact information for requirements under this part is as follows:

Office of Comptroller, MS 24
605 Suwannee Street
Tallahassee, Florida 32399-0450
FDOTSingleAudit@dot.state.fl.us

C. The Agency shall retain sufficient records demonstrating its compliance with the terms of this Agreement for a period of five years from the date the audit report is issued and shall allow the Department, or its designee, the CFO or State of Florida Auditor General access to such records upon request. The Agency shall ensure that the audit working papers are made available to the Department, or its designee, the CFO, or State of Florida Auditor General upon request for a period of five years from the date the audit report is issued unless extended in writing by the Department.

9. Termination or Suspension of Project: The Department may, by written notice to the Agency, suspend any or all of the Agency's obligations under this Agreement until such time as the event or condition resulting in such suspension has ceased or been corrected or the Department may terminate this Agreement in whole or in part at any time the interest of the Department requires such termination.

- A. If the Department determines that the performance of the Agency is not satisfactory, the Department shall notify the Agency of the deficiency in writing with a requirement that the deficiency be corrected within thirty (30) days of such notice. Such notice shall provide reasonable specificity to the Agency of the deficiency that requires correction. If the deficiency is not corrected within such time period, the Department may either (1) immediately terminate the Agreement as set forth in paragraph 9.B. below, or (2) take whatever action is deemed appropriate by the Department to correct the deficiency. In the event the Department chooses to take action and not terminate the Agreement, the Agency shall, upon demand, promptly reimburse the Department for any and all costs and expenses incurred by the Department in correcting the deficiency.
- B. If the Department terminates the Agreement, the Department shall notify the Agency of such termination in writing, with instructions to the effective date of termination or specify the stage of work at which the Agreement is to be terminated.
- C. If the Agreement is terminated before the Project is completed, the Agency shall be paid only for the percentage of the Project satisfactorily performed for which costs can be substantiated. Such payment, however, shall not exceed the equivalent percentage of the contract price. All work in progress on Department right-of-way will become the property of the Department and will be turned over promptly by the Agency.
- D. The Department reserves the right to unilaterally cancel this Agreement for refusal by the Agency or any contractor, sub-contractor or materials vendor to allow public access to all documents, papers, letters or other material subject to the provisions of Chapter 119, Florida Statutes, and made or received in conjunction with this Agreement unless the records are exempt.
- E. Upon receipt of any final termination or suspension notice under this paragraph 9., the Agency shall proceed promptly to carry out the actions required in such notice, which may include any or all of the following: (a) necessary action to terminate or suspend, as the case may be, Project activities and contracts and such other action as may be required or desirable to keep to a minimum the costs upon the basis of which the financing is to be computed; or (b) furnish a statement of the Project activities and contracts and other undertakings the cost of which are otherwise includable as Project costs. The termination or suspension shall be carried out in conformity with the latest schedule, plan, and cost as approved by the Department or upon the basis of terms and conditions imposed by the Department upon

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the failure of the Agency to furnish the schedule, plan, and estimate within a reasonable time. The closing out of federal financial participation in the Project shall not constitute a waiver of any claim which the Department may otherwise have arising out of this Agreement.

10. Contracts of the Agency:

- A. Except as otherwise authorized in writing by the Department, the Agency shall not execute any contract or obligate itself in any manner requiring the disbursement of Department funds, including consultant or construction contracts or amendments thereto, with any third party with respect to the Project without the written approval of the Department. Failure to obtain such approval shall be sufficient cause for nonpayment by the Department. The Department specifically reserves the right to review the qualifications of any consultant or contractor and to approve or disapprove the employment of such consultant or contractor.
- B. It is understood and agreed by the parties to this Agreement that participation by the Department in a project with the Agency, where said project involves a consultant contract for engineering, architecture or surveying services, is contingent on the Agency's complying in full with provisions of Section 287.055, Florida Statutes, Consultants' Competitive Negotiation Act, the federal Brooks Act, 23 C.F.R. 172, and 23 U.S.C. 112. At the discretion of the Department, the Agency will involve the Department in the consultant selection process for all projects funded under this Agreement. In all cases, the Agency shall certify to the Department that selection has been accomplished in compliance with the Consultants' Competitive Negotiation Act and the federal Brooks Act.
- C. The Agency shall comply with, and require its consultants and contractors to comply with applicable federal law pertaining to the use of Federal-aid funds. The Agency shall comply with the provisions in the FHWA-1273 form as set forth in Exhibit "C", FHWA 1273 attached to and incorporated in this Agreement. The Agency shall include FHWA-1273 in all contracts with consultants and contractors performing work on the Project.

11. Disadvantaged Business Enterprise (DBE) Policy and Obligation: It is the policy of the Department that DBE's, as defined in 49 C.F.R. Part 26, as amended, shall have the opportunity to participate in the performance of contracts financed in whole or in part with Department funds under this Agreement. The DBE requirements of applicable federal and state laws and regulations apply to this Agreement.

The Agency and its contractors agree to ensure that DBE's have the opportunity to participate in the performance of this Agreement. In this regard, all recipients and contractors shall take all necessary and reasonable steps in accordance with applicable federal and state laws and regulations to ensure that the DBE's have the opportunity to compete for and perform contracts. The Agency and its contractors and subcontractors shall not discriminate on the basis of race, color, national origin or sex in the award and performance of contracts, entered pursuant to this Agreement.

12. Compliance with Conditions and Laws: The Agency shall comply and require its contractors and subcontractors to comply with all terms and conditions of this Agreement and all federal, state, and local laws and regulations applicable to this Project. Execution of this Agreement constitutes a certification that the Agency is in compliance with, and will require its contractors and subcontractors to comply with, all requirements imposed by applicable federal, state, and local laws and regulations, including the "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion – Lower Tier Covered Transactions," in 49 C.F.R. Part 29, and 2 C.F.R. Part 200 when applicable.

13. Performance Evaluations: Agencies are evaluated on a project-by-project basis. The evaluations provide information about oversight needs and provide input for the recertification process. Evaluations are submitted to the Agency's person in responsible charge or designee as part of the Project closeout process. The Department provides the evaluation to the Agency no more than 30 days after final acceptance.

- A. Each evaluation will result in one of three ratings. A rating of Unsatisfactory Performance means the Agency failed to develop the Project in accordance with applicable federal and state regulations, standards and procedures, required excessive District involvement/oversight, or the Project was brought in-house by the Department. A rating of Satisfactory Performance means the Agency developed the

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Project in accordance with applicable federal and state regulations, standards and procedures, with minimal District involvement/oversight. A rating of Above Satisfactory Performance means the Agency developed the Project in accordance with applicable federal and state regulations, standards and procedures, without District involvement/oversight.

- B. The District will determine which functions can be further delegated to Agencies that continuously earn Satisfactory and Above Satisfactory evaluations.

14. Restrictions, Prohibitions, Controls, and Labor Provisions: During the performance of this Agreement, the Agency agrees as follows, and agrees to require its contractors and subcontractors to include in each subcontract the following provisions:

- A. The Agency will comply with all the requirements imposed by Title VI of the Civil Rights Act of 1964, the regulations of the U.S. Department of Transportation issued thereunder, and the assurance by the Agency pursuant thereto. The Agency shall include the attached Exhibit "E", Title VI Assurances in all contracts with consultants and contractors performing work on the Project that ensure compliance with Title VI of the Civil Rights Act of 1964, 49 C.F.R. Part 21, and related statutes and regulations.
- B. The Agency will comply with all the requirements as imposed by the ADA, the regulations of the Federal government issued thereunder, and assurance by the Agency pursuant thereto.
- C. A person or affiliate who has been placed on the convicted vendor list following a conviction for a public entity crime may not submit a bid on a contract to provide any goods or services to a public entity; may not submit a bid on a contract with a public entity for the construction or repair of a public building or public work; may not submit bids on leases of real property to a public entity; may not be awarded or perform work as a contractor, supplier, subcontractor or consultant under a contract with any public entity; and may not transact business with any public entity in excess of the threshold amount provided in Section 287.017, Florida Statutes, for CATEGORY TWO for a period of 36 months from the date of being placed on the convicted vendor list.
- D. In accordance with Section 287.134, Florida Statutes, an entity or affiliate who has been placed on the Discriminatory Vendor List, kept by the Florida Department of Management Services, may not submit a bid on a contract to provide goods or services to a public entity; may not submit a bid on a contract with a public entity for the construction or repair of a public building or public work; may not submit bids on leases of real property to a public entity; may not be awarded or perform work as a contractor, supplier, subcontractor or consultant under a contract with any public entity; and may not transact business with any public entity.
- E. An entity or affiliate who has had its Certificate of Qualification suspended, revoked, denied or have further been determined by the Department to be a non-responsible contractor may not submit a bid or perform work for the construction or repair of a public building or public work on a contract with the Agency.
- F. Neither the Agency nor any of its contractors or their subcontractors shall enter into any contract, subcontract or arrangement in connection with the Project or any property included or planned to be included in the Project in which any member, officer or employee of the Agency or the locality during tenure or for 2 years thereafter has any interest, direct or indirect. If any such present or former member, officer or employee involuntarily acquires or had acquired prior to the beginning of tenure any such interest, and if such interest is immediately disclosed to the Agency, the Agency, with prior approval of the Department, may waive the prohibition contained in this paragraph provided that any such present member, officer or employee shall not participate in any action by the Agency or the locality relating to such contract, subcontract or arrangement. The Agency shall insert in all contracts entered into in connection with the Project or any property included or planned to be included in any Project, and shall require its contractors to insert in each of their subcontracts, the following provision:

"No member, officer or employee of the Agency or of the locality during his tenure or for 2 years thereafter shall have any interest, direct or indirect, in this contract or the proceeds thereof."

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The provisions of this paragraph shall not be applicable to any agreement between the Agency and its fiscal depositories or to any agreement for utility services the rates for which are fixed or controlled by a governmental agency.

- G. No member or delegate to the Congress of the United States shall be admitted to any share or part of this Agreement or any benefit arising therefrom.

15. Indemnification and Insurance:

- A. It is specifically agreed between the parties executing this Agreement that it is not intended by any of the provisions of any part of this Agreement to create in the public or any member thereof, a third party beneficiary under this Agreement, or to authorize anyone not a party to this Agreement to maintain a suit for personal injuries or property damage pursuant to the terms or provisions of this Agreement. The Agency guarantees the payment of all just claims for materials, supplies, tools, or labor and other just claims against the Agency or any subcontractor, in connection with this Agreement. Additionally, the Agency agrees to include the following indemnification in all contracts with contractors/subcontractors, or consultants/subconsultants who perform work in connection with this Agreement:

"To the fullest extent permitted by law, the Agency's contractor shall indemnify and hold harmless the Agency, the State of Florida, Department of Transportation, 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 intentional wrongful misconduct of the contractor and persons employed or utilized by the contractor in the performance of this Contract."

This indemnification shall survive the termination of this Contract. Nothing contained in this paragraph is intended to nor shall it constitute a waiver of the State of Florida and the Agency's sovereign immunity.

To the fullest extent permitted by law, the Agency's consultant shall indemnify and hold harmless the Agency, the State of Florida, Department of Transportation, 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 intentional wrongful misconduct of the consultant and persons employed or utilized by the consultant in the performance of this Contract.

This indemnification shall survive the termination of this Contract. Nothing contained in this paragraph is intended to nor shall it constitute a waiver of the State of Florida and the Agency's sovereign immunity."

- B. The Agency shall, or cause its contractor or consultant to carry and keep in force, during the term of this Agreement, a general liability insurance policy or policies with a company or companies authorized to do business in Florida, affording public liability insurance with combined bodily injury limits of at least \$200,000 per person and \$300,000 each occurrence, and property damage insurance of at least \$200,000 each occurrence, for the services to be rendered in accordance with this Agreement. The Agency shall also, or cause its contractor or consultant to carry and keep in force Workers' Compensation Insurance as required by the State of Florida under the Workers' Compensation Law. With respect to any general liability insurance policy required pursuant to this Agreement, all such policies shall be issued by companies licensed to do business in the State of Florida. The Agency shall provide to the Department certificates showing the required coverage to be in effect with endorsements showing the Department to be an additional insured prior to commencing any work under this Agreement. Policies that include Self Insured Retention will not be accepted. The certificates and policies shall provide that in the event of any material change in or cancellation of the policies reflecting the required coverage, thirty days advance notice shall be given to the Department or as provided in accordance with Florida law.

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16. Miscellaneous Provisions:

- A. The Agency will be solely responsible for compliance with all applicable environmental regulations, for any liability arising from non-compliance with these regulations, and will reimburse the Department for any loss incurred in connection therewith. The Agency will be responsible for securing any applicable permits. The Agency shall include in all contracts and subcontracts for amounts in excess of \$150,000, a provision requiring compliance with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401-7671q) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251-1387).
- B. The Department shall not be obligated or liable hereunder to any individual or entity not a party to this Agreement.
- C. In no event shall the making by the Department of any payment to the Agency constitute or be construed as a waiver by the Department of any breach of covenant or any default which may then exist on the part of the Agency and the making of such payment by the Department, while any such breach or default shall exist, shall in no way impair or prejudice any right or remedy available to the Department with respect to such breach or default.
- D. If any provision of this Agreement is held invalid, the remainder of this Agreement shall not be affected. In such an instance, the remainder would then continue to conform to the terms and requirements of applicable law.
- E. By execution of the Agreement, the Agency represents that it has not paid and, also agrees not to pay, any bonus or commission for the purpose of obtaining an approval of its application for the financing hereunder.
- F. Nothing in the Agreement shall require the Agency to observe or enforce compliance with any provision or perform any act or do any other thing in contravention of any applicable state law. If any of the provisions of the Agreement violate any applicable state law, the Agency will at once notify the Department in writing in order that appropriate changes and modifications may be made by the Department and the Agency to the end that the Agency may proceed as soon as possible with the Project.
- G. In the event that this Agreement involves constructing and equipping of facilities, the Agency shall submit to the Department for approval all appropriate plans and specifications covering the Project. The Department will review all plans and specifications and will issue to the Agency a written approval with any approved portions of the Project and comments or recommendations covering any remainder of the Project deemed appropriate. After resolution of these comments and recommendations to the Department's satisfaction, the Department will issue to the Agency a written approval with said remainder of the Project. Failure to obtain this written approval shall be sufficient cause of nonpayment by the Department.
- H. Upon completion of right-of-way activities on the Project, the Agency must certify compliance with all applicable federal and state requirements. Certification is required prior to authorization for advertisement for or solicitation of bids for construction of the Project, including if no right-of-way is required.
- I. The Agency will certify in writing, prior to Project closeout that the Project was completed in accordance with applicable plans and specifications, is in place on the Agency's facility, adequate title is in the Agency's name, and the Project is accepted by the Agency as suitable for the intended purpose.
- J. The Agency agrees that no federally-appropriated funds have been paid, or will be paid by or on behalf of the Agency, to any person for influencing or attempting to influence any officer or employee of any federal agency, a Member of Congress, an officer or employee of Congress or an employee of a Member of Congress in connection with the awarding of any federal contract, the making of any federal grant, the making of any federal loan, the entering into of any cooperative agreement, and the extension,

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continuation, renewal, amendment or modification of any federal contract, grant, loan or cooperative agreement. If any funds other than federally-appropriated funds have been paid by the Agency to any person for influencing or attempting to influence an officer or employee of any federal agency, a Member of Congress, an officer or employee of Congress or an employee of a Member of Congress in connection with this Agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions. The Agency shall require that the language of this paragraph be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly. No funds received pursuant to this contract may be expended for lobbying the Legislature, the judicial branch or a state agency.

- K.** The Agency may not permit the Engineer of Record to perform Construction, Engineering and Inspection services on the Project.
- L.** The Agency agrees to maintain any project not on the State Highway System constructed under this Agreement. If the Agency constructs any improvement on Department right-of-way, the Agency ☒ will ☐ will not maintain the improvements made for their useful life.
- M.** The Agency shall comply with all applicable federal guidelines, procedures, and regulations. If at any time a review conducted by Department and or FHWA reveals that the applicable federal guidelines, procedures, and regulations were not followed by the Agency and FHWA requires reimbursement of the funds, the Agency will be responsible for repayment to the Department of all funds awarded under the terms of this Agreement.
- N.** The Agency:
- i. shall utilize the U.S. Department of Homeland Security's E-Verify system to verify the employment eligibility of all new employees hired by Agency during the term of the contract; and
 - ii. shall expressly require any contractor and subcontractors performing work or providing services pursuant to the state contract to likewise utilize the U.S. Department of Homeland Security's E-Verify system to verify the employment eligibility of all new employees hired by the subcontractor during the contract term.
- O.** This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which shall constitute the same Agreement. A facsimile or electronic transmission of this Agreement with a signature on behalf of a party will be legal and binding on such party.
- P.** The Parties agree to comply with s.20.055(5), Florida Statutes, and to incorporate in all subcontracts the obligation to comply with s.20.055(5), Florida Statutes.
- Q.** If the Project is procured pursuant to Chapter 255 for construction services and at the time of the competitive solicitation for the Project 50 percent or more of the cost of the Project is to be paid from state-appropriated funds, then the Agency must comply with the requirements of Section 255.0991, Florida Statutes.
- R. Exhibits**
- i. Exhibit "A", Project Description and Responsibilities, is attached and incorporated into this Agreement.
 - ii. Exhibit "B", Schedule of Funding, is attached and incorporated into this Agreement.
 - iii. ☒ If this Project includes Phase 58 (construction) activities, then Exhibit "C", FHWA FORM 1273, is attached and incorporated into this Agreement.

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- iv. ☐ An Alternative Pay Method is used on this Project. If an alternative Pay Method is used on this Project, then Exhibit "D", Alternative Pay Method, is attached and incorporated into this Agreement.
- v. Exhibit "E", Title VI Assurances is attached and incorporated into this Agreement.
- vi. Exhibit "F", the Agency Resolution authorizing entry into this Agreement, is attached and incorporated into this Agreement.
- vii. ☐ State Funds are used on this Project. If State Funds are used on this Project, then Exhibit "G", State Funds Addendum, is attached and incorporated into this Agreement.
- viii. ☐ This Project is located off the State Highway System and includes funding for landscaping. If this Project is located off the State Highway System and includes funding for landscaping, then Exhibit "L" is attached and incorporated into this Agreement.
- ix. ☐ This Project utilizes Advance Project Reimbursement. If this Project utilizes Advance Project Reimbursement, then Exhibit "R" is attached and incorporated into this Agreement.
- x. ☐ This Project includes funding for a roadway lighting system. If the Project includes funding for roadway lighting system, Exhibit "RL" is attached and incorporated into this Agreement.
- xi. ☐ This Project includes funding for traffic signals and/or traffic signal systems. If this Project includes funding for traffic signals and/or traffic signals systems, Exhibit "T" is attached and incorporated into this Agreement.
- xii. Exhibit "1", Federal Financial Assistance (Single Audit Act) is attached and incorporated into this Agreement.
- xiii. ☐ State Funds are used on this Project. If State Funds are used on this Project, then Exhibit "2", State Financial Assistance (Florida Single Audit Act), is attached and incorporated into this Agreement.

The remainder of this page intentionally left blank.

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IN WITNESS WHEREOF, the parties have executed this Agreement on the day and year written above.

AGENCY CITY OF PORT ORANGE

STATE OF FLORIDA, DEPARTMENT OF TRANSPORTATION

By: _____
Name:
Title:

By: _____
Name:
Title: Director of Transportation Development

Attest: _____
Title:

Legal Review:

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EXHIBIT "A"

PROJECT DESCRIPTION AND RESPONSIBILITIES

FPN: 435536-1-58/68-01

This exhibit forms an integral part of the Local Agency Program Agreement between the State of Florida, Department of Transportation and

the City of Port Orange, 1000 City Center Circle, Port Orange, FL 32129

PROJECT LOCATION:

☐ The project is on the National Highway System.

☐ The project is on the State Highway System.

PROJECT LENGTH AND MILE POST LIMITS: ~0.32 miles; from Clyde Morris Boulevard to Appleview Way

PROJECT DESCRIPTION:

Victoria Gardens Sidewalk is located in City of Port Orange. The project includes installation of 4-inch thick, 8-foot wide concrete sidewalk with a thickened edge. The sidewalk will be placed along the south and east sides of Victoria Gardens Blvd. from Clyde Morris Boulevard to connect to an existing sidewalk at Appleview Way in order to complete a loop to SR 421. Project elements include ADA compliant sidewalk, curb ramps, Miami curb replacement to provide compliant counter slopes at Appleview Way, detectable warning surfaces, stabilized shoulder, fire hydrant adjustment, signage, and thermoplastic striping to include special emphasis crosswalks. A sign with a flashing beacon is being replaced which will include installation of new conduit and cables. In addition, mobilization, maintenance of traffic (MOT), clearing and grubbing, swale fine grading, erosion control, and sodding are also included as part of this project.

All sidewalk construction includes fiberglass reinforcement, 3,000 psi strength concrete, and a thickened edge. Fiberglass reinforcement, concrete strength exceeding 2,500 psi, and a thickened edge are considered upgrades for sidewalks. The City will be reimbursed for the basic 2,500 psi concrete, while the upgrades would be paid through local funds.

SPECIAL CONSIDERATIONS BY AGENCY:

The audit report(s) required in the Agreement shall include a Schedule of Project Assistance that will reflect the Department's contract number, the Financial Project Number (FPN), the Federal Authorization Number (FAN), where applicable, the amount of state funding action (receipt and disbursement of funds), any federal or local funding action, and the funding action from any other source with respect to the project.

Invoices shall be submitted on a quarterly basis and progress reports shall be submitted as requested to:

Vince Vacchiano, Construction Manager
Florida Department of Transportation
719 South Woodland Boulevard, MS 3-506
DeLand, Florida 32720

The Agency shall commence the project's activities subsequent to the execution of this Agreement and shall perform in accordance with the following schedule:

- a) Study to be completed by N/A.
- b) Design to be completed by N/A.

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EXHIBIT "A"

PROJECT DESCRIPTION AND RESPONSIBILITIES

- c) Right-of-Way requirements identified and provided to the Department by N/A.
- d) Right-of-Way to be certified by N/A.
- e) Construction contract to be let by April 24, 2017.
- f) Construction to be completed by September 12, 2017.

If this schedule cannot be met, the Agency will notify the Department in writing with a revised schedule or the project is subject to the withdrawal of federal funding.

SPECIAL CONSIDERATIONS BY DEPARTMENT:

The project funding may be reduced to an amount equal to the award amount and/or the actual contract costs.

Invoice payments will be made on a pro-rata basis as a percentage of the federal funding amount compared to the actual award amount. The City is locally funding concrete upgrades and CEI Services. The combined local funding meets and exceeds the River-to-Sea TPO match requirement. No further pro-ration for match purposes is required.

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EXHIBIT "B"

SCHEDULE OF FUNDING

AGENCY NAME & BILLING ADDRESS City of Port Orange 1000 City Center Circle Port Orange, FL 32129	FPN: 435536-1-58/68-01
---	-------------------------------

TYPE OF WORK By Fiscal Year	FUNDING			
	(1) TOTAL PROJECT FUNDS	(2) LOCAL FUNDS	(3) STATE FUNDS	(4) FEDERAL FUNDS
Planning-18 FY: _____	_____	_____	_____	_____
FY: _____	_____	_____	_____	_____
FY: _____	_____	_____	_____	_____
Total Planning Cost				
Project Development & Environment (PD&E) - 28				
FY: _____	_____	_____	_____	_____
FY: _____	_____	_____	_____	_____
FY: _____	_____	_____	_____	_____
Total PD&E Cost				
Design - 38 FY: _____	_____	_____	_____	_____
FY: _____	_____	_____	_____	_____
FY: _____	_____	_____	_____	_____
Total Design Cost				
Right-of-Way - 48 FY: _____	_____	_____	_____	_____
FY: _____	_____	_____	_____	_____
FY: _____	_____	_____	_____	_____
Total Right-of-Way Cost				
Construction-58 FY: 2016-2017	<u>\$338,275.00</u>	<u>\$20,472 .00</u>	<u>\$0.00</u>	<u>\$317,803.00</u>
FY: _____	_____	_____	_____	_____
FY: _____	_____	_____	_____	_____
FY: _____	_____	_____	_____	_____
Total Construction Cost	<u>\$338,275.00</u>	<u>\$20,472 .00</u>	<u>\$0.00</u>	<u>\$317,803.00</u>
Construction Engineering and Inspection (CEI) - 68				
FY: 2016-2017	<u>\$30,940.00</u>	<u>\$30,940.00</u>	<u>\$0.00</u>	<u>\$0.00</u>
FY: _____	_____	_____	_____	_____
FY: _____	_____	_____	_____	_____
Total CEI Cost	<u>\$30,940.00</u>	<u>\$30,940.00</u>	<u>\$0.00</u>	<u>\$0.00</u>
Operations – 88				
FY: _____	_____	_____	_____	_____
FY: _____	_____	_____	_____	_____
FY: _____	_____	_____	_____	_____
Total Operations Costs				
TOTAL COST OF THE PROJECT	\$369,215.00	\$51,412.00	\$0.00	\$317,803.00

The Department's fiscal year begins on July 1. For this project, funds are not projected to be available until after the 1st of July of each fiscal year. The Department will notify the Agency, in writing, when funds are available.

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EXHIBIT "C"

**FHWA FORM 1273
FEDERAL RESOURCES AWARDED PURSUANT TO THIS AGREEMENT ARE AS FOLLOWS:**

**LEGAL REQUIREMENTS AND RESPONSIBILITY TO THE PUBLIC –
COMPLIANCE WITH FHWA 1273.**

The FHWA-1273 version dated May 1, 2012 is appended in its entirety to this Exhibit. FHWA-1273 may also be referenced on the Department's website at the following URL address:
<http://www.fhwa.dot.gov/programadmin/contracts/1273/1273.pdf>

Sub-recipients of federal grants awards for Federal-Aid Highway construction shall take responsibility to obtain this information and comply with all provisions contained in FHWA-1273.

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Exhibit "E"
TITLE VI ASSURANCES

During the performance of this contract, the consultant or contractor, for itself, its assignees and successors in interest (hereinafter collectively referred to as the "contractor") agrees as follows:

- (1.) **Compliance with REGULATIONS:** The contractor shall comply with the Regulations relative to nondiscrimination in federally-assisted programs of the U.S. Department of Transportation (hereinafter, "USDOT") *Title 49, Code of Federal Regulations, Part 21*, as they may be amended from time to time, (hereinafter referred to as the **REGULATIONS**), which are herein incorporated by reference and made a part of this contract.
- (2.) **Nondiscrimination:** The Contractor, with regard to the work performed by it during the contract, shall not discriminate on the basis of race, color, national origin, or sex in the selection and retention of sub-contractors, including procurements of materials and leases of equipment. The contractor shall not participate either directly or indirectly in the discrimination prohibited by **Section 21.5** of the **REGULATIONS**, including employment practices when the contract covers a program set forth in **Appendix B** of the **REGULATIONS**.
- (3.) **Solicitations for Sub-contractors, including Procurements of Materials and Equipment:** In all solicitations either by competitive bidding or negotiation made by the contractor for work to be performed under sub-contract, including procurements of materials or leases of equipment, each potential sub-contractor or supplier shall be notified by the contractor of the contractor's obligations under this contract and the **REGULATIONS** relative to nondiscrimination on the basis of race, color, national origin, or sex.
- (4.) **Information and Reports:** The contractor shall provide all information and reports required by the **REGULATIONS** or directives issued pursuant thereto, and shall permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the *Florida Department of Transportation* or the *Federal Highway Administration, Federal Transit Administration, Federal Aviation Administration, and Federal Motor Carrier Safety Administration* to be pertinent to ascertain compliance with such **REGULATIONS**, orders and instructions. Where any information required of a contractor is in the exclusive possession of another who fails or refuses to furnish this information the contractor shall so certify to the *Florida Department of Transportation*, or the *Federal Highway Administration, Federal Transit Administration, Federal Aviation Administration, or Federal Motor Carrier Safety Administration* as appropriate, and shall set forth what efforts it has made to obtain the information.
- (5.) **Sanctions for Noncompliance:** In the event of the contractor's noncompliance with the nondiscrimination provisions of this contract, the Florida Department of Transportation shall impose such contract sanctions as it or the Federal Highway Administration, Federal Transit Administration, Federal Aviation Administration, or

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Federal Motor Carrier Safety Administration may determine to be appropriate, including, but not limited to:

- a. withholding of payments to the contractor under the contract until the contractor complies, and/or
- b. cancellation, termination or suspension of the contract, in whole or in part.

(6.) Incorporation of Provisions: The contractor shall include the provisions of paragraphs (1) through (7) in every sub-contract, including procurements of materials and leases of equipment, unless exempt by the **REGULATIONS**, or directives issued pursuant thereto. The contractor shall take such action with respect to any sub-contract or procurement as the *Florida Department of Transportation* or the *Federal Highway Administration, Federal Transit Administration, Federal Aviation Administration, or Federal Motor Carrier Safety Administration* may direct as a means of enforcing such provisions including sanctions for noncompliance, provided, however, that, in the event a contractor becomes involved in, or is threatened with, litigation with a sub-contractor or supplier as a result of such direction, the contractor may request the *Florida Department of Transportation* to enter into such litigation to protect the interests of the *Florida Department of Transportation*, and, in addition, the contractor may request the United States to enter into such litigation to protect the interests of the United States.

(7.) Compliance with Nondiscrimination Statutes and Authorities: Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d et seq., 78 stat. 252), (prohibits discrimination on the basis of race, color, national origin); and 49 CFR Part 21; The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, (42 U.S.C. § 4601), (prohibits unfair treatment of persons displaced or whose property has been acquired because of Federal or Federal-aid programs and projects); Federal-Aid Highway Act of 1973, (23 U.S.C. § 324 et seq.), (prohibits discrimination on the basis of sex); Section 504 of the Rehabilitation Act of 1973, (29 U.S.C. § 794 et seq.), as amended, (prohibits discrimination on the basis of disability); and 49 CFR Part 27; The Age Discrimination Act of 1975, as amended, (42 U.S.C. § 6101 et seq.), (prohibits discrimination on the basis of age); Airport and Airway Improvement Act of 1982, (49 USC § 471, Section 47123), as amended, (prohibits discrimination based on race, creed, color, national origin, or sex); The Civil Rights Restoration Act of 1987, (PL 100-209), (Broadened the scope, coverage and applicability of Title VI of the Civil Rights Act of 1964, The Age Discrimination Act of 1975 and Section 504 of the Rehabilitation Act of 1973, by expanding the definition of the terms "programs or activities" to include all of the programs or activities of the Federal-aid recipients, sub-recipients and contractors, whether such programs or activities are Federally funded or not); Titles II and III of the Americans with Disabilities Act, which prohibit discrimination on the basis of disability in the operation of public entities, public and private transportation systems, places of public accommodation, and certain testing entities (42 U.S.C. §§ 12131 – 12189) as implemented by Department of Transportation regulations at 49 C.F.R. parts 37 and 38; The Federal Aviation Administration's Non-discrimination statute (49 U.S.C. § 47123) (prohibits discrimination on the basis of race, color, national origin, and sex); Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, which ensures non-discrimination against minority populations by discouraging programs, policies, and activities with disproportionately high and adverse human health or environmental effects on minority and low-income populations; Executive Order 13166, Improving Access to Services for Persons with Limited English Proficiency, and resulting agency guidance, national origin discrimination includes discrimination because of limited English proficiency (LEP). To ensure compliance with Title VI, you must take reasonable steps to ensure that LEP persons have meaningful access to your programs (70 Fed. Reg. at 74087 to 74100); Title IX of the Education Amendments of 1972, as amended, which prohibits you from discriminating because of sex in education programs or activities (20 U.S.C. 1681 et seq).

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EXHIBIT "F"

AGENCY RESOLUTION

The agency Resolution authorizing entry into this Agreement is attached and incorporated into this Agreement.

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EXHIBIT 1

FEDERAL FINANCIAL ASSISTANCE (SINGLE AUDIT ACT)

FEDERAL RESOURCES AWARDED PURSUANT TO THIS AGREEMENT ARE AS FOLLOWS:

CFDA No.: 20.205
CFDA Title: Highway Planning and Construction
Federal-Aid Highway Program, Federal Lands Highway Program
CFDA Program Site: <https://www.cfda.gov/>
Award Amount: \$317,803.00
Awarding Agency: Florida Department of Transportation
Award is for R&D: No
Indirect Cost Rate: N/A

FEDERAL RESOURCES AWARDED TO THE RECIPIENT PURSUANT TO THIS AGREEMENT CONSIST OF THE FOLLOWING:

2 CFR Part 200 – Uniform Administrative Requirements, Cost Principles & Audit Requirements for Federal Awards
<http://www.ecfr.gov/>

OMB Circular A-133, *Audits of States, Local Governments and Non-Profit Organizations*
http://www.whitehouse.gov/sites/default/files/omb/assets/a133/a133_revised_2007.pdf

OMB Circular A-133 Compliance Supplement 2014
http://www.whitehouse.gov/omb/circulars/a133_compliance_supplement_2014

FEDERAL RESOURCES AWARDED PURSUANT TO THIS AGREEMENT MAY ALSO BE SUBJECT TO THE FOLLOWING:

OMB Circular A-87 (Revised), *Cost Principles for State, Local and Indian Tribal Governments*
http://www.whitehouse.gov/omb/circulars_a087_2004/

OMB Circular A-102, *Grants and Cooperative Agreements with State and Local Governments*
http://www.whitehouse.gov/omb/circulars_a102/

Title 23 – Highways, United States Code
<http://uscode.house.gov/browse/prelim@title23&edition=prelim>

Title 49 – Transportation, United States Code
<http://uscode.house.gov/browse/prelim@title49&edition=prelim>

Map-21 – Moving Ahead for Progress in the 21st Century, Public Law 112-141
<http://www.gpo.gov/fdsys/pkg/PLAW-112publ141/pdf/PLAW-112publ141.pdf>

Federal Highway Administration – Florida Division
<http://www.fhwa.dot.gov/fldiv/>

Federal Funding Accountability and Transparency Act (FFATA) Sub-award Reporting System (FSRS)
<https://www.fsr.gov/>



CITY COUNCIL AGENDA ITEM

REQUESTED COUNCIL MEETING DATE 03/07/2017

Consent item: Yes

SUBJECT: (B14) Resolution No 17-12 - Ratifying Connection Fees for Rains Drive and Lighthouse Shores Sewer Extension Project located in Ponce Inlet

DEPARTMENT: Public Utilities

GOAL:

RECOMMENDED MOTION: Move to approve Resolution No. 17-12 establishing connection fees for Lighthouse Shores and Rains Drive residents in Ponce Inlet at \$1,400.00

SUMMARY: The Utilities Department requests City Council approval of a resolution establishing connection fees for Lighthouse Shores and Rains Drive residents in Ponce Inlet at \$1,400.00.

The City of Port Orange owns, operates, and maintains the sanitary sewer system within Ponce Inlet city limits. In 2009, the Port Orange City Council approved two cost participation projects with the Town of Ponce Inlet: Rains Drive and Lighthouse Shores. The projects were designed to extend the gravity sewer system to approximately 52 homes and enable the homeowner to abandon their septic tanks. Council also established the connection fees for Rains Drive at \$4,500 per household and Lighthouse Shores at \$5,000 per household to recoup the cost of the construction. The standard connection fee is \$1,400 for residents connected to an existing sewer pipeline. Connection fees are separate from impact fees.

Prior to the project construction completion, a joint meeting of city staff and Ponce Inlet Town Council was held to discuss sewer service in Ponce Inlet. There are discussions of the cost of the connection fees, but no follow up directives could be found on file. The files contain the notice from the Town of Ponce Inlet to each homeowner that the sewer system was now available at a connection fee of \$1,400, however, there is no evidence that City Council formally approved the change in the connection fee.

The construction was completed in May 2009. As of October 2016, 22 of the expected 52 properties have connected to the city sewer system. Each customer has paid \$1,400 connection fee and \$1,868 impact fee to the City.

This request is for Council to adopt a resolution establishing the connection fee of \$1,400 for the property owners in Lighthouse Shores and Rains Drive project areas and repeal all or parts of previous resolutions in conflict with the provisions of this resolution.

Project No.: Funding Account No.:

ATTACHMENTS:

1.	Resolution No. 17-12	LegalFilesWeb1.pdf
2.	Justification memo	Dept Justification Memo for Resol.pdf

Julia Wiggins	Created/Initiated - 02/13/2017
Julia Wiggins	Approved - 02/13/2017
Kenny Ho	Approved - 02/13/2017
Rick Wilson	Approved - 02/13/2017
Lynn Stevens	Approved - 02/17/2017
Tracey Riehm	Approved - 02/23/2017
Margaret Roberts	Approved - 02/24/2017
Matthew Jones	Approved - 02/24/2017
Jake Johansson	Approved - 02/24/2017
Robin Fenwick	Final Approval - 02/24/2017

RESOLUTION NO. 17-12

A RESOLUTION OF THE CITY OF PORT ORANGE,
VOLUSIA COUNTY, FLORIDA, RATIFYING THE
CONNECTION FEES RECEIVED FOR THE RAINS
DRIVE SEWER SYSTEM EXTENSION PROJECT AND
LIGHTHOUSE SHORES SEWER SYSTEM EXTENSION
PROJECT LOCATED IN PONCE INLET;
ESTABLISHING THE CONNECTION FEE TO BE
CHARGED FOR THOSE PROPERTIES THAT HAVE
YET TO CONNECT TO THE SEWER SYSTEM IN THE
PROJECT AREAS; PROVIDING FOR REPEAL OF
CONFLICTING RESOLUTIONS; AND PROVIDING AN
EFFECTIVE DATE.

WHEREAS, on January 20, 2009, the City Council approved a cost participation (in an amount not to exceed \$122,061) with the Town of Ponce Inlet on a capital improvement project to extend the sanitary sewer system to seventeen (17) single family homes and two (2) vacant lots situated along Rains Drive in Ponce Inlet (hereinafter referred to as the “Rains Drive Sewer System Extension Project”); and

WHEREAS, on February 24, 2009, the City Council approved a change order (in an amount not to exceed \$178,361) to expand the sewer extension project to the Lighthouse Shores area comprised of thirty-five (35) existing single family homes in Ponce Inlet (hereinafter referred to as the “Lighthouse Shores Sewer System Extension Project”); and

WHEREAS, City Council intended to recoup its cost participation for construction costs for each of the above described projects by imposing impact fees on residents required to connect to the sewer system in a sufficient amount to cover the costs (\$4,500 connection fee for each resident connecting to the Rains Drive Sewer System Extension, and \$5,000 connection fee for each resident connecting to the Lighthouse Shores Sewer System Extension Project); and

WHEREAS, since the completion of the Rains Drive Sewer Extension Project, the Town of Ponce Inlet has collected and remitted to the City of Port Orange eleven (11) of the potential nineteen (19) connection fees in the amount of \$1,400 per impact fee; and

WHEREAS, since the completion of the Lighthouse Shores Sewer System Extension Project, the Town of Ponce Inlet has collected and remitted to the City of Port Orange eleven (11) of the potential thirty-five (35) connection fees in the amount of \$1,400 per impact fee; and

WHEREAS, the City Council now desires to ratify the connection fees charged and collected for the Rains Drive Sewer Extension Project and Lighthouse Shores Sewer System Extension Project, and establish a \$1,400 connection fee for the remaining properties in the project areas that are required to connect to the sewer system.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF PORT ORANGE, VOLUSIA COUNTY, FLORIDA:

Section 1. The sewer connection fees charged and collected for the Rains Drive Sewer Extension Project and Lighthouse Shores Sewer System Extension Project as outlined in the attached **Exhibit “A”** are hereby ratified.

Section 2. The sewer connection fee charged for the remaining property owners required to connect to the sewer system as a result of the Rains Drive Sewer Extension Project and Lighthouse Shores Sewer System Extension Project is hereby established in the amount of \$1,400 per connection.

Section 3. All resolutions or parts of resolutions in conflict with the provisions of this resolution are hereby repealed to the extent of such conflict.

Section 4. This resolution shall become effective immediately upon adoption.

MAYOR DONALD O. BURNETTE

ATTEST:

Robin L. Fenwick, CMC City Clerk

Adopted on the day of

Reviewed and Approved: _____
Matthew J. Jones, Deputy City Attorney



City of Port Orange Public Utilities Department

TO: M.H. Johansson, City Manager

FROM: Lynn Stevens, Public Utilities Director

DATE: February 16, 2017

SUBJECT: Resolution Ratifying Ponce Inlet Connection Fees

REQUEST:

The Utilities Department requests City Council approval of a resolution establishing connection fees for Lighthouse Shores and Rains Drive residents in Ponce Inlet at \$1,400.00.

PURPOSE:

The purpose of this resolution is to encourage connection to the City sewer system at the same fees historically charged in the area and to repeal conflicting resolutions.

CONSIDERATION:

The City of Port Orange owns, operates, and maintains the sanitary sewer system within Ponce Inlet city limits. In 2009, the Port Orange City Council approved two cost participation projects with the Town of Ponce Inlet: Rains Drive and Lighthouse Shores. The projects were designed to extend the gravity sewer system to approximately 52 homes and enable the homeowner to abandon their septic tanks. Since the Town of Ponce Inlet was constructing new water mains in the area, the cost of mobilization, excavation, and restoration for each project was significantly reduced for the sewer line installation.

Council approved the projects and established the residential connection fees to recoup the cost of the construction. The connection fees were based on the cost of construction divided by the total number of homes. Since the cost of each project was different, so were the connection fees. The connection fees for the Rains Drive was \$4,500 per household and Lighthouse Shores was \$5,000 per household. The standard connection fee is \$1,400 for residents connected to an existing sewer pipeline. Connection fees are in addition to impact fees. For customers outside city limits the impact fees are \$1,868. The total of the fees would result in a per household cost of \$6,368 or \$6,868 depending on which street the resident was located. There are additional costs to each customer to connect to the sewer system piping on the customer side (private plumber required) and

to properly abandon the septic system. The total cost could easily exceed \$10,000 per household.

Prior to the project construction completion, a joint meeting of city staff (manager Parker and city attorney) and Ponce Inlet Town Council was held to discuss sewer service in Ponce Inlet. There are discussions of the cost of the connection fees, but no follow up directives could be found on file. The files do contain the notice from the Town of Ponce Inlet to each homeowner that the sewer system was now available at a connection fee of \$1,400, however, there is no evidence that City Council formally approved the change in the connection fee.

Since this system resides in Ponce Inlet city limits, the Town ordinance requiring sewer connections apply. The Ponce Inlet ordinance requires residents to connect to the sewer system when 1) the existing septic tank fails; or 2) upon sale of the property. The construction was completed in May 2009. As of October 2016, 22 of the expected 52 properties have connected to the city sewer system. Each customer has paid \$1,400 connection fee and \$1,868 impact fee to the City.

This request is for Council to adopt a resolution establishing the connection fee of \$1,400 for the property owners in Lighthouse Shores and Rains Drive project areas and repeal all or parts of previous resolutions in conflict with the provisions of this resolution.

FUNDING:

There are no funds associated with this request.

RECOMMENDATION:

The Public Utilities Department recommends City Council approval of a resolution establishing connection fees for Lighthouse Shores and Rains Drive residents in Ponce Inlet at \$1,400.00.

ANTICIPATED SCHEDULE:

Council approval March 7, 2017

ATTACHMENTS:

- a.) Resolution
- b.) City Council Agenda Item 1/20/09
- c.) City Council Agenda Item 2/14/09
- d.) Ponce Inlet Notice to the Resident



CITY COUNCIL AGENDA ITEM

REQUESTED COUNCIL MEETING DATE 02/24/09

File copy - City of Port Orange
Rains Dr. UTI. Japs - #300
App

SUBJECT: City Cost Participation / Change Order #1 to the Rains Drive Sewer Cost Participation Project in the Town of Ponce Inlet to extend gravity sewer system within the Lighthouse Shores area.

DEPARTMENT: Public Utilities

RECOMMENDED MOTION: To approve change order #1 to the Rains Drive Sewer cost participation project in an amount of \$178,361.00 for the construction, construction management, and utility inspection for the Lighthouse Shores sewer system extension, and to authorize the Mayor and City Manager to execute applicable contract documents, as necessary; and establish the sewer connection fee of \$4,500.00 per each residential lot to be served.

SUMMARY: This is a change order submitted at the request of the Town of Ponce Inlet staff to cost participate with them on a Capital Improvement Project within the Lighthouse Shores area in conjunction with their upcoming potable water system improvement project. They are requesting our concurrence to cost participate with them on the cost of installing the sanitary sewer system portion and our pro-rata share of restoration costs. Approximately 35 existing single family homes will be provided with sanitary sewer service with this project. J.D. Weber Construction is the general contractor for the Rains Drive sewer project and has agreed to this conceptual proposed change order which commissions them to extend gravity sewer within the Lighthouse Shores area, vicinity map additionally attached. By cost participating with this project, both municipalities will take advantage in sharing the restoration costs, which are quite expensive in a developed area such as this.

The City's Engineering Consultant, Quentin Hampton and Assoc., completed a conceptual design and has submitted the conceptual cost estimate for our share of the costs, attached. This cost estimate is based on unit prices from the Rains Drive Sewer Extension project. We have evaluated this engineering cost estimate and found the estimate to be fair and reasonable and in-line with current industry pricing within our area.

The \$4,500.00 sewer connection fee per residential unit is based on construction cost (excluding engineering and inspection fees) divided by 35 sewer services to be installed. The City will recuperate these fees via the Town of Ponce Inlet existing sewer ordinance. The Town requires mandatory sewer connection within one (1) year of notice of sewer availability.

Funds are currently available in City Cost Participation Project, #UCP001.

ATTACHMENTS: ☐ Ordinance ☐ Resolution ☐ Budget Resolution
☒ Other ☒ Support Documents/Contracts Available for Review in Public Utilities Office

DEPARTMENT HEAD

Kenny Ho

Date 2.12.09

FINANCE DEPARTMENT

Approved as to Budget Requirements

Date

CITY ATTORNEY

N/A

Approved as to Form and Legality

Date N/A

CITY MANAGER

Approved Agenda Item For:

COUNCIL ACTION:

☐ Approved as Recommended
☐ Continued to Date Certain

☐ Disapproved
☐ Approved with Modification:

☐ Tabled Indefinitely



CITY COUNCIL AGENDA ITEM

REQUESTED COUNCIL MEETING DATE 01/20/09

File copy - City Cost Participation

RANS DR 300

SUBJECT: City Cost Participation - Town of Ponce Inlet to Install a Sanitary Sewer Collection System along Rains Drive.

DEPARTMENT: Public Utilities

RECOMMENDED MOTION: To approve City Cost Participation with the Town of Ponce Inlet in an amount not to exceed of \$122,061.00 for the construction, construction management, and utility inspection for the Rains Drive Sewer System Extension Project, and to authorize the Mayor and City Manager to execute applicable contract documents, as necessary; and establish the sewer connection fee of \$5,000.00 per residential unit for each lot to be served.

SUMMARY: The Town of Ponce Inlet has requested that we cost participate with them on a Capital Improvement Project along Rains Drive in their town in conjunction with their upcoming potable water system improvement project. They are requesting our concurrence to cost participate with them on the cost of installing the sanitary sewer system portion and our pro-rata share of restoration costs. Seventeen (17) existing single family homes and two (2) vacant lots will be provided with sanitary sewer service with this project. Twelve (12) bids were received by the Town on December 2, 2008 with J.D. Weber Construction submitting the lowest base bid of \$229,735.00. City staff has found J.D. Weber Construction to be the most responsive, responsible, low bidder based on our past projects experiences. By cost participating with this project, both municipalities can take advantage in sharing many of these restoration costs, which are quite expensive in a developed area such as this.

The City's Engineering Consultant, Quentin Hampton and Assoc., completed the designed and has submitted the cost estimate for our share of the costs, attached. We have evaluated this engineering cost estimate and found the estimate is fair and reasonable and in-line with current industry pricing within our area.

The \$5,000.00 sewer connection fee per residential unit is based on construction cost (excluding engineering and inspection fees) divided by 19 sewer services. The City will recuperate these fees via the Town of Ponce Inlet existing sewer ordinance. The Town requires mandatory sewer connection within one (1) year of notice of sewer availability.

Funds are currently available in City Cost Participation under the general guidelines of Chapter 11 of the LDC. Funds are available in the City Cost Participation Project, #UCP001.

ATTACHMENTS: ☐ Ordinance ☐ Resolution ☐ Budget Resolution

☒ Other ☒ Support Documents/Contracts Available for Review in Public Utilities Office

DEPARTMENT HEAD

Kenny Ho

Date 12.30.08

FINANCE DEPARTMENT

Approved as to Budget Requirements

Date

CITY ATTORNEY

N/A

Approved as to Form and Legality

Date N/A

CITY MANAGER

Approved Agenda Item For:

COUNCIL ACTION:

☐ Approved as Recommended

☐ Disapproved

☐ Tabled Indefinitely

☐ Continued to Date Certain

☐ Approved with Modification:

Smith, Roger

From: Smith, Roger
Sent: Tuesday, March 24, 2009 7:39 AM
To: Parker, Ken; Shelley, John; Barnhart, Betty; Roberts, Margaret
Cc: Andrew Giannini; 'Mark Hampton'; Ho, Kenny; Griffith, Fred; Ulrich, Mike
Subject: Impact & Connect & Availability Fees for 2 active Ponce Inlet Construction Projects

Attachments: Rains & Lighthouse Impact & Connect Fees.pdf

Ken, John, Betty & Margaret:

Late yesterday PU staff received a copy of the attached Notification issued by Ponce Inlet announcing the Impact & Connect Fees on the Rains Drive & Lighthouse Shores projects. Availability fees are discussed as well. The letter also indicates that the Town Attorney is preparing an agreement.

---Roger

File w/ attachment: Rains Drive (200)



**Rains &
Lighthouse Impact**

P139

Attn: Kenny Ho 5.23.09
Rogers Smith RUS
Frig G.

Town of Ponce Inlet

4300 South Atlantic Avenue
Ponce Inlet, Florida 32127

From Regina

March 23, 2009

To: Property Owners of Rains Drive, S. Atlantic Avenue, & Lighthouse Shores subdivision (only)

RE: Sewer System Installation Information

Dear Property Owner:

At the Town Council meeting held on March 18th, 2009, the Town Council discussed the septic to sewer conversion for your area. Current Town regulations require hook-up within ninety (90) days of installation of sewer lines. However, the Town Council has now directed the Town Attorney to prepare an ordinance which would eliminate this requirement and allow present homeowners to defer hook-up so long as their septic systems are functioning properly and other conditions are met. Due to this impending change in Town regulations, you will NOT have to pay or hook-up by the dates which you were previously notified.

Also, the Town Council has negotiated with the Town's sewer service provider, City of Port Orange, for a reduced overall cost to the homeowner for this project. The minimum sewer connection fee (\$1,400) and the minimum sewer development fee (\$1,868) will be all that apply, as opposed to a proportionate share of the actual sewer line. It is important to note that these are the current rates and these rates are subject to change in the future. The Town is still in negotiations with the City of Port Orange in hopes of holding these rates for two years. Therefore, even though actual connection to the sewer system may be many years out for your residence, it may behoove you to pay these fees before they change. Though the Town will attempt to provide you with a definite date for when these current rates will expire, it is incumbent on the homeowner to remain aware of this as no further notification shall be required of the Town. Please note that these fees are payable to the Town of Ponce Inlet.

Lastly, once sewer is determined available to your property, regardless of actual connection, you will be charged the minimum sewer availability charge. This will be added to your monthly utility bill. This amount is currently \$17.55 per month for the standard single-family residential meter.

If you have any questions regarding this matter, please contact the Ponce Inlet Public Works Division at 322-6729, between the hours of 8 am and 4 pm, Monday through Friday.

Yours truly,

Keith Gunter, General Manager
Ponce Inlet Public WorksCopy: Cassandra Blissett, Town Manager
Jeanne Clauss, Assistant Town Manager/Deputy Clerk
Aref Joulani, Director of Planning & Development
Kenneth Parker, City Manager, City of Port Orange

KG/p

Phone: (386) 236-2150 • Fax: (386) 322-6717



CITY COUNCIL AGENDA ITEM

REQUESTED COUNCIL MEETING DATE 03/07/2017

Consent item: Yes

SUBJECT: (B15) City Attorney's Report FY17 - First Quarter

DEPARTMENT: City Attorney

GOAL:

RECOMMENDED MOTION: Move to accept the City Attorney's Report.

SUMMARY: First Quarter Report attached for your reference.

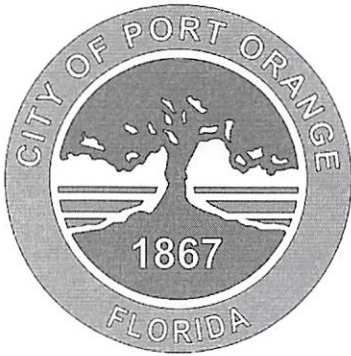
Project No.: Funding Account No.:

ATTACHMENTS:

1.	CA's Report FY17 - 1st Quarter	CA Report FY17 - 1st Quarter.pdf
2.	CA's Report FY16 - 1st-4th Quarter	CA Report FY16.pdf

Tracy London
Margaret Roberts
Jake Johansson
Robin Fenwick

Created/Initiated - 02/14/2017
Approved - 02/23/2017
Approved - 02/24/2017
Final Approval - 02/24/2017



CITY OF PORT ORANGE

1000 CITY CENTER CIRCLE
PORT ORANGE, FL 32129-4144
OFFICE OF THE CITY ATTORNEY
TELEPHONE 386-506-5525
FAX 386-506-5530
www.Port-Orange.org

MEMORANDUM

TO: Mayor Donald O. Burnette
Vice Mayor Bod Ford
Council Member Drew Bastian
Council Member Chase Tramont
Council Member Scott Stiltner
M. H. Johansson, City Manager

FROM: Margaret T. Roberts, City Attorney 

DATE: February 23, 2017

SUBJECT: City Attorney's Report
October 1, 2016 – December 31, 2016

A summary of new case activity for the first quarter FY17, is attached. If you have any questions, please contact me.



Case Summary FY17

Office of the City Attorney
City of Port Orange, Florida

<u>Category</u>	<u>1st Quarter</u>	<u>2nd Quarter</u>	<u>3rd Quarter</u>	<u>4th Quarter</u>
Bankruptcy	1			
Contracts	22			
Foreclosures	0			
Forfeitures	1			
PD Property Return	6			
Prosecutions - City Ordinance Violations	1			
Prosecutions - Animal Enforcement Violations	1			
Prosecutions - Parking Violations	11			
Real Property – Development Review	18			
Real Property – Transactional	1			
Torts/Claims	5			
Other Files	26			
Total New Items:	93			



CITY OF PORT ORANGE

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MEMORANDUM

TO: Mayor Allen Green
Vice Mayor Drew Bastian
Council Member Donald Burnette
Council Member Bob Ford
Council Member Scott Stiltner
M. H. Johansson, City Manager

FROM: Margaret T. Roberts, City Attorney 

DATE: September 26, 2016

SUBJECT: City Attorney's Report
July 1, 2016 – September 30, 2016

A summary of case activity is attached. If you have any questions, please contact me.



Case Summary FY16

Office of the City Attorney
City of Port Orange, Florida

<u>Category</u>	<u>1st Quarter</u>	<u>2nd Quarter</u>	<u>3rd Quarter</u>	<u>4th Quarter</u>
Bankruptcy	1	0	0	2
Contracts	49	32	36	53
Foreclosures	2	1	2	3
Forfeitures	7	8	8	2
PD Property Return	0	9	5	1
Prosecutions - City Ordinance Violations	7	8	2	4
Prosecutions - Animal Enforcement Violations	4	8	5	5
Prosecutions - Parking Violations	16	2	7	14
Real Property – Development Review	2	20	10	19
Real Property – Transactional	15	14	4	5
Torts/Claims	7	11	11	15
Other Files	26	29	24	20
Total New Items:	136	142	114	143



CITY COUNCIL AGENDA ITEM

REQUESTED COUNCIL MEETING DATE 03/07/2017

Consent item: Yes

SUBJECT: (B16) Crime Report

DEPARTMENT: Police Services

GOAL:

RECOMMENDED MOTION:

SUMMARY: The Police Department will present a report which details criminal activity in Port Orange.

Project No.: Funding Account No.:

ATTACHMENTS:

1.	Crime Report	UCR Report - 2016 Annual.pdf
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Debbie Grabowski
William Proctor
Thomas Grimaldi
Jake Johansson
Robin Fenwick

Created/Initiated - 02/14/2017
Approved - 02/15/2017
Approved - 02/15/2017
Approved - 02/15/2017
Final Approval - 02/15/2017



CHIEF THOMAS R. GRIMALDI

PORT ORANGE POLICE DEPARTMENT

4545 CLYDE MORRIS BOULEVARD
PORT ORANGE, FLORIDA 32129
TELEPHONE (386) 506-5870
FAX (386) 756-5311
www.port-orange.org

2016 Annual Crime Report Executive Summary

The FBI recently released the Uniform Crime Report (UCR) statistics for January 1, 2016 through December 31, 2016. During 2016 the City of Port Orange experienced an increase in most areas reported.

Violent crime increased by 13.8%, which involved double the numbers of robberies that occurred in 2015. Property crimes indicate a total increase of 23.9%, most of which were vehicle theft and theft from vehicles. Domestic violence crimes increased by 32.7%, most of which were simple assaults (the threat to commit violence upon another).

Our Police Department also recovered 60% more stolen property than was recovered in the preceding year and our arrests have also increased by .7% over 2015 totals.

Although not calculated in the UCR, the Police Department also experienced a 6% increase in traffic crashes in 2015, requiring a significant amount of resources.

While we must understand that the presence of crime is indicative of many factors, to include economic issues, presence of illicit drugs, poor parenting, reduced cooperation from witness/victims, etc., the UCR statistics for 2016 are very concerning.

The Port Orange Police Department (POPD) has taken steps to reduce these crimes since January 2017. Our crime reduction goals have been shared with each member of the POPD and we are committed to reaching those goals. Success will require education, enforcement, and proper staffing.

Sincerely,
Thomas R. Grimaldi
Thomas R. Grimaldi
Chief of Police



ACCREDITED 1997

UCR CHECKLIST - UNVERIFIED DATA FOR REVIEW & VERIFICATION

Agency ORI:	FL0641200	Agency Name:	Port Orange Police Department
Reporting Period/Year:	2016 A	Population:	59,315
Clearance Rate:	25.9	Crime Rate:	2,592.9
Date Generated:	2/7/2017	☒ Arrest Data Provided	
	☐ LEOKA Data	☒ Comparative Prior Year Data	
	☒ Clearance Rate Reflects a Change of 10% or Greater		

Violent Offenses	2015	2016	% Change
Murder	1	1	0.0%
Rape	2	1	-50.0%
Robbery	5	10	100.0%
Aggravated Assault	45	49	8.9%
Violent Offense Total	53	61	15.1%
Violent Crime Rate	90.4	102.8	13.8%
Property Offenses	2015	2016	% Change
Burglary	150	182	21.3%
Larceny	993	1,216	22.5%
Motor Vehicle Theft	45	79	75.6%
Property Offense Total	1,188	1,477	24.3%
Property Crime Rate	2,025.4	2,490.1	22.9%
Total Index Offenses	1,241	1,538	23.9%
Clearance Rate for Index Offenses	34.4	25.9	-24.6%

Other Offenses	2015	2016	% Change
Arson	0	0	
Simple Assault	213	249	16.9%
Fondling	0	0	

Domestic Violence Offenses	2015	2016	% Change
Murder	0	1	
Manslaughter	0	0	
Rape	2	1	-50.0%
Fondling	0	0	
Aggravated Assault	8	16	100.0%
Aggravated Stalking	0	0	
Simple Assault	148	191	29.1%
Threat/Intimidation	0	0	
Simple Stalking	1	2	100.0%
Total Domestic Violence Offenses	159	211	32.7%

Arrests	2015	2016	% Change
Murder	1	1	0.0%
Rape	1	0	-100.0%
Robbery	5	10	100.0%
Aggravated Assault	41	50	22.0%
Burglary	20	41	105.0%
Larceny	169	209	23.7%
Motor Vehicle Theft	5	8	60.0%
Part II	1,545	1,480	-4.2%
Total Arrests	1,787	1,799	0.7%

Breakdown of Total Arrests - 2016			
Male Arrests	1,243	Female Arrests	556
Adult Arrests	1,744	Juvenile Arrests	55

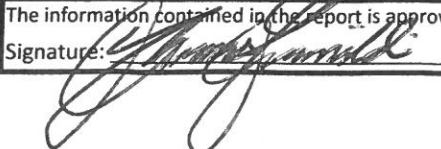
Vehicle Recoveries	2015	2016	% Change
Stolen Local/Recovered Local	28	15	-46.4%
Stolen Local/Recovered Elsewhere	4	30	650.0%
Stolen Elsewhere/Recovered Local	5	6	20.0%

Stolen/Recovered Property	2015	2016	% Change
Total Stolen Property	\$1,634,085	\$2,619,533	60.3%
Total Recovered Property	\$592,678	\$948,582	60.1%

Law Enforcement Officers Killed /Assaulted (LEOKA) - 2016			
Officers Killed	0	Officers Assaulted	0

Justifiable Homicide - 2016			
By Police Officer	0	By Private Citizen	0

The information contained in the report is approved as correct.

Signature:  Date: 2/13/17



CRIME IN FLORIDA

Port Orange Police Department

January - December 2016

(UNVERIFIED - SUBMITTED DATA FOR REVIEW)

Florida Department of
Law Enforcement

The statistics presented in this release are an indication of crime and criminal activities known to, and reported by, law enforcement agencies for 2016. This report reflects data residing in the UCR database as of 2/7/2017.

Crime Volume and Rate

MEASURE	2015	2016	Percent Change
Total Index Crime	1,241	1,538	23.9
Total Violent Crime	53	61	15.1
Total Property Crime	1,188	1,477	24.3
Total Crime Rate	2,115.7	2,592.9	22.6
Violent Crime Rate	90.4	102.8	13.8
Property Crime Rate	2,025.4	2,490.1	22.9

Offense Totals

INDEX OFFENSES	2015	2016	Percent Change
Murder	1	1	0.0
Firearm	1	1	0.0
Knife/Cutting Instr.	0	0	
Hands/Fists/Feet	0	0	
Other	0	0	
Rape	2	1	-50.0
Firearm	0	0	
Knife/Cutting Instr.	0	0	
Hands/Fists/Feet	2	1	-50.0
Other	0	0	
Robbery	5	10	100.0
Firearm	3	3	0.0
Knife/Cutting Instr.	0	1	
Hands/Fists/Feet	2	6	200.0
Other	0	0	
Aggravated Assault	45	49	8.9
Firearm	18	12	-33.3
Knife/Cutting Instr.	12	9	-25.0
Hands/Fists/Feet	4	8	100.0
Other	11	20	81.8
Burglary	150	182	21.3
Forced Entry	69	74	7.2
No Forced Entry	81	108	33.3
Attempted Entry	0	0	
Larceny	993	1,216	22.5
Pocket Picking	2	3	50.0
Purse Snatching	1	2	100.0
Shoplifting	259	321	23.9
From Motor Vehicle	320	420	31.3
Motor Vehicle Parts	11	5	-54.5
Bicycles	53	56	5.7
From Building	75	53	-29.3
From Coin Oper. Dev.	3	4	33.3
All Other	269	352	30.9
Motor Vehicle Theft	45	79	75.6
TOTAL INDEX OFFENSES	1,241	1,538	23.9

Arrest Totals

ARREST TYPE	2015	2016	Percent Change
Violent Offense Arrests	48	61	27.1
Adult	48	57	18.8
Juvenile	0	4	
Male	38	49	28.9
Female	10	12	20.0
Property Offense Arrests	194	258	33.0
Adult	186	246	32.3
Juvenile	8	12	50.0
Male	108	142	31.5
Female	86	116	34.9
Part II Offense Arrests	1,545	1,480	-4.2
Adult	1,509	1,441	-4.5
Juvenile	36	39	8.3
Male	1,050	1,052	0.2
Female	495	428	-13.5
TOTAL ARRESTS	1,787	1,799	0.7

Domestic Violence by Offense Type

PRIMARY OFFENSE	2015	2016	Percent Change
Murder	0	1	
Manslaughter	0	0	
Rape	2	1	-50.0
Fondling	0	0	
Aggravated Assault	8	16	100.0
Aggravated Stalking	0	0	
Simple Assault	148	191	29.1
Threat/Intimidation	0	0	
Simple Stalking	1	2	100.0
TOTAL OFFENSES	159	211	32.7

Property Information Values

PROPERTY TYPE	STOLEN VALUE	RECOVERED VALUE
Currency, Note, Etc.	50,323	221
Jewelry, Precious Metals	511,559	23,353
Clothing & Furs	21,328	1,560
Motor Vehicles	1,045,352	682,001
Office Equipment	47,128	3,029
TVs, Radios, Stereos	41,913	7,078
Firearms	47,210	802
Household Goods	24,855	979
Consumable Goods	2,004	1,152
Livestock	0	0
Miscellaneous	827,861	228,407
TOTAL VALUES	2,619,533	948,582

CRIME IN FLORIDA
Port Orange Police Department
January - December 2016
 (UNVERIFIED - SUBMITTED DATA FOR REVIEW)

Crime Trends

Year	Index Total Crimes	% Change	Violent Crime	% Change	Property Crime	% Change	Population	% Change	Crime Rate	% Change
2012	1,491	-2.1	62	-27.9	1,429	-0.6	56,386	0.1	2,644.3	-2.2
2013	1,608	7.8	48	-22.6	1,560	9.2	57,060	1.2	2,818.1	6.6
2014	1,167	-27.4	31	-35.4	1,136	-27.2	57,467	0.7	2,030.7	-27.9
2015	1,241	6.3	53	71.0	1,188	4.6	58,656	2.1	2,115.7	4.2
2016	1,538	23.9	61	15.1	1,477	24.3	59,315	1.1	2,592.9	22.6

Domestic Violence
by Offense Type to Victim's Relationship to Offender

OFFENSES	RELATIONSHIP VICTIM TO OFFENDER								Arrests
	Total	Spouse	Parent	Child	Sibling	Other Family	Cohabitant	Other	
Murder	1	0	0	0	0	0	1	0	1
Manslaughter	0	0	0	0	0	0	0	0	0
Rape	1	0	0	1	0	0	0	0	0
Fondling	0	0	0	0	0	0	0	0	0
Aggravated Assault	16	2	2	1	1	1	6	3	12
Aggravated Stalking	0	0	0	0	0	0	0	0	0
Simple Assault	191	24	19	11	17	4	91	25	137
Threat/Intimidation	0	0	0	0	0	0	0	0	0
Simple Stalking	2	1	0	0	0	0	0	1	1
TOTAL OFFENSES	211	27	21	13	18	5	98	29	151

ARSON			
STRUCTURE	TOTAL INHABITED	TOTAL ABANDONED	ATTEMPTED
Single Occupied Residence	0	0	0
Other Residence	0	0	0
Storage	0	0	0
Industrial/Manufacturing	0	0	0
Commercial	0	0	0
Community/Public	0	0	0
All Other Structures	0	0	0
Motor Vehicles	0	0	0
Other Mobile	0	0	0
Other	0	0	0
TOTAL	0	0	0

VEHICLE RECOVERY	
	Number
Stolen Locally and Recovered Locally	15
Stolen Locally and Recovered by Other Jurisdictions	30
Stolen Other Jurisdictions and Recovered Locally	6
TOTAL	51

SOURCE: Florida Department of Law Enforcement. Florida Uniform Crime Report, 2016 [Computer program]. Tallahassee, FL: FDLE, Florida Statistical Analysis Center. Report reflects data residing in the UCR database as of 2/7/2017. Crime rates calculated per 100,000 population.

Arrest Totals by Age and Sex
Port Orange Police Department
January - December 2016
 (UNVERIFIED - SUBMITTED DATA FOR REVIEW)

OFFENSES	JUVENILE			ADULT			TOTAL
	Total	Male	Female	Total	Male	Female	ALL AGES
Murder	0	0	0	1	1	0	1
Rape	0	0	0	0	0	0	0
Robbery	0	0	0	10	9	1	10
Aggravated Assault	4	2	2	46	37	9	50
Burglary	6	6	0	35	28	7	41
Larceny	6	2	4	203	101	102	209
Motor Vehicle Theft	0	0	0	8	5	3	8
TOTAL INDEX	16	10	6	303	181	122	319
Manslaughter	0	0	0	0	0	0	0
Kidnap/Abduction	0	0	0	1	1	0	1
Arson	0	0	0	0	0	0	0
Simple Assault	10	5	5	204	110	94	214
Drug Arrests	5	5	0	445	335	110	450
Bribery	0	0	0	0	0	0	0
Embezzlement	0	0	0	0	0	0	0
Fraud	0	0	0	23	14	9	23
Counterfeit/Forgery	0	0	0	2	2	0	2
Extortion/Blackmail	0	0	0	0	0	0	0
Intimidation	0	0	0	1	1	0	1
Prostitution/Commercialized Sex	0	0	0	0	0	0	0
Fondling	0	0	0	0	0	0	0
Other Sex Offenses	0	0	0	3	3	0	3
Stolen Property Buy/Receive/Possess	0	0	0	1	1	0	1
Driving Under Influence	0	0	0	80	48	32	80
Destruction/Damage/Vandalism	0	0	0	7	4	3	7
Gambling	0	0	0	0	0	0	0
Weapons Violations	1	1	0	9	9	0	10
Liquor Law Violations	0	0	0	3	2	1	3
Miscellaneous	23	14	9	662	497	165	685
TOTAL PART II	39	25	14	1,441	1,027	414	1,480
TOTAL	55	35	20	1,744	1,208	536	1,799

SOURCE: Florida Department of Law Enforcement. Florida Uniform Crime Report, 2016 [Computer program]. Tallahassee, FL: FDLE, Florida Statistical Analysis Center. Report reflects data residing in the UCR database as of 2/7/2017.

Arrest Totals Comparative Data
Port Orange Police Department
January - December 2016
(UnVERIFIED - SUBMITTED DATA FOR REVIEW)

OFFENSES	JUVENILE			ADULT			TOTAL ALL AGES		
	2015	2016	Percent Change	2015	2016	Percent Change	2015	2016	Percent Change
Murder	0	0		1	1	0.0	1	1	0.0
Rape	0	0		1	0	-100.0	1	0	-100.0
Robbery	0	0		5	10	100.0	5	10	100.0
Aggravated Assault	0	4		41	46	12.2	41	50	22.0
Burglary	4	6	50.0	16	35	118.8	20	41	105.0
Larceny	4	6	50.0	165	203	23.0	169	209	23.7
Motor Vehicle Theft	0	0		5	8	60.0	5	8	60.0
TOTAL INDEX	8	16	100.0	234	303	29.5	242	319	31.8
Manslaughter	0	0		0	0		0	0	
Kidnap/Abduction	0	0		1	1	0.0	1	1	0.0
Arson	0	0		0	0		0	0	
Simple Assault	5	10	100.0	214	204	-4.7	219	214	-2.3
Drug Arrests	7	5	-28.6	448	445	-0.7	455	450	-1.1
Bribery	0	0		0	0		0	0	
Embezzlement	0	0		0	0		0	0	
Fraud	0	0		19	23	21.1	19	23	21.1
Counterfeit/Forgery	0	0		4	2	-50.0	4	2	-50.0
Extortion/Blackmail	0	0		0	0		0	0	
Intimidation	0	0		1	1	0.0	1	1	0.0
Prostitution/Commercialized Sex	0	0		0	0		0	0	
Fondling	0	0		0	0		0	0	
Other Sex Offenses	0	0		2	3	50.0	2	3	50.0
Stolen Property Buy/Receive/Possess	0	0		6	1	-83.3	6	1	-83.3
Driving Under Influence	1	0	-100.0	158	80	-49.4	159	80	-49.7
Destruction/Damage/Vandalism	5	0	-100.0	3	7	133.3	8	7	-12.5
Gambling	0	0		0	0		0	0	
Weapons Violations	1	1	0.0	8	9	12.5	9	10	11.1
Liquor Law Violations	1	0	-100.0	8	3	-62.5	9	3	-66.7
Miscellaneous	16	23	43.8	637	662	3.9	653	685	4.9
TOTAL PART II	36	39	8.3	1,509	1,441	-4.5	1,545	1,480	-4.2
TOTAL	44	55	25.0	1,743	1,744	0.1	1,787	1,799	0.7

SOURCE: Florida Department of Law Enforcement. Florida Uniform Crime Report, 2016 [Computer program]. Tallahassee, FL: FDLE, Florida Statistical Analysis Center. Report reflects data residing in the UCR database as of 2/7/2017.

Uniform Crime Reports - Offense Reporting Form
Crime Index and Domestic Violence Offenses - Page 1 of 2
Port Orange Police Department
January - December 2016
 (UNVERIFIED - SUBMITTED DATA FOR REVIEW)

CLASSIFICATION OF OFFENSES	TOTAL NUMBER OF OFFENSES	TOTAL CLEARANCES				TOTAL VALUE OF PROPERTY STOLEN (\$)	WEAPON				Number of Offenses	DOMESTIC VIOLENCE							
		Arrest	Exception	Adult	Juvenile		Firearm	Knife or Cutting Instr.	Other Dangerous Weapon	Hands, Fists or Feet		RELATIONSHIP VICTIM TO OFFENDER							
												Spouse	Parent	Child	Sibling	Other Family	Cohabitant	Other	Arrests
Criminal Homicide	1	1	0	1	0	0	1	0	0	0	1	0	0	0	0	0	1	0	1
Murder	1	1	0	1	0	0	1	0	0	0	1	0	0	0	0	0	1	0	1
Manslaughter	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Index Sex Offenses	1	0	0	0	0	0	0	0	0	1	1	0	0	1	0	0	0	0	0
Rape, Committed	1	0	0	0	0	0	0	0	0	1	1	0	0	1	0	0	0	0	0
Rape, Attempted	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Robbery	10	5	1	6	0	340	3	1	0	6									
Highway	2	1	0	1	0	0	0	1	0	1									
Residence	1	0	0	0	0	6	0	0	0	1									
Bank	3	3	0	3	0	0	0	0	0	3									
Gas / Service Station	1	0	0	0	0	0	1	0	0	0									
Convenience Store	1	0	0	0	0	50	0	0	0	1									
Other Commercial Estab.	2	1	1	2	0	284	2	0	0	0									
Miscellaneous	0	0	0	0	0	0	0	0	0	0									
Aggravated Assault	49	23	9	30	2		12	9	20	8	16	2	2	1	1	1	6	3	12
Aggravated Assault	49	23	9	30	2		12	9	20	8	16	2	2	1	1	1	6	3	12
Aggravated Stalking	0	0	0	0	0		0	0	0	0	0	0	0	0	0	0	0	0	0
TOTAL VIOLENT (Excluding Manslaughter)	61	29	10	37	2	340	16	10	20	15	18	2	2	2	1	1	7	3	13
Fondling	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Simple Assault	249	155	41	186	10					249	191	24	19	11	17	4	91	25	137
Threat/Intimidation											0	0	0	0	0	0	0	0	0
Simple Stalking											2	1	0	0	0	0	0	1	1
TOTAL DOMESTIC VIOLENCE											211	27	21	13	18	5	98	29	151

SOURCE: Florida Department of Law Enforcement. Florida Uniform Crime Report, 2016 [Computer program]. Tallahassee, FL: FDLE, Florida Statistical Analysis Center. Report reflects data residing in the UCR database as of 2/7/2017.

Uniform Crime Reports - Offense Reporting Form
Crime Index and Domestic Violence Offenses - Page 2 of 2
Port Orange Police Department
January - December 2016
 (UNVERIFIED - SUBMITTED DATA FOR REVIEW)

CLASSIFICATION OF OFFENSES	TOTAL NUMBER OF OFFENSES	TOTAL CLEARANCES				TOTAL VALUE OF PROPERTY STOLEN (\$)	ARSON							
		Arrest	Exception	Adult	Juvenile		LOCATION	TOTAL INHABITED	TOTAL ABANDONED	ATTEMPT	TOTAL DOLLAR LOSS (\$)	CLEARANCES		
												Adult	Juvenile	
Burglary	182	11	40	48	3	613,923	Single Occupancy Residence	0	0	0	0	0	0	
Forcible Entry	74	4	17	20	1	248,839	Other Residence	0	0	0	0	0	0	
Unlawful Entry	108	7	23	28	2	365,084	Storage	0	0	0	0	0	0	
Attempted	0	0	0	0	0	0	Industrial/Manufacturing	0	0	0	0	0	0	
Burglary, Residence	138	11	28	36	3	405,786	Commercial	0	0	0	0	0	0	
Night	31	4	8	11	1	135,723	Community/Public	0	0	0	0	0	0	
Day	63	7	16	21	2	186,785	All Other Structures	0	0	0	0	0	0	
Unknown	44	0	4	4	0	83,278	Motor Vehicles	0	0	0	0	0	0	
Burglary, Non-Residence	44	0	12	12	0	208,137	Other Mobile	0	0	0	0	0	0	
Night	14	0	8	8	0	24,588	Other	0	0	0	0	0	0	
Day	2	0	1	1	0	640								
Unknown	28	0	3	3	0	182,909	ARSON TOTALS	0	0	0	0	0	0	
Larceny	1,216	192	107	282	17	761,537	PROPERTY INFORMATION / VALUES						VEHICLE RECOVERY	
Pocket Picking	3	0	0	0	0	268	PROPERTY TYPE	STOLEN VALUE (\$)	RECOVERED VALUE (\$)					
Purse Snatching	2	1	0	1	0	243	Currency, Note, Etc.	50,323	221					
Shoplifting	321	161	18	176	3	31,533	Jewelry, Precious Metals	511,559	23,353			Stolen Locally and Recovered Locally	15	
From Motor Vehicle	420	14	42	46	10	152,433	Clothing & Furs	21,328	1,560					
Motor Vehicle Parts	5	0	0	0	0	4,382	Motor Vehicles	1,045,352	682,001			Stolen Locally and Recovered by Other Jurisdictions	30	
Bicycles	56	2	6	7	1	11,984	Auto	694,000	527,000					
From Building	53	1	9	9	1	86,784	Trucks and Buses	164,002	55,001			Stolen in Other Jurisdictions and Recovered Locally	6	
From Coin Oper. Dev.	4	0	0	0	0	242	Motorcycles	44,350	0					
All Other Larceny	352	13	32	43	2	473,668	Other Vehicles	143,000	100,000					
\$200 & Over	363	22	51	71	2	732,533	Office Equipment	47,128	3,029					
\$50 - \$200	158	36	15	48	3	17,103	TVs, Radios, Stereos	41,913	7,078					
Under \$50	695	134	41	163	12	11,901	Firearms	47,210	802					
Motor Vehicle Theft	79	5	5	10	0	1,243,733	Household Goods	24,855	979					
Auto	49	3	4	7	0	824,839	Consumable Goods	2,004	1,152					
Trucks and Buses	21	1	1	2	0	235,783	Livestock	0	0					
Motorcycles	7	1	0	1	0	48,111	Miscellaneous	827,861	228,407					
Other Vehicles	2	0	0	0	0	135,000	PROPERTY VALUE TOTALS	2,619,533	948,582			VEHICLES	51	
TOTAL PROPERTY	1,477	208	152	340	20	2,619,193								
ALL CRIME INDEX*	1,538	237	162	377	22	2,619,533								

*Crime Index Offenses do not include Manslaughter, Fondling, Simple Assault, Threat/Intimidation, and Simple Stalking.

SOURCE: Florida Department of Law Enforcement. Florida Uniform Crime Report, 2016 [Computer program]. Tallahassee, FL: FDLE, Florida Statistical Analysis Center. Report reflects data residing in the UCR database as of 2/7/2017.

Law Enforcement Officers Killed or Assaulted (LEOKA)
Port Orange Police Department
January - December 2016
 (UNVERIFIED - SUBMITTED DATA FOR REVIEW)

LEOKA Officer Data	Officer Killed, Felonious		Officer Killed, Accidental		Officer Assaulted	
	Total	Percent	Total	Percent	Total	Percent
Number of Officers	0		0		0	
Breakdown of Officers by Age:						
Officer Age 18 - 24 Years	0		0		0	
Officer Age 25 - 34 Years	0		0		0	
Officer Age 35 - 44 Years	0		0		0	
Officer Age 45 - 54 Years	0		0		0	
Officer Age 55 - 64 Years	0		0		0	
Officer Age 65 +	0		0		0	
Breakdown of Officer Experience:						
Officer Experience 1 - 4 Years	0		0		0	
Officer Experience 5 - 9 Years	0		0		0	
Officer Experience 10 -14 Years	0		0		0	
Officer Experience 15 -19 Years	0		0		0	
Officer Experience 20 -24 Years	0		0		0	
Officer Experience 25 -29 Years	0		0		0	
Officer Experience 30 + Years	0		0		0	
Extent of Injury:						
None	-	-	-	-	0	
Minor	-	-	-	-	0	
Serious	-	-	-	-	0	
Fatal	0		0		-	-
Breakdown of Officers by Sex:						
Male	0		0		0	
Female	0		0		0	
Breakdown of Officers by Race:						
White	0		0		0	
Black	0		0		0	
American Indian	0		0		0	
Asian	0		0		0	
Officer Activity:						
Responding to Disturbance	0		0		0	
Breaking & Entering in Process/Pursuit	0		0		0	
Robbery in Process/Pursuit	0		0		0	
Attempting Other Arrest	0		0		0	
Civil Disorder	0		0		0	
Domestic Disturbance	0		0		0	
Handling/Transporting/Custody of Prisoner	0		0		0	
Investigate Suspicious Person/Circumstance	0		0		0	
Ambush, No Warning	0		0		0	
Assailant Mentally Deranged	0		0		0	
Traffic Pursuit or Stop	0		0		0	
Other	0		0		0	
Type of Assignment:						
One Person Vehicle	0		0		0	
Two Person Vehicle	0		0		0	
Detective or Special Assignment	0		0		0	
Traffic, Motorcycle Officer(s)	0		0		0	
Other	0		0		0	
Additional Officer Data:						
Officer Was Wearing Body Armor	0		0		0	
Body Armor Prevented Injury	0		0		0	
Officer Was Not Wearing Body Armor	0		0		0	
Officer Wearing Body Armor Unknown	0		0		0	
Firearm Discharged by Officer	0		0		0	
Officer Was Alone	0		0		0	

SOURCE: Florida Department of Law Enforcement. Florida Uniform Crime Report, 2016 [Computer program]. Tallahassee, FL: FDLE, Florida Statistical Analysis Center. Report reflects data residing in the UCR database as of 2/7/2017.

Law Enforcement Officers Killed or Assaulted (LEOKA)
Port Orange Police Department
January - December 2016
 (UNVERIFIED - SUBMITTED DATA FOR REVIEW)

LEOKA Offender Data	Officer Killed, Felonious		Officer Killed, Accidental		Officer Assaulted	
	Total	Percent	Total	Percent	Total	Percent
Number of Offenders	0		0		0	
Breakdown of Offenders by Age:						
Offender Under 18 Years	0		0		0	
Offender Age 18 - 24 Years	0		0		0	
Offender Age 25 - 34 Years	0		0		0	
Offender Age 35 - 44 Years	0		0		0	
Offender Age 45 - 54 Years	0		0		0	
Offender Age 55 - 64 Years	0		0		0	
Offender Age 65 +	0		0		0	
Unknown	0		0		0	
Offender Injured?						
Yes	0		0		0	
No	0		0		0	
Unknown	0		0		0	
Extent of Offender Injury:						
Not Applicable	0		0		0	
Minor	0		0		0	
Moderate	0		0		0	
Serious	0		0		0	
Fatal	0		0		0	
Breakdown of Offenders by Sex:						
Male	0		0		0	
Female	0		0		0	
Unknown	0		0		0	
Breakdown of Offenders by Race:						
White	0		0		0	
Black	0		0		0	
American Indian	0		0		0	
Asian	0		0		0	
Unknown	0		0		0	
Weapon:						
Handgun	0		0		0	
Rifle	0		0		0	
Shotgun	0		0		0	
Firearm	0		0		0	
Knife/Cutting Instrument	0		0		0	
Blunt Object	0		0		0	
Hands/Fist/Feet	0		0		0	
Poison	0		0		0	
Explosives	0		0		0	
Fire/Incendiary	0		0		0	
Drugs	0		0		0	
Unknown	0		0		0	
Other	0		0		0	
Other Offender Data						
Firearm Discharged by Offender	0		0		0	
Officer Aware Offender Had Weapon	0		0		0	
Offender Used Officer's Weapon	0		0		0	
Offense Cleared by Arrest or Exception	0		0		0	

SOURCE: Florida Department of Law Enforcement. Florida Uniform Crime Report, 2016 [Computer program]. Tallahassee, FL: FDLE, Florida Statistical Analysis Center. Report reflects data residing in the UCR database as of 2/7/2017.

Uniform Crime Reports - Supplemental Homicide Report
Port Orange Police Department
January - December 2016
 (UNVERIFIED - SUBMITTED DATA FOR REVIEW)

Report Number	Record Seq Nbr	Report Date	Victim			Offender			Situation Code	Victim Relationship	Weapon Type	Circumstance Code	Justifiable Circumstance	Justifiable Code
			Age	Sex	Race	Age	Sex	Race						
160007621	1	8/27/2016	24	F-FEMALE	W-WHITE	35	M-MALE	B-BLACK	A-SINGLE VICTIM / SINGLE OFFENDER	H-CO-HABITANT	4-FIREARM	U-UNKNOWN	1-NOT APPLICABLE	1-NOT APPLICABLE



CITY COUNCIL AGENDA ITEM

REQUESTED COUNCIL MEETING DATE 03/07/2017

Consent item: Yes

SUBJECT: (B17) Other Post Employment Benefits Actuarial Valuation Report

DEPARTMENT: Finance

GOAL:

RECOMMENDED MOTION: Accept the Other Post Employment Benefit Actuarial Valuation Report as of October 1, 2015.

SUMMARY: Other Post Employment Benefits (OPEB) are benefits other than pensions provided to retired employees. These benefits principally involve health and dental insurance, for which the retired worker pays the cost of coverage. However, because the City includes retirees in the insurance plans, the blended premiums are higher than they would be if only current workers were covered. This results in an implicit subsidy to the retired workers, which is required by GASB 45 to be valued biennially for inclusion on the financial statements. The current Actuarial Valuation Report is attached for your information.

Project No.: Funding Account No.:

ATTACHMENTS:

1.	Other Post Employment Benefits	Port Orange - 10-1-2015 GASB 45 Valuation w CL-final.pdf
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Debbie Culpepper
Tracey Riehm
Jake Johansson
Robin Fenwick

Created/Initiated - 02/20/2017
Approved - 02/23/2017
Approved - 02/24/2017
Final Approval - 02/24/2017



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Consultants & Actuaries

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February 10, 2017

Ms. Tracey Riehm
Finance Director
City of Port Orange
1000 City Center Circle
Port Orange, Florida 32129

Re: City of Port Orange Post Retirement Benefits Plan

Dear Tracey:

As requested, we are pleased to enclose six (6) copies of the Actuarial Valuation Report as of October 1, 2015 for the City of Port Orange Post Retirement Benefits Plan.

We appreciate the opportunity to have performed this important work assignment on behalf of the City. We look forward to discussing any comments and / or questions and to working with you on future OPEB valuation updates.

If you should have any question concerning the above, please do not hesitate to contact us.

Sincerest regards,

A handwritten signature in cursive script that reads 'Kelly L. Adams'.

Kelly L. Adams, A.S.A., M.A.A.A., E.A.
Consultant and Actuary

Enclosures

**THE REPORT OF THE ACTUARIAL VALUATION
AS OF OCTOBER 1, 2015
OF THE
CITY OF PORT ORANGE
POST RETIREMENT BENEFITS PROGRAM**

GRS

Gabriel Roeder Smith & Company

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February 10, 2017

Ms. Tracey Riehm
Finance Director
City of Port Orange
1000 City Center Circle
Port Orange, Florida 32129

Dear Tracey:

Submitted in this report are the results of an Actuarial Valuation of the benefit values associated with the employer-financed retiree health benefits provided by the City of Port Orange under the City of Port Orange Post Retirement Benefits Program (Program). The date of the Actuarial Valuation is October 1, 2015. This report was prepared at the request of the City.

The actuarial calculations were prepared for purposes of complying with the requirements of Statement 45 of the Governmental Accounting Standards Board (GASB). The calculations reported herein have been made on a basis consistent with our understanding of these accounting standards. Determinations of the liability associated with the benefits described in this report for purposes other than satisfying the City's financial reporting requirements may produce significantly different results. This report may be provided to parties other than the City only in its entirety and only with the permission of the City.

The valuation was based upon information furnished by the City of Port Orange, concerning Program benefits, financial transactions, Program provisions along with active members, terminated members, retirees and beneficiaries demographic and coverage information. The census data was provided as of October 1, 2015. We reviewed this information for internal consistency, but did not otherwise audit the data. We are not responsible for the accuracy or completeness of the information provided by the City.

The discount rate used in this Actuarial Valuation is the discount rate adopted by the City – 3.75%. The demographic and other economic assumptions are based on the demographic and other economic assumptions used in the Actuarial Valuations for the City of Port Orange General Employees Defined Benefit Pension Plan, the City of Port Orange Police Pension Fund and the City of Port Orange Fire and Rescue Pension Fund as indicated in the *Valuation Methods and Assumptions* section of this report. For separation from active membership and rates of disability for General employees and for rates of mortality we utilized the same rates as those used in the Florida Retirement System (FRS) for the respective Class for the July 1, 2016 Actuarial Valuation. The payroll growth assumption was selected to be more indicative of the average for all City of Port Orange employees versus each individual group of employees. The trend and participation assumptions are set by Gabriel, Roeder, Smith & Company based on general and Program specific experience. Each assumption represents an estimate of future Program experience.

The GASB Funded Ratio is not appropriate for assessing the sufficiency of Program assets, if any, to meet the estimated cost of settling benefit obligations based upon funding assumptions but may be appropriate for assessing the need for or the amount of future contributions.

To the best of our knowledge and belief the information contained in this report is accurate and fairly presents the actuarial position of the City of Port Orange Post Retirement Benefits Program as of the valuation date. All calculations have been made in conformance with generally accepted actuarial principles and practices and in conformance with the Actuarial Standards of Practice issued by the Actuarial Standards Board.

Future actuarial measurements may differ significantly from the current measurements presented in this report due to such factors as the following: Program experience differing from that anticipated by the economic or demographic assumptions; changes in economic or demographic assumptions; increases or decreases expected as part of the natural operation of the methodology used for these measurements and changes in Program provisions or applicable law. Due to the limited scope of the actuary's assignment, the actuary did not perform an analysis of the potential range of such future measurements.

This report should not be relied on for any purpose other than the purpose described in the primary communication.

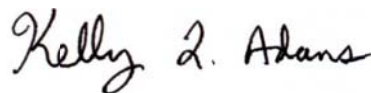
The signing actuaries are independent of the City.

The undersigned actuaries are members of the American Academy of Actuaries and meet the Qualification Standards of the American Academy of Actuaries to render the actuarial opinions contained herein.

Respectfully submitted,



Lawrence F. Wilson, A.S.A., M.A.A.A., E.A., F.C.A.
Senior Consultant and Actuary



Kelly L. Adams, A.S.A., M.A.A.A., E.A.
Consultant and Actuary

EXECUTIVE SUMMARY

EXECUTIVE SUMMARY

This report presents the annual expense required to be recognized by the Program sponsor for purposes of complying with the accounting requirements of GASB Statement 45.

The following charts summarize the results of this Actuarial Valuation. The program is using the **Pay-As-You-Go** method with the Entry Age Normal funding method. For additional detail please see Section A of the report.

For Fiscal Year Ending	September 30, 2017	September 30, 2016	September 30, 2015*
Annual Required Contribution (ARC)	\$684,310	\$647,215	\$472,304
Per Covered Active Employee	\$1,759	\$1,664	N/A
As % of Expected Covered Payroll	3.9%	3.8%	N/A
Annual OPEB Cost	\$678,834	\$642,889	\$468,953
Employer Contribution **	(\$252,430)	(\$225,550)	(\$261,199)
Addition to Net OPEB Obligation	\$426,404	\$417,339	\$207,754
EOY Net OPEB Obligation	\$2,414,175	\$1,987,771	\$1,570,432
	As of	October 1, 2015	October 1, 2013
Actuarial Accrued Liability		\$6,296,563	\$4,669,865
Actuarial Value of Assets		\$0	\$0
Unfunded Actuarial Accrued Liability		\$6,296,563	\$4,669,865

* As reported in the City's Comprehensive Annual Financial Report (CAFR).

** Employer contribution reflects the actuarially determined implicit subsidy cost.

Accrued Liability and Annual OPEB Cost

The Unfunded Actuarial Accrued Liability represents an actuarial measurement of the obligation that has *accrued* so far, based on the promise that has been made to current retirees and to current employees. This will be displayed in the Notes to Financial Statements and Required Supplementary Information within the City's annual financial statements and Comprehensive Annual Financial Report (CAFR).

The Annual OPEB Cost is the amount expensed for the year. The Annual OPEB Cost includes implicit subsidies paid on behalf of the current retirees and their dependents. Since the City's program is currently unfunded, the Employer Contribution equals the estimated claims based on age-adjusted premiums net of the estimated premium contribution paid by retirees for the year. The chart above presents the actuarially determined amount of such Employer Contributions.

EXECUTIVE SUMMARY

The cumulative difference between the Annual OPEB Costs and the Employer Contributions is called the Net OPEB Obligation. This is the amount of expense charged to date (per GASB Statement 45) which has not yet been offset by Employer Contributions. The Net OPEB Obligation will be reflected as a liability in the Statement of Net Assets of the City's annual financial statement. The Net OPEB Obligation flows to the balance sheet and accumulates each year until fully paid off by future Employer Contributions.

GASB Background

GASB issued Statement 45 to set forth rules for how governmental employers should account for Other Post-Employment Benefits (OPEBs). This Accounting Standard is effective for fiscal years beginning after December 15, 2006 for governments that were *Phase 1* governments for the purpose of implementing GASB Statement 34, December 15, 2007 for governments that were *Phase 2* governments for the purpose of implementing GASB Statement 34, and December 15, 2008 for governments that were *Phase 3* governments for the purpose of implementing GASB Statement 34.

The City of Port Orange Post Retirement Benefits Program first implemented GASB Statement 45 during the 2007-2008 fiscal year. The results presented herein are applicable to the year ending September 30, 2016 and are based on an actuarial valuation as of October 1, 2015 and projected to Program years ending September 30, 2017 through September 30, 2026.

GASB recently issued Statement 75 replacing Statement 45 effective with fiscal year ending September 30, 2018. All results in this report are based upon Statement 45.

EXECUTIVE SUMMARY

This Actuarial Valuation and Report covers the OPEBs provided to the retirees of the City of Port Orange. The Substantive Program provisions for the City's OPEBs are described in the section of this Report entitled *Summary of Benefit Provisions*.

GASB's Rationale

The issuance of GASB Statement 45 marked another major step in GASB's movement toward full accrual accounting for all governmental entities which issue government-wide financial statements according to generally accepted accounting principles.

Prior to implementation, the costs of OPEBs had been reflected in the majority of governmental financial statements on a pay-as-you-go basis of accounting. The subsidy provided by the City had been recorded as an expense only after employees retire, and then only one year at a time as the subsidy is paid. Statement 45 views the subsidy for retiree medical benefits as a form of compensation which must be accrued on the books of the City during an employee's working life, rather than waiting until the employee's service to the City has been completed and he or she has retired. GASB requires the lifetime value of that subsidy to be expensed over the working career of the employees.

Direct Subsidies

The City provides direct subsidies to surviving spouses of Firefighters or Police Officers who are killed as a result of an act of violence inflicted by another person while in the line of duty and to Firefighters or Police Officers (and their spouses) who become catastrophically disabled while in the line of duty. All other retirees are responsible for paying the total blended premium amount for post-employment benefit coverage. Details can be found in the section entitled *Summary of Benefit Provisions*.

Implicit Rate Subsidy

A liability arises because the retiree premiums are based on a blending of the experience among younger active employees and retired members. Since retirees generally have higher costs, the City is actually subsidizing the cost of the retiree and dependent coverage even when retirees pay all or a significant portion of the blended premium.

EXECUTIVE SUMMARY

GASB Statement 45 calls this the *implicit rate subsidy*. Even though it appears there is no additional City subsidy beyond the premiums directly being paid for retiree and dependent coverage, GASB believes there is, and it is not an insignificant amount. A group of 62-year-old retirees or dependents can easily cost over 50% more than the City is collecting from retirees for coverage (on a blended basis). The City, therefore, has assumed an obligation to pay for this implicit subsidy for current retirees and their dependents, as well as for current employees after they retire in the future.

Measuring the current year's explicit and implicit subsidies, projecting those subsidies for decades into the future and making an allocation of that cost to different years, is the subject of this Actuarial Valuation Report.

Funded and Unfunded Plans

Currently, the Program is unfunded - there is no separate GASB compliant Trust Fund or equivalent arrangement into which the City would make contributions to advance-fund the obligation. Ultimate subsidies which are provided over time are financed directly by general assets and reserves of the City. These assets are invested in short-term fixed income instruments. Consequently, according to GASB Statement 45, the interest discount rate used to calculate the present values and costs of the OPEB must be the long-range expected return on such short-term fixed income instruments. The City selected an discount rate of 3.75% for this purpose. If the OPEB Program were advance-funded with its assets invested in a prudent mix of stocks and longer bonds, and if the City adopted a Funding Policy to make fully funding cash deposits into a qualifying OPEB Trust, then a much higher interest discount rate (i.e. 7.25%) may be used. This would result in a lower ARC and a lower Unfunded Actuarial Accrued Liability versus using the 3.75% discount rate.

Actuarial Assumptions

In any long-term Actuarial Valuation (such as for OPEBs and Pensions), certain demographic, economic and behavioral assumptions are made concerning the population, the investment return / discount rates and the benefits provided. These Actuarial Assumptions form the basis for the actuarial model which is used to project the future population, the future benefits provided, and the future contributions collected. Next the investment return / discount rate assumption is used to discount the projected net OPEB benefits to a present value. This and other related present values are used to calculate the Annual OPEB

EXECUTIVE SUMMARY

Cost to be expensed in the City's financial statements and the Unfunded Actuarial Accrued Liability disclosed in the statements.

It would be instructive to review the section of this Report titled, *Actuarial Cost Method and Actuarial Assumptions* for details of all the relevant Actuarial Assumptions used in this Actuarial Valuation.

Actuarial Cost Methods

Liabilities and OPEB Costs for the City's Program were developed using the Entry Age Level Percent of Pay Actuarial Cost Method with an amortization of the Unfunded Actuarial Accrued Liability as a level percentage of pay on an open basis.

SECTION A

VALUATION RESULTS

**DETERMINATION OF UNFUNDED ACTUARIAL ACCRUED LIABILITY
FOR OTHER POST EMPLOYMENT BENEFITS
FISCAL YEAR BEGINNING OCTOBER 1, 2015**

<u>Base Valuation</u>					
<i>Present Value of Future Benefits</i>		Total	General	Police	Fire
1. Active Participants		\$ 7,139,438	\$ 2,251,945	\$2,721,356	\$ 2,166,137
2. Inactive Participants		<u>2,565,957</u>	<u>\$ 806,502</u>	<u>\$ 625,888</u>	<u>\$ 1,133,567</u>
3. Total PVFB		\$ 9,705,395	\$ 3,058,447	\$3,347,244	\$ 3,299,704
<i>EAN Accrued Liabilities</i>					
1. Active Participants		\$ 3,730,606	\$ 1,178,169	\$1,474,697	\$ 1,077,740
2. Inactive Participants		<u>2,565,957</u>	<u>\$ 806,502</u>	<u>\$ 625,888</u>	<u>\$ 1,133,567</u>
3. Total EAN Accrued Liability		\$ 6,296,563	\$ 1,984,671	\$2,100,585	\$ 2,211,307
<i>Normal Cost</i>		\$ 386,568	\$ 123,915	\$ 144,687	\$ 117,966
<u>100 Basis Points Increase in Trend Rates</u>			Percent Change		
Present Value of Future Benefits		\$11,585,462	19%		
EAN Accrued Liabilities		7,260,717	15%		
Normal Cost		477,310	23%		
<u>100 Basis Points Decrease in Trend Rates</u>					
Present Value of Future Benefits		\$ 8,234,872	-15%		
EAN Accrued Liability		5,512,492	-12%		
Normal Cost		317,428	-18%		

The Unfunded Actuarial Accrued Liability (UAAL) is not booked as an expense all in one year and does not appear in the Employer's Statement of Net Assets. Nevertheless, it is reported in the Notes to the Financial Statements. These are information sections within the employer's financial statements.

**DEVELOPMENT OF THE ANNUAL REQUIRED CONTRIBUTION
FOR OTHER POST EMPLOYMENT BENEFITS
FISCAL YEAR BEGINNING OCTOBER 1, 2015**

	Annual Required Contribution
<i>Base Valuation</i>	
Normal Cost	\$ 386,568
Amortization of UAAL (30 years)	248,843
Interest Adjustment	11,804
Total ARC	<u>\$ 647,215</u>
<i>100 Basis Points Increase in Trend Rates</i>	
Normal Cost	\$ 477,310
Amortization of UAAL (30 years)	286,947
Interest Adjustment	14,198
Total ARC	<u>\$ 778,455</u>
Percentage Change	20%
<i>100 Basis Points Decrease in Trend Rates</i>	
Normal Cost	\$ 317,428
Amortization of UAAL (30 years)	217,857
Interest Adjustment	9,944
Total ARC	<u>\$ 545,229</u>
Percentage Change	-16%

The unfunded actuarial accrued liability is amortized as a level percent of pay over a period of 30 years. A 30-year amortization period for unfunded actuarial accrued liabilities is the maximum period that complies with GASB requirements.

**AMORTIZATION OF UNFUNDED ACTUARIAL ACCRUED LIABILITY
FOR OTHER POST EMPLOYMENT BENEFITS
FISCAL YEAR BEGINNING OCTOBER 1, 2015**

Date	Unfunded Liability	Amortization Payment
10/01/2015	\$ 6,296,563	\$ 248,843
10/01/2016	6,274,510	255,064
10/01/2017	6,245,175	261,441
10/01/2018	6,208,124	267,977
10/01/2019	6,162,903	274,676
10/01/2020	6,109,036	281,543
10/01/2021	6,046,024	288,582
10/01/2022	5,973,346	295,797
10/01/2023	5,890,457	303,192
10/01/2024	5,796,787	310,772
10/01/2025	5,691,741	318,541
10/01/2026	5,574,695	326,505
10/01/2027	5,444,997	334,668
10/01/2028	5,301,966	343,035
10/01/2029	5,144,891	351,611
10/01/2030	4,973,028	360,401
10/01/2031	4,785,601	369,411
10/01/2032	4,581,797	378,646
10/01/2033	4,360,769	388,112
10/01/2034	4,121,632	397,815
10/01/2035	3,863,460	407,760
10/01/2036	3,585,289	417,954
10/01/2037	3,286,110	428,403
10/01/2038	2,964,871	439,113
10/01/2039	2,620,474	450,091
10/01/2040	2,251,772	461,343
10/01/2041	1,857,570	472,877
10/01/2042	1,436,619	484,699
10/01/2043	987,617	496,816
10/01/2044	509,206	509,206
10/01/2045	0	0

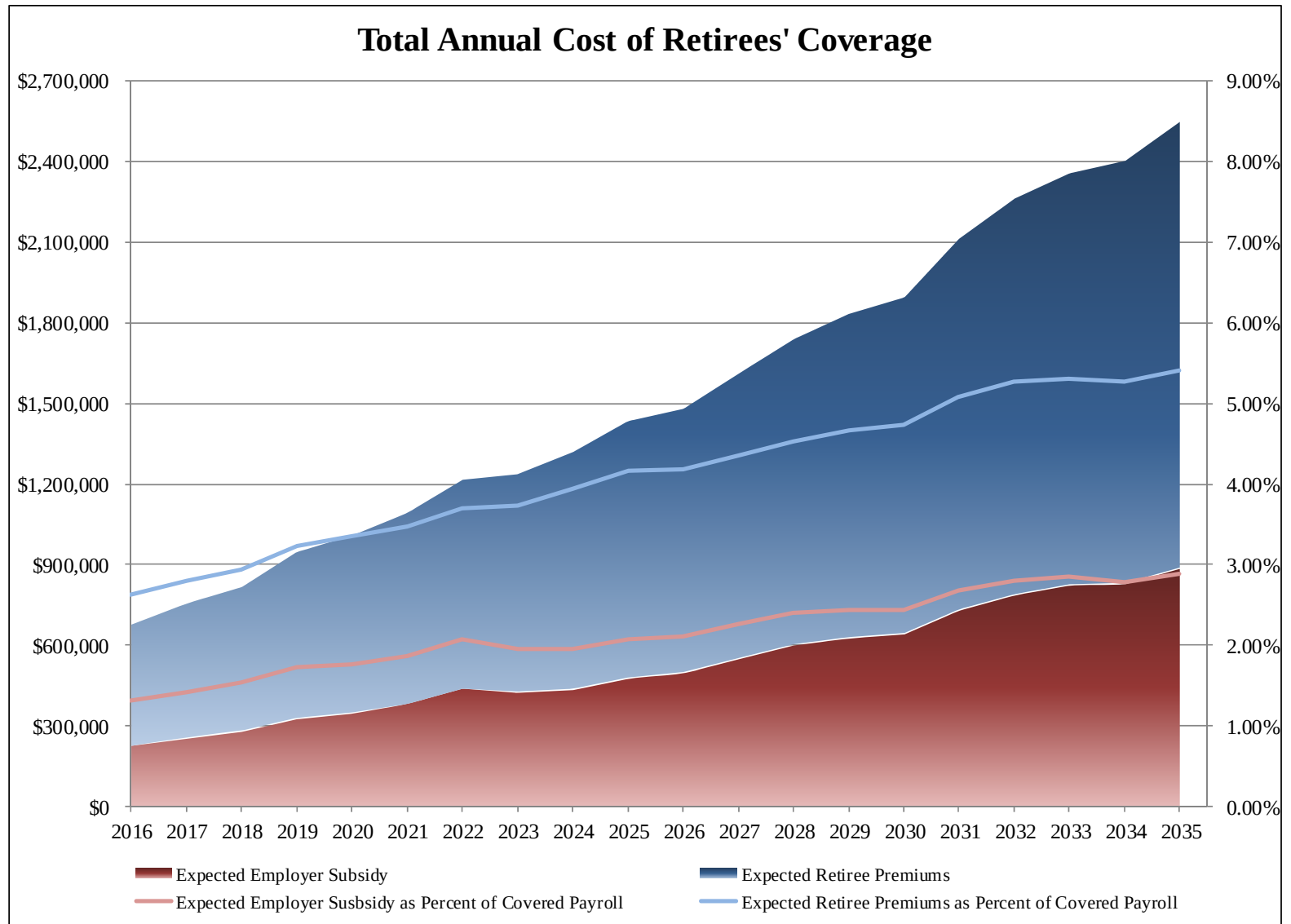
Amortization payments are assumed to increase at a payroll growth rate of 2.5%.

TWENTY YEARS OF EXPECTED BENEFIT PAYMENTS - OTHER POST EMPLOYMENT BENEFITS
FISCAL YEAR BEGINNING OCTOBER 1, 2015 *

Fiscal Year Ending	Total Expected Benefits			Expected Retiree Premiums			Net Expected Benefits		
	From Current and Future Active Members	From Current Inactive Members	Total	From Current and Future Active Members	From Current Inactive Members	Total	From Current and Future Active Members	From Current Inactive Members	Total
2016	63,141	612,246	675,387	43,054	406,783	449,837	20,087	205,463	\$ 225,550
2017	139,259	609,955	749,214	98,534	398,250	496,784	40,725	211,705	252,430
2018	199,745	615,421	815,166	142,590	392,519	535,109	57,155	222,902	280,057
2019	300,852	643,475	944,327	214,401	401,836	616,237	86,451	241,639	328,090
2020	407,829	595,563	1,003,392	288,447	368,363	656,810	119,382	227,200	346,582
2021	519,384	568,730	1,088,114	360,582	346,977	707,559	158,802	221,753	380,555
2022	646,203	568,134	1,214,337	437,013	340,151	777,164	209,190	227,983	437,173
2023	776,346	459,364	1,235,710	533,042	279,628	812,670	243,304	179,736	423,040
2024	927,040	387,409	1,314,449	638,721	239,360	878,081	288,319	148,049	436,368
2025	1,068,858	361,932	1,430,790	732,411	222,746	955,157	336,447	139,186	475,633
2026	1,169,950	310,062	1,480,012	794,148	190,696	984,844	375,802	119,366	495,168
2027	1,282,372	324,829	1,607,201	857,169	200,192	1,057,361	425,203	124,637	549,840
2028	1,432,635	305,883	1,738,518	948,064	188,215	1,136,279	484,571	117,668	602,239
2029	1,522,067	306,559	1,828,626	1,014,664	187,073	1,201,737	507,403	119,486	626,889
2030	1,662,868	229,999	1,892,867	1,101,246	147,875	1,249,121	561,622	82,124	643,746
2031	1,915,106	194,091	2,109,197	1,251,202	129,288	1,380,490	663,904	64,803	728,707
2032	2,110,929	151,615	2,262,544	1,368,895	108,122	1,477,017	742,034	43,493	785,527
2033	2,191,681	160,616	2,352,297	1,417,810	112,151	1,529,961	773,871	48,465	822,336
2034	2,259,059	139,219	2,398,278	1,466,195	102,106	1,568,301	792,864	37,113	829,977
2035	2,399,911	146,041	2,545,952	1,555,152	105,175	1,660,327	844,759	40,866	885,625

* Assuming stationary active population.

TWENTY YEARS OF EXPECTED BENEFIT PAYMENTS - OTHER POST EMPLOYMENT BENEFITS **FISCAL YEAR BEGINNING OCTOBER 1, 2015 * (CONTINUED)**

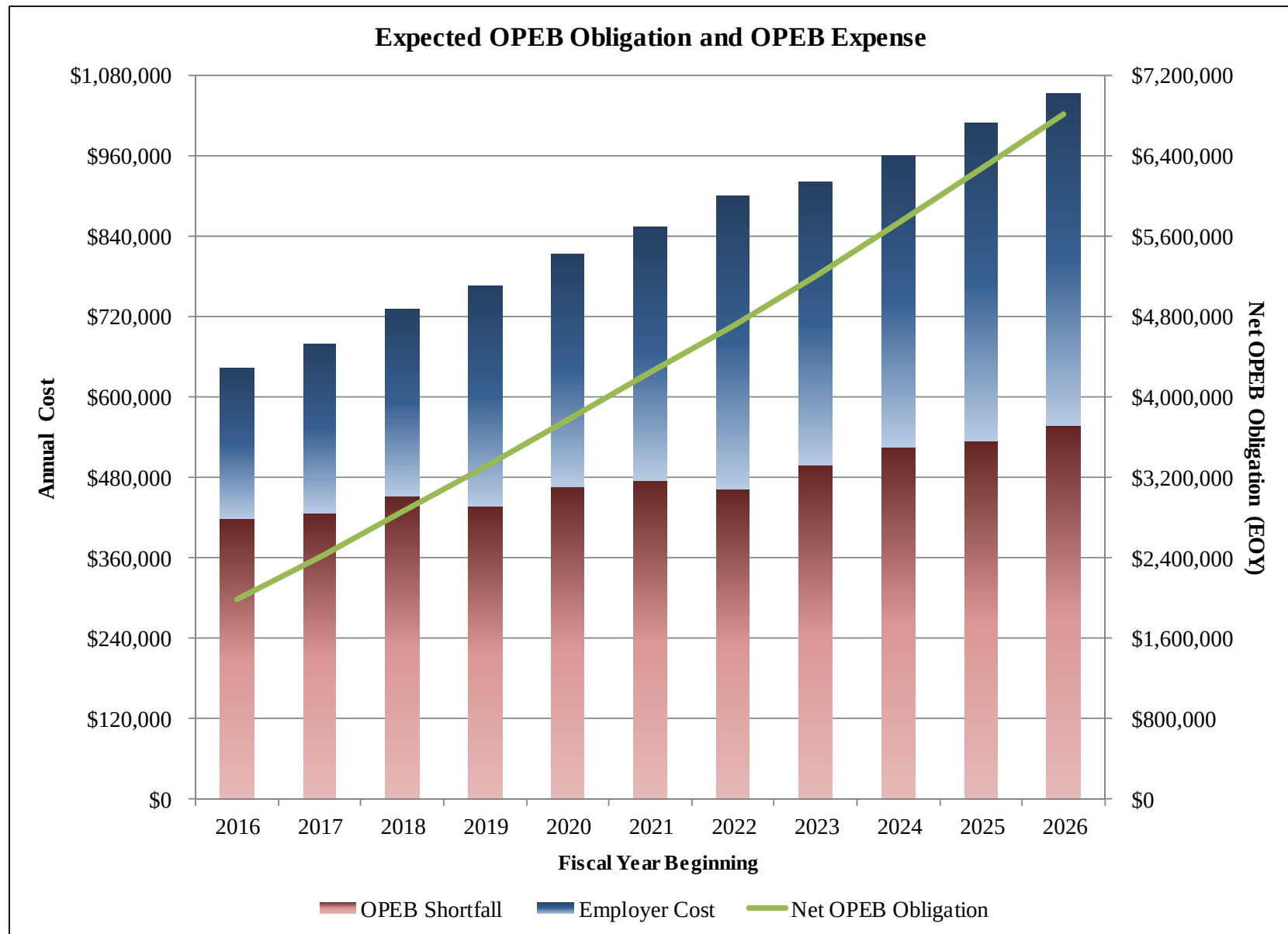


* Assuming stationary active population.

TEN (10) YEAR PROJECTIONS *

ANNUAL OPEB PROJECTION											
<i>Fiscal Year Ending</i>	<u>2016</u>	<u>2017</u>	<u>2018</u>	<u>2019</u>	<u>2020</u>	<u>2021</u>	<u>2022</u>	<u>2023</u>	<u>2024</u>	<u>2025</u>	<u>2026</u>
<u>Actives</u>											
Number *	389	389	389	389	389	389	389	389	389	389	389
Payroll	17,159,429	17,742,022	18,248,057	19,071,933	19,633,694	20,345,389	21,028,226	21,763,120	22,335,432	22,917,543	23,540,583
<u>Present Value of Future Benefits (PVFB)</u>											
Active PVFB	7,139,438	7,505,759	7,849,999	8,227,493	8,500,628	8,725,031	9,016,230	9,393,778	9,537,206	9,654,782	9,956,954
Inactive PVFB	2,565,957	2,728,927	2,966,578	3,115,385	3,409,009	3,731,539	3,991,167	4,168,756	4,726,863	5,357,306	5,807,040
Total PVFB	9,705,395	10,234,686	10,816,577	11,342,878	11,909,637	12,456,570	13,007,397	13,562,534	14,264,069	15,012,088	15,763,994
<u>Actuarial Accrued Liabilities (AAL)</u>											
Active AAL	3,730,606	3,966,122	4,134,898	4,416,450	4,536,591	4,657,483	4,847,063	5,104,618	5,018,880	4,886,501	4,941,031
Inactive AAL	2,565,957	2,728,927	2,966,578	3,115,385	3,409,009	3,731,539	3,991,167	4,168,756	4,726,863	5,357,306	5,807,040
Total AAL	6,296,563	6,695,049	7,101,476	7,531,835	7,945,600	8,389,022	8,838,230	9,273,374	9,745,743	10,243,807	10,748,071
<u>Annual Required Contribution (ARC)</u>											
Normal Cost	386,568	407,237	443,797	461,243	493,735	517,938	545,901	551,635	572,923	600,950	625,973
Amortization of Unfunded AAL	248,843	264,592	280,654	297,662	314,014	331,539	349,291	366,489	385,157	404,841	424,769
Interest Adjustment	11,804	12,481	13,458	14,099	15,006	15,781	16,630	17,056	17,799	18,685	19,520
ARC	647,215	684,310	737,909	773,004	822,755	865,258	911,822	935,180	975,879	1,024,476	1,070,262
<u>Annual OPEB Cost</u>											
ARC	647,215	684,310	737,909	773,004	822,755	865,258	911,822	935,180	975,879	1,024,476	1,070,262
Interest on BOY NOO	58,891	74,541	90,532	107,452	123,840	141,355	159,142	176,503	195,222	214,916	234,906
ARC Adjustment	(63,217)	(80,017)	(97,182)	(115,345)	(132,937)	(151,739)	(170,833)	(189,469)	(209,563)	(230,704)	(252,162)
Net OPEB Cost	642,889	678,834	731,259	765,111	813,658	854,874	900,131	922,214	961,538	1,008,688	1,053,006
<u>Net OPEB Obligation</u>											
NOO, Beginning of Year	1,570,432	1,987,771	2,414,175	2,865,377	3,302,398	3,769,474	4,243,793	4,706,751	5,205,925	5,731,095	6,264,150
OPEB Expense	642,889	678,834	731,259	765,111	813,658	854,874	900,131	922,214	961,538	1,008,688	1,053,006
Employer Contributions	(225,550)	(252,430)	(280,057)	(328,090)	(346,582)	(380,555)	(437,173)	(423,040)	(436,368)	(475,633)	(495,168)
NOO, End of Year	1,987,771	2,414,175	2,865,377	3,302,398	3,769,474	4,243,793	4,706,751	5,205,925	5,731,095	6,264,150	6,821,988
<u>Benefits/Contributions</u>	225,550	252,430	280,057	328,090	346,582	380,555	437,173	423,040	436,368	475,633	495,168
* Assuming stationary active population. Reflects GASB Statement No. 45 only. GASB Statement No. 75 is scheduled to be first effective for fiscal year September 30, 2018. ** Employer contributions reflect the actuarially determined costs.											

TEN (10) YEAR PROJECTIONS (CONTINUED)*



* Assuming stationary active population.

COMMENTS

COMMENT A: One of the key assumptions used in any valuation of the cost of post-employment benefits is the expected rate of return on program assets, if any. Higher expected investment returns will result in a lower ARC. Lower expected investment returns will result in a higher ARC. Based on information from the City, we have calculated the liability and the resulting ARC using a 3.75% expected long term rate of investment return under the Pay-As-You-Go method. The 3.75% expected long term rate of return is lowered from the 4.0% used in the prior valuation.

COMMENT B: Based on the number of Program members as of this Actuarial Valuation the City is required by GASB to perform actuarial valuations at least biennially. An annual actuarial valuation would re-compute the required contribution rate each year. This will permit fluctuations and trends in experience to be reflected in the contribution rate on a more regular basis.

COMMENT C: The amortization of the unfunded actuarial accrued liability has been calculated to increase at the same rate as the projected increase in active member payroll (2.5% per year).

COMMENT D: The ARC and projections shown include amortization of the unfunded actuarial accrued liability over an open 30-year period. This is the maximum amortization period permitted by the GASB Statement 45. A shorter amortization period would result in a higher ARC.

COMMENT E: Program costs in this Actuarial Valuation are higher than projected Program costs from the prior Actuarial Valuation. This increase is primarily due to the decrease in the discount rate as directed by the City, updated mortality assumptions and trend assumptions reflecting advances in industry standards along with an increase in the estimated Excise Tax due to the Affordable Care Act. The participation assumptions were updated to better reflect actual program experience and produced increased costs for Police and Fire with decreased costs for General members. The increases in costs were partially offset by lower than expected medical claims experience resulting in per capita age adjusted net claims averaging approximately 6.0% lower than expected.

COMMENTS (CONTINUED)

COMMENT F: Summary of health care reform provisions and their effects on this actuarial valuation:

I. Removal of the Lifetime Maximum

The City has already included changes made to the Program structure in response to health care reform. Thus, no adjustment was made for removal of the lifetime maximum.

II. Extension of Dependent Coverage up to Age 26 for Covered Employee's Children

This provision is deemed to not be material to this Program and is not reflected in the current per capita adult costs.

III. Elimination of Annual Dollar Limits (Effective 2014) / Restrictions on Annual Dollar Limits

This provision is reflected in the premiums used to develop the per capita adult costs.

IV. Medicare Advantage Plans – Effective January 1, 2011

In a Medicare Advantage Plan, the OPEB liability is based on the difference between the present value of future claims less the present value of future Medicare reimbursements. The law provides for reductions to the reimbursement amounts that would be provided to Medicare Advantage plans starting in 2011. GASB does not permit recognition of future Program changes in a valuation - net claims growth assumption is based on the current Program design. Due to the uncertainty in the future design of the Medicare Advantage Plan, Program net claims are trended at standard rates, implicitly assuming both total claims and reimbursements grow similarly.

We understand the City does not currently provide a Medicare Advantage plan; hence there is no impact to the liabilities.

V. Medicare Part D Subsidy – Shrinking Medicare Prescription Drug Donut Hole Starting January 1, 2011

Retiree Drug Subsidy payments are not reflected as an offsetting item in GASB 45 valuations.

VI. Excise Tax on High-Cost Employer Health Plans (aka Cadillac Tax) Effective January 1, 2020

The *Cadillac* tax is a 40% excise tax paid by the coverage provider (employer and/or insurer) on the value of health plan costs in excess of certain thresholds. The previously established 2018 thresholds of \$10,200 for single coverage or \$27,500 for family coverage will be indexed to inflation by the CPI-U to determine the thresholds for 2020. Many plans are below the thresholds today, but may likely exceed them in the next decade. The thresholds will be indexed at CPI-U, which is historically lower than the medical inflation rates affecting the cost of the plans. There is considerable uncertainty about how the tax would be applied, and considerable latitude in grouping of participants for tax purposes.

COMMENTS (CONTINUED)

We have reflected an additional cost for the high cost plan excise tax. In the future, the City may need to decide whether to reduce benefits to avoid the tax, or how the additional cost will be allocated between the employer and the members. There is a 3.9% load on the liabilities for the excise tax.

A number of provisions of the underlying health care plans would need to change if the Program currently has and subsequently loses its grandfathered status. The provisions include:

- I. Elimination of limits on pre-existing conditions (effective 6 months after enactment for covered children under age 19 and 2014 for all enrollees).
- II. Elimination of cost-sharing for preventive services.
- III. Elimination of emergency services preauthorization.
- IV. Elimination of OB-GYN preauthorization.
- V. Providing enrollees with a choice of primary care physician.
- VI. Elimination of waiting periods exceeding 90 days (effective 2014).
- VII. Tying annual cost-sharing limits to HSA limits (effective 2014).

If the City health plans are already in compliance with the above provisions, no additional consideration will need to be given in the valuation of these liabilities as of this valuation (upon loss of the grandfathered status).

We have not identified any other specific provision of health care reform that would be expected to have a significant impact on the measured obligation. As additional guidance on the legislation is issued we will review and monitor those impacts.

SECTION B

RETIREE PREMIUM RATE DEVELOPMENT

RETIREE PREMIUM RATE DEVELOPMENT

Initial premium rates were developed for the two classes of retirees (pre-65 and post-65). The fully-insured rates provided by the City of Port Orange were utilized to determine the appropriate premium rates. The fully-insured premiums are blended rates based on the combined experience of active and retired members; therefore, there is an implicit employer subsidy for the non-Medicare eligible retirees since the average costs of providing health care benefits to retirees under age 65 is higher than the average cost of providing health care benefits to active employees. The true per capita cost for the pre-65 retirees is developed by adjusting the demographic differences between the active employees and retirees to reflect this implicit rate subsidy for the retirees. For members on Medicare, we estimated the true cost for these members by adjusting the blended rates to factor in the amount covered by Medicare. We assume 75% of the post-65 members will enroll in Medicare A & B and 25% will not enroll in either A or B.

Age graded and gender distinct premiums are utilized by this valuation. The premiums developed by the preceding process are appropriate for the unique age and gender distribution currently existing. Over the future years covered by this valuation, the age and gender distribution will most likely change. Therefore, our process *distributes* the average premium over all age / gender combinations and assigns a unique premium for each combination. The age / gender specific premiums more accurately reflect the health care utilization and cost at that age.

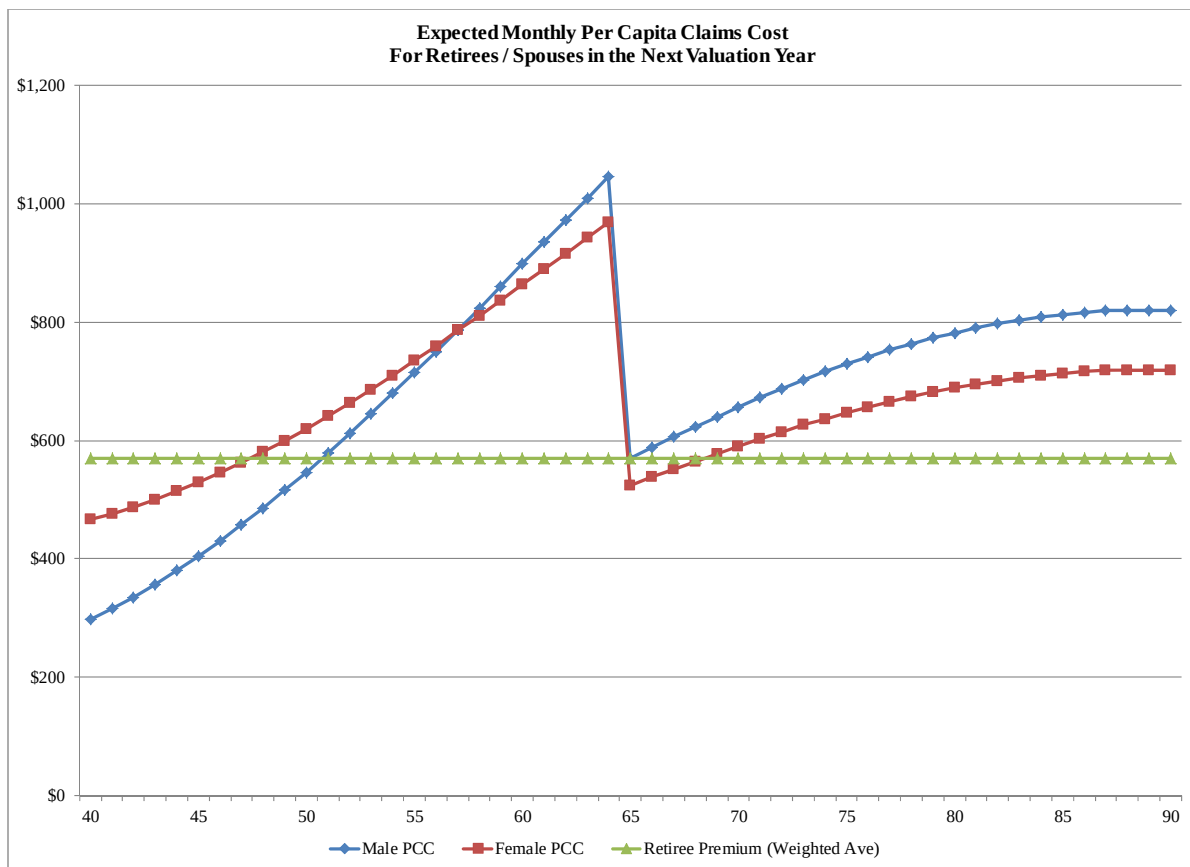
The current premiums used to develop the per capita claims costs are shown in the following table:

Monthly Premium Rates Effective July 1, 2016				
Coverage Tier	Balance HMO	Classic HMO	Classic 2000 POS	HDHP
Retiree Only	\$ 540.60	\$ 658.21	\$ 662.81	\$ 444.68
Retiree / Spouse	\$ 954.71	\$ 1,162.40	\$ 1,170.53	\$ 785.31

PER CAPITA COST

The combined monthly one-person medical and prescription drug premiums at select ages are shown below.

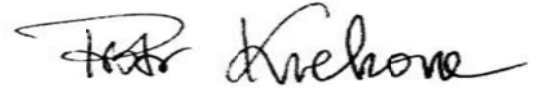
Monthly Per Capita Costs		
Age	Male	Female
40	\$297.43	\$465.99
45	\$404.11	\$529.05
50	\$546.72	\$619.47
55	\$714.56	\$734.50
60	\$897.69	\$862.87
64	\$1,044.86	\$968.49
65	\$569.29	\$524.24
70	\$656.67	\$590.48
75	\$729.02	\$646.98
80	\$781.66	\$689.00



PER CAPITA COST (CONTINUED)

We did not *age grade* the dental premium rates for this valuation, since dental claims do not vary significantly by age. The retirees pay 100% of the dental premium. Therefore, no implicit subsidy is assumed and dental coverage is not included in this valuation.

The undersigned is a Member of the American Academy of Actuaries (M.A.A.A.) and meets the Qualification Standards of the American Academy of Actuaries to certify the per capita retiree health care rates shown above.

A handwritten signature in black ink, appearing to read "Piotr Krekora", written over a horizontal line.

Piotr Krekora, A.S.A., M.A.A.A.

Consultant and Actuary

SECTION C

SUMMARY OF **BENEFIT PROVISIONS**

SUMMARY OF BENEFITS AS OF OCTOBER 1, 2015

PROGRAM PARTICIPANTS

All fulltime employees of the City of Port Orange who are participating in the City sponsored medical Program at retirement are eligible to receive retiree health care benefits.

NORMAL RETIREMENT BENEFITS

Normal retirement eligibility conditions for retiree health care benefits are as follows:

General - Defined Contribution Plan Employees:

1. Attainment of age 55.
- 2.

General – Defined Benefit Plan Employees:

1. Attainment of age 65 and completion of 10 years of credited service.

Firefighters:

For Firefighters hired before September 25, 2012:

1. Attainment of age 50 and completion of 10 years of credited service or
2. Completion of 20 years of credited service.

For Firefighters hired on or after September 25, 2012 but before December 4, 2012 (Note no Firefighters were hired during this time):

1. Attainment of age 55 and completion of 10 years of credited service or
2. Completion of 25 years of credited service.

Note for pension benefit purposes the eligibility is based on benefits accrued before and after September 25, 2012 not hire date. However for retiree medical purposes it translates as shown above.

For Firefighters hired on or after December 4, 2012:

1. Attainment of age 55 and completion of 10 years of credited service or
2. Attainment of age 52 and completion of 25 years of credited service.

Police Officers:

For Police Officers hired on or before January 31, 2011:

Earlier of:

1. Attainment of age 48 and completion of 10 years of credited service or
2. Attainment of age 45 and completion of 25 years of credited service.

SUMMARY OF BENEFITS AS OF OCTOBER 1, 2015 (CONTINUED)

For Police Officers hired after January 31, 2011:

1. Attainment of age 48 and completion of 10 years of credited service.

All Members

Health Care Benefit Provided by Program

Member: Eligible Members are eligible to elect lifetime post retirement coverage which continues until death. Member pays the full blended cost of coverage.

Spouse: Eligible Members are eligible to elect spousal coverage which continues until the spouse's death. Member / spouse pays the full blended cost of spousal coverage.

Dependent: Eligible Members are eligible to elect dependent coverage which continues up until age 26 (30 if certain criteria are met) of the dependent. Member / dependent pays the full blended cost of dependent coverage.

EARLY RETIREMENT BENEFITS

Early retirement eligibility conditions for retiree health care benefits are as follows:

Defined Contribution Plan Employees:

None.

General – Defined Benefit Plan Employees:

1. Attainment of age 55 and completion of 10 years of credited service.

Firefighters:

For Firefighters hired before September 25, 2012:

1. Attainment of age 40 and completion of 10 years of credited service

For Firefighters hired on or after December 4, 2012

1. Attainment of age 50 and completion of 10 years of credited service.

Police Officers:

1. Attainment of age 45 and completion of 10 years of credited service.

SUMMARY OF BENEFITS AS OF OCTOBER 1, 2015 (CONTINUED)

All Members

Health Care Benefit Provided by Program

Member: Eligible Members are eligible to elect lifetime post retirement coverage which continues until death. Member pays the full blended cost of coverage.

Spouse: Eligible Members are eligible to elect spousal coverage which continues until the spouse's death. Member / spouse pays the full blended cost of spousal coverage.

Dependent: Eligible Members are eligible to elect dependent coverage which continues up until age 26 (30 if certain criteria are met) of the dependent. Member / dependent pays the full blended cost of dependent coverage.

DEATH IN SERVICE RETIREMENT BENEFITS

Death retirement eligibility conditions for retiree health care benefits are as follows:

Health Care Benefit Eligibility Conditions

Police and Firefighters: Result of violent act in line of duty.

Health Care Benefit Provided by Program

Fully subsidized for lifetime (or remarriage) of spouse; dependents to age 26.

DISABLED RETIREMENT BENEFITS

Disability retirement eligibility conditions for retiree health care benefits are as follows:

Health Care Benefit Eligibility Conditions

General - Defined Contribution Plan Employees:

1. Not eligible.

General – Defined Benefit Plan Employees:

1. Immediately.

Firefighters:

1. Completion of 10 years of credited service for non-service related disabilities.
2. Immediately for service related disabilities.

Police Officers:

1. Completion of 10 years of credited service for non-service related disabilities
2. Immediately for service related disabilities

SUMMARY OF BENEFITS AS OF OCTOBER 1, 2015 (CONTINUED)

Health Care Benefit Provided by Program

Member: Eligible Members are eligible to elect post retirement coverage which continues until death. Member pays the full blended cost of coverage. Police and Firefighters – resulting from catastrophic line of duty injury - fully subsidized for life.

Spouse: Eligible Members are eligible to elect spousal coverage which continues until the spouse's death. Member / spouse pay full blended cost of spousal coverage. Police and Firefighters – resulting from catastrophic line of duty injury - fully subsidized for life.

Dependent: Eligible Members are eligible to elect dependent coverage which continues up until age 26 (30 if certain criteria are met) of the dependent. Member / dependent pays the full cost of dependent coverage. Police and Firefighters – resulting from catastrophic line of duty injury - fully subsidized to age 26.

BENEFITS FOR SPOUSES OF RETIRED EMPLOYEES

Spouses of retired employees are eligible to receive retiree health care benefits. Coverage continues to surviving spouses of deceased retirees.

NON-MEDICARE AND MEDICARE-ELIGIBLE PROVISIONS

Benefits continue to be provided by the Program once a retiree is eligible for Medicare. Retirees are not required to enroll in Medicare once eligible.

VISION COVERAGE

No separate vision benefits.

DENTAL COVERAGE

Health Care Benefit Eligibility Conditions

Members who retire meet retiree health care eligibility conditions may elect dental benefits.

Health Care Benefit Provided by Program

Member: Member pays the full cost of coverage.

LIFE INSURANCE COVERAGE

No life insurance benefits are provided.

CHANGES SINCE PRIOR VALUATION

None

SUMMARY OF KEY RETIREE HEALTHCARE BENEFITS

MEDICAL BENEFITS		
	HMO - Balance	HMO - Classic
Lifetime Maximum	Unlimited	Unlimited
Deductible (CYD)		
Single	\$500	None
Family	\$1,000	None
Out-of-Pocket Maximum *		
Single	\$4,000	\$3,000
Family	\$8,000	\$6,000
Office Visit		
Preventative Care	100% covered	100% covered
Primary Care	\$25 co-pay	\$20 co-pay
Specialist	\$50 co-pay	\$35 co-pay
Maternity Care	\$50 co-pay 80% after deductible	\$35 co-pay \$200 per admission
Hospital (Maximum per Admission)		
Inpatient	80% after deductible	\$200 per admission
Outpatient	80% after deductible	\$100 co-pay
Urgent Care	\$100 co-pay	\$60 co-pay
Emergency Room	\$350 co-pay	\$100 co-pay
Mental & Nervous		
Outpatient	\$50 co-pay	\$35 co-pay
Inpatient	80% after deductible	\$200 per admission
Alcohol & Drug Abuse		
Outpatient	\$50 co-pay	\$35 co-pay
Inpatient	80% after deductible	\$200 per admission
Prescription Drugs - FHCP Pharmacy (Generic/Brand/Specialty)		
Preferred	\$3 / \$30 / \$125	\$3 / \$30 / \$125
Non-Preferred	\$10 / \$55 / \$125	\$10 / \$55 / \$125

* Does not include Prescription Drug co-pays

SUMMARY OF KEY RETIREE HEALTHCARE BENEFITS (CONTINUED)

MEDICAL BENEFITS				
	POS - Classic		HDHP	
	In Network	Out-of-Network	In Network	Out-of-Network
Lifetime Maximum	Unlimited	Unlimited	Unlimited	Unlimited
Deductible (CYD)				
Single	None	\$2,000	\$1,300	\$2,600
Family	None	\$4,000	\$2,600	\$5,200
Out-of-Pocket Maximum*				
Single	\$3,000	\$6,000	\$5,000	\$10,000
Family	\$6,000	\$12,000	\$5,000	\$10,000
Office Visit				
Preventative Care	100% covered	50% after deductible	100% covered	60% after deductible
Primary Care	\$20 co-pay	50% after deductible	80% after deductible	60% after deductible
Specialist	\$35 co-pay	50% after deductible	80% after deductible	60% after deductible
Maternity Care	\$35 co-pay \$250 co-pay per day up to a max of 5 days per admission	50% after deductible	80% after deductible	60% after deductible
Hospital (Maximum per Admission)				
Inpatient	\$250 co-pay per day up to a max of 5 days per admission	50% after deductible	80% after deductible	60% after deductible
Outpatient	\$100 co-pay	50% after deductible	80% after deductible	60% after deductible
Urgent Care	\$60 co-pay	\$60 co-pay	80% after deductible	80% after deductible
Emergency Room	\$100 co-pay	\$100 co-pay	80% after deductible	80% after deductible
Mental & Nervous				
Outpatient	\$35 co-pay	50% after deductible	80% after deductible	60% after deductible
Inpatient	\$250 co-pay per day up to a max of 5 days per admission	50% after deductible	80% after deductible	60% after deductible
Alcohol & Drug Abuse				
Outpatient	\$35 co-pay	50% after deductible	80% after deductible	60% after deductible
Inpatient	\$250 co-pay per day up to a max of 5 days per admission	50% after deductible	80% after deductible	60% after deductible
Prescription Drugs - FHCP Pharmacy (Generic/Brand/Specialty)			Following Copay after deductible	
Preferred	\$3 / \$30 / \$125	N/A	\$3 / \$30 / \$125	N/A
Non-Preferred	\$10 / \$55 / \$125	N/A	\$10 / \$55 / \$125	N/A

* Does not include Prescription Drug co-pays

SECTION D

SUMMARY OF PARTICIPANT DATA

ACTIVE MEMBERS AS OF OCTOBER 1, 2015

Attained Age	Years of Service to Valuation Date							Total
	0-4	5-9	10-14	15-19	20-24	25-29	30+	
Less than 25	26	-	-	-	-	-	-	26
25-29	37	9	-	-	-	-	-	46
30-34	25	7	7	-	-	-	-	39
35-39	14	13	15	5	-	-	-	47
40-44	8	9	15	8	-	-	-	40
45-49	15	5	14	13	6	-	-	53
50-54	12	7	2	9	16	1	2	49
55-59	14	10	8	3	17	-	2	54
60-64	9	3	3	3	6	-	-	24
65 & above	4	2	2	1	2	-	-	11
Totals	164	65	66	42	47	1	4	389

While not directly used in the financial computations, the following group averages are computed and shown because of their general interest.

	<u>10/01/2013</u>	<u>10/01/2015</u>
Age:	43.6 years	43.7 years
Service:	8.4 years	9.2 years
Annual Pay:	\$49,342	\$44,112

RETIRED MEMBERS AS OF OCTOBER 1, 2015

Attained Age	Retirees			Spouses		
	Male	Female	Total	Male	Female	Total
44 & under	-	-	-	-	1	1
45-49	3	-	3	-	3	3
50-54	3	-	3	1	4	5
55-59	18	3	21	-	8	8
60-64	12	8	20	1	2	3
65-69	-	1	1	-	1	1
70-74	-	-	-	-	-	-
75-79	-	-	-	-	-	-
80 & above	-	-	-	-	-	-
Total	36	12	48	2	19	21

The member counts above include solely those retirees who have elected to receive retiree health care coverage through the City of Port Orange Post Retirement Benefits Program.

SECTION E

GASB ACCOUNTING SCHEDULES

GASB STATEMENT 45
REQUIRED ACTUARIAL INFORMATION
SCHEDULES OF FUNDING PROGRESS AND EMPLOYER CONTRIBUTIONS

GASB Statement 45						
Schedule of Funding Progress						
Actuarial Valuation Date	Actuarial Value of Assets (a)	Actuarial Accrued Liability (AAL) - Entry Age (b)	Unfunded AAL (UAAL) (b - a)	Funded Ratio (a/b)	Covered Payroll (c)	UAAL as a Percentage of Covered Payroll ((b-a)/c)
October 1, 2011 *	\$ 0	\$ 4,199,000	\$ 4,199,000	0.0%	\$ 16,705,000	25.1%
October 1, 2013 *	\$ 0	\$ 4,669,865	\$ 4,669,865	0.0%	\$ 17,960,464	26.0%
October 1, 2015	\$ 0	\$ 6,296,563	\$ 6,296,563	0.0%	\$ 17,159,429	36.7%

* As reported in the City's Comprehensive Annual Financial Report (CAFR).

Schedule of Employer Contributions				
Fiscal Year Ending	Annual OPEB Cost	Amount Contributed	Percentage of Annual OPEB Cost Contributed	Net OPEB Obligation
September 30, 2014 ¹	\$ 454,488	\$ 223,133	49.1%	\$ 1,362,678
September 30, 2015 ¹	\$ 468,953	\$ 261,199	55.7%	\$ 1,570,432
September 30, 2016 ²	\$ 642,889	\$ 225,550	35.1%	\$ 1,987,771

¹ As reported in the City's Comprehensive Annual Financial Report (CAFR).

² Amount contributed reflects the actuarially determined cost.

GASB STATEMENT 45
REQUIRED ACTUARIAL INFORMATION
ACCOUNTING DISCLOSURE EXHIBIT

Annual OPEB Cost (Expense) and Net OPEB Obligation (NOO)		
Fiscal Year Ended	09/30/2016	9/30/2015 ¹
Normal Cost (service cost for one year)	\$ 386,568	\$ 254,650
Amortization of UAAL	248,843	199,488
Interest on Normal Cost and Amortization	11,804	18,166
Annual Required Contribution (ARC)	\$ 647,215	\$ 472,304
NOO at beginning of year	\$ 1,570,432	\$ 1,362,678
Annual Required Contribution (ARC)	\$ 647,215	\$ 472,304
Interest on NOO	58,891	54,507
Adjustment to ARC	(63,217)	(57,858)
Annual OPEB Cost	\$ 642,889	\$ 468,953
Employer Contribution ²	(225,550)	(261,199)
Increase / (Decrease) in NOO	\$ 417,339	\$ 207,754
NOO at end of year	\$ 1,987,771	\$ 1,570,432

¹ As reported in the City's Comprehensive Annual Financial Report (CAFR).

² Employer contributions reflect the actuarially determined cost.

GASB STATEMENT 45
REQUIRED ACTUARIAL INFORMATION
ACCOUNTING DISCLOSURE EXHIBIT (CONTINUED)

Actuarial valuation date	10/01/2015
Actuarial cost method	Entry Age
Amortization method	Level percent, open
Remaining amortization period	30 years
Asset valuation method	Unfunded
Actuarial assumptions:	
Investment rate of return *	3.75%
Projected salary increases	4.00% -7.50%
Payroll growth assumptions	2.50%
Initial trend rate *	7.00%
Ultimate trend rate *	4.40%
* Includes inflation at	2.60%

This information is presented in draft form for review by the City's auditors. Please let us know if any items should be adjusted in order for this table to be consistent with the audited financial statements.

GASB STATEMENT 45

PROJECTED DISCLOSURES FOR FISCAL YEARS ENDING SEPTEMBER 30, 2016 THROUGH SEPTEMBER 30, 2017

Based on the number of Program members as of this actuarial valuation, GASB allows for performing actuarial valuations biennially with results applicable to two reporting years (per paragraph 12 of GASB Statement 45). However, a new fully compliant actuarial valuation would need to be performed if significant changes have occurred since the previous actuarial valuation that affect the valuation results, including significant changes in benefit provisions, size or composition of the membership or other factors that impact long-term actuarial assumptions through the reporting date. Refer also to Q&A 8.17.5 of the 2008-2009 Comprehensive Implementation Guide. In the absence of such changes, the following disclosures may be used in fiscal years 2016 - 2017 reporting.

Schedule of Employer Contributions				
Fiscal Year Ending	Annual OPEB Cost	Amount Contributed ¹	Percentage of Annual OPEB Cost Contributed	Net OPEB Obligation
September 30, 2016	\$ 642,889	\$ 225,550	35.1%	\$ 1,987,771
September 30, 2017	\$ 678,834	\$ 252,430	37.2%	\$ 2,414,175

¹ *Amount contributed* reflects the actuarially determined cost.

GASB STATEMENT 45
PROJECTED DISCLOSURES FOR FISCAL YEARS ENDING
SEPTEMBER 30, 2016 THROUGH SEPTEMBER 30, 2017 (CONTINUED)

Annual OPEB Cost (Expense) and Net OPEB Obligation (NOO)		
Fiscal Year Ending	09/30/2017	09/30/2016
Normal Cost (service cost for one year)	\$ 407,237	\$ 386,568
Amortization of UAAL	264,592	248,843
Interest on Normal Cost and Amortization	12,481	11,804
Annual Required Contribution (ARC)	\$ 684,310	\$ 647,215
NOO at beginning of year	\$ 1,987,771	\$ 1,570,432
Annual Required Contribution (ARC)	\$ 684,310	\$ 647,215
Interest on NOO	74,541	58,891
Adjustment to ARC	(80,017)	(63,217)
Annual OPEB Cost	\$ 678,834	\$ 642,889
Employer Contribution ¹	(252,430)	(225,550)
Increase / (Decrease) in NOO	\$ 426,404	\$ 417,339
NOO at end of year	\$ 2,414,175	\$ 1,987,771

¹ Employer contributions reflect the actuarially determined cost.

SECTION F

ACTUARIAL COST METHOD AND ACTUARIAL ASSUMPTIONS

VALUATION METHODS AND ASSUMPTIONS

Actuarial Cost Method. Normal cost and the allocation of benefit values between service rendered before and after the valuation date was determined using an **Individual Entry-Age Actuarial Cost Method** having the following characteristics:

- (i) the annual normal cost for each individual active member, payable from the date of employment to the date of retirement, is sufficient to accumulate the value of the member's benefit at the time of retirement;
- (ii) each annual normal cost is a constant percentage of the member's year by year projected covered pay.

Actuarial gains (losses), as they occur, reduce (increase) the Unfunded Actuarial Accrued Liability.

Financing of Unfunded Actuarial Accrued Liabilities. Unfunded actuarial accrued liabilities (full funding credit if assets exceed liabilities) were amortized by level (principal & interest combined) percent of pay contributions over an open 30 year period. Program is currently unfunded.

Rate of investment return under the Pay-As-You-Go approach is 3.75%, compounded annually.

The assumed real return is the rate of return in excess of price inflation. Considering other assumptions used in the valuation, the 3.75% nominal rate translates to a net real return of 1.15%.

Rates of salary increase used for individual active members are as follows:

Current salary for General Program participants is assumed to increase 4.0% per year.

Current salary for Police Program participants is assumed to increase 7.5% per year.

Current salary for Firefighter Program participants is assumed to increase in accordance with the following table based upon the number of years of service.

VALUATION METHODS AND ASSUMPTIONS (CONTINUED)

Years of Service	Increase
0 - 4	7.0%
5 - 9	6.0%
10 - 14	5.0%
15 & Over	4.0%

These salary increase assumptions are used in the October 1, 2015 Actuarial Valuations for the City of Port Orange General Employees Defined Benefit Pension Plan, the City of Port Orange Police Pension Fund and the City of Port Orange Fire and Rescue Pension Fund.

Healthy participant pre-retirement and post-retirement mortality tables are:

General Employee participants during employment - RP-2000 Combined Healthy Participant Mortality Table, separate rates for males and females, with 50% White Collar Adjustment / 50% Blue Collar Adjustment and fully generational mortality improvements projected to each future decrement date with Scale BB.

General Employee participants post-employment - For male participants: RP-2000 Annuitant Mortality Tables, with 50% White Collar Adjustment / 50% Blue Collar Adjustment and fully generational mortality improvements projected to each future decrement date with Scale BB. For female participants: RP-2000 Annuitant Mortality Tables, with 100% White Collar and fully generational mortality improvements projected to each future decrement date with Scale BB.

Police Officer and Firefighters participants during employment - RP-2000 Combined Healthy Mortality Table, separate for males and females, with 10% White Collar Adjustment / 90% Blue Collar Adjustment and fully generational mortality improvements projected to each future decrement date with Scale BB.

Police Officer and Firefighter participants post-employment - RP-2000 Annuitant Mortality Table, separate for males and females, with 10% White Collar Adjustment / 90% Blue Collar Adjustment and fully generational mortality improvements projected to each future decrement date with Scale BB.

Healthy mortality assumptions are the healthy mortality assumptions used in the July 1, 2016 Actuarial Valuations of the Florida Retirement System.

VALUATION METHODS AND ASSUMPTIONS (CONTINUED)

Disabled mortality rates:

General disabled participants - For male participants, 100% RP-2000 Disabled Male Mortality Table setback four years without projected mortality improvements. For female participants, 100% RP-2000 Disabled Female Mortality Table set forward two years without projected mortality improvements.

For Police Officer and Firefighter participants - For Disabled male participants, 60% RP-2000 Disabled Male Mortality Table setback four years / 40% RP-2000 Annuitant Male Mortality Table with White Collar Adjustment with no setback, without projected mortality improvements. For disabled female participants, 60% RP-2000 Disabled Female Mortality Table set forward two years / 40% RP-2000 Annuitant Female Mortality Table with White Collar Adjustment with no setback, without projected mortality improvements.

Disabled mortality assumptions are the disabled mortality assumptions used for the July 1, 2016 Actuarial Valuations of the Florida Retirement System.

Line of Duty death:

20% of all deaths for Police Officers are assumed to be in the line of duty due to an act of violence inflicted by another person.

75% of all deaths for Firefighter participants are assumed to be in the line of duty - 20% of those deaths are assumed to be the result of an act of violence inflicted by another person or due to arson.

Rates of retirement:

Rates of retirement for General participants are used in accordance with the following table.

Age	General
55	5%
56 - 59	3%
60 - 61	5%
62	10%
63 - 64	5%
65	100%

VALUATION METHODS AND ASSUMPTIONS (CONTINUED)

Rates of retirement (cont'd):

Rates of retirement for Police Officers are used in accordance with the following:

Police Officers hired on or before January 31, 2011:

Age	Years of Service		
	< 10	10 - 24	25+
Under 45	0%	0%	0%
45 - 51	0%	0%	100%
52 & Over	0%	100%	100%

Police Officers hired after January 31, 2011: 100% at Age 48 and 10 Years of Service

Early retirement rates for all Police Officers equal separation rates.

Rates of retirement for Firefighter participants are used in accordance with the following:

Firefighter participants hired before December 4, 2012:

Years Following Normal Retirement *	Rate
0	30%
1 - 4	15%
5 & over	100%

* Early retirement rates equal separation rates

Firefighter participants hired on or after December 4, 2012:

100% at Normal Retirement with early retirement rates equal to separation rates.

All participants who are currently in the DROP plan are assumed to retire five years after DROP entry or at the date provided by the City if provided.

Rates of retirement for participants are based on the retirement assumptions used for the October 1, 2015 Actuarial Valuations of the City of Port Orange General Employees Defined Benefit Pension Plan, the City of Port Orange Police Pension Fund and the City of Port Orange Fire and Rescue Pension Fund.

VALUATION METHODS AND ASSUMPTIONS (CONTINUED)

Rates of separation from active membership:

General participant rates were used in accordance with the following illustrative example based upon number of years of service:

Separation Rates - General										
Completed Years of Service	Males					Completed Years of Service	Females			
	Attained Age						Attained Age			
	25	35	45	55			25	35	45	55
0	27.2 %	25.8 %	24.4 %	27.4 %		0	26.6 %	25.4 %	24.4 %	23.2 %
1	18.5	14.3	12.5	12.2		1	19.8	15.9	13.9	13.4
2	17.2	12.8	11.6	10.7		2	17.1	13.5	11.9	11.0
3	14.6	12.6	10.3	9.3		3	13.0	11.2	9.8	8.7
4	12.7	10.9	8.8	7.8		4	12.9	10.9	8.8	8.3
5	9.7	8.5	6.8	6.8		5	10.7	9.0	6.7	6.1
6	8.5	7.5	6.5	5.4		6	9.7	8.0	6.5	5.8
7	8.4	6.8	6.0	5.2		7	9.2	7.8	6.1	5.4
8	7.7	6.2	5.1	4.4		8	7.8	6.8	5.8	5.4
9	6.3	5.3	5.1	4.3		9	7.1	6.2	4.7	4.5
10 or more	6.2	4.2	2.7	4.5		10 or more	5.3	4.6	3.0	3.0

Police Officer rates were used in accordance with the following table based upon number of years of service:

Service	Rate
0 - 2	23%
3 - 9	8%
10	30%
11 - 12	5%
13 - 14	4%
15 - 16	3%
17 - 18	2%
19	1%
20 & over	0%
Rates are unisex	

VALUATION METHODS AND ASSUMPTIONS (CONTINUED)

Rates of separation from active membership (cont'd):

Firefighter rates were used in accordance with the following illustrative example based upon age:

Age	Rate
20	9.300%
25	8.775%
30	7.875%
35	6.225%
40	4.275%
45	2.625%
50	1.125%
55	0.450%
60	0.375%
65	0.000%
Rates are unisex	

General participants separation of service rates are the separation of service rates used for the Florida Retirement System (FRS) July 1, 2016 Actuarial Valuation. For all other participants, separation of service rates are the separation of service rates used for the October 1, 2015 Actuarial Valuations of the City of Port Orange Police Pension Fund and the City of Port Orange Fire and Rescue Pension Fund.

Rates of disability:

General participants disability rates are used in accordance with the following illustrative example based upon age:

General Participants			
Age	Annual Rates		
	Male		Female
25	0.0105	%	0.0105 %
30	0.0105		0.0105
35	0.0205		0.0105
40	0.0205		0.0205
45	0.0840		0.0605
50	0.1660		0.1060
55	0.2560		0.1660
60	0.3100		0.2725
65	0.1100		0.0900
70	0.0500		0.0500
Over 75	0.0405		0.0405

VALUATION METHODS AND ASSUMPTIONS (CONTINUED)

Rates of disability (cont'd):

Police Officer and Firefighter participants' disability rates were used in accordance with the following illustrative example based upon age:

Age	Police	Fire & Rescue
25	0.090 %	0.090 %
30	0.011	0.110
35	0.130	0.140
40	0.165	0.190
45	0.200	0.300
50	0.410	0.510
55	0.620	0.960
60	0.830	1.660
65	1.040	0.000
70 & Over	1.250	0.000

Disability rates for General participants are the disability rates used in the July 1, 2016 Actuarial Valuation of the Florida Retirement System (FRS). Disability rates for all other participants are the disability rates used in the October 1, 2015 Actuarial Valuation Reports of the City of Port Orange Police Pension Fund and the City of Port Orange Fire and Rescue Pension Fund.

Line of Duty disability:

100% of all disabilities for Police Officers are assumed to be in the line of duty - 20% of those disabilities are assumed to be the result of a catastrophic event.

75% of all disabilities for Firefighter participants are assumed to be in the line of duty - 20% of those disabilities are assumed to be the result of a catastrophic injury.

Rates of participation:

Active participants are assumed to elect Program coverage as shown in the table below based on age at the time of retirement.

Age	Rate
Under 50	50%
50 - 54	60%
55 - 59	75%
60 - 64	85%
65 & Over	5%

VALUATION METHODS AND ASSUMPTIONS (CONTINUED)

Rates of participation (cont'd):

5% of participants are assumed to elect or maintain post-age 65 retiree health coverage.

Active participants currently covering a spouse in the group medical Program - 65% are assumed to elect Program coverage for their spouse. Active participants currently are not enrolled or have elected employee only coverage in the group medical Program - 0% are assumed to elect Program coverage for their spouse. Current inactive participants - actual coverage election is valued. 5% of participants that become surviving spouses due to the death of an active employee assumed to elect pre-65 coverage and 5% of electing spouses assumed to elect or continue coverage after 65.

100% of active participants are assumed married for purposes of death benefits.

Marital assumptions:

Husbands are assumed to be three (3) years older than wives.

The following ***health care inflation trend rates*** are assumed in this actuarial valuation. The rates are used for both the per-capita claim costs and premium rates assumed to be paid by retirees.

Health Care Inflation	
Fiscal Year Ending	Rate
2015	7.00%
2016	6.50%
2017	6.00%
2018	5.90%
2019	5.80%
2020	5.79%
2021	5.78%
2022	5.78%
2023	5.77%
2024	5.76%
2025 – 2029	5.75%
2030	5.53%
2031	5.37%
2032	5.24%
2033	5.15%
2034	5.07%
2035	4.94%
2036	4.80%
2037	4.67%
2038	4.53%
2039 and thereafter	4.40%

VALUATION METHODS AND ASSUMPTIONS (CONTINUED)

Miscellaneous:

For purposes of projections a 3.25% wage inflation was used.

Changes from previous valuation

Rate of investment return under the Pay-As-You-Go approach is 4.0%, compounded annually.

Healthy participant pre-retirement and post-retirement mortality tables are:

General Employee participants - Blended Annuitant and Non Annuitant Mortality table with separate for males and females as issued for 2013 by the IRS. No additional mortality improvement is assumed beyond the seven and fifteen year projections included in the IRS table. This table is updated each year.

Police Officer participants - the RP-2000 Combined Healthy Mortality table separate for males and females is used projected with Scale AA to the valuation date. No additional mortality improvement is assumed beyond the valuation date.

For Firefighter participants, the RP-2000 Combined Healthy Mortality table separate for males and females is used. No additional mortality improvement is assumed.

Healthy mortality assumptions are the healthy mortality assumptions used in the October 1, 2013 Actuarial Valuations of the City of Port Orange General Employees Defined Benefit Pension Plan, the City of Port Orange Police Pension Fund and the City of Port Orange Fire and Rescue Pension Fund.

Disabled mortality rates:

General and Police Officer participants - same tables as shown above for the healthy participants is used.

For Firefighter participants - healthy mortality assumption shown above with age set forward of five years.

Disabled mortality assumptions are the disabled mortality assumptions used for the October 1, 2013 Actuarial Valuations of the City of Port Orange General Employees Defined Benefit Pension Plan, the City of Port Orange Police Pension Fund and the City of Port Orange Fire and Rescue Pension Fund.

VALUATION METHODS AND ASSUMPTIONS (CONTINUED)

Changes from previous valuation (performed by prior actuary) - continued

Rates of participation:

Active participants are assumed to elect Program coverage as shown in the table below based on age at the time of retirement.

Age	Rate
Under 50	25%
50 - 54	40%
55 - 59	75%
60 - 64	90%
65 & Over	10%

The following ***health care inflation trend rates*** were assumed in this actuarial valuation. The rates are used for both the per-capita claim costs and premium rates assumed to be paid by retirees.

Health Care Inflation	
Fiscal Year Ending	Rate
2013	8.00%
2014	7.50%
2015	7.00%
2016	6.50%
2017	6.00%
2018	5.50%
2019	5.25%
2020 and thereafter	5.00%

APPENDIX

TEMPLATE NOTE TO FINANCIAL STATEMENT

(AS REQUIRED PURSUANT TO GASB STATEMENT 45)

Program Description

The City of Port Orange provides health insurance benefits to its retired employees through a single-employer Program administered by the City. Pursuant to the provisions of Section 112.0801, Florida Statutes, former employees who retire from the City and eligible dependents, may continue to participate in the City's fully-insured benefit program for medical and prescription drug insurance coverage. The City subsidizes the premium rates paid by retirees implicitly, by allowing them to participate in the Program at the blended group (implicitly subsidized) premium rates (blended between active and retired employees). The blended premium rates provide an implicit subsidy for retirees because, on an actuarial basis, their current and future claims are expected to result in higher costs to the Program on average than those of active employees. The benefits provided under this defined benefit Program are provided for a retiree's lifetime (or until such time at which retiree discontinues coverage under the City sponsored Program, if earlier).

[Note: Feel free to edit the above, please be sure to include:

(1) Name of the plan (if any), identification of the public employee retirement system (PERS) or other entity that administers the plan, and identification of the plan as a single-employer, agent multiple-employer or cost-sharing multiple-employer defined benefit OPEB plan.

(2) Brief description of the types of benefits and the authority under which benefit provisions are established or may be amended.

(3) Whether the OPEB plan issues a stand-alone financial report or is included in the report of a PERS or another entity, and, if so, how to obtain the report.]

Funding Policy

Currently, the City's Post Retirement Benefits Program is unfunded. That is, the City has not established a separate GASB compliant Trust Fund or equivalent arrangement into which the City would make contributions to advance-fund the obligation. Benefits are currently paid when due out of the general assets and reserves of the City on a pay-as-you-go basis.

[Note: Feel free to edit the above, please be sure to include:

(1) Authority under which the obligations of the plan members, employer(s), and other contributing entities (for example, state contributions to local government plan) to contribute to the plan are established or may be amended.

(2) Required contribution rate(s) from [retired] plan members. The required contribution rate(s) could be expressed as a rate (amount) per member or as a percentage of covered payroll. Suggestion: If the percentage of gross premium paid by a retiree is the same for all retirees (e.g., 100% or 50%), then just disclose that percentage. If the percentage of the gross premium varies by retiree depending on service, then disclose the range of percentages.

(3) Required contribution rate(s) from the employer in accordance with the funding policy, in dollars or as a percentage of current-year covered payroll, and, if applicable, legal or contractual maximum contribution rates. If the plan is a single-employer or agent plan and the rate differs significantly from the ARC, disclose how the rate is determined (for example, by statute or by contract) or that the plan is financed on a

TEMPLATE NOTE TO FINANCIAL STATEMENT (CONTINUED)

pay-as-you-go basis. Suggestion: This disclosure is really the inverse of the disclosure in (2) above. Furthermore, disclose that you have adopted a pay-as-you-go funding policy with no qualifying OPEB trust.]

Annual OPEB Cost and Net OPEB Obligation

The Employer's annual other postemployment benefit (OPEB) cost (expense) is calculated based on the ARC. The ARC represents a level of funding that, if paid on an ongoing basis, is projected to cover the normal cost each year and to amortize any unfunded actuarial liabilities (or funding excess) over a period not to exceed 30 years.

Annual OPEB Cost (Expense) and Net OPEB Obligation (NOO)		
Fiscal Year Ended	09/30/2016	9/30/2015 ¹
Normal Cost (service cost for one year)	\$ 386,568	\$ 254,650
Amortization of UAAL	248,843	199,488
Interest on Normal Cost and Amortization	11,804	18,166
Annual Required Contribution (ARC)	\$ 647,215	\$ 472,304
NOO at beginning of year	\$ 1,570,432	\$ 1,362,678
Annual Required Contribution (ARC)	\$ 647,215	\$ 472,304
Interest on NOO	58,891	54,507
Adjustment to ARC	(63,217)	(57,858)
Annual OPEB Cost	\$ 642,889	\$ 468,953
Employer Contribution ²	(225,550)	(261,199)
Increase / (Decrease) in NOO	\$ 417,339	\$ 207,754
NOO at end of year	\$ 1,987,771	\$ 1,570,432

¹ As reported in the City's Comprehensive Annual Financial Report (CAFR).

² Employer contributions reflect the actuarially determined cost.

The Employer's annual OPEB cost, the percentage of annual OPEB cost contributed to the Program, and the net OPEB obligation were as follows: *[Note: the schedule below includes information for the current and the following fiscal years. Please disclose only the row for the prior and current year in your financial report and add additional rows each year thereafter until three years are reached.]*

TEMPLATE NOTE TO FINANCIAL STATEMENT (CONTINUED)

Schedule of Employer Contributions				
Fiscal Year Ending	Annual OPEB Cost	Amount Contributed	Percentage of Annual OPEB Cost Contributed	Net OPEB Obligation
September 30, 2014 ¹	\$ 454,488	\$ 223,133	49.1%	\$ 1,362,678
September 30, 2015 ¹	\$ 468,953	\$ 261,199	55.7%	\$ 1,570,432
September 30, 2016 ²	\$ 642,889	\$ 225,550	35.1%	\$ 1,987,771

¹ As reported in the City's Comprehensive Annual Financial Report (CAFR).

² Amount contributed reflects the actuarially determined cost.

Funded Status and Funding Progress

As of the reporting date the Program assets were \$0, the actuarial accrued liability for benefits was \$6,296,563, the total unfunded actuarial liability is \$6,296,563 and the actuarial value of assets as a percentage of the actuarial accrued liability (funded ratio) is 0%. The covered payroll (annual payroll of active employees covered by the Program) was \$17,159,429 and the ratio of the unfunded actuarial accrued liability to the covered payroll was 36.7%.

The projection of future benefit payments for an ongoing Program involves estimates of the value of reported amounts and assumptions about the probability of occurrence of events far into the future. Examples include assumptions about future employment, mortality and the healthcare cost trend. Amounts determined regarding the funded status of the Program and the annual required contributions of the employer are subject to continual revision as actual results are compared with past expectations and new estimates are made about the future. The schedule of funding progress, presented as required supplementary information following the notes to the financial statements, presents multiyear trend information about whether the actuarial value of Program assets is increasing or decreasing over time relative to the actuarial accrued liabilities for benefits.

Methods and Assumptions

Projections of benefits for financial reporting purposes are based on the substantive Program (the Program as understood by the employer and Program members) and include the types of benefits provided at the time of each valuation and the historical pattern of sharing of benefit costs between the employer and Program members to that point. The methods and assumptions used include techniques that are designed to reduce the effects of short-term volatility in actuarial accrued liabilities and the actuarial value of assets, consistent with the long-term perspective of the calculations.

Based on the historical and expected returns of the Employer's short-term investment portfolio, a discount rate of 3.75% was used. An inflation rate of 2.6% was assumed. In addition, the Entry Age Normal actuarial cost method was used. The unfunded actuarial accrued liability is being amortized as a level percent of pay on an open basis. The remaining amortization period at September 30, 2016 is 30 years. Health insurance trends start at 7.0% for the fiscal year ending in 2015 and 6.5% for 2016, grading down to 4.4% - the ultimate trend rate in 2039.

TEMPLATE NOTE TO FINANCIAL STATEMENT (CONTINUED)

[Optional] The following assumptions were made:

Retirement age for active employees — Expected Retirement ages for active employees are based on the retirement assumptions used in the respective October 1, 2015 Actuarial Valuation Reports of the City of Port Orange General Employees Defined Benefit Pension Plan, the City of Port Orange Police Pension Fund, and the City of Port Orange Fire and Rescue Pension Fund.

Active Member Marital status — 65% of all employees who currently cover spouses in the City's group medical Program are assumed to enroll in Program coverage and are assumed to elect spousal Program coverage upon retirement. For active employees, spouses' genders were assumed to be opposite to the members' genders and females are assumed to be three years younger than their male spouses. Actual spouse data was used for current retired Program members as of the valuation date and is assumed to remain unchanged until assumed death of the spouses.

Mortality — See Section F of this report

Turnover — See Section F of this report

Health insurance premiums — Health insurance premiums in effect as of July 1, 2016 for each plan available to active employees and retirees and enrollment in each plan were used as the basis for the calculation of the present value of total benefits paid.

GASB Statement 45 Schedule of Funding Progress						
Actuarial Valuation Date	Actuarial Value of Assets (a)	Actuarial Accrued Liability (AAL) - Entry Age (b)	Unfunded AAL (UAAL) (b - a)	Funded Ratio (a/b)	Covered Payroll (c)	UAAL as a Percentage of Covered Payroll ((b-a)/c)
October 1, 2011 *	\$ 0	\$ 4,199,000	\$ 4,199,000	0.0%	\$ 16,705,000	25.1%
October 1, 2013 *	\$ 0	\$ 4,669,865	\$ 4,669,865	0.0%	\$ 17,960,464	26.0%
October 1, 2015	\$ 0	\$ 6,296,563	\$ 6,296,563	0.0%	\$ 17,159,429	36.7%

[Note: Only one row is to be presented for each Valuation Date. Even though this report presents the numbers required for recognition for the current and two future years, only one Census or Valuation Date is assigned. The Actuarial Accrued Liability is calculated as of the Census or Valuation Date and no other rows are to be added to this Schedule until another calculation is performed with another Actuarial Accrued Liability calculated as of another Census or Valuation Date. The Schedule of Funding Progress will only present one row in each year's Required Supplementary Information until another set of calculations as of another Census or Valuation is performed, even though the Schedule of Employer Contributions will have three rows.]

GLOSSARY

Accrued Service. The service credited under the Program which was rendered before the date of the actuarial valuation.

Actuarial Accrued Liability. The difference between (i) the actuarial present value of future Program benefits, and (ii) the actuarial present value of future normal cost. Sometimes referred to as *accrued liability* or *past service liability*.

Actuarial Assumptions. Estimates of future Program experience with respect to rates of mortality, disability, turnover, retirement, rate or rates of investment income and salary increases. Decrement assumptions (rates of mortality, disability, turnover and retirement) are generally based on past experience, often modified for projected changes in conditions. Economic assumptions (salary increases and investment income) consist of an underlying rate in an inflation-free environment plus a provision for a long-term average rate of inflation.

Actuarial Cost Method. A mathematical budgeting procedure for allocating the dollar amount of the *actuarial present value of future Program benefits* between the actuarial present value of future normal cost and the actuarial accrued liability.

Actuarial Equivalent. A single amount or series of amounts of equal value to another single amount or series of amounts, computed on the basis of the rate(s) of interest and mortality tables used by the Program.

Actuarial Present Value. The amount of funds presently required to provide a payment or series of payments in the future. It is determined by discounting expected future payments at a predetermined rate of interest, taking into account the probability of payment.

Amortization. Paying off an interest-bearing liability by means of periodic payments of interest and principal, as opposed to paying it off with a lump sum payment.

GLOSSARY (CONCLUDED)

Annual Required Contribution (ARC). The ARC is the normal cost plus the portion of the unfunded actuarial accrued liability to be amortized in the current period. The ARC is an amount that is actuarially determined in accordance with the requirements so that, if paid on an ongoing basis, it would be expected to provide sufficient resources to fund both the normal cost for each year and the amortized unfunded liability.

Governmental Accounting Standards Board (GASB). GASB is the private, nonpartisan, nonprofit organization that works to create and improve the rules U.S. state and local governments follow when accounting for their finances and reporting them to the public.

Medical Trend Rate (Health Inflation). The increase in the Program's cost over time. Trend includes all elements that may influence the Program's cost, assuming that enrollments and current Program benefits do not change. Trend includes such elements as, pure price inflation, changes in utilization, advances in medical technology, and cost shifting.

Normal Cost. The annual cost assigned, under the advance funding method, to current and subsequent Program years. Sometimes referred to as *current service cost*. Any payment toward the unfunded actuarial accrued liability is not part of the normal cost.

Other Post-Employment Employee Benefits (OPEB). OPEB are post-employment benefits other than pensions. OPEB generally takes the form of health insurance and dental, vision, prescription drugs or other healthcare benefits.

Reserve Account. An account used to indicate that funds have been set aside for a specific purpose and are not generally available for other uses.

Unfunded Actuarial Accrued Liability. The difference between the actuarial accrued liability and valuation assets. Sometimes referred to as *unfunded accrued liability*.

Valuation Assets. The value of current Program assets recognized for valuation purposes.

OPEB PRE-FUNDING

Many employers fund retiree health care benefits using the Pay-As-You-Go (or cash disbursement) method. The employer's annual contribution for these benefits is equal to the actual disbursements during the year for health care benefits for retired employees. This method of funding will result in increasing contributions over time. First, per capita cash disbursements will tend to increase from year to year as the cost of health care services, or the utilization of these services, increases. Second, the number of retired members is likely to increase for years to come. More retirees results in greater disbursements as a percentage of employee payroll.

A retiree health care Program is similar to a defined benefit pension Program, in that promises are made to employees to provide them with a benefit payable at some future date. For defined benefit pension Program sponsors a common funding objective is to contribute annual amounts to a fund which will i) remain level as a percentage of active member payroll, and ii) when combined with present assets and future investment return will be sufficient to meet the financial obligations of the Program to current and future retirees.

The ultimate determination as to the level of pre-funding will be the result of decisions made in an attempt to reconcile the often conflicting needs of benefit security for members and fiscal responsibility for the employer. The GASB accounting standards noted in the previous section of the report can factor into decisions concerning the level of any pre-funding.

The following pages discuss funding vehicles for retiree health care for governmental Program sponsors. Three funding vehicles are discussed in detail: Internal Revenue Code (IRC) § 401(h) accounts, voluntary employees' beneficiary associations (VEBAs), and governmental trusts (IRC 115). Also provided is a description of health reimbursement arrangements (HRAs) and health savings accounts (HSAs), as well as OPEB Bonds and Life Insurance Contracts (Corporate-Owned Life Insurance).

This section addresses the provisions of certain federal laws and regulations applicable to governmental entities. However, the authors are not attorneys and the statements made are not intended as legal advice or opinion. Administrators should seek the advice of qualified legal counsel to ensure that Programs comply with applicable laws and regulations.

GOVERNMENTAL TRUSTS (IRC § 115)

Internal Revenue Code section 115(1) provides that gross income does not include income derived from an essential governmental function and accruing to a state or political subdivision. The determination whether a function is an essential governmental function depends on the facts and circumstances of each case. The details of IRC § 115's application are presented in several IRS revenue rulings and private letter rulings. (See: Revenue Rulings 77-261 and 90-74, as well as Private Letter Rulings 9401005, 9506037, and 200003052.)

In IRS Revenue Ruling 90-74, the IRS holds that the income of a fund maintained by a group of political subdivisions to pool casualty risks, including payment of worker's compensation and employee health benefits is not subject to federal tax. This approach is very similar to a governmental integral part trust; however, Revenue Ruling 90-74 applies to an organization created by political subdivisions to provide a benefit, whereas the integral part doctrine applies to government structures not functioning as a separate entity.

Implementation

- A separate trust is established by the organization to provide benefits that are part of an essential governmental function. State statutory authority for this may be required, and would be useful for confirming that the trust is established to perform a governmental function.
- IRS approval is obtained. Although this is not a required step, it would be prudent to obtain IRS approval for the Program design.
- The governing body of each member entity (e.g., city, county, etc.) authorizes the entity to join the organization. Representatives of the member entities sit on the organization's board.
- Employer contributions (as well as the monetary value of accrued but unused *use it or lose it* sick leave / vacation time) may be contributed to the trust. Separate accounts could be established for each member, or a single account could be established to pool contributions and benefit payouts.
- After-tax employee contributions appear to be allowed.

GOVERNMENTAL TRUSTS (IRC § 115) (CONTINUED)

- Trust assets are invested in a wide range of securities.
- Trust assets are distributed to the member entities upon termination of the trust and after satisfaction of all associated liabilities. However, given the liabilities associated with retiree health care, it is unlikely that assets would remain in the trust after satisfaction of all liabilities.

Legal Requirements and Restrictions

- **Program Design:** In order for the trust to qualify as an *integral part* of the governmental entity, the member entities must have *substantial control* and *substantial financial involvement*. Substantial control means the entity's representatives have the power to amend or terminate the trust, and to name the parties that manage the daily operations of the entity, including naming the trustees. Substantial financial involvement means the entity has the primary responsibility for funding the trust.
- **Contribution limits:** None for governmental Programs.
- **Nondiscrimination rules:** Uncertain. Possibly the nondiscrimination rules under IRC § 105(h) involving the taxation of highly compensated individuals on discriminatory benefits would apply. Further legal research would need to be done to determine whether the 105(h) definitions of *highly compensated individuals* would apply in this instance.
- **Recordkeeping:** Records must be maintained denoting the contributions made by the employer and employees, as well as investment income earned. There are no separate federal recordkeeping requirements.

Tax Consequences

- **Employer contributions:** Tax-free to the employer and employee.
- **Investment income:** Income accruing on fund/account balances is not taxed.
- **Monetary value of unused sick/vacation leave:** May be added to the account on a tax-free basis if provided on a *use it or lose it* basis.
- **Employee contributions: Uncertain:** Appear to be allowed on an after-tax basis, but not tax-deferred under a 414(h)(2) pick-up.
- **Benefit payments:** Not taxable to the recipient (unless discriminatory under IRC § 105(h)).

GOVERNMENTAL TRUSTS (IRC § 115) (CONCLUDED)

Advantages

- **Unlimited employer contributions:** Governmental trusts are not subject to the 419A(c)(2) restriction on employer contributions to VEBAs or the subordination limit applied to 401(h) accounts.
- Although uncertain, the nondiscrimination rules pertaining to VEBAs would probably not apply. Possibly the nondiscrimination rules under IRC § 105(h) involving the taxation of highly compensated individuals on discriminatory benefits would apply.

Disadvantages

- Employee contributions may only be after-tax. However, this does not preclude the employees from negotiating for employer contributions in lieu of salary increases.

Although there are still some uncertainties surrounding the use of governmental trusts for pre-funding retiree health care, they appear to be the most flexible of the funding vehicles available and have been used by several governmental Program sponsors.

VOLUNTARY EMPLOYEES' BENEFICIARY ASSOCIATIONS (VEBAs)

Technically, a VEBA is a separate tax-exempt entity, established under Internal Revenue Code § 501(c)(9), used to create a separate trust to pay for medical care and other benefits to VEBA members, their dependents, and designated beneficiaries. The VEBA trust fund is controlled by the members or by trustees acting on behalf of the members.

Implementation

- A separate trust is established subject to the rules of IRC § 501(c)(9).
- IRS approval is obtained. This is a required step for creation of a VEBA.¹
- Employer contributions, after-tax employee contributions, and the monetary value of accrued but unused *use it or lose it* sick leave and vacation time may be contributed to the VEBA. Separate accounts could be established for each member, or a single account could be established to pool contributions and benefit payouts.
- VEBA assets can be invested in a wide range of securities, similar to those of retirement systems.
- The VEBA must maintain various records related to contributions and benefits, and file an annual return with the IRS through Form 990. [Treas. Reg. § 1.501(c)(9)-5(a)] However, Private Letter Ruling 9506037 found that a VEBA maintained by a governmental employer also qualified for tax exemption under IRC § 115 (see below). Consequently, it was not required to file Form 990.
- Upon termination, VEBA assets may be transferred to another exempt VEBA which provides similar benefits to the same group of employees. Assets may also be distributed to VEBA members upon termination of the VEBA if the allocation is based on an objective, nondiscriminatory formula that does not disproportionately benefit highly compensated employees. [Treas. Reg. § 1.501(c)(9)-4(d); PLR 8925091] VEBA assets may **not** be returned to employers.

¹In order to obtain tax-exempt status, a VEBA must obtain IRS approval by submitting Form 1024 to the IRS district director for the key district in which the VEBA is located. [IRC 505(c)(1); Treas. Reg. § 1.505(c)-1T]. The form must be filed within 15 months after the trust was established.

VOLUNTARY EMPLOYEES' BENEFICIARY ASSOCIATIONS (VEBAs) (CONTINUED)

Legal Requirements and Restrictions

- **Plan design:** The terms of the plan must specify the amount of the benefits and the time period over which the benefits will be paid.
- **Contribution limits:** None for VEBAs sponsored by governments. While private sector employer contributions to pre-fund retiree health care benefits through VEBAs are limited by complicated restrictions under IRC § 419A(c)(2), governmental plans are not subject to these limits. The 419A limits require that the calculations for determining employer contributions not include assumptions regarding increased health care costs due to medical inflation -- a restriction that could significantly hamper adequate pre-funding. Because state and local governments are tax exempt, these restrictions do not apply.
- **Nondiscrimination rules:** The tax laws exempting governments from the nondiscrimination rules that apply to pension plans do not extend to welfare benefit plans such as VEBAs. The Code imposes a complicated set of nondiscrimination rules on VEBAs though IRC § 505(b)(1). However, Private Letter Ruling 9507009 held that these requirements were deemed satisfied by a collectively bargained VEBA of a governmental employer.
- **Recordkeeping:** Public entities are exempt from some, but not all, of the VEBA recordkeeping requirements. Records must be maintained by the VEBA denoting the contributions made by the employer and the after-tax contributions made by the employees.

Tax Consequences

- **Employer contributions:** Employers and plan members are not taxed on employer contributions.
- **Investment income:** Investment income is not taxable.
- **Monetary value of unused sick/vacation leave:** May be added to the account tax-free if provided by the employer on a *use it or lose it* basis.
- **Employee contributions:** Allowed on an after-tax basis. Employee contributions may not be picked up under IRC § 414(h)(2).
- **Benefit payments:** Retiree health benefits received through a VEBA are also not taxed, although the benefits must conform to the statutes exempting medical payments from taxation.

VOLUNTARY EMPLOYEES' BENEFICIARY ASSOCIATIONS (VEBAs) (CONCLUDED)

Advantages

- VEBA membership is not limited to full-time employees or participants in the retirement plan. Part-time employees and independent contractors are allowed to join.
- Unlimited employer contributions. VEBAs sponsored by governmental plans are not subject to the 419A(c)(2) restriction on employer contributions to the VEBA.

Disadvantages

- Employee contributions may only be made on an after-tax basis. However, this does not preclude the employees from negotiating for employer contributions to the VEBA in lieu of salary increases.
- While Private Letter Ruling 9507009 held that the nondiscrimination rules under IRC § 505(b)(1) do not apply to collectively bargained plans, the rules are complex and cumbersome to the extent they apply to non-collectively bargained plans.

VEBAs sponsored by collectively bargained governmental plans have significant flexibility with regard to unlimited employer contributions and freedom from nondiscrimination rules. However, IRS approval is a required step in the process of their creation and, to the extent the plans are not collectively bargained, complicated nondiscrimination rules may apply. VEBAs have specific requirements relating to control of the trust by the members or trustees acting on behalf of the members.

401(h) ACCOUNTS

IRC § 401(h) allows a tax-qualified defined benefit pension plan to establish a separate account, within the pension trust, for use in paying benefits for sickness, accident, hospitalization, and medical expenses of retired employees, their spouses, and their dependents.

Implementation

- A separate account within the 401(a) pension trust is established and maintained for the exclusive purpose of paying the medical benefits.
- Employer (and possibly pre- or post-tax employee) contributions are credited to the account, along with interest earned on investments. Separate accounts could be established for each employee, or a single account could be established to pool contributions and benefit payouts.
- The 401(h) account could be invested separately from the pension assets or pooled with the pension funds. If pooled with the pension funds, the investment income would have to be allocated back to the 401(h) account on a reasonable basis and accounted for separately.
- Transfers from the retirement plan to the 401(h) account are allowable from an *overfunded* defined benefit plan, governed by strict requirements for such transfers specified in IRC § 420. (See below.)
- The monies paid out of the account must only be for sickness, accident, hospitalization, and medical expenses of the retirement plan's members, their spouses, and their dependents.
- Upon satisfaction of all 401(h) account liabilities to provide medical benefits, any amount remaining in the account must, under the terms of the plan, be returned to the employer.

Legal Requirements and Restrictions

For the retirement plan sponsoring the 401(h) account to remain tax qualified under IRC § 401(a), the 401(h) account must meet certain requirements established by the Code:

- **Plan design:** The terms of the plan must specify the amount of the benefits and the time period over which the benefits will be paid. According to legal counsel, this does not require that all of the retiree medical plan provisions be incorporated into the retirement plan document, but does call for clear coordination. Employer contributions to the 401(h) account must be reasonable and ascertainable.

401(h) ACCOUNTS (CONTINUED)

- **Contribution limits:** Employer contributions for medical (and life insurance benefits) must be *subordinate* to contributions for pension benefits. That is, the aggregate annual contributions for medical benefits, when added to the actual contributions for life insurance (if any), must not exceed 25% of the total actual contributions to the plan (other than contributions to fund past service costs) after the date on which the 401(h) account is established.
- **Nondiscrimination rules:** The nondiscrimination rules for qualified retirement plans do not apply to public plans under IRC § 401(a)(5)(G), as amended by the Taxpayer Relief Act of 1997. However, the nondiscrimination rules applicable to self-insured plans under IRC § 105(h) may apply.
- **Recordkeeping:** The 401(h) account assets must be accounted for separately from pension assets; however, the assets in the account can be pooled with pension assets for investment purposes.

Tax Consequences

Provided the account is established and maintained in accordance with the legal requirements and restrictions:

- **Employer contributions:** Employer contributions are not taxable to the employers or plan members.
- **Investment income:** Investment income is not taxable.
- **Unused sick/vacation leave:** May not be added to the plan.
- **Employee contributions:** Employee contributions may (presumably) be picked-up as employer contributions under IRC 414(h)(2). If employee contributions to a 401(h) account are picked-up, it would be prudent to obtain IRS approval.
- **Benefit payments:** Retirees and their beneficiaries are not taxed on payments made from the account for sickness, accident, hospitalization, and medical expenses.

401(h) ACCOUNTS (CONTINUED)

IRC § 420 Transfers

While IRC § 420 allows the transfer of funds from an *overfunded* retirement plan to its 401(h) account, it places strict restrictions on these transfers. Failure to meet the restrictions could jeopardize the qualified status of the pension plan.

- In the private sector, only assets in excess of 150% of liabilities, calculated on a plan termination basis, may be transferred to the 401(h) account. While these rules do not apply to governmental plans, it would be prudent to follow them as if they did.
- Generally, the amount transferred in a given year may not exceed the retiree medical benefits paid during that year.
- Current and certain former employees must be fully vested in their accrued pension benefits at the time of the transfer.
- Retiree medical benefits may not be reduced for five years after the transfer (including the year of the transfer).
- Only one transfer is permitted per year.
- While the transfer is deemed not to exceed the 401(h) subordination limit, there may be other legal restrictions that prohibit the transfer (e.g., collective bargaining agreements).

Advantages

- 401(h) accounts are simple to establish. Since the pension plan is already established in a 401(a) trust, a new trust is not required. Nor does the 401(h) account need to be physically separate from the pension account for investment purposes.
- Member contributions may be tax-sheltered, under IRC § 414(h).
- Significantly overfunded employers could transfer pension assets to the 401(h) account, under IRC 420.

401(h) ACCOUNTS (CONCLUDED)

Disadvantages

- Coverage under a 401(h) account is subject to the same *exclusive benefit* rules as the pension plan and so is limited only to members of the pension plan. Moreover, assets in the 401(h) account may not be transferred to a VEBA or other account outside of the retirement trust.
- As a result of the subordination limit, contributions may be significantly less than those required to fund the promised benefits. For overfunded pension plans, with low employer contributions, this limit can be particularly troublesome. Moreover, exceeding this contribution limit may lead to disqualification of both the medical account and the pension trust.

HEALTH REIMBURSEMENT ARRANGEMENTS (HRAs)

IRS' expansion and clarification of health reimbursement arrangements in Notice 2002-45 and Revenue Ruling 2002-41 may make them useful for providing health care benefits in a manner similar to medical savings accounts.

An HRA is an arrangement that reimburses employees (or former employees, including retirees) and their spouses and dependents for substantiated medical care expenses, including premiums for accident or health coverage. The reimbursement amount is set at a maximum dollar amount for a given year, and any unused portion is carried forward to increase the maximum reimbursement amount in subsequent years. The reimbursement is paid solely by the employer. Employee contributions may not be made pursuant to salary reduction elections or otherwise.

HRA reimbursements of medical care expenses are generally excludible from the employee's gross income under § 106 and § 105. However, if any person has the right to receive cash or any other taxable or non-taxable benefit other than the reimbursement of medical care, then all HRA distributions to all persons made under the arrangement in the current year are included in gross income.

An HRA may continue to reimburse former employees or retired employees for medical care expenses after termination of employment. The HRA may limit reimbursement only up to the unused reimbursement account remaining at termination of employment (possibly reduced for administrative costs of coverage). Alternatively, an HRA may provide for an increase in the amount available for reimbursement of medical care expenses after the employee retires or otherwise leaves employment.

HEALTH REIMBURSEMENT ARRANGEMENTS (HRAs) (CONCLUDED)

Because an HRA is paid for solely by the employer and is not pursuant to salary reduction, certain restrictions under IRC § 125 do not apply to HRAs. For example, instead of prohibiting employees from carrying over unused plan benefits from one year to the next, such carry-overs are allowed under HRAs. Instead of restricting reimbursements for claims to a single coverage period, HRAs may reimburse claims incurred during one coverage period in a future coverage period. (Note, however, claims may only be reimbursed for periods during which the individual was covered by the HRA.) In addition, the maximum reimbursement amount credited under the HRA in the future (not including amounts carried forward from previous periods) may be increased or decreased.

IRS' 2002 clarification of HRAs represents a significant extension of this arrangement and provides an additional means for financing health care benefits for current and former employees. However, it does not appear that HRAs are portable by former employees, including retirees, desiring to roll the account into another health reimbursement or retiree funding vehicle. Employee contributions may not be made. HRA limitations may not meet the needs for pre-funding defined benefit retiree health care plans.

HEALTH SAVINGS ACCOUNTS (HSAs)

Health Savings Accounts were established under the Medicare Prescription Drug, Improvement, and Modernization Act of 2003. They combine a high-deductible health plan (HDHP) with a tax-advantaged savings account for individuals and families. For individual coverage for 2015, a qualified HDHP must have an annual deductible of at least \$1,300 and limit annual out-of-pocket health care expenses to not more than \$6,550. For family coverage for 2015, the annual deductible must be at least \$2,600 and annual out-of-pocket expenses not more than \$13,100. The deductible for family coverage is a cumulative for all family members combined. Certain types of preventive care may be excluded from the high deductible, including annual physicals, related diagnostic tests, immunizations, screening services, and certain types of child care.

For individuals and families covered by a qualified HDHP, a Health Savings Account may be established to accumulate funds used to pay the HDHP premiums, deductibles, and qualified out-of-pocket medical expenses. For 2015, contributions to the HSA are tax-deferred and may be made by individuals and employers, limited to the lesser of the HDHP deductible or \$3,350 for individual coverage and \$6,650 for family coverage. Additional contributions are permitted if the account holder is age 55 and older.

The account is self-directed and investment income is not taxed when earned. Distributions from the account are tax-free if used to pay qualified medical expenses, including premiums and out-of-pocket expenses. If used for other purposes, the distributions are subject to income tax and an additional 10 percent excise tax. Taxable distributions made after death, disability, or the attainment of age 65 are not subject to the excise tax.

Unused account balances are carried over to subsequent years and may be used to pay health care benefits after termination of employment and in retirement. While Medicare premiums can be paid from an HSA, certain restrictions disadvantage HSAs for financing health care benefits in retirement. Individuals may not make contributions to HSAs after age 65. Moreover, premiums for Medicare supplemental health care policies may not be reimbursed from an HSA.

Health Savings Accounts must be combined with a high-deductible health plan (HDHP). As high-deductible health plans are not common in public sector benefit offerings, HSAs may have limited applicability for pre-funding defined benefit retiree health care plans.

OPEB BONDS

OPEB Bonds are essentially pension obligation bonds (POBs). Interest in pension obligation bonds (POBs) have grown among state and local governments in recent years. POBs are financing instruments, issued by a state or local government, designed to pay obligations to a pension fund or pension system. POB proceeds are typically used to pay some or all of a plan's unfunded accrued liability (UAL) and may include some of the plan's normal costs.

OPEB Bonds are issued by governmental entities for the payment of its other postemployment benefits liabilities. The advantages of OPEB Bonds are similar to those of pension obligation bonds, including interest rate savings (comparing bond interest costs against the investment return assumption/discount rate used in calculating the UAAL and ARC) and arbitrage opportunities (when the investment return assumption and actual investment return exceeds the yield on bonds).

LIFE INSURANCE CONTRACTS

Corporate-Owned Life Insurance (COLI) is any life insurance contract that is wholly owned by a corporation and under which the company pays the entire premium and is the sole beneficiary of the death proceeds. In other words, the employer buys life insurance on the life of an employee. The life insurance proceeds are then used to recover the costs for employee and/or retiree benefits provided. The receipt of proceeds from COLI is coincident with the payment of any life insurance or death benefit obligation of the employer. Studies have shown that a large share of postemployment health benefit payments occur in the year in which the employee dies.

Some of the issues accompanying the choice of COLI funding include:

- What is the investment return under the Corporate-Owned Life Insurance coverage and how does it compare to the long-term investment return reflected by the diversified mix of stocks and bonds held in a trust by the employer?
- Is there a limitation on the deductibility of corporate policy loan interest?
- The amount contributed may not be deductible, although it could be if the investments are owned by a VEBA.



CITY COUNCIL AGENDA ITEM

REQUESTED COUNCIL MEETING DATE 03/07/2017

Consent item: No

SUBJECT: (C18) 866 Chickadee Drive - Nik Foster

DEPARTMENT: City Clerk

GOAL:

RECOMMENDED MOTION: Recommend waiver of the penalties totaling \$2724.76.

SUMMARY: Mr. Foster bought a home at 866 Chickadee Dr. that he reports was vacant for seven years. He intends to repair the home and put it back into service. The property has \$2,824.78 in unpaid bills and \$2724.76 in unpaid penalties. Mr. Foster would like relief from the penalty portion (\$2,724.76) of this lien.

Project No.: Funding Account No.:

ATTACHMENTS:

1.	Letter from Nik Foster	PO Council Letter.pdf
2.	Account Summary	866 CHICKADEE.XLSX

Robin Fenwick
Tracey Riehm
Jake Johansson
Robin Fenwick

Created/Initiated - 02/22/2017
Approved - 02/24/2017
Approved - 02/24/2017
Final Approval - 02/24/2017

Nik & Ashley Foster

866 Chickadee Dr.
Port Orange, FL 32127
(386)547-3965
nfoster@seatow.com

February 22, 2017

Port Orange City Council
1000 City Center Circle
Port Orange, FL 32129

Mayor Burnette and Port Orange City Council Members,

My wife and I recently purchased a property in Port Orange at 866 Chickadee Drive in the beautiful Cypress Cove subdivision. The property we purchased has been vacant for nearly 8 years and it is our intention to improve/update it to the standards of the neighborhood, including new landscaping (which has been a common complaint from the neighbors). In fact, several neighbors have come by to introduce themselves and are very pleased that the home will finally be cared for again and cease being the black eye of the neighborhood.

My request of the council is to waive the penalties associated with the water bill for this property. As you can see from the attached utility audit conducted by Tracy in the Water Department, the outstanding balance on the account is \$5,309.00. Nearly half of this balance, has been accrued from "penalties." As a Port Orange resident, I understand the importance of the required charge for access to the water connection and how the city uses it to budget. I am comfortable paying the availability total of \$2,824.78. However, the penalty charges were continuously added to the account each month for eight consecutive years, long after the house was vacated and service shut-off. It is my understanding that penalty charges are not actual costs for the City of Port Orange. It is our hope that you will waive the penalty charges in the sum of \$2,724.76. By eliminating the "penalty fees" it will allow us to put that money into property improvements that will effect the look of the neighborhood and property values for the neighbors elevating the community as a whole.

I appreciate your consideration of this matter.

Sincerely,

Nik & Ashley Foster



CITY COUNCIL AGENDA ITEM

REQUESTED COUNCIL MEETING DATE 03/07/2017

Consent item: No

SUBJECT: (F20) Port Orange South Daytona Chamber of Commerce Quarterly Report

DEPARTMENT: City Manager

GOAL: 4 - Economic Development

RECOMMENDED MOTION: Move to accept Port Orange/South Daytona Chamber of Commerce Quarterly Report

SUMMARY: The Port Orange/South Daytona Chamber of Commerce provides economic development and other services to the City. The contract between the entities indicates that the Chamber will report to the City quarterly on its accomplishments.

This presentation will cover the first quarter of the fiscal year and will be presented by Debbie Connors, Executive Director of the Chamber of Commerce.

Project No.: Funding Account No.:

ATTACHMENTS:

Alan Rosen
Jake Johansson
Robin Fenwick

Created/Initiated - 02/07/2017
Approved - 02/07/2017
Final Approval - 02/08/2017

**The Golf Club at Cypress Head
Course Cash Flow Report
January 31, 2017**

	<u>January</u>	<u>YTD</u>
EBITDA	\$28,174.52	\$7,318.40
Management Fee Expense	(5,712.85)	(22,851.40)
Depreciation & Amortization	(153.61)	(612.44)
Net Income	22,308.06	(16,145.44)
Working Capital Changes		
Inventory	63.24	(6,963.52)
Receivables	(281.97)	91,971.57
Payables	(4,666.11)	(55,273.62)
Due to from the City	67.85	567.78
Prepays	(29,901.87)	(32,304.64)
Accrued Liabilities	10,206.92	(18,177.84)
Other Liabilities	(20,778.56)	(102,810.60)
Depreciation & Amortization	153.61	612.44
Operating Cash Flow	(22,828.83)	(138,523.87)
Investing Cash Flows	<u> </u>	<u> </u>
Financing Cash Flow	<u> </u>	<u> </u>
Net Cash Flows	<u>(22,828.83)</u>	<u>(138,523.87)</u>
Beginning Cash	61,306.06	177,001.10
Net Cash Flows	<u>(22,828.83)</u>	<u>(138,523.87)</u>
Ending Cash	<u>38,477.23</u>	<u>38,477.23</u>

The Golf Club at Cypress Head
Comparative Income Statement
For the Four Months Ending January 31, 2017

	MTD Prior Year	YTD Prior Year	Audited Prior Year	Percent of Total	MTD Actual	YTD Actual	Annual Budget	Percent of Total
REVENUES								
Green Fees & Cart Fees	100,423	312,625	1,077,267	29%	119,071	389,335	1,116,089	35%
Merchandise	4,884	16,400	54,320	30%	4,935	20,568	57,514	36%
Other Pro Shop	1,214	2,460	14,505	17%	1,480	3,234	11,540	28%
Range	2,877	9,107	34,150	27%	3,619	11,971	34,679	35%
Food and Beverage	0	0	137		0	0	0	
Other Operating Revenues	3,243	10,636	37,806	28%	3,968	13,409	39,852	34%
TOTAL REVENUE	112,641	351,227	1,218,185	29%	133,073	438,517	1,259,674	35%
COST OF SALES								
Merchandise	3,581	13,662	36,189	38%	2,894	11,988	40,260	30%
TOTAL COGS	3,581	13,662	36,189	38%	2,894	11,988	40,260	30%
COGS - Merchandise %	73.3%	83.3%	66.6%	125.0%	58.6%	58.3%	70.0%	83.3%
PAYROLL								
Course and Grounds	28,053	119,062	339,558	35%	31,258	122,676	351,366	35%
Carts, Range, Starters, Etc.	6,797	24,050	81,091	30%	8,001	28,221	92,546	30%
Pro Shop	4,388	20,243	53,209	38%	3,982	15,069	55,398	27%
General and Administrative	11,139	42,684	127,363	34%	11,184	43,329	129,158	34%
Marketing	3,896	16,322	48,834	33%	3,870	16,334	49,603	33%
TOTAL PAYROLL	54,272	222,360	650,054	34%	58,294	225,629	678,071	33%
OPERATING EXPENSES								
Course and Grounds	13,029	65,407	247,630	26%	16,748	73,852	212,591	35%
Carts, Range, Starters, Etc.	6,599	29,471	80,708	37%	6,625	27,326	85,302	32%
Pro Shop	416	990	10,107	10%	150	1,213	9,015	13%
Food and Beverage	0	185	322	57%	0	0	0	
General and Administrative	16,122	71,644	197,823	36%	18,189	84,370	205,607	41%
Marketing	2,192	18,976	34,250	55%	2,000	6,820	33,063	21%
TOTAL OPERATING EXPENSES	38,359	186,673	570,840	33%	43,711	193,581	545,578	35%
TOTAL EXPENSES	96,212	422,696	1,257,084	34%	104,898	431,199	1,263,909	34%
OTHER INCOME (EXPENSE)								
MANAGEMENT FEES	(5,713)	(24,508)	(70,211)	35%	(5,713)	(22,851)	(69,924)	33%
Depreciation & Amortization	(381)	(1,524)	(11,147)	14%	(154)	(612)	(4,572)	13%
TOTAL OTHER INCOME (EXPENSE)	(6,094)	(26,032)	(81,358)	32%	(5,866)	(23,464)	(74,496)	31%
NET INCOME	10,335	(97,501)	(120,257)	81%	22,308	(16,145)	(78,731)	21%
Paid Rounds	2,908	9,691	34,878	28%	3,645	12,223	38,696	32%
Annual Pass Rounds	866	2,581	8,657	30%	904	3,109	5,051	62%
Other Rounds	196	663	2,437	27%	233	918	2,812	33%
Total Rounds	3,970	12,935	45,972	28%	4,782	16,250	46,559	35%
Revenue/Paid Rounds	39	36	35	104%	37	36	33	110%
Revenue/Total Rounds	28	27	26	102%	28	27	27	100%

The Golf Club at Cypress Head

For the Four Months Ending January 31, 2017

	01/31/17	09/30/16	01/31/16
ASSETS			
CURRENT ASSETS:			
Cash			
Cash - Operating	0	0	152,959
Cash - Depository	37,127	176,360	0
Cash - Manual Checks	850	850	850
Cash - Housebank & Other	500	(209)	(1,296)
Total Cash	<u>38,477</u>	<u>177,001</u>	<u>152,513</u>
Accounts Receivable			
A/R Member	622	92,593	359
Total Accounts Receivable	<u>622</u>	<u>92,593</u>	<u>359</u>
Other Current Assets			
Inventory - Merchandise	23,197	16,234	15,696
Prepaid Insurance	10,897	10,248	10,761
Prepaid Exp - Other	38,694	7,038	6,641
Total Other Current Assets	<u>72,788</u>	<u>33,520</u>	<u>33,098</u>
TOTAL CURRENT ASSETS	<u>111,887</u>	<u>303,115</u>	<u>185,970</u>
PROPERTY, PLANT AND EQUIPMENT:			
Buildings & Improvements	30,598	30,598	54,143
Furniture and Fixtures	0	0	9,045
Machinery & Equipment	5,550	5,550	16,000
Property Plant and Equipment	36,148	36,148	79,187
Accumulated Depreciation	(24,849)	(24,236)	(57,653)
TOTAL PROPERTY, PLANT AND EQUIPMENT	<u>11,299</u>	<u>11,911</u>	<u>21,534</u>
TOTAL ASSETS	<u><u>123,186</u></u>	<u><u>315,026</u></u>	<u><u>207,504</u></u>

The Golf Club at Cypress Head

For the Four Months Ending January 31, 2017

	<u>01/31/17</u>	<u>09/30/16</u>	<u>01/31/16</u>
LIABILITIES AND STOCKHOLDERS' EQUITY			
CURRENT LIABILITIES:			
Accts Pay - Trade	19,838	75,111	8,615
Accts Pay - Other	(109,821)	(110,389)	48,292
Accrued Expenses	2,476	7,783	2,710
Accrued Payroll	20,976	25,945	20,175
Accrued Taxes	11,339	13,903	9,274
Accrued Interest	0	5,337	0
Deferred Revenue	194,526	297,337	215,939
TOTAL CURRENT LIABILITIES	<u>139,333</u>	<u>315,027</u>	<u>305,005</u>
 TOTAL LIABILITIES	 <u>139,333</u>	 <u>315,027</u>	 <u>305,005</u>
STOCKHOLDER'S EQUITY			
Retained Earnings	(16,147)	(1)	(97,501)
Net Retained Earnings	(16,147)	(1)	(97,501)
Stockholders Equity	(16,147)	(1)	(97,501)
TOTAL STOCKHOLDER'S EQUITY	<u>(16,147)</u>	<u>(1)</u>	<u>(97,501)</u>
 TOTAL LIABILITIES AND STOCKHOLDER'S EQUITY	 <u>123,186</u>	 <u>315,026</u>	 <u>207,504</u>

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The Golf Club at Cypress Head
Summary of All Units
For the Four Months Ending January 31, 2017

MTD Actual	MTD Budget	% of Budget	MTD Prior Year	% of PY		YTD Actual	YTD Budget	% of Budget	YTD Prior Year	% of PY	Annual Budget	
REVENUES												
69,050	55,718	124%	58,719	118%	Green Fees	230,550	211,858	109%	183,008	126%	646,060	664,102
50,021	41,704	120%	41,704	120%	Cart Fee	158,786	163,028	97%	129,616	123%	470,029	489,876
0	0	0%	0	0%	Merchandise	0	0	0%	0	0%	0	(137)
380	480	79%	480	79%	Handicap Fee	700	620	113%	620	113%	4,567	4,969
840	540	156%	540	156%	Lessons	1,764	1,400	126%	1,150	153%	3,931	7,549
0	0	0%	74	0%	Other Pro Shop Revenue	0	0	0%	74	0%	0	0
260	120	217%	120	217%	Rental Clubs	770	817	94%	617	125%	3,042	2,760
4,935	4,484	110%	4,884	101%	Retail	20,568	18,499	111%	16,400	125%	57,514	58,625
3,619	2,677	135%	2,877	126%	Range	11,971	10,407	115%	9,107	131%	34,679	37,015
0	0	0%	0	0%	Food & Beverage	0	0	0%	0	0%	0	137
3,968	3,243	122%	3,243	122%	City Surcharge R & R	13,409	13,317	101%	10,636	126%	39,852	40,579
133,073	108,966	122%	112,641	118%	Total Revenues	438,517	419,946	104%	351,227	125%	1,259,674	1,305,475
COST OF GOODS SOLD												
2,894	3,139	92%	3,581	81%	COGS - Merchandise	11,988	12,950	93%	13,662	88%	40,260	34,516
2,894	3,139	92%	3,581	81%	Total COGS	11,988	12,950	93%	13,662	88%	40,260	34,516
130,179	105,827	123%	109,060	119%	GROSS MARGIN	426,529	406,996	105%	337,565	126%	1,219,414	1,270,959
58.64%	70.00%	83.76%	73.32%	79.97%	COGS - Merchandise %	58.29%	70.00%	83.26%	83.31%	69.97%	70.00%	705.76%
PAYROLL												
20,561	19,078	108%	18,150	113%	Gross Payroll - Salaried	82,324	76,312	108%	72,508	114%	228,936	241,481
26,552	27,596	96%	25,184	105%	Gross Payroll - Hourly	101,839	108,859	94%	107,697	95%	318,603	296,670
47,113	46,674	101%	43,333	109%	S/T Wages	184,164	185,171	99%	180,205	102%	547,539	538,151
3,504	3,571	98%	3,283	107%	Payroll Tax - FICA	13,800	14,168	97%	13,576	102%	41,893	40,265
752	970	78%	1,069	70%	Payroll Tax - UC	1,571	1,661	95%	2,380	66%	4,953	4,932
773	970	80%	1,093	71%	Payroll Tax - WC	3,525	3,849	92%	4,178	84%	11,719	10,610
6,152	5,818	106%	5,494	112%	Benefits	22,570	23,271	97%	22,021	102%	71,967	59,364
11,181	11,329	99%	10,939	102%	S/T Adders	41,465	42,949	97%	42,155	98%	130,532	115,172
58,294	58,003	101%	54,272	107%	TOTAL PAYROLL	225,629	228,120	99%	222,360	101%	678,071	653,323
OPERATING EXPENSES												
411	218	189%	18	2284%	Cart Supplies	867	855	101%	856	101%	2,521	1,368
187	154	122%	4	4457%	Course Accessories	3,079	1,968	156%	748	412%	3,886	4,550
1,277	1,450	88%	1,050	122%	Fertilizer	10,150	9,539	106%	7,242	140%	25,094	41,723
0	0	0%	0	0%	Flowers/Decor	0	174	0%	74	0%	399	1,531
1,535	1,100	140%	1,300	118%	Fuel	4,124	4,233	97%	3,632	114%	13,026	11,828
1,322	800	165%	0	0%	Fungicides	2,393	1,606	149%	1,635	146%	4,045	5,981
1,902	160	1189%	160	1187%	Herbicides	5,638	3,873	146%	3,373	167%	15,068	22,785
858	45	1907%	45	1890%	Insecticides	6,185	4,554	136%	2,454	252%	15,077	18,680
368	398	92%	398	92%	Janitorial Supplies	914	1,383	66%	812	113%	4,136	4,178
0	100	0%	0	0%	Laundry/Uniforms	209	400	52%	0	0%	1,038	351
610	437	139%	487	125%	Office Supplies	1,466	2,023	72%	2,124	69%	4,366	4,043
0	0	0%	0	0%	Range Balls	1,455	1,730	84%	1,530	95%	3,330	2,475
117	100	117%	190	61%	Range Equipment	455	476	96%	987	46%	1,284	727
0	0	0%	0	0%	Range Expenses	0	10	0%	10	0%	460	13
0	0	0%	754	0%	Sand/Topdress	1,925	1,000	192%	3,445	56%	9,011	9,560
0	0	0%	0	0%	Seeds/Trees	4,400	4,069	108%	3,469	127%	4,069	4,400
0	0	0%	0	0%	Small Tools	611	150	407%	0	0%	407	1,134
0	0	0%	0	0%	Staff/Volunteer Uniforms	0	400	0%	0	0%	833	41
0	150	0%	213	0%	Supplies	878	600	146%	213	412%	1,801	3,247
0	0	0%	0	0%	Tournament Expense	(425)	574	-74%	574	-74%	1,174	(320)
321	91	353%	91	355%	Alarm System	1,465	454	323%	452	324%	1,425	3,432
0	0	0%	0	0%	Carpet Cleaning	0	0	0%	0	0%	890	0
0	118	0%	218	0%	Cart Repairs	0	555	0%	1,455	0%	1,855	(130)
190	332	57%	332	57%	Computer Service	762	4,772	16%	773	99%	6,912	3,122
0	0	0%	0	0%	Contract Cleaning	0	130	0%	130	0%	130	0
0	0	0%	0	0%	Guest Relations	32	0	0%	49	65%	0	117
150	192	78%	192	78%	Handicap Expense	300	192	156%	192	156%	4,475	5,032
0	0	0%	0	0%	Indoor Plant Maint	0	0	0%	0	0%	100	0
0	762	0%	762	0%	Irrigation	452	2,277	20%	1,277	35%	6,392	4,361
0	75	0%	11	0%	Lesson Expense	0	300	0%	11	0%	965	1,140
0	0	0%	0	0%	Pest Control	0	0	0%	0	0%	230	0
1,500	1,777	84%	2,027	74%	Repair & Maint - Equipment	7,667	8,560	90%	10,340	74%	22,585	28,737
1,669	410	407%	410	407%	Repair & Maint - Building	2,333	1,558	150%	496	470%	3,208	5,189
5,356	5,356	100%	5,356	100%	Cart Lease	21,423	21,424	100%	21,424	100%	64,272	64,266
4,886	4,886	100%	4,512	108%	Equipment Lease	19,545	19,544	100%	18,048	108%	55,637	55,637
168	168	100%	168	100%	Off-Site Storage	672	672	100%	672	100%	1,974	2,053
966	1,002	96%	1,002	96%	Utilities - Electric	4,042	4,125	98%	4,125	98%	13,383	12,391
4,991	3,714	134%	3,714	134%	Utilities - Other	16,386	13,395	122%	13,395	122%	41,871	52,194
95	129	74%	264	36%	Utilities - Telephone/Fax	1,096	747	147%	1,018	108%	2,449	2,642
236	244	97%	244	97%	Utilities - Water	991	1,236	80%	1,235	80%	2,897	2,933

The Golf Club at Cypress Head
Summary of All Units
For the Four Months Ending January 31, 2017

MTD	MTD	% of	MTD	% of		YTD	YTD	% of	YTD	% of	Annual	
Actual	Budget	Budget	Prior Year	PY		Actual	Budget	Budget	Prior Year	PY	Budget	
2,000	2,442	82%	2,192	91%	Advertising & Promotion	5,808	6,978	83%	6,229	93%	16,247	18,811
588	74	795%	74	793%	Bank Charges	2,024	832	243%	832	243%	1,382	4,463
116	0	0%	35	329%	Cash Short/(Over)	499	0	0%	138	361%	0	637
150	200	75%	175	86%	Cell Phone	800	875	91%	750	107%	2,475	2,225
3,968	3,243	122%	3,243	122%	City Surcharge R & R	13,409	13,317	101%	10,636	126%	39,852	40,579
0	0	0%	0	0%	Copier/Photocopies	18	166	11%	166	11%	671	614
1,702	1,727	99%	1,727	99%	Credit Card Discounts	9,282	10,797	86%	9,796	95%	27,744	22,988
0	0	0%	0	0%	Donations	(267)	0	0%	0	0%	0	97
220	0	0%	0	0%	Dues & Subscriptions	220	150	147%	150	147%	1,109	679
525	0	0%	210	250%	Education & Training	525	0	0%	210	250%	200	315
200	114	176%	114	175%	Employee Relations	1,155	867	133%	667	173%	2,122	2,834
0	0	0%	0	0%	Employee Testing	203	131	155%	131	155%	244	623
3,858	3,871	100%	3,796	102%	Insurance Expense	15,434	15,409	100%	15,184	102%	46,377	45,961
0	0	0%	0	0%	Member Relations	38	131	29%	131	29%	649	38
0	7	0%	7	0%	Messenger Service - Fedex	104	90	116%	91	115%	403	445
0	1,469	0%	669	0%	Miscellaneous	864	6,991	12%	13,291	7%	13,291	900
0	1,200	0%	1,200	0%	O/S - Accounting	12,000	13,200	91%	13,200	91%	12,000	10,800
0	0	0%	0	0%	O/S - Legal	0	0	0%	0	0%	80	0
0	0	0%	0	0%	O/S - Other	350	0	0%	325	108%	9,218	17,263
646	256	252%	56	1163%	Payroll Processing Fee	4,526	1,047	432%	845	535%	3,535	10,368
43	0	0%	0	0%	Postage/Shipping	185	39	475%	39	472%	634	282
(30)	(30)	100%	(30)	100%	Tax/Licenses/Fees	(120)	(90)	133%	(90)	133%	(100)	(285)
0	0	0%	0	0%	Theft Loss	0	0	0%	106	0%	0	0
567	520	109%	520	109%	Travel - Meals	695	612	113%	612	114%	683	1,976
44	847	5%	447	10%	Travel - Other	4,342	4,734	92%	4,066	107%	16,423	11,602
0	1,000	0%	0	0%	Website Expenses	0	1,000	0%	900	0%	4,000	2,100
0	0	0%	0	0%	Employee Meals	0	200	0%	0	0%	669	25
43,711	41,308	106%	38,359	114%	TOTAL OPERATING EXPENSES	193,581	197,034	98%	186,673	104%	545,578	577,748
28,175	6,516	432%	16,429	171%	EBITDA	7,318	(18,158)	-40%	(71,469)	-10%	(4,235)	39,888
5,713	5,827	98%	5,713	100%	Management Fee	22,851	23,308	98%	24,508	93%	69,924	68,554
5,713	5,827	98%	5,713	100%	Management Fees	22,851	23,308	98%	24,508	93%	69,924	68,554
37	98	38%	98	38%	Deprec - Mach & Equip	147	392	38%	390	38%	1,176	1,684
117	283	41%	283	41%	Deprec - Buildings	465	1,132	41%	1,134	41%	3,396	8,551
154	381	40%	381	40%	S/T DEPR. & AMORT	612	1,524	40%	1,524	40%	4,572	10,235
22,308	308	7243%	10,335	216%	NET INCOME	(16,145)	(42,990)	38%	(97,501)	17%	(78,731)	(38,902)

The Golf Club at Cypress Head
Course & Grounds
For the Four Months Ending January 31, 2017

MTD Actual	MTD Budget	% of Budget	MTD Prior Year	% of PY		YTD Actual	YTD Budget	% of Budget	YTD Prior Year	% of PY	Annual Budget	
REVENUES												
69,050	55,718	124%	58,719	118%	Green Fees	230,550	211,858	109%	183,008	126%	646,060	664,102
3,968	3,243	122%	3,243	122%	City Surcharge R & R	13,409	13,317	101%	10,636	126%	39,852	40,579
73,018	58,961	124%	61,962	118%	Total Revenues	243,959	225,175	108%	193,644	126%	685,912	704,681
73,018	58,961	124%	61,962	118%	GROSS MARGIN	243,959	225,175	108%	193,644	126%	685,912	704,681
PAYROLL												
9,075	7,802	116%	6,826	133%	Gross Payroll - Salaried	36,142	31,208	116%	27,382	132%	93,624	103,427
15,736	15,952	99%	15,236	103%	Gross Payroll - Hourly	62,853	62,658	100%	68,284	92%	186,129	177,104
24,811	23,754	104%	22,061	112%	S/T Wages	98,995	93,866	105%	95,667	103%	279,753	280,532
1,743	1,817	96%	1,595	109%	Payroll Tax - FICA	7,014	7,181	98%	6,855	102%	21,402	19,817
385	494	78%	526	73%	Payroll Tax - UC	890	636	140%	1,111	80%	2,040	2,568
399	494	81%	534	75%	Payroll Tax - WC	1,773	1,953	91%	2,163	82%	5,990	5,228
3,920	3,409	115%	3,337	117%	Benefits	14,004	13,635	103%	13,267	106%	42,181	35,026
6,447	6,214	104%	5,992	108%	S/T Adders	23,681	23,405	101%	23,395	101%	71,613	62,640
31,258	29,968	104%	28,053	111%	TOTAL PAYROLL	122,676	117,271	105%	119,062	103%	351,366	343,172
OPERATING EXPENSES												
187	154	122%	4	4457%	Course Accessories	3,079	1,968	156%	748	412%	3,886	4,550
1,277	1,450	88%	1,050	122%	Fertilizer	10,150	9,539	106%	7,242	140%	25,094	41,723
0	0	0%	0	0%	Flowers/Decor	0	174	0%	74	0%	399	1,531
1,535	1,100	140%	1,300	118%	Fuel	4,124	4,233	97%	3,632	114%	13,026	11,828
1,322	800	165%	0	0%	Fungicides	2,393	1,606	149%	1,635	146%	4,045	5,981
1,902	160	1189%	160	1187%	Herbicides	5,638	3,873	146%	3,373	167%	15,068	22,785
858	45	1907%	45	1890%	Insecticides	6,185	4,554	136%	2,454	252%	15,077	18,680
0	0	0%	754	0%	Sand/Topdress	1,925	1,000	192%	3,445	56%	9,011	9,560
0	0	0%	0	0%	Seeds/Trees	4,400	4,069	108%	3,469	127%	4,069	4,400
0	0	0%	0	0%	Small Tools	611	150	407%	0	0%	407	1,134
0	0	0%	0	0%	Staff/Volunteer Uniforms	0	400	0%	0	0%	833	41
0	762	0%	762	0%	Irrigation	452	2,277	20%	1,277	35%	6,392	4,361
1,500	1,702	88%	2,027	74%	Repair & Maint - Equipment	5,689	7,781	73%	9,782	58%	20,663	24,973
0	0	0%	0	0%	Repair & Maint - Building	0	500	0%	0	0%	1,207	270
4,886	4,886	100%	4,512	108%	Equipment Lease	19,545	19,544	100%	18,048	108%	58,632	55,637
224	185	121%	185	121%	Utilities - Electric	916	915	100%	915	100%	2,703	2,548
2,446	1,361	180%	1,361	180%	Utilities - Other	6,879	6,094	113%	6,094	113%	16,748	22,909
0	114	0%	114	0%	Utilities - Telephone/Fax	298	417	71%	418	71%	1,072	1,090
236	244	97%	244	97%	Utilities - Water	991	1,236	80%	1,235	80%	2,897	2,933
375	0	0%	210	179%	Education & Training	375	0	0%	210	179%	0	165
0	0	0%	0	0%	Employee Relations	0	100	0%	0	0%	200	542
0	0	0%	0	0%	Employee Testing	203	131	155%	131	155%	244	623
0	0	0%	0	0%	O/S - Other	0	0	0%	325	0%	9,218	16,913
0	100	0%	300	0%	Travel - Other	0	400	0%	900	0%	1,700	900
16,748	13,063	128%	13,029	129%	TOTAL OPERATING EXPENSES	73,852	70,961	104%	65,407	113%	212,591	256,075
25,012	15,930	157%	20,881	120%	EBITDA	47,431	36,943	128%	9,175	517%	121,955	105,435
25,012	15,930	157%	20,881	120%	NET INCOME	47,431	36,943	128%	9,175	517%	121,955	105,435

The Golf Club at Cypress Head
Carts
For the Four Months Ending January 31, 2017

MTD Actual	MTD Budget	% of Budget	MTD Prior Year	% of PY		YTD Actual	YTD Budget	% of Budget	YTD Prior Year	% of PY	Annual Budget	
50,021	41,704	120%	41,704	120%	REVENUES	158,786	163,028	97%	129,616	123%	470,029	489,876
50,021	41,704	120%	41,704	120%	Cart Fee	158,786	163,028	97%	129,616	123%	470,029	489,876
50,021	41,704	120%	41,704	120%	Total Revenues	158,786	163,028	97%	129,616	123%	470,029	489,876
					GROSS MARGIN	158,786	163,028	97%	129,616	123%	470,029	489,876
					PAYROLL							
7,225	7,415	97%	6,128	118%	Gross Payroll - Hourly	25,361	29,421	86%	21,340	119%	82,679	76,161
7,225	7,415	97%	6,128	118%	S/T Wages	25,361	29,421	86%	21,340	119%	82,679	76,161
549	567	97%	365	150%	Payroll Tax - FICA	1,997	2,250	89%	1,566	128%	6,323	6,093
111	154	72%	153	73%	Payroll Tax - UC	354	580	61%	656	54%	1,688	1,421
108	154	70%	138	78%	Payroll Tax - WC	485	611	79%	449	108%	1,767	1,490
9	8	109%	13	69%	Benefits	25	32	77%	39	63%	89	97
776	883	88%	669	116%	S/T Adders	2,861	3,473	82%	2,710	106%	9,867	9,102
8,001	8,298	96%	6,797	118%	TOTAL PAYROLL	28,221	32,894	86%	24,050	117%	92,546	85,263
					OPERATING EXPENSES							
411	218	188%	18	2284%	Cart Supplies	867	855	101%	856	101%	2,521	1,368
0	118	0%	218	0%	Cart Repairs	0	555	0%	1,455	0%	1,855	(130)
5,356	5,356	100%	5,356	100%	Cart Lease	21,423	21,424	100%	21,424	100%	64,272	64,266
742	817	91%	817	91%	Utilities - Electric	3,126	3,210	97%	3,210	97%	10,680	9,843
6,508	6,509	100%	6,409	102%	TOTAL OPERATING EXPENSES	25,416	26,044	98%	26,945	94%	79,328	75,348
35,512	26,897	132%	28,498	125%	EBITDA	105,148	104,090	101%	78,621	134%	298,155	329,265
35,512	26,897	132%	28,498	125%	NET INCOME	105,148	104,090	101%	78,621	134%	298,155	329,265

The Golf Club at Cypress Head
Range
For the Four Months Ending January 31, 2017

MTD Actual	MTD Budget	% of Budget	MTD Prior Year	% of PY		YTD Actual	YTD Budget	% of Budget	YTD Prior Year	% of PY	Annual Budget	
3,619	2,677	135%	2,877	126%	REVENUES							
3,619	2,677	135%	2,877	126%	Range	11,971	10,407	115%	9,107	131%	34,679	37,015
3,619	2,677	135%	2,877	126%	Total Revenues	11,971	10,407	115%	9,107	131%	34,679	37,015
3,619	2,677	135%	2,877	126%	GROSS MARGIN	11,971	10,407	115%	9,107	131%	34,679	37,015
0	0	0%	0	0%	OPERATING EXPENSES							
117	100	117%	190	61%	Range Balls	1,455	1,730	84%	1,530	95%	3,330	2,475
0	0	0%	0	0%	Range Equipment	455	476	96%	987	46%	1,284	727
0	75	0%	0	0%	Range Expenses	0	10	0%	10	0%	460	13
0	75	0%	0	0%	Repair & Maint - Equipment	0	300	0%	0	0%	900	0
117	175	67%	190	61%	TOTAL OPERATING EXPENSES	1,910	2,516	76%	2,526	76%	5,974	3,215
3,502	2,502	140%	2,686	130%	EBITDA	10,061	7,891	127%	6,580	153%	28,705	33,800
3,502	2,502	140%	2,686	130%	NET INCOME	10,061	7,891	127%	6,580	153%	28,705	33,800

The Golf Club at Cypress Head
F & B Cafe
For the Four Months Ending January 31, 2017

MTD Actual	MTD Budget	% of Budget	MTD Prior Year	% of PY		YTD Actual	YTD Budget	% of Budget	YTD Prior Year	% of PY	Annual Budget	
0	0	0%	0	0%	REVENUES							
0	0	0%	0	0%	Food & Beverage	0	0	0%	0	0%	0	137
0	0	0%	0	0%	Total Revenues	0	0	0%	0	0%	0	137
0	0	0%	0	0%	GROSS MARGIN	0	0	0%	0	0%	0	137
0	0	0%	0	0%	OPERATING EXPENSES							
0	0	0%	0	0%	Repair & Maint - Equipment	0	0	0%	79	0%	0	0
0	0	0%	0	0%	Cash Short/(Over)	0	0	0%	0	0%	0	137
0	0	0%	0	0%	Theft Loss	0	0	0%	106	0%	0	0
0	0	0%	0	0%	TOTAL OPERATING EXPENSES	0	0	0%	185	0%	0	137
0	0	0%	0	0%	EBITDA	0	0	0%	(185)	0%	0	0
0	0	0%	0	0%	NET INCOME	0	0	0%	(185)	0%	0	0

The Golf Club at Cypress Head
Golf Shop
For the Four Months Ending January 31, 2017

MTD Actual	MTD Budget	% of Budget	MTD Prior Year	% of PY		YTD Actual	YTD Budget	% of Budget	YTD Prior Year	% of PY	Annual Budget	
REVENUES												
0	0	0%	0	0%	Merchandise	0	0	0%	0	0%	0	(137)
360	480	79%	480	79%	Handicap Fee	700	620	113%	620	113%	4,567	4,969
840	540	156%	540	156%	Lessons	1,764	1,400	126%	1,150	153%	3,931	7,549
0	0	0%	74	0%	Other Pro Shop Revenue	0	0	0%	74	0%	0	0
260	120	217%	120	217%	Rental Clubs	770	817	94%	617	125%	3,042	2,760
4,935	4,484	110%	4,884	101%	Retail	20,568	18,499	111%	16,400	125%	57,514	58,625
6,415	5,624	114%	6,097	105%	Total Revenues	23,802	21,336	112%	18,860	126%	69,054	73,766
COST OF GOODS SOLD												
2,894	3,139	92%	3,581	81%	COGS - Merchandise	11,988	12,950	93%	13,662	88%	40,260	34,516
2,894	3,139	92%	3,581	81%	Total COGS	11,988	12,950	93%	13,662	88%	40,260	34,516
3,521	2,485	142%	2,516	140%	GROSS MARGIN	11,813	8,386	141%	5,198	227%	28,794	39,250
58.64%	70.00%	83.76%	73.32%	79.97%	COGS - Merchandise %	58.29%	70.00%	83.26%	83.31%	69.97%	70.00%	705.76%
PAYROLL												
3,592	4,229	85%	3,820	94%	Gross Payroll - Hourly	13,626	16,780	81%	18,073	75%	49,795	43,404
3,592	4,229	85%	3,820	94%	S/T Wages	13,626	16,780	81%	18,073	75%	49,795	43,404
276	324	85%	398	69%	Payroll Tax - FICA	1,064	1,285	83%	1,492	71%	3,812	3,270
59	88	67%	96	61%	Payroll Tax - UC	130	196	66%	319	41%	728	533
56	88	63%	73	76%	Payroll Tax - WC	249	349	71%	359	69%	1,063	826
390	500	78%	568	69%	S/T Adders	1,443	1,830	79%	2,170	66%	5,603	4,629
3,982	4,729	84%	4,388	91%	TOTAL PAYROLL	15,069	18,610	81%	20,243	74%	55,398	48,034
OPERATING EXPENSES												
0	50	0%	0	0%	Office Supplies	461	200	231%	0	0%	600	1,200
0	150	0%	213	0%	Supplies	878	600	146%	213	412%	1,801	3,247
0	0	0%	0	0%	Tournament Expense	(425)	574	-74%	574	-74%	1,174	(320)
150	192	78%	192	78%	Handicap Expense	300	192	156%	192	156%	4,475	5,032
0	75	0%	11	0%	Lesson Expense	0	300	0%	11	0%	965	1,140
0	0	0%	0	0%	Repair & Maint - Building	0	0	0%	0	0%	0	31
150	467	32%	416	36%	TOTAL OPERATING EXPENSES	1,213	1,866	65%	990	123%	9,015	10,330
(610)	(2,711)	23%	(2,287)	27%	EBITDA	(4,469)	(12,090)	37%	(16,035)	28%	(35,619)	(19,114)
(610)	(2,711)	23%	(2,287)	27%	NET INCOME	(4,469)	(12,090)	37%	(16,035)	28%	(35,619)	(19,114)

The Golf Club at Cypress Head
G & A
For the Four Months Ending January 31, 2017

MTD Actual	MTD Budget	% of Budget	MTD Prior Year	% of PY		YTD Actual	YTD Budget	% of Budget	YTD Prior Year	% of PY	Annual Budget	
PAYROLL												
8,358	7,905	106%	8,197	102%	Gross Payroll - Salaried	32,774	31,620	104%	31,763	103%	94,860	97,613
8,358	7,905	106%	8,197	102%	S/T Wages	32,774	31,620	104%	31,763	103%	94,860	97,613
714	605	118%	698	102%	Payroll Tax - FICA	2,764	2,420	114%	2,699	102%	7,260	8,189
150	164	91%	222	67%	Payroll Tax - UC	150	164	91%	222	67%	291	272
162	164	98%	289	56%	Payroll Tax - WC	779	656	119%	933	84%	2,031	2,306
1,800	1,993	90%	1,733	104%	Benefits	6,863	7,972	86%	7,067	97%	24,716	19,630
2,825	2,926	97%	2,942	96%	S/T Adders	10,555	11,212	94%	10,921	97%	34,298	30,395
11,184	10,831	103%	11,139	100%	TOTAL PAYROLL	43,329	42,832	101%	42,684	102%	129,158	128,008
OPERATING EXPENSES												
368	398	92%	398	92%	Janitorial Supplies	914	1,383	66%	812	113%	4,136	4,178
0	100	0%	0	0%	Laundry/Uniforms	209	400	52%	0	0%	1,038	351
610	387	157%	487	125%	Office Supplies	1,005	1,823	55%	2,124	47%	3,766	2,842
321	91	353%	91	355%	Alarm System	1,465	454	323%	452	324%	1,425	3,432
0	0	0%	0	0%	Carpet Cleaning	0	0	0%	0	0%	890	0
190	332	57%	332	57%	Computer Service	762	4,772	16%	773	99%	6,912	3,122
0	0	0%	0	0%	Contract Cleaning	0	130	0%	130	0%	130	0
0	0	0%	0	0%	Guest Relations	32	0	0%	49	65%	0	117
0	0	0%	0	0%	Indoor Plant Maint	0	0	0%	0	0%	100	0
0	0	0%	0	0%	Pest Control	0	0	0%	0	0%	230	0
0	0	0%	0	0%	Repair & Maint - Equipment	1,978	479	413%	479	413%	1,022	3,764
1,669	410	407%	410	407%	Repair & Maint - Building	2,333	1,058	221%	496	470%	2,001	4,888
168	168	100%	168	100%	Off-Site Storage	672	672	100%	672	100%	1,974	2,053
2,545	2,353	108%	2,353	108%	Utilities - Other	9,507	7,301	130%	7,301	130%	25,123	29,285
95	15	633%	150	63%	Utilities - Telephone/Fax	797	330	242%	600	133%	1,377	1,552
588	74	795%	74	793%	Bank Charges	2,024	832	243%	832	243%	4,463	4,463
116	0	0%	35	329%	Cash Short/(Over)	499	0	0%	138	361%	0	500
150	200	75%	175	86%	Cell Phone	800	875	91%	750	107%	2,475	2,225
3,968	3,243	122%	3,243	122%	City Surcharge R & R	13,409	13,317	101%	10,636	126%	39,852	40,579
0	0	0%	0	0%	Copier/Photocopies	18	166	11%	166	11%	671	614
1,702	1,727	99%	1,727	99%	Credit Card Discounts	9,282	10,797	86%	9,796	95%	27,744	22,988
0	0	0%	0	0%	Donations	(267)	0	0%	0	0%	0	97
220	0	0%	0	0%	Dues & Subscriptions	220	150	147%	150	147%	1,109	679
150	0	0%	0	0%	Education & Training	150	0	0%	0	0%	200	150
200	114	176%	114	175%	Employee Relations	1,155	767	151%	667	173%	1,922	2,293
3,858	3,871	100%	3,796	102%	Insurance Expense	15,434	15,409	100%	15,184	102%	46,377	45,961
0	0	0%	0	0%	Member Relations	38	131	29%	131	29%	649	38
0	7	0%	7	0%	Messenger Service - Fedex	104	90	116%	91	115%	403	445
0	469	0%	669	0%	Miscellaneous	(36)	1,375	-3%	1,675	-2%	1,675	0
0	1,200	0%	1,200	0%	O/S - Accounting	12,000	13,200	91%	13,200	91%	12,000	10,800
0	0	0%	0	0%	O/S - Legal	0	0	0%	0	0%	80	0
0	0	0%	0	0%	O/S - Other	350	0	0%	0	0%	0	350
646	256	252%	56	1163%	Payroll Processing Fee	4,526	1,047	432%	845	535%	3,535	10,368
43	0	0%	0	0%	Postage/Shipping	185	39	475%	39	472%	634	282
(30)	(30)	100%	(30)	100%	Tax/Licenses/Fees	(120)	(90)	133%	(90)	133%	(100)	(285)
567	520	109%	520	109%	Travel - Meals	695	612	113%	612	114%	683	1,976
44	647	7%	147	30%	Travel - Other	4,230	3,934	108%	2,934	144%	13,523	10,419
0	0	0%	0	0%	Employee Meals	0	200	0%	0	0%	669	25
18,189	16,552	110%	16,122	113%	TOTAL OPERATING EXPENSES	84,370	81,653	103%	71,644	118%	205,607	210,549
(29,372)	(27,383)	107%	(27,261)	108%	EBITDA	(127,698)	(124,485)	103%	(114,327)	112%	(334,765)	(338,557)
5,713	5,827	98%	5,713	100%	Management Fee	22,851	23,308	98%	24,508	93%	69,924	68,554
5,713	5,827	98%	5,713	100%	Management Fees	22,851	23,308	98%	24,508	93%	69,924	68,554
37	98	38%	98	38%	Deprec - Mach & Equip	147	392	38%	390	38%	1,176	1,684
117	283	41%	283	41%	Deprec - Buildings	465	1,132	41%	1,134	41%	3,396	8,551
154	381	40%	381	40%	S/T DEPR. & AMORT	612	1,524	40%	1,524	40%	4,572	10,235
(35,239)	(33,591)	105%	(33,355)	106%	NET INCOME	(151,162)	(149,317)	101%	(140,360)	108%	(409,261)	(417,347)

The Golf Club at Cypress Head
Marketing
For the Four Months Ending January 31, 2017

MTD Actual	MTD Budget	% of Budget	MTD Prior Year	% of PY		YTD Actual	YTD Budget	% of Budget	YTD Prior Year	% of PY	Annual Budget	
					PAYROLL							
3,127	3,371	93%	3,127	100%	Gross Payroll - Salaried	13,409	13,484	99%	13,363	100%	40,452	40,441
3,127	3,371	93%	3,127	100%	S/T Wages	13,409	13,484	99%	13,363	100%	40,452	40,441
223	258	86%	226	99%	Payroll Tax - FICA	961	1,032	93%	965	100%	3,096	2,896
48	70	68%	72	66%	Payroll Tax - UC	48	85	56%	72	66%	206	138
49	70	70%	59	84%	Payroll Tax - WC	239	280	85%	274	87%	868	759
423	408	104%	412	103%	Benefits	1,679	1,632	103%	1,647	102%	4,981	4,611
743	806	92%	768	97%	S/T Adders	2,925	3,029	97%	2,958	99%	9,151	8,405
3,870	4,177	93%	3,896	99%	TOTAL PAYROLL	16,334	16,513	99%	16,322	100%	49,603	48,846
					OPERATING EXPENSES							
2,000	2,442	82%	2,192	91%	Advertising & Promotion	5,808	6,978	83%	6,229	93%	16,247	18,811
0	1,000	0%	0	0%	Miscellaneous	900	5,616	16%	11,616	8%	11,616	900
0	100	0%	0	0%	Travel - Other	112	400	28%	232	48%	1,200	283
0	1,000	0%	0	0%	Website Expenses	0	1,000	0%	900	0%	4,000	2,100
2,000	4,542	44%	2,192	91%	TOTAL OPERATING EXPENSES	6,820	13,994	49%	18,976	36%	33,063	22,094
(5,870)	(8,719)	67%	(6,088)	96%	EBITDA	(23,154)	(30,507)	76%	(35,298)	66%	(82,666)	(70,940)
(5,870)	(8,719)	67%	(6,088)	96%	NET INCOME	(23,154)	(30,507)	76%	(35,298)	66%	(82,666)	(70,940)

The Golf Club at Cypress Head
For the Four Months Ending January 31, 2017

MTD Actual	MTD Budget	% of Budget	MTD Prior Year	% of PY		YTD Actual	YTD Budget	% of Budget	YTD Prior Year	% of PY	Annual Budget	
REVENUES												
119,071	97,422	122%	100,423	119%	Green Fees & Cart Fees	389,335	374,886	104%	312,625	125%	1,116,089	1,153,978
4,935	4,484	110%	4,884	101%	Merchandise	20,568	18,499	111%	16,400	125%	57,514	58,488
1,480	1,140	130%	1,214	122%	Other Pro Shop	3,234	2,837	114%	2,460	131%	11,540	15,278
3,619	2,677	135%	2,877	126%	Range	11,971	10,407	115%	9,107	131%	34,679	37,015
0	0	0%	0	0%	Food and Beverage	0	0	0%	0	0%	0	137
3,968	3,243	122%	3,243	122%	Other Operating Revenues	13,409	13,317	101%	10,636	126%	39,852	40,579
133,073	108,966	122%	112,641	118%	TOTAL REVENUE	438,517	419,946	104%	351,227	125%	1,259,674	1,305,475
COST OF SALES												
2,894	3,139	92%	3,581	81%	Merchandise	11,988	12,950	93%	13,662	88%	40,260	34,516
2,894	3,139	92%	3,581	81%	TOTAL COGS	11,988	12,950	93%	13,662	88%	40,260	34,516
58.6%	70.0%	83.8%	73.3%	80.0%	COGS - Merchandise %	58.3%	70.0%	83.3%	83.3%	70.0%	70.0%	705.8%
PAYROLL												
31,258	29,968	104%	28,053	111%	Course and Grounds	122,676	117,271	105%	119,062	103%	351,366	343,172
8,001	8,298	96%	6,797	118%	Carts, Range, Starters, Etc.	28,221	32,894	86%	24,050	117%	92,546	85,263
3,982	4,729	84%	4,388	91%	Pro Shop	15,069	18,610	81%	20,243	74%	55,398	48,034
11,184	10,831	103%	11,139	100%	General and Administrative	43,329	42,832	101%	42,684	102%	129,158	128,008
3,870	4,177	93%	3,896	99%	Marketing	16,334	16,513	99%	16,322	100%	49,603	48,846
58,294	58,003	101%	54,272	107%	TOTAL PAYROLL	225,629	228,120	99%	222,360	101%	678,071	653,323
OPERATING EXPENSES												
16,748	13,063	128%	13,029	129%	Course and Grounds	73,852	70,961	104%	65,407	113%	212,591	256,075
6,625	6,684	99%	6,599	100%	Carts, Range, Starters, Etc.	27,326	28,560	96%	29,471	93%	85,302	78,563
150	467	32%	416	36%	Pro Shop	1,213	1,866	65%	990	123%	9,015	10,330
0	0	0%	0	0%	Food and Beverage	0	0	0%	185	0%	0	137
18,189	16,552	110%	16,122	113%	General and Administrative	84,370	81,653	103%	71,644	118%	205,607	210,549
2,000	4,542	44%	2,192	91%	Marketing	6,820	13,994	49%	18,976	36%	33,063	22,094
43,711	41,308	106%	38,359	114%	TOTAL OPERATING EXPENSES	193,581	197,034	98%	186,673	104%	545,578	577,748
104,898	102,450	102%	96,212	109%	TOTAL EXPENSES	431,199	438,104	98%	422,696	102%	1,263,909	1,265,587
28,175	6,516	432%	16,429	171%	EBITDA	7,318	(18,158)	-40%	(71,469)	-10%	(4,235)	39,888

The Golf Club at Cypress Head
For the Four Months Ending January 31, 2017

MTD Actual	MTD Budget	% of Budget	MTD Prior Year	% of PY		YTD Actual	YTD Budget	% of Budget	YTD Prior Year	% of PY	Annual Budget	
28,175	6,516	432%	16,429	171%	EBITDA	7,318	(18,158)	-40%	(71,469)	-10%	(4,235)	39,888
(5,713)	(5,827)	98%	(5,713)	100%	MANAGEMENT FEES	(22,851)	(23,308)	98%	(24,508)	93%	(69,924)	(68,554)
					OTHER INCOME (EXPENSE)							
(154)	(381)	40%	(381)	40%	Depreciation & Amortization	(612)	(1,524)	40%	(1,524)	40%	(4,572)	(10,235)
(154)	(381)	40%	(381)	40%	TOTAL OTHER INCOME (EXPENSE)	(612)	(1,524)	40%	(1,524)	40%	(4,572)	(10,235)
22,308	308	7243%	10,335	216%	NET INCOME	(16,145)	(42,990)	38%	(97,501)	17%	(78,731)	(38,902)
3,645	2,508	145%	2,908	125%	Paid Rounds	12,223	11,191	109%	9,691	126%	38,696	37,410
904	516	175%	866	104%	Annual Pass Rounds	3,109	1,961	159%	2,581	120%	5,051	9,185
233	196	119%	196	119%	Other Rounds	918	823	112%	663	138%	2,812	2,692
4,782	3,220	149%	3,970	120%	Total Rounds	16,250	13,975	116%	12,935	126%	46,559	49,287
37	43	84%	39	94%	Revenue/Paid Rounds	36	38	96%	36	99%	33	417
28	34	82%	28	98%	Revenue/Total Rounds	27	30	90%	27	99%	27	315

TRIAL BALANCE SUMMARY FOR 2016

The Golf Club at Cypress Head

General Ledger

Ranges: From:
Date: 1/1/2017
Account: First

To:
1/31/2017
Last

Sorted By:
Include:
Print Currency In: Functional (Z-US\$)

Account
Posting, Unit

Inactive	Account	Description	Beginning Balance	Debit	Credit	Net Change	Ending Balance
	10020-5950-900	Cash - Course Depository NEW	\$59,956.06	\$122,177.65	\$145,006.48	(\$22,828.83)	\$37,127.23
	10100-5950-900	Cash - Course Other	\$850.00	\$0.00	\$0.00	\$0.00	\$850.00
	10120-5950-900	Cash - New Payroll	\$0.00	\$49,980.55	\$49,980.55	\$0.00	\$0.00
	10180-5950-900	Cash - Pro Shop Bank	\$500.00	\$0.00	\$0.00	\$0.00	\$500.00
	11160-5950-900	A/R Member	\$339.92	\$895.78	\$613.81	\$281.97	\$621.89
	12000-5950-900	Inventory - Merchandise	\$23,260.26	\$2,830.41	\$2,893.65	(\$63.24)	\$23,197.02
	13020-5950-900	Prepaid Insurance	\$14,755.32	\$0.00	\$3,858.39	(\$3,858.39)	\$10,896.93
	13040-5950-900	Prepaid Exp - Other	\$4,933.97	\$34,712.85	\$952.59	\$33,760.26	\$38,694.23
	20100-5950-900	Machinery & Equipment	\$5,550.40	\$0.00	\$0.00	\$0.00	\$5,550.40
	20160-5950-900	Buildings and Improvements	\$30,597.54	\$0.00	\$0.00	\$0.00	\$30,597.54
	22040-5950-900	Accum. Deprec - Mach & Equip	(\$3,162.83)	\$0.00	\$36.87	(\$36.87)	(\$3,199.70)
	22080-5950-900	Accum. Deprec - Buildings	(\$21,532.45)	\$0.00	\$116.74	(\$116.74)	(\$21,649.19)
	30000-5950-900	Accts Pay - Trade	(\$24,503.95)	\$129,319.69	\$124,653.58	\$4,666.11	(\$19,837.84)
	30040-5950-900	Accts Pay - Other	\$109,889.07	\$10,366.93	\$10,434.78	(\$67.85)	\$109,821.22
	31000-5950-900	Accrued Expenses	(\$4,669.30)	\$4,714.00	\$2,520.49	\$2,193.51	(\$2,475.79)
	31020-5950-900	Accrued Payroll	(\$16,032.72)	\$9,868.64	\$14,734.76	(\$4,866.12)	(\$20,898.84)
	31080-5950-900	Accrued Tips Payable	(\$62.00)	\$0.00	\$15.00	(\$15.00)	(\$77.00)
	31220-5950-900	Accrued Sales Tax	(\$3,819.35)	\$3,819.35	\$7,370.92	(\$3,551.57)	(\$7,370.92)
	31400-5950-900	Accrued City Surcharge	\$0.00	\$0.00	\$3,967.74	(\$3,967.74)	(\$3,967.74)
	32000-5950-900	Deferred Rev - Rainchecks	(\$1,800.82)	\$110.33	\$532.64	(\$422.31)	(\$2,223.13)
	32020-5950-900	Deferred Rev - Outing Deposits	(\$2,916.45)	\$341.82	\$180.25	\$161.57	(\$2,754.88)
	32040-5950-900	Deferred Rev - Legacy GF Passes	(\$44,677.32)	\$4,964.15	\$0.00	\$4,964.15	(\$39,713.17)
	32050-5950-900	Deferred Revenue - Cypress GF Passes	(\$43,620.61)	\$5,026.98	\$180.25	\$4,846.73	(\$38,773.88)
	32060-5950-900	Deferred Rev - Gift Certificates	(\$139.14)	\$0.00	\$0.00	\$0.00	(\$139.14)
	32070-5950-900	Deferred Rev - Gift Cards	(\$23,754.06)	\$2,731.30	\$501.21	\$2,230.09	(\$21,523.97)
	32100-5950-900	Deferred Rev - Credit Books	(\$15,257.66)	\$1,225.71	\$1,464.99	(\$239.28)	(\$15,496.94)
	32120-5950-900	Deferred Rev - Trail Fee Pass	(\$82,252.15)	\$9,139.13	\$0.00	\$9,139.13	(\$73,113.02)
	32220-5950-900	Deferred Rev - Founders Pass	(\$886.35)	\$98.48	\$0.00	\$98.48	(\$787.87)
	49020-5950-900	Retained Earnings - Current	\$1.12	\$0.00	\$0.00	\$0.00	\$1.12
	50000-5950-100	Green Fees - Annual Pass	(\$29,213.41)	\$0.00	\$9,909.36	(\$9,909.36)	(\$39,122.77)
	50040-5950-100	Green Fees - Member	(\$122,844.86)	\$0.00	\$55,172.93	(\$55,172.93)	(\$178,017.79)
	50070-5950-100	Green Fees - (surcharge)	(\$9,441.36)	\$3,967.74	\$7,935.48	(\$3,967.74)	(\$13,409.10)
	50500-5950-200	Cart Fee 18	(\$81,617.36)	\$0.00	\$40,881.93	(\$40,881.93)	(\$122,499.29)
	50520-5950-200	Cart Fee - Annual Trail	(\$27,147.27)	\$0.00	\$9,139.13	(\$9,139.13)	(\$36,286.40)
	52090-5950-600	Handicap Fee	(\$320.00)	\$0.00	\$380.00	(\$380.00)	(\$700.00)
	52150-5950-600	Lessons	(\$924.05)	\$0.00	\$840.00	(\$840.00)	(\$1,764.05)
	52280-5950-600	Rental Clubs	(\$510.00)	\$0.00	\$260.00	(\$260.00)	(\$770.00)
	52310-5950-600	Retail	(\$15,632.54)	\$0.00	\$4,934.99	(\$4,934.99)	(\$20,567.53)
	53050-5950-220	Range Pass Revenue	(\$8,351.90)	\$0.00	\$3,619.00	(\$3,619.00)	(\$11,970.90)
	56120-5950-100	City Surcharge R & R	(\$9,441.36)	\$0.00	\$3,967.74	(\$3,967.74)	(\$13,409.10)
	60000-5950-600	COGS - Merchandise - Accessories	\$9,094.76	\$2,893.65	\$0.00	\$2,893.65	\$11,988.41
	70000-5950-100	Gross Payroll - Salaried	\$27,066.69	\$10,831.67	\$1,756.49	\$9,075.18	\$36,141.87
	70000-5950-600	Gross Payroll - Salaried	\$0.00	\$176.00	\$176.00	\$0.00	\$0.00
	70000-5950-900	Gross Payroll - Salaried	\$24,415.23	\$12,162.06	\$3,803.66	\$8,358.40	\$32,773.63
	70000-5950-950	Gross Payroll - Salaried	\$10,281.47	\$3,732.56	\$605.28	\$3,127.28	\$13,408.75
	70010-5950-100	Gross Payroll - Hourly	\$47,116.97	\$19,121.24	\$3,385.51	\$15,735.73	\$62,852.70
	70010-5950-200	Gross Payroll - Hourly	\$18,135.78	\$8,269.82	\$1,044.97	\$7,224.85	\$25,360.63
	70010-5950-600	Gross Payroll - Hourly	\$10,034.34	\$4,084.42	\$492.74	\$3,591.68	\$13,626.02
	71000-5950-100	Payroll Tax - FICA	\$5,270.80	\$2,108.00	\$365.10	\$1,742.90	\$7,013.70
	71000-5950-200	Payroll Tax - FICA	\$1,448.57	\$631.64	\$83.07	\$548.57	\$1,997.14
	71000-5950-600	Payroll Tax - FICA	\$788.46	\$313.46	\$37.70	\$275.76	\$1,064.22
	71000-5950-900	Payroll Tax - FICA	\$2,049.90	\$848.30	\$134.32	\$713.98	\$2,763.88
	71000-5950-950	Payroll Tax - FICA	\$737.86	\$265.96	\$43.13	\$222.83	\$960.69
	71010-5950-100	Payroll Tax - UC	\$504.80	\$385.07	\$0.00	\$385.07	\$889.87
	71010-5950-200	Payroll Tax - UC	\$242.95	\$110.85	\$0.00	\$110.85	\$353.80
	71010-5950-600	Payroll Tax - UC	\$71.04	\$58.90	\$0.00	\$58.90	\$129.94
	71010-5950-900	Payroll Tax - UC	\$0.00	\$149.61	\$0.00	\$149.61	\$149.61

TRIAL BALANCE SUMMARY FOR 2016

The Golf Club at Cypress Head

Inactive	Account	Description	Beginning Balance	Debit	Credit	Net Change	Ending Balance
	71010-5950-950	Payroll Tax - UC	\$0.00	\$47.63	\$0.00	\$47.63	\$47.63
	71020-5950-100	Payroll Tax - WC	\$1,374.28	\$398.93	\$0.00	\$398.93	\$1,773.21
	71020-5950-200	Payroll Tax - WC	\$377.70	\$107.56	\$0.00	\$107.56	\$485.26
	71020-5950-600	Payroll Tax - WC	\$192.92	\$55.62	\$0.00	\$55.62	\$248.54
	71020-5950-900	Payroll Tax - WC	\$617.49	\$161.50	\$0.00	\$161.50	\$778.99
	71020-5950-950	Payroll Tax - WC	\$189.40	\$49.14	\$0.00	\$49.14	\$238.54
	71030-5950-100	Benefits	\$10,084.32	\$6,083.55	\$2,163.40	\$3,920.15	\$14,004.47
	71030-5950-200	Benefits	\$15.90	\$50.29	\$41.56	\$8.73	\$24.63
	71030-5950-900	Benefits	\$5,062.30	\$3,246.86	\$1,446.64	\$1,800.22	\$6,862.52
	71030-5950-950	Benefits	\$1,255.53	\$616.68	\$193.60	\$423.08	\$1,678.61
	80110-5950-200	Cart Supplies	\$456.42	\$410.75	\$0.00	\$410.75	\$867.17
	80170-5950-100	Course Accessories	\$2,891.81	\$187.20	\$0.00	\$187.20	\$3,079.01
	80230-5950-100	Fertilizer	\$8,872.51	\$1,277.00	\$0.00	\$1,277.00	\$10,149.51
	80270-5950-100	Fuel	\$2,589.48	\$1,534.76	\$0.00	\$1,534.76	\$4,124.24
	80280-5950-100	Fungicides	\$1,071.00	\$1,321.52	\$0.00	\$1,321.52	\$2,392.52
	80320-5950-100	Herbicides	\$3,736.35	\$1,901.75	\$0.00	\$1,901.75	\$5,638.10
	80370-5950-100	Insecticides	\$5,327.25	\$857.96	\$0.00	\$857.96	\$6,185.21
	80380-5950-900	Janitorial Supplies	\$545.75	\$367.81	\$0.00	\$367.81	\$913.56
	80420-5950-900	Laundry/Uniforms	\$208.79	\$0.00	\$0.00	\$0.00	\$208.79
	80520-5950-600	Office Supplies	\$461.01	\$0.00	\$0.00	\$0.00	\$461.01
	80520-5950-900	Office Supplies	\$395.42	\$609.52	\$0.00	\$609.52	\$1,004.94
	80610-5950-220	Range Balls	\$1,455.00	\$0.00	\$0.00	\$0.00	\$1,455.00
	80620-5950-220	Range Equipment	\$338.59	\$116.61	\$0.00	\$116.61	\$455.20
	80690-5950-100	Sand/Topdress	\$1,924.69	\$0.00	\$0.00	\$0.00	\$1,924.69
	80710-5950-100	Seeds/Trees	\$4,400.00	\$0.00	\$0.00	\$0.00	\$4,400.00
	80730-5950-100	Small Tools	\$610.68	\$0.00	\$0.00	\$0.00	\$610.68
	80780-5950-600	Supplies	\$877.50	\$0.00	\$0.00	\$0.00	\$877.50
	80810-5950-600	Tournament Expense	(\$424.97)	\$0.00	\$0.00	\$0.00	(\$424.97)
	81010-5950-900	Alarm System	\$1,143.75	\$321.25	\$0.00	\$321.25	\$1,465.00
	81130-5950-900	Computer Service	\$571.42	\$190.46	\$0.00	\$190.46	\$761.88
	81200-5950-900	Guest Relations	\$31.94	\$0.00	\$0.00	\$0.00	\$31.94
	81220-5950-600	Handicap Expense	\$150.00	\$149.50	\$0.00	\$149.50	\$299.50
	81250-5950-100	Irrigation	\$452.07	\$0.00	\$0.00	\$0.00	\$452.07
	81350-5950-100	Repair & Maint - Equipment	\$4,189.05	\$1,500.24	\$0.00	\$1,500.24	\$5,689.29
	81350-5950-900	Repair & Maint - Equipment	\$1,977.94	\$0.00	\$0.00	\$0.00	\$1,977.94
	81360-5950-900	Repair & Maint - Building	\$664.35	\$1,669.00	\$0.00	\$1,669.00	\$2,333.35
	82000-5950-200	Cart Lease	\$16,067.01	\$5,355.67	\$0.00	\$5,355.67	\$21,422.68
	82020-5950-100	Equipment Lease	\$14,658.75	\$4,886.25	\$0.00	\$4,886.25	\$19,545.00
	82060-5950-900	Off-Site Storage	\$504.00	\$168.00	\$0.00	\$168.00	\$672.00
	83000-5950-100	Utilities - Electric	\$692.15	\$224.24	\$0.00	\$224.24	\$916.39
	83000-5950-200	Utilities - Electric	\$2,384.15	\$741.81	\$0.00	\$741.81	\$3,125.96
	83020-5950-100	Utilities - Other	\$4,432.82	\$2,445.79	\$0.00	\$2,445.79	\$6,878.61
	83020-5950-900	Utilities - Other	\$6,961.86	\$2,545.17	\$0.00	\$2,545.17	\$9,507.03
	83030-5950-100	Utilities - Telephone/Fax	\$298.09	\$0.00	\$0.00	\$0.00	\$298.09
	83030-5950-900	Utilities - Telephone/Fax	\$702.53	\$518.91	\$424.00	\$94.91	\$797.44
	83050-5950-100	Utilities - Water	\$754.95	\$235.89	\$0.00	\$235.89	\$990.84
	84030-5950-950	Adv/Promo - Local/Regional Print	\$700.00	\$0.00	\$0.00	\$0.00	\$700.00
	84040-5950-950	Adv/Promo - Mktg/Bus Dev	\$3,108.05	\$2,399.82	\$400.00	\$1,999.82	\$5,107.87
	85020-5950-900	Bank Charges	\$1,435.58	\$588.28	\$0.00	\$588.28	\$2,023.86
	85050-5950-900	Cash Short/(Over)	\$382.69	\$631.68	\$515.34	\$116.34	\$499.03
	85060-5950-900	Cell Phone	\$650.00	\$150.00	\$0.00	\$150.00	\$800.00
	85070-5950-900	City Surcharge R & R	\$9,441.36	\$3,967.74	\$0.00	\$3,967.74	\$13,409.10
	85110-5950-900	Copier/Photocopies	\$17.72	\$0.00	\$0.00	\$0.00	\$17.72
	85120-5950-900	Credit Card Discounts	\$7,580.85	\$1,701.59	\$0.00	\$1,701.59	\$9,282.44
	85140-5950-900	Donations	(\$266.95)	\$0.00	\$0.00	\$0.00	(\$266.95)
	85150-5950-900	Dues & Subscriptions	\$0.00	\$220.00	\$0.00	\$220.00	\$220.00
	85160-5950-100	Education & Training	\$0.00	\$375.00	\$0.00	\$375.00	\$375.00
	85160-5950-900	Education & Training	\$0.00	\$150.00	\$0.00	\$150.00	\$150.00
	85190-5950-900	Employee Relations	\$954.93	\$318.75	\$118.53	\$200.22	\$1,155.15
	85200-5950-100	Employee Testing	\$203.00	\$0.00	\$0.00	\$0.00	\$203.00
	85280-5950-900	Insurance Expense	\$11,575.17	\$3,858.39	\$0.00	\$3,858.39	\$15,433.56
	85320-5950-900	Member Relations	\$37.50	\$0.00	\$0.00	\$0.00	\$37.50
	85330-5950-900	Messenger Service - Fedex	\$104.18	\$0.00	\$0.00	\$0.00	\$104.18

TRIAL BALANCE SUMMARY FOR 2016
The Golf Club at Cypress Head

Inactive	Account	Description	Beginning Balance	Debit	Credit	Net Change	Ending Balance
	85340-5950-900	Miscellaneous	(\$35.64)	\$0.00	\$0.00	\$0.00	(\$35.64)
	85340-5950-950	Miscellaneous	\$900.00	\$0.00	\$0.00	\$0.00	\$900.00
	85390-5950-900	O/S - Accounting	\$12,000.00	\$0.00	\$0.00	\$0.00	\$12,000.00
	85430-5950-900	O/S - Other	\$350.00	\$0.00	\$0.00	\$0.00	\$350.00
	85480-5950-900	Payroll Processing Fee	\$3,880.07	\$4,946.29	\$4,300.20	\$646.09	\$4,526.16
	85490-5950-900	Postage/Shipping	\$142.38	\$42.75	\$0.00	\$42.75	\$185.13
	85610-5950-900	Tax/Licenses/Fees	(\$90.00)	\$0.00	\$30.00	(\$30.00)	(\$120.00)
	85710-5950-900	Travel - Meals	\$127.67	\$566.94	\$0.00	\$566.94	\$694.61
	85720-5950-900	Travel - Other	\$4,185.78	\$44.28	\$0.00	\$44.28	\$4,230.06
	85720-5950-950	Travel - Other	\$112.32	\$0.00	\$0.00	\$0.00	\$112.32
	90000-5950-900	Management Fee	\$17,138.55	\$5,712.85	\$0.00	\$5,712.85	\$22,851.40
	98020-5950-900	Deprec - Mach & Equip	\$110.61	\$36.87	\$0.00	\$36.87	\$147.48
	98040-5950-900	Deprec - Buildings	\$348.22	\$116.74	\$0.00	\$116.74	\$464.96
	RCMWD-5950-100	Rounds - Complimentary - Weekday	10,544.00	125.00	0.00	125.00	10,669.00
	REMWD-5950-100	Rounds - Employee - Weekday	16,847.00	108.00	0.00	108.00	16,955.00
	RMBWD-5950-100	Rounds - Member - Weekday	58,909.00	904.00	0.00	904.00	59,813.00
	RPKWD-5950-100	Rounds - Peak - Weekday	310,719.00	3,645.00	0.00	3,645.00	314,364.00
	RPKWE-5950-100	Rounds - Peak - Weekend	5,071.00	0.00	0.00	0.00	5,071.00



February 20th, 2017

Robin Fenwick
City of Port Orange
100 City Center Circle
Port Orange, FL 32129

Dear Ms. Fenwick,

The following is the financial and operational summary report for January 2017 at Cypress Head Golf Club.

FINANCIAL SUMMARY FOR MONTH ENDING January 2017							
	Current				Year to Date		
	Actual	Budget	Variance vs. Budget		Actual	Budget	Variance vs. Budget
Revenue							
Green Fees	\$ 69,050	\$ 55,718	\$ 13,332		\$ 230,550	\$ 211,858	\$ 18,692
Cart Fees	\$ 50,021	\$ 41,704	\$ 8,317		\$ 158,786	\$ 163,028	\$ (4,242)
Range	\$ 3,619	\$ 2,677	\$ 942		\$ 11,971	\$ 10,407	\$ 1,564
Pro- Shop Revenues	\$ 6,415	\$ 5,624	\$ 791		\$ 23,802	\$ 21,336	\$ 2,466
City Surcharge R/R	\$ 3,968	\$ 3,243	\$ 725		\$ 13,409	\$ 13,317	\$ 92
Total Revenue	\$ 133,073	\$ 108,966	\$ 24,107		\$ 438,518	\$ 419,946	\$ 18,572
Cost of Sales							
Merchandise	\$ 2,894	\$ 3,139	\$ (245)	58%	\$ 11,988	\$ 12,950	\$ (962)
Gross Margin	\$ 130,179	\$ 105,827	\$ 24,352		\$ 426,530	\$ 406,996	\$ 19,534
Total Payroll	\$ 58,294	\$ 58,003	\$ 291		\$ 225,629	\$ 228,120	\$ (2,491)
Total Operating Expenses	\$ 43,711	\$ 41,308	\$ 2,403		\$ 193,581	\$ 197,034	\$ (3,453)
Net Operating Income	\$ 28,174	\$ 6,516	\$ 21,658		\$ 7,320	\$ (18,158)	\$ 25,478
Other Expenses							
Management Fee	\$ 5,867	\$ 6,208	\$ (341)		\$ 23,463	\$ 24,832	\$ (1,369)
Interest Expense	\$ -	\$ -	\$ -		\$ -	\$ -	\$ -
Depreciation	\$ 154	\$ 381	\$ 545		\$ 612	\$ 1,524	\$ (912)
Net Cash From Ops	\$ 22,307	\$ 308	\$ 21,999		\$ (16,143)	\$ (42,990)	\$ 26,847
Rounds							
Total Rounds	4,782	3,220	1,562		16,250	13,975	2,275
Avg. Green Fee/Cart Fee	\$24.90	\$30.26	\$ (5.36)		\$23.96	\$26.83	\$ (2.87)
Avg. Merchandise/round	\$1.34	\$1.75	\$ (0.41)		\$1.46	\$1.53	\$ (0.06)

Overview:

- Overall revenues for December finished at \$133,073 versus a budgeted amount of \$108,966 for a positive gain of \$24,107. The range revenue was positive for \$942 relative to the budgeted amount for the month. The pro shop and merchandise sales also exceeded budget by \$721 as well.
- Total payroll for the month was equal to the budgeted amount projected and the staff completed the final stages of debris removal from Hurricane Matthew.
- Our operating expenses were over budget due mainly due to added cost of fungicides and herbicides required for proper maintenance and health of the turf.
- The month of January is the fourth month in our fiscal year with the revenues being ahead of budget by \$18,570 due to a warm weather pattern combined with outstanding course conditions. Total payroll YTD is under budget by \$2,491 with total expenses being under budget as well by \$3,453.

R&R Projects:

- There were no projects for the month of January.

Tee Sheet Activity:

- There were 4782 total rounds for the month which included 3,645 paid rounds, 904 Annual with Cypress Pass member rounds and 233 other rounds. The round type for the month included 3,773 eighteen hole rounds and 896 nine hole rounds.
- The Golf staff continues to monitor daily tee sheet activity and they are trained to recognize underutilization of the tee sheet and offer promotional prices through the website to increase the number of potential players.

January 2017 and YTD rounds mix:

Type	Actual	Budget	Month- P.Y.	Y.T.D	P.Y-Y.T.D
Paid	3645	2508	2908	12223	9691
Annual	904	516	866	3109	2581
Other rounds	233	196	196	918	663
Total Rounds	4782	3220	3970	16250	12935

Departmental Summaries:**Course & Grounds/Range**

- Jason Chennault, our head superintendent has shared the following in regards to our agronomic schedule;
- January temperatures were wonderfully warm allowing the maintenance team to keep progressing with cultural practices that will benefit us later this spring and into summer, completing tasks such as verticutting and topdressing, use of plant growth regulators and fertilizers. We fertilized the entire golf course just recently and pre-emergent herbicide to control weeds has been applied throughout fairways and tees.

- Over the next 30-45 days we will have a broad scale application to fairways and some rough areas for mole crickets, as well as continued herbicide sprays to control weeds now and into the next two to three months. In addition to this we will continue to keep up with our spoon feeding of greens, tees, and fairways through foliar sprays as well as the usual grooming and sanding of the greens to promote density and smoother consistent putting surfaces.
- The range continues to be a benefit to all players improving their skills and we illuminate the range on Friday and Saturday evenings to allow for more extended usage of the facility. This helps to enhance the overall experience for all golfers using the practice area.

Golf Shop/Carts

- New merchandise continues to arrive in preparation for the upcoming season. Merchandise is regularly updated to enhance the professional nature of the golf shop and help promote merchandise sales. Vendors include Footjoy, Titleist, Callaway, Bridgestone, Page & Tuttle, Bermuda Sands, Ahead headwear and St Andrews products. We continue to hold specials promoting different manufacturers to compete with the large box stores locally. There was \$944.00 in gift card sales purchased for the month as well as over \$4,934.00 in pro-shop sales.
- We continue to follow all regular maintenance procedures regarding the cart fleet which includes registering monthly totals for battery amperage and mileage as well as proper watering of all batteries to protect all warranties associated with the new fleet. In addition to the monthly process our carts are inspected daily for any damage which may have occurred during normal play. We continue to be committed to providing quality carts for the enjoyment of all our players.
- The staff at Cypress Head Golf Course continues to offer lesson packages for beginners as well as advanced players. We have hosted a series of Men's and Ladies golf clinic which have been very well received.

- The MGA and WGA leagues continue to play on a weekly basis and the number of players has increased as more of our northern friends return to their homes here in Port Orange and Volusia County. We have also added a weekly Homeowner's nine & dine event where the players enjoy nine holes of golf followed by dinner at the Tavern. These groups have been well attended and they continue to enjoy the camaraderie of playing here at Cypress Head.

Marketing and Sales:

- Ms. Reggie Hunter, our Director of Sales & Marketing, is actively involved with the community and is focusing on booking new & previous clients for tournament events in 2017.
- We are continuing our involvement with Daytona CVB, Golf Pac, and Tee-Times USA along with other National wholesaler and Golf Now to maximize utilization of our tee sheet.
- We continue to maintain our database of emails with over 9,900 unique e-mail addresses. The golf staff continues to register player profiles including residency, phone numbers and proper classifications of all players. This process will allow us an opportunity to offer promotions to our database to experience all that Cypress Head has to offer.
- Ms. Hunter continues to cultivate her relationships in the community by her continued involvement in the POSD Chamber, POSD Ambassadors program, Daytona Beach Chamber, SEV Chamber and the POSD Rotary club. She was involved in a joint effort involving the POSD Rotary and the Chamber leadership class of 2015 to help beautify the grounds at Sugarmill Elementary school.

Mindshare Reviews and Comments:

Report run: 2/20/2017 12:36 PM MST

Data current as of: 2/20/2017 12:36 PM MST



REPORT CRITERIA

Date of Survey	1/1/17 - 1/31/17
Select level:	Cypress Head

Number of Surveys: 35

#	Zip Code	Date Golfed	Date of Survey	Tee Time	Overall Rating	Service Rating	Course Rating	Food Rating	Recommend Rating	NPS	Overall Rating w/o F&B	Comments	
Totals					9.2	9.6	8.7	8.5	9.5	85.7	9.3		
Cypress Head					9.2	9.6	8.7	8.5	9.5	85.7	9.3		
Golf					9.2	9.6	8.7	8.5	9.5	85.7	9.3		

- There were over 650 questionnaires mailed out to players during the month with an overall rating for the golf course receiving a 9.3. We also received a recommended rating of 9.5 and our service rating is at 9.6.
- We continue to assist all players by helping them to enjoy their experience here at Cypress Head. There were some reviews that had constructive ideas to help us improve in some areas which we will evaluate as a team. The comments returned by the players in this avenue are useful tools in helping our maintenance and golf staff team improve. We also review all negative comments and they are discussed by our team and if required we will contact the individual to help us better understand their concerns. Players also have access to a suggestion box which is located at the clubhouse near the Men's and Ladies bulletin boards.



Corporate Support:

- Kemper Sports Center for Excellence – Ongoing resource.

Summary:

- The Golf Course Advisory Board voted unanimously to recommend to the city council that the Kemper Sports Management contract be renewed for a period of three more years.
- Our entire team which includes golf staff, outside services and maintenance will continue to offer the best in class customer service and course conditions. The most recent customer recommendation rating is at 9.5 which indicate that Cypress Head continues to be "Top of Mind "for all golfers.
- We will be offering promotions for Valentine's Day as well as other merchandising sales designed to help increase traffic in our golf shop.
- We are also introducing a Junior golf clinic series for the month of February in conjunction with early school release days.

Respectfully Submitted,

Bob Duquette, PGA

General Manager
The Golf Club at Cypress Head.



CITY COUNCIL AGENDA ITEM

REQUESTED COUNCIL MEETING DATE 03/07/2017

Consent item: No

SUBJECT: (H23) First Reading - Ordinance No. 2017-5 – Cornerstone Grove PUD Master Development Agreement and Conceptual Development Plan, Case No. 16-40000007

DEPARTMENT: Community Development

GOAL: 3 - Quality of Life

RECOMMENDED MOTION: Move to approve Ordinance No. 2017-5, approving the Cornerstone Grove Master Development Agreement and Conceptual Development Plan.

SUMMARY: Planning Commission Action (1/26/2017): Recommended approval, subject to the MDA and CDP being modified to: 1) include language that the Home Owners Association (HOA) documents for the subdivision will require vehicles to park in the garage and not within the courtyard area located between duplex buildings and 2) extend Phan Drive (local street in subdivision) to intersect with the future Yorktowne Boulevard.

The applicant revised the CDP as requested with regard to the extension of Phan Drive. The Planning Commission also recommended additional language be added to the MDA to require homeowners to park in their garages, an addition that was proposed by the applicant. However, upon City Attorney's Office review of the modifications requested by Planning Commission as to the parking, the City Attorney's Office determined that the City could not enforce the requirement in the MDA. The City Attorneys' Office has worked with the applicant to add language in the MDA that clearly requires the HOA to regulate parking in the private drives and courtyard areas. As part of the subdivision plat and plan review, the applicant will be required to submit a draft of the HOA documents that will be recorded along with the plat.

The applicant proposes to establish the Cornerstone Grove Master Development Agreement (MDA) and Conceptual Development Plan (CDP) for an existing Planned Unit Development (PUD) without an active MDA or CDP (Exhibit 1). If approved, the applicant intends to develop the +/- 13-acre parcel located at the west side of Hidden Lakes Drive, north of Yorktowne Boulevard (Figure 1 - Location Map) as a 64-unit duplex residential development along with associated subdivision improvements.

The subject property was initially part of the Hunters Woods PUD. The City approved this PUD in 1998; however, the MDA was never recorded. In 2006, the City approved a MDA and CDP for an 80-unit townhome development (Villas of Key Largo). The subject property was never developed and the Villas of Key Largo MDA and CDP expired. The property has remained undeveloped and until a MDA and CDP are approved, executed,

and recorded, the property has no permitted uses or building and lot dimensional requirements in effect.

If approved, the proposed Cornerstone Grove MDA and CDP will provide the regulatory framework for the development of the subject property with a maximum of 64 duplex lots at a density of 4.92 units per acre.

Project No.: Funding Account No.:

ATTACHMENTS:

1.	Ord. No. 2017-5	Ord. No. 2017-5.pdf
2.	Staff Report	Cornerstone Staff Report CC 3-7.pdf

Melanie Schmotzer	Created/Initiated - 02/16/2017
Tim Burman	Approved - 02/16/2017
Wayne Clark	Approved - 02/16/2017
Shannon Balmer	Approved - 02/24/2017
Margaret Roberts	Approved - 02/24/2017
Jake Johansson	Approved - 02/24/2017
Robin Fenwick	Final Approval - 02/24/2017

ORDINANCE NO. 2017-5

AN ORDINANCE OF THE CITY OF PORT ORANGE,
VOLUSIA COUNTY, FLORIDA, APPROVING
CORNERSTONE GROVE PLANNED UNIT DEVELOPMENT
A RESIDENTIAL PUD MASTER DEVELOPMENT
AGREEMENT (MDA) AND THE CONCEPTUAL
DEVELOPMENT PLAN (CDP); PROVIDING FOR REPEAL OF
CONFLICTING ORDINANCES; PROVIDING FOR
SEVERABILITY; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the City and Developer desire to enter into the Cornerstone Grove Planned Unit Development a Residential PUD Master Development Agreement ("MDA") and Conceptual Development Plan ("CDP") hereinafter referred to as the "Agreement"); and

WHEREAS, the Developer submitted a request to the Planning Commission to approve the Agreement; and

WHEREAS, a public hearing was held following public notice as prescribed by ordinance; and

WHEREAS, the Planning Commission has by unanimous vote recommended approval of the proposed Agreement; and

WHEREAS, the City Council has approved by a majority vote of the members present the approval of the Agreement.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF PORT ORANGE, VOLUSIA COUNTY, FLORIDA:

Section 1. The City Council of the City of Port Orange does hereby approve the Agreement (attached hereto as **Exhibit "1"**).

Section 2. The Mayor and City Clerk are hereby authorized to execute said Agreement.

Section 3. All ordinances or parts of ordinances in conflict with the provisions of this ordinance are hereby repealed to the extent of such conflict.

Section 4. If any provision of this ordinance or the application thereof to any person or circumstance is held invalid, the invalidity shall not affect other provisions or applications of this ordinance which can be given effect without the invalid provision or application, and to this end the provisions of this ordinance are declared severable.

Section 5. This ordinance shall become effective immediately upon adoption.

MAYOR DONALD O. BURNETTE

ATTEST:

Robin L. Fenwick, CMC, City Clerk

Passed on first reading on the day of _____, 2017

Passed and adopted on second and final reading on the day of _____, 2017

Reviewed and Approved: _____
Shannon K. Balmer, Assistant City Attorney

Exhibit "1"

CORNERSTONE GROVE PLANNED UNIT DEVELOPMENT A RESIDENTIAL PUD MASTER DEVELOPMENT AGREEMENT

CITY OF PORT ORANGE, a Florida municipal corporation ("City"), and **GEOSAM CAPITAL US (VENETIAN BAY) LP**, a Florida limited partnership ("Developer"), hereby covenant and agree, and bind their successors and assigns as follows:

1. OWNERSHIP OF THE PROPERTY

This Planned Unit Development (PUD), commonly known as "CORNERSTONE GROVE", involves approximately 13+/- acres of land which is legally described on Exhibit "A" attached hereto, and shall henceforth be referred to as the "Property". The Property is under the sole ownership of Geosam Capital US (Venetian Bay) LP, signatory to this MDA. A letter of authorization of ownership is attached to Developer's application materials. This MDA between City and Developer shall revoke any and all prior development agreements applicable to the Property.

2. DEVELOPMENT CONCEPT

The Cornerstone Grove PUD provides for a duplex residential development that offers a unique housing type, adding additional housing choices to the Port Orange community. It will be marketed to and targeted for a variety of demographic groups, including young professionals, active retirees, and "empty nesters" seeking to downsize to homes with less maintenance responsibilities.

3. DEVELOPMENT AGREEMENT AND CONCEPTUAL DEVELOPMENT PLAN

Development of the Property shall be controlled by the terms and provisions of this Master Development Agreement (the "MDA") and the Conceptual Development Plan (the "Conceptual Plan"), attached hereto as Exhibit "B", for the Property which generally depicts the planned layout of streets, lots, common areas and other planned features or improvements to the

Property and demonstrates the lot coverage requirements available to lot owners within the PUD. Collectively, this MDA and the Conceptual Plan for the Property may be referred to as the “Plan”. In the event of a conflict between the terms and provisions of the MDA and the graphic illustrations of the Conceptual Plan, the MDA shall control. If the MDA is silent regarding a particular subject or requirement, such silence shall not be construed as a conflict with the Conceptual Plan. Unless otherwise specifically described within the MDA, final development and development permits for uses/structures within the PUD shall comply with regulations, ordinances, and resolutions in effect at the time of plan approval or permit application.

The parties acknowledge that compliance with City’s Land Development Code (the “LDC”) may necessitate modification of the Conceptual Plan. In the event modification to comply with the LDC is required, and the modifications to the Conceptual Plan are not in conflict with the textual provisions of this MDA and any City ordinances not superseded by this MDA, the modifications shall be deemed “minor” and may be approved without formal amendment of this MDA. Minor modifications shall require City Administrative Official’s written approval. If Developer is not satisfied with the suggested resolution of any problem or the decision by City Administrative Official categorizing the modification as minor or major, Developer may appeal the decision to the Planning Commission. Appeals from the Planning Commission may be made to City Council.

4. USAGE OF THE PROPERTY

A. Permitted Uses

The property shall be used for residential purposes and developed as a residential community with open space and other buffers as specified herein. The project shall be developed for a maximum of 64 duplex dwelling units for a maximum density of 5.0 dwelling units per acre. When considered in light of other housing and community choices in the vicinity

(e.g. Royal Palm, Coquina Cove, Shallowbrook at Dunlawton Hills, etc.) the Cornerstone Grove PUD will provide for a compatible residential development that is consistent with surrounding land use pattern, while providing a unique housing option to the Port Orange community.

B. Temporary Use

Developer, at its option and, subject to compliance with the provisions of LDC Chapter 5, Section 10, as applicable, may locate a sales office in any phase or phases of the development, upon recording of the plat. At Developer's option and, subject to compliance with the terms of this paragraph, the sales office may be moved from one phase to another phase. The sales office shall be for the purpose of selling and reselling residential units within the Cornerstone Grove PUD. Developer may at its option, and subject to the terms of this paragraph, use one or more model homes as the marketing/sales/mortgage company office and Developer may split the sales functions into different housing units. Parking for the temporary activities allowed by this paragraph shall be in the parking spaces provided for the sales office/model home and shall be handicapped accessible.

C. Minimum Lot Area

Lot dimensions and configurations within the PUD are generally depicted on the Conceptual Plan. Duplex units shall be constructed on zero lot lines with no more than two units occupying a single building. The lot sizes and configurations may vary from those depicted generally on the Conceptual Plan, so long as all lots maintain a minimum lot area of 2,700 square feet per unit.

D. Number of Units/Density

The total number of residential units in the development shall not exceed sixty four (64) dwelling units or a gross project density of 5.0 dwelling units per acre.

E. Open Space

The Cornerstone Grove PUD complies with the LDC requirement of a minimum of sixty percent (60%) of the total project area as open space and twenty percent (20%) of the total project area as common open space.

F. Maximum Lot Coverage

1. Maximum Building Lot Coverage: 50%
2. Maximum Impervious Lot Coverage: 80%

G. Maximum Building Height

The maximum building height shall not exceed 35 feet (35').

H. Minimum Building Setbacks (principal structure):

1. Duplex
 - a. Front 13 ft from adjacent right-of-way; 0 ft for attached structure
 - b. Rear 15 ft from the rear property line; 0 ft for attached structure; 6 ft for Lot 39.
 - c. Side 7.5 ft
 - d. Side Corner Equal to front setback

I. Special Setbacks

No accessory structures or pools shall be allowed in the required rear yard setback area except as follows:

A porch may be built with a setback of five feet (5') from the rear lot line and seven and one-half feet (7.5') from the side lot line.¹ Porches are permitted to be either open or enclosed. Alternatively, patios are permitted, subject to compliance with the standards established by the

¹ Duplex is a front and back duplex building, meaning the front unit has private access to the front yard, whereas the back property has private use of the backyard. The "front" of the rear unit of the duplex building faces towards the rear lot line.

LDC (i.e. paver patios at grade shall be two and a one-half feet (2.5') and concrete patios at grade shall be five feet (5')).

Fences are permitted to be installed on lots, subject to compliance with the standards established by the LDC.

J. Minimum Lot Dimensions

1. Lot Area: 2,700 s.f. per unit
2. Lot Width: 47 ft per unit
3. Minimum Floor Area 1,500 s.f. per unit
4. Lot width shall be measured at the front building setback line.
5. Flag lots shall not be permitted.

5. ARCHITECTURAL STANDARDS AND REVIEW

The overall architectural theme of the project shall be "Court Homes" style and all colors and materials, signage, building orientation, and architectural styles shall be consistent with that theme. "Court Homes" are defined as two abutting duplex building sites which are designed so that a single driveway is constructed between the two duplex building sites and serves all four units. Additionally, the two units of a duplex building are placed one behind the other so that the building is designed to appear from the street as a single family home. Garages are located on the inner-facing side (adjacent to the driveway) of the duplex buildings and are not visible from the street. Such structures shall maintain the overall architectural theme of the project.

6. PHASING

Development of the Property may occur in phases or sub-phases. Each phase or sub-phase of the Property may be individually platted or, at Developer's option, two (2) or more phases may be platted simultaneously. Each phase or sub-phase shall conform to City standards of functionally "standing alone" in regard to provisions of access to infrastructure including, but

not limited to, roads, potable water, sewer, reclaimed water and other required infrastructure. In the event only one (1) phase or sub-phase at a time is platted, the plat for a particular phase or sub-phase shall make provisions for allowing connection of the remaining phases or sub-phases in the configuration required by the Conceptual Plan, and contain such reservations, easements and utility extensions necessary to facilitate the development of subsequent phases in accordance herewith. The area included in a particular phase may be modified subsequent to this MDA or divided into sub-phases provided the phase or sub-phase is able to functionally “stand alone” as required above. Such modification to the Conceptual Plan shall be allowed as a minor modification not requiring City Council approval provided Developer can provide a reasonable and justifiable basis for the modified phasing or sub-phasing plan. If the Property is developed and platted in phases or sub-phases, Developer may grade and clear the road rights-of-way, easements and stormwater improvements prior to platting of the lots within a future phase or sub-phase, so long as such grading and clearing is done pursuant to a valid permit from City and the St. Johns River Water Management District. Additionally, if the Property is developed and platted in phases or sub-phases, the six feet (6’) high vinyl fence required to be constructed along the right-of-way line for Yorktowne Blvd. and Hidden Lake Dr., as detailed in Section 12 of this MDA, shall be constructed with the first phase.

The phasing of development shall not effect or change the provisions of Section 14 herein regarding expiration. The concept of phasing or sub-phasing is for the purpose of allowing Developer the flexibility to meet market conditions and the ability to conform to the requirements of this MDA and the LDC.

7. SANITARY WASTE, STORMWATER, POTABLE WATER, AND RECLAIMED WATER

It is anticipated that Developer will extend water and sewer lines to serve the PUD Property and the development authorized herein. If City desires to extend the water and sewer lines prior to Developer's need for installation of Developer's lines, Developer shall grant the necessary utility easements to City and City shall, at its sole cost, install and pay for such lines. Stormwater shall be retained as generally depicted on the Conceptual Plan. In addition, stormwater facilities for the extension of Yorktowne Boulevard shall be provided as depicted on the Conceptual Plan. Developer shall comply with City's LDC and the rules and regulations of the St. Johns River Water Management District concerning stormwater drainage.

8. ROADS, SIDEWALKS, PARKING, AND CONNECTIVITY

Roads, and sidewalks within the Cornerstone Grove PUD shall be public and dedicated to the City via the recorded plat. The development of the Cornerstone Grove PUD shall comply with the transportation concurrency management requirements established in the City of Port Orange Comprehensive Plan and Code of Ordinances. Access to Cornerstone Grove is provided through two access points at Hidden Lake Drive and one stub out to the right of way line of Yorktowne Boulevard for future roadway connection when Yorktowne Boulevard is built. Developer shall install a minimum four foot (4') wide sidewalk on both sides of the roadways within the development. All roads and sidewalks shall be built to City standards.

Parking areas shall, in addition to the parking spaces in the garage of each duplex dwelling unit and on public rights-of-way as permitted by the Code of Ordinances, be permitted in a designated area shown as Tract B on the attached Conceptual Plan. In addition, there are designated visitor parking spaces throughout the development within each motor court area, as shown and described as visitor parking on the attached Conceptual Plan. The HOA will regulate parking within the motor court areas and on the shared driveways between adjacent duplex buildings by establishing provisions in the covenants and restrictions. Said provisions may be

enforced by fines and liens imposed by the HOA upon the individual lots and all other remedies available at law.

9. IMPACT FEE CREDIT

Nothing in this MDA shall be construed as a waiver by Developer of its right to pursue impact fee credits for any and all work performed by Developer for which impact fee credits can be awarded. Alternatively, in the event that Developer works with the City of Port Orange to redesign the segment of Yorktowne Boulevard extension (from the intersection of Yorktowne/Hidden Lakes to the north limits of the PUD) adjacent to the project, impact fee credits may be requested by Developer according to Chapter 21, Article II, Section 11 of the LDC.

10. MAINTENANCE OF COMMON OPEN SPACE AND COMMON FACILITIES

Developer will form and incorporate a non-profit homeowners' association which will operate, maintain, and control, subject to other documents of record, the common areas, and common facilities, including but not limited to all sidewalks, parking lots and access driveways thereto, common open space, all of the lakes and storm water drainage systems within the PUD and the entrance features and areas to the PUD. The general scope and format of the homeowners' association documents, and the covenants and restrictions, will be similar in concept to the documents of similar property owners' associations in Port Orange. The covenants and restrictions governing the Property and association responsibilities shall be executed and recorded in the Public records of Volusia County, Florida. The HOA will have a board of directors to legislate and govern the rules and orders of the HOA. The HOA board will have the means and authority to carry out and regulate the by-laws and restrictions governing the maintenance, operation, and repairs of all common areas and facilities. Not only will the board of directors be able to regulate and govern the common area; the board will also regulate each

and every member requiring the maintenance and service of his own individual building site. The HOA rules may be enforced by fines and liens upon the individual building sites and any other remedy available at law. The HOA may charge and collect dues to maintain operate and service all common facilities on the Property. The HOA will have authority to place a lien against individual building sites in order to collect unpaid HOA dues. The owner of each lot within the Property will automatically become a member of the HOA by virtue of purchasing a building site subject to the rules, covenants, and restrictions of the HOA. The HOA will have the authority and means to hire, supervise, and regulate persons employed by them for the maintenance, repair, and operation of common areas and facilities. If the association fails to perform the maintenance, repair, or replacement, as necessary, of the stormwater drainage facility, the City shall have the right to enter upon the common area of the PUD and to provide the maintenance, repair, or replacement of the stormwater drainage facility and shall have the right to lien all owners of record in the PUD for the cost of such maintenance, repair, and replacement as City may deem necessary.

11. PROJECT BUFFERS AND LANDSCAPING

In order to comply with the requirements of Chapter 13, Section 3 and 3.5 of the Port Orange LDC, a perimeter buffer shall be provided as shown on the Conceptual Plan and shall comply with the following standards and requirements. A perimeter landscape buffer with a width of ten feet (10') along portions of Hidden Lakes Drive and Yorktowne Boulevard property boundaries and a width of five feet (5') along the north property boundary, adjacent to the proposed forty five foot (45') drainage easement, shall be provided for the Cornerstone Grove PUD, as shown in the Conceptual Plan. Landscaping within the perimeter landscape buffers shall meet or exceed the minimum requirements of the Port Orange LDC. Existing vegetation in the perimeter buffer that may remain undisturbed shall count towards the landscaping

requirements for the buffer. Existing vegetation that is determined by City to be invasive exotics, diseased/dying and/or interfering with required extension of utilities may be removed, provided that any viable protected or specimen trees shall be mitigated in accordance with the City of Port Orange LDC, as amended. The landscape plans required for the final plat shall account for the removal and mitigation of trees within the perimeter buffers. No structures, primary or accessory, will be allowed within the ten foot (10') perimeter buffer installed as depicted in the Conceptual Plan. Installation of the ten foot (10') landscape buffer along Yorktowne Blvd. must be installed prior to approval of the subdivision and issuance of the first Certificate of Occupancy in the subdivision. The landscape buffers shall be part of the common area to be conveyed to the HOA. Maintenance and repair of the landscape buffers within said common area shall be the responsibility of the HOA. As part of the subdivision process, there shall be a landscape conservation and maintenance easement granted to the Cornerstone Grove HOA to ensure that the landscape buffers are properly preserved and maintained. The Cornerstone Grove HOA shall establish maintenance standards in the covenants and restrictions for the landscape buffers.

12. FENCING ALONG EXISTING RIGHTS-OF-WAY

A six feet (6') high vinyl fence shall be constructed along the right-of-way line of Yorktowne Blvd. and Hidden Lake Dr. to buffer and screen the developed portion of the Cornerstone Grove PUD, as shown on the Conceptual Plan. Construction of the six feet (6') high vinyl fence along Yorktowne Blvd. will be located outside the twelve foot (12') Utility/Drainage/Access Easement. Construction of the six feet (6') vinyl fence along Hidden Lake Dr. will comply with the visual clearance requirements in Chapter 12, Section 6 of the LDC (five feet (5') setback from the right-of-way and the twenty-five feet (25') visual clearance triangle at the intersection of two (2) rights-of-way). Maintenance and repair of the six feet (6')

vinyl fences shall be the responsibility of the Cornerstone Grove HOA. As part of the subdivision process, there shall be a maintenance easement granted to the Cornerstone Grove HOA to ensure that said six feet (6') high vinyl fences are maintained.

13. ENVIRONMENTAL CONSIDERATIONS

Both during and after construction, Developer will use reasonable efforts to preserve trees and natural vegetation within the Property and maximize protection of natural drainage pathways. The PUD shall comply with the tree preservation requirements of City's LDC. Developer shall comply with all rules, statutes, laws and regulations pertaining to protected wildlife species, including but not limited to the rules and permitting requirements of the Florida Game and Freshwater Fish Commission concerning gopher tortoises. Compliance with the City Environmental Preservation Code may necessitate modification of the Conceptual Plan.

14. EXPIRATION

The duration of this MDA shall not exceed ten (10) years from the date of its execution. This MDA may be extended for an additional five (5) year term by mutual consent of Developer and the City subject to a public hearing. Development of the Cornerstone Grove PUD shall commence within three (3) years from the date of execution of this MDA. Failure to comply with the schedule set out above shall cause this MDA to lapse unless the schedule is modified by mutual agreement of Developer and the City. Development shall be as defined by the LDC.

15. EFFECTIVE DATE

This MDA shall become effective upon recording in the Public Records of Volusia County, Florida.

16. AMENDMENTS

Amendments to this MDA, other than minor modifications to the Conceptual Plan as referred to in Section 3 of this MDA, shall not be effective unless in writing and signed on behalf

of the City and by all record title property owners of the land for which this amendment is to be applied.

Before amending this MDA, the City shall conduct one or more public hearings. At the City's option, one of these public hearings may be held by the City's Planning Commission.

A. Notice of intent to consider an amendment to this MDA shall be published by the City, at Developer's cost, in a newspaper of general circulation and readership in Volusia County, Florida.

B. If applicable, notice of intent to consider an amendment shall comply with the requirements of Section 166.041(3)(C), Florida Statutes, as amended from time to time.

C. The day, time, and place at which the second public hearing will be held shall be announced at the first public hearing.

D. The notices required above shall specify the location of the PUD Property, the location of that portion of the PUD Property subject to the proposed amendment, the nature of the proposed amendment, and the following information to the extent applicable:

- i. Changes in permitted, conditional, and/or prohibited uses proposed;
- ii. Changes in population densities proposed; and
- iii. Changes in building intensities and/or height proposed.

E. The notices shall specify a place where a copy of the proposed amendment can be obtained.

17. CONFORMANCE WITH THE LAWS

Developer agrees:

A. To develop the property according to all PUD regulations of the City to the extent those regulations are not inconsistent with the Plan for the property.

B. To provide agreements, contracts, deed restrictions, and sureties and other documents required by the City Legal Department for completion of the development or approved development phases, and for the continuing operation and maintenance of such areas, functions and facilities as are not to be provided, operated or maintained at public expense, and that Developer's successors in title will be bound by Developer's commitments made in this MDA.

C. To be bound by all City codes and ordinances that are not in conflict with the provisions of this MDA.

18. ENFORCEABILITY

If any provision of this MDA is held by a court of competent jurisdiction to be invalid or otherwise unenforceable, such holding shall not affect the validity of enforceability of any other provision of this MDA unless the holding so states.

19. PRIOR AGREEMENTS

This MDA represents the complete understandings by and between the parties with respect to the development and continued use of the subject property. Any and all prior agreements between the parties with respect to any subject comprehended by this MDA is hereby voided and superseded by this MDA.

[REMAINDER OF PAGE LEFT INTENTIONALLY BLANK]

IN WITNESS WHEREOF, the parties hereto attached their hands and seals this

_____ day of _____, 2017.

Signed, sealed and delivered
in the presence of

Witness 1 Signature

Print Name of Witness 1

Witness 2 Signature

Print Name of Witness 2

CITY OF PORT ORANGE,
a Florida municipal corporation

By: _____
Donald O. Burnette, Mayor

Attest:

By: _____
Robin Fenwick, City Clerk

STATE OF FLORIDA
COUNTY OF VOLUSIA

The foregoing instrument was acknowledged before me this _____ day of __, 2017, by Donald O. Burnette, Mayor of City of Port Orange, Florida, a Florida Municipal Corporation, on behalf of City, who is personally known to me and did not take an oath.

Notary Type, Print or Stamp Name
My commission Expires _____

STATE OF FLORIDA
COUNTY OF VOLUSIA

The foregoing instrument was acknowledged before me this _____ day of __, 2017, by Robin Fenwick, City Clerk of City of Port Orange, Florida, a Florida Municipal Corporation, on behalf of City, who is personally known to me and did not take an oath.

Notary Type, Print or Stamp Name
My commission Expires _____

DEVELOPER:

**GEOSAM CAPITAL US (VENETIAN BAY)
LP, a Delaware limited partnership**

By: Geosam Capital US GP LLC, a Delaware
limited liability company, its general partner

By: _____
Martin Pham, Manager

STATE OF FLORIDA
COUNTY OF _____

The foregoing instrument was acknowledged before me this _____ day of _____, 2017, by Martin Pham as Manager of Geosam Capital US GP LLC, a Delaware limited liability company and General Partner of Geosam Capital US (Venetian Bay) LP, a Delaware limited partnership. . He is personally known to me OR has produced _____ as identification.

Notary Type, Print or Stamp Name
My commission Expires _____

EXHIBIT "A"

LEGAL DESCRIPTION

A PORTION OF SECTION 18, TOWNSHIP 16 SOUTH, RANGE 33 EAST, VOLUSIA COUNTY, FLORIDA, DESCRIBED AS FOLLOWS:

FROM THE NORTHEAST CORNER OF SAID SECTION 18, RUN S01°43'30"E ALONG THE EAST LINE OF SAID SECTION 18, A DISTANCE OF 2640.02 FEET TO THE SOUTHEAST CORNER OF THE NORTHEAST ONE-QUARTER OF SAID SECTION 18; THENCE S89°41'53"W ALONG THE SOUTH LINE OF THE NORTHEAST ONE-QUARTER OF SAID SECTION 18, A DISTANCE OF 2055.18 FEET TO THE EASTERLY RIGHT OF WAY LINE OF INTERSTATE HIGHWAY 95 (A 350 FOOT WIDE RIGHT OF WAY) AND THE BEGINNING OF A NON TANGENT CURVE CONCAVE SOUTHWEST, HAVING A RADIUS OF 3994.83 FEET, A CENTRAL ANGLE OF 05°49'28" AND A CHORD BEARING OF N53°30'41"W; THENCE NORTHWESTERLY ALONG THE ARC OF SAID CURVE AND ALONG SAID EASTERLY RIGHT OF WAY LINE, 406.11 FEET; THENCE CONTINUE ALONG SAID EASTERLY RIGHT OF WAY LINE N56°25'25"W, 2161.92 FEET; THENCE DEPART SAID EASTERLY RIGHT OF WAY LINE N33°34'35"E, 100.00 FEET TO A POINT ON THE EASTERLY RIGHT OF WAY LINE OF YORKTOWNE BOULEVARD (A 100 FOOT WIDE RIGHT OF WAY PER OFFICIAL RECORDS BOOK 3557, PAGE 1879 AND OFFICIAL RECORDS BOOK 3718, PAGE 1042, OF THE PUBLIC RECORDS OF VOLUSIA COUNTY, FLORIDA) AND THE POINT OF BEGINNING; THENCE ALONG SAID EASTERLY RIGHT OF WAY LINE N56°25'25"W, 1444.30 FEET TO A POINT ON THE WEST LINE OF SAID SECTION 18; THENCE N01°54'42"W ALONG SAID WEST SECTION LINE 16.36 FEET TO A POINT ON THE WESTERLY PROLONGATION OF THE SOUTH BOUNDARY LINE OF HIDDEN LAKE PHASE IV-B, AS RECORDED IN MAP BOOK 41, PAGE 55, SAID PUBLIC RECORDS; THENCE DEPART SAID WEST SECTION LINE N89°53'21"E ALONG SAID WESTERLY PROLONGATION AND SAID SOUTH BOUNDARY LINE AND THE SOUTH BOUNDARY LINE OF HIDDEN LAKE PHASE IV A, AS RECORDED IN MAP BOOK 40, PAGES 86-87, OF SAID PUBLIC RECORDS, 1279.44 FEET; THENCE DEPART SAID LINE S00°57'27"E, 671.61' TO THE BEGINNING OF A TANGENT CURVE CONCAVE WESTERLY HAVING A RADIUS OF 190.00 FEET AND A CENTRAL ANGLE OF 34°32'02"; THENCE SOUTHWESTERLY ALONG THE ARC OF SAID CURVE, 114.52 FEET; THENCE S33°34'135"W, 37.00 FEET TO THE BEGINNING OF A TANGENT CURVE CONCAVE NORTHWESTERLY HAVING A RADIUS OF 25.00 FEET, A CENTRAL ANGLE OF 00°00'00" AND A CHORD BEARING OF S78°34'35"W; THENCE SOUTHWESTERLY ALONG THE ARC OF SAID CURVE, 39.27 FEET TO THE POINT OF BEGINNING.

CONTAINING 12.998 ACRES, MORE OR LESS.

EXHIBIT "B"

CONCEPTUAL DEVELOPMENT PLAN

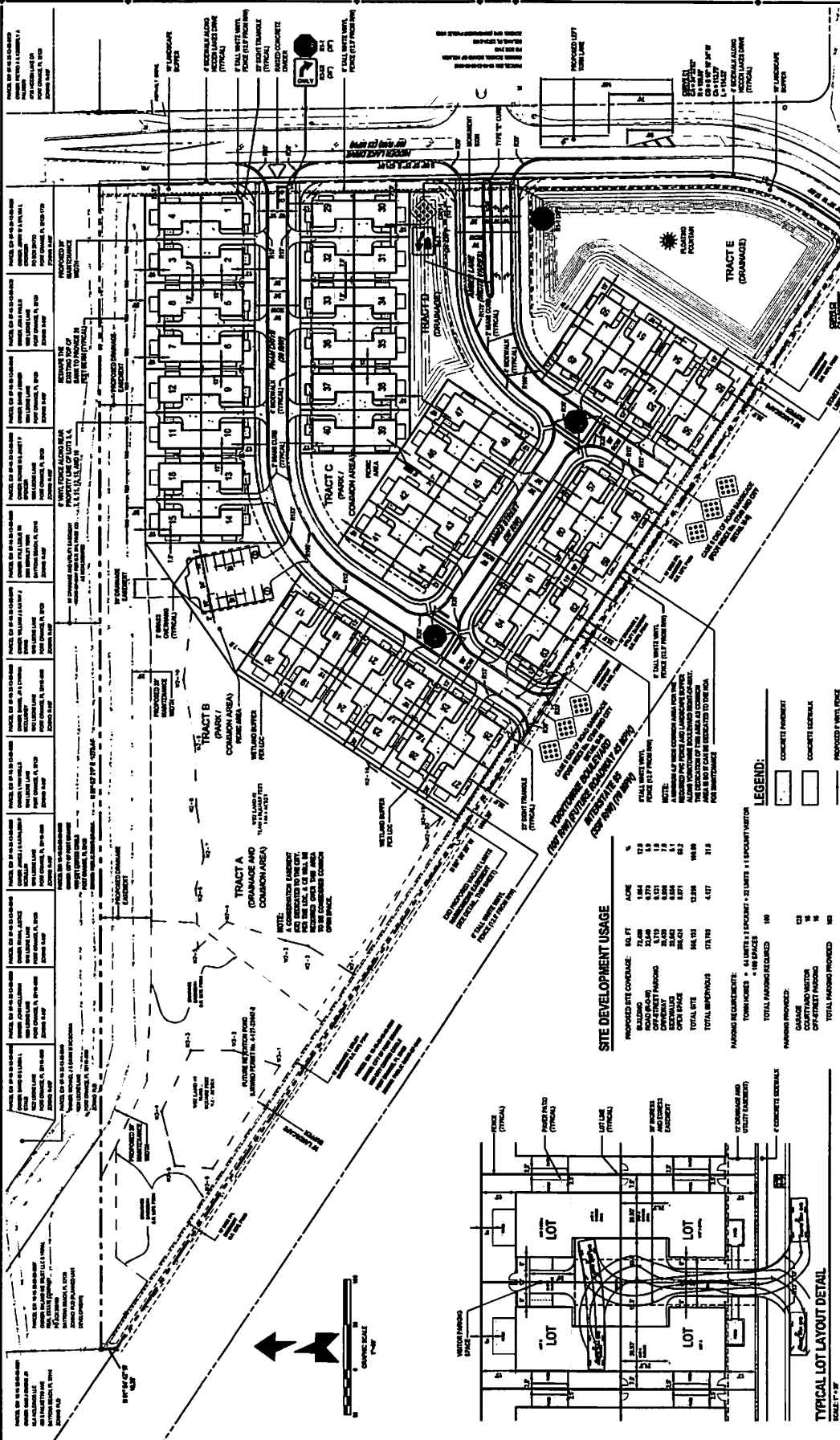
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1	10/20/2011	ISSUED FOR PERMITTING
2	10/20/2011	REVISED PER PERMITTING COMMENTS
3	10/20/2011	REVISED PER PERMITTING COMMENTS
4	10/20/2011	REVISED PER PERMITTING COMMENTS
5	10/20/2011	REVISED PER PERMITTING COMMENTS
6	10/20/2011	REVISED PER PERMITTING COMMENTS
7	10/20/2011	REVISED PER PERMITTING COMMENTS
8	10/20/2011	REVISED PER PERMITTING COMMENTS
9	10/20/2011	REVISED PER PERMITTING COMMENTS
10	10/20/2011	REVISED PER PERMITTING COMMENTS

NEWKIRK ENGINEERING
 1375 N. W. 10th Ave., Suite 200
 Fort Lauderdale, FL 33304
 Phone: (954) 394-1100
 Fax: (954) 394-1101
 www.newkirk-engineering.com
 Professional Engineer
 No. 12345
 © 2011

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 Fort Lauderdale, FL 33304
 Phone: (954) 394-1100
 Fax: (954) 394-1101
 www.geosart.com
 Professional Engineer
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 © 2011

CONCEPTUAL DEVELOPMENT SITE PLAN
 CORNERSTONE GROVE PUD
 HIDDEN LAKE DRIVE
 PORT ORANGE, FL 32129

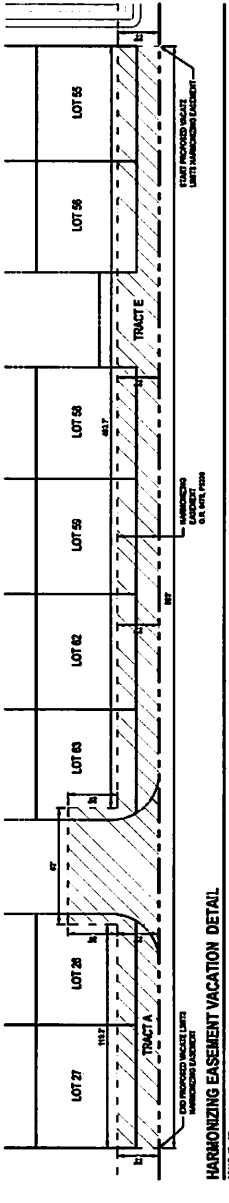
NO. 00971
 PROJECT No. 2010-027
 DATE: OCTOBER 2011
 DRAWN BY: [Name]
 CHECKED BY: [Name]
 SCALE: 1"=40'
 DRAWING NUMBER: 3



SITE DEVELOPMENT USAGE

USE	AREA (SQ. FT.)	AREA (ACRES)
PARKING	10,000	0.23
ROADWAY	10,000	0.23
LANDSCAPING	10,000	0.23
UTILITIES	10,000	0.23
TOTAL SITE	40,000	0.92

PARCING REQUIREMENTS:
 TOTAL HOMES: 100
 TOTAL PARCING REQUIRED: 100
 TOTAL PARCING PROVIDED: 100







STAFF REPORT

Restatement of Master Development Agreement and
Conceptual Development Plan for the Cornerstone Grove PUD
CASE NO. 16-40000007

REQUEST:	To approve the Cornerstone Grove Master Development Agreement (MDA) and Conceptual Development Plan (CDP) for an existing PUD without an active MDA and CDP
APPLICANT/ OWNER:	Geosam Capital US (Venetian Bay) LP
LOCATION:	West side of Hidden Lakes Drive & Horizon Elementary School, North of Yorktowne Boulevard
STAFF RECOMMENDATION:	Approval
STAFF CONTACT:	Briana Conlan-King, Planner (386) 506-5676
PLANNING COMMISSION:	January 26, 2017, Recommended Approval
CITY COUNCIL:	March 7, 2017

INTRODUCTION:

The applicant proposes to establish the Cornerstone Grove Master Development Agreement (MDA) and Conceptual Development Plan (CDP) for an existing Planned Unit Development (PUD) without an active MDA or CDP (Exhibit 1). If approved, the applicant intends to develop the +/- 13-acre parcel located at the west side of Hidden Lakes Drive, north of Yorktowne Boulevard (Figure 1 - Location Map) as a 64-unit duplex residential development along with associated subdivision improvements.

Figure 1. Location Map



The subject property was initially part of the Hunters Woods PUD. The City approved this PUD in 1998; however, the MDA was never recorded. In 2006, the City approved a MDA and CDP for an 80-unit townhome development (Villas of Key Largo). The subject property was never developed and the Villas of Key Largo MDA and CDP expired. The property has remained undeveloped and until a MDA and CDP are approved, executed, and recorded, the property has no permitted uses or building and lot dimensional requirements in effect.

Currently, the property's Future Land Use designation is *Urban Medium Density Residential* (4-8 units/acre) and its zoning of PUD foreshadows the intent that the property be developed for residential purposes. The proposed development will be reducing the density from the previously approved 80-unit townhome development to a 64-unit duplex residential development.

The subject property is currently undeveloped and located north of Yorktowne Boulevard, between I-95 and Horizon Elementary School. The following table summarizes the land use and zoning of the adjacent properties and the Future Land Use and zoning maps for the subject property and the adjacent properties are attached (Exhibit 2).

Table 1. Adjacent Future Land Use and Zoning

Direction	Future Lane Use	Zoning	Land Use
North	Suburban Residential 2-4 units/acre	R-8SF	Single-Family Residential
South	I-95 Right-of-way	I-95	Federal Highway
East	Public/Institutional	GPU (Government/Public Use)	Horizon Elementary School
West	I-95 Right-of-way	I-95 Right-of-way	Federal Highway

According to the Land Development Code (LDC), the proposed MDA constitutes a zoning document for the subject property establishing permitted uses and certain development requirements. A MDA and CDP does not grant approval of any specific development itself, but rather establishes parameters for how the property can be developed. Some flexibility from the standard code requirements is offered with the goal of creating a better-quality project. The CDP is an exhibit to the proposed MDA that includes the general location and size of the residential lots, parking, landscape buffers, screening, utilities, and drainage areas.

Specific subdivision development requirements listed the MDA and LDC, such as the type and location of trees and shrubs in the landscape buffers, location and size of the stormwater pipes, and water, sewer, and reclaim lines, shape and depth of the stormwater pond, design of the parking lot, roadway design, and other subdivision requirements are finalized with the subdivision plans. The subdivision plan is typically a 30 to 50-page set of technical documents that are signed and sealed by a licensed engineer and contain extensive engineering and construction details. The subdivision plans for the Cornerstone Grove Subdivision are required to be designed to meet the requirements of the LDC and the proposed MDA.

CONSISTENCY WITH THE COMPREHENSIVE PLAN:

The +/- 13-acre subject property is designated *Urban Medium Density Residential* (4-8 units/acre) and *Suburban Residential* (2-4 units/acre) on the City's Future Land Use Map (Exhibit 2). As shown on Exhibit 2, the majority of the 13-acre property has a Future Land Use (FLU) designation of *Urban Medium Density Residential* (4-8 units/acre) and the proposed subdivision is located within this FLU designation. Specifically, the Comprehensive Plan states that the *Urban Medium-Density Residential* category includes **duplex**, villa, cluster, townhouse, mobile home, manufactured or multi-family housing at densities of between four and eight units per acre. The overall density of the project is consistent with the Future Land Use designation of the property. The proposed MDA to allow **64 duplex lots (4.92 units/acre)** is consistent with the intent of the underlying future land use designation.

DEVELOPMENT PROPOSAL:

If approved, the proposed Cornerstone Grove MDA and CDP will provide the regulatory framework for the development of the subject property with a maximum of 64 duplex lots at a density of 4.92 units per acre (Figure 2). The following discussion will focus on aspects of the proposed MDA and CDP such as general site layout, access, setbacks, lot dimensions, landscape buffers, traffic and other infrastructure capacity.



Figure 2. Color Rendering of Subdivision Layout – Provided by the Applicant

According to the applicant, if the MDA were approved, it would provide the framework to develop a duplex residential subdivision that will be marketed toward young professionals, active retirees and empty nesters seeking to downsize homes, with less maintenance responsibility. As described in the applicant's proposed MDA, the architectural style of the

duplexes will be consistent regarding colors and materials, building orientation, and architectural style. The design of the proposed structure consists of two tandem duplex buildings that are designed with a single driveway between the two duplex buildings. The garages for each duplex unit are accessed through a common driveway located between the duplex buildings so they are not visible from the street. Additionally, the applicant states that the design of the duplex building will appear as a single-family home from the street (Figure 3 and 4).

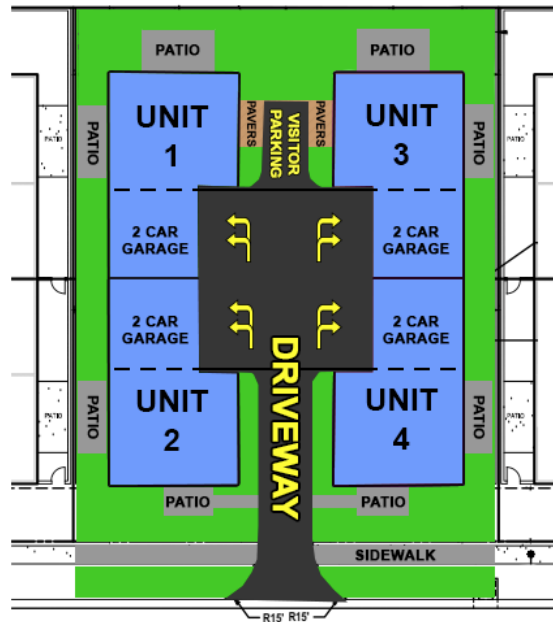


Figure 3. Typical Lot Layout Detail



Figure 4. Street view of proposed duplex buildings

The applicant also states that the proposed duplex residential development will be different compared to other duplex developments in the City such as Royal Palm, Dunlawton Hills, Coquina Cove, Riverwood, etc.... (Figure 5). According to the applicant, the lot configuration and driveway placement for the proposed development maintains areas for on-street parking, allows adequate locations for trees in the front yard, minimizes sidewalk conflicts by minimizing curb cuts for driveways, eliminates duplexes with dominant front-facing garages, and promotes home ownership opportunities.



Figure 5. Typical Duplex Layout

General Layout

The CDP for the proposed MDA shows the general lot layout for the proposed 64-lot duplex subdivision. The general site layout and subdivision improvements associated with this development will comply with the requirements of the Land Development Code (LDC) and the MDA.

The design of the proposed dwelling units consists of two tandem duplex buildings that are designed with a single driveway between the two duplex buildings. The 2-car garage for the duplex unit is accessed through a common driveway located between the duplex buildings so they are not visible from the street.

Dimensional Building and Lot Requirements:

The proposed MDA provides the dimensional requirements for the proposed residential lots for the subdivision. The proposed building setback and lot requirements in the MDA are generally consistent with City's standard zoning districts that permit duplexes and the other PUDs that allow duplexes (Table 2). The proposed development provides the majority of its open space in common areas instead of the individual lots. The overall amount of open space is generally consistent with other duplex requirements but is allocated differently. According to the applicant, this approach to open space is consistent with the preference of the resident the developer will market toward. According to the applicant, the proposed subdivision is intended for residents seeking an attractive and functional home but without the maintenance demands of a yard, therefore; a large yard is not a necessity.

Table 2. Dimensional Requirements

Zoning District	Min. Living Area/D.U.	Min. Lot Area	Min. Lot Width	Max. Building Coverage	Min. Open Space	Front Bldg. Setback	Side Bldg. Setback	Rear Bldg. Setback	Max. Height
Cornerstone Grove PUD	1,050 SF	2,800 SF	50'	50%	20%	13'	15' between bldgs.	15'	35'
Coquina Cove Phase 1 (attached)	600 SF	1,800 SF	18'	35%	40%	15'	15' between buildings	25'	35'
Royal Palm PUD	1,020 SF	2,550 SF	25'	60%	10%	20'	5'	20'	35'
Dunlawton Hills PUD*	900 SF	3,500 SF	32' ***	N/A	N/A	20'	15'	15'	35'
Riverwood PUD **	600 SF	N/A	38' ***	N/A	N/A	30'	15' between buildings	50' between buildings	35'
R-2D	900 SF	5,000 SF	50'	40%	35%	30'	10'	25'	35'
PC-A Neighborhood	600 SF	1,800 SF	18'	40%	40%	15'	15' between buildings	25'	35'

* Minimum lot width, maximum building coverage, and minimum open space was not listed in the MDA

** Minimum lot width and lot area, maximum building coverage, and minimum open space was not listed in the MDA

*** Minimum lot width for Dunlawton Hills is 32 feet and minimum lot width for Riverwood Phase IV-A is 38 feet.

Roadway/Sidewalks

Roads within the development will be public and constructed to City standards. Access to the development will be provided from Hidden Lakes Drive via a main entrance road and a right in/right out access point at the north end of the development. The main entrance road will align with the existing driveway for Horizon Elementary School to create a true intersection. Sidewalks within the development and along Hidden Lakes Drive will be public and constructed to City standards.

Traffic

The proposed subdivision will be required to comply with the City's Concurrency Management requirements in the LDC. If the MDA is approved, a traffic study could be required at the time the subdivision plat and plans are reviewed to identify any improvements that might be needed. Similar to other developments within the City, the developer may be required to enter into a Concurrency Fair-Share Agreement with the City to pay for part of the scheduled improvements for any impacted areas.

According to the Institute of Transportation Engineers (ITE) Trip Generation Manual, 9th edition, a 64-lot duplex subdivision could generate an additional 372 daily trips (186 entering and 186 exiting). The ITE Trip Generation Manual is nationally recognized for conducting site impact studies, determining on-site circulation patterns, performing access management studies, and determining traffic signal timing.

The Yorktowne Boulevard extension is planned as a four-lane median divided urban collector roadway extending from Hidden Lakes Drive to Willow Run Boulevard. The completion of Yorktowne Boulevard would provide an alternate route for vehicles to cross I-95 and relieve congestion at the I-95/ Dunlawton intersection. There are two remaining segments of Yorktowne Boulevard that remain to be constructed; the central segment and the north segment (Figure 6 on Page 7).

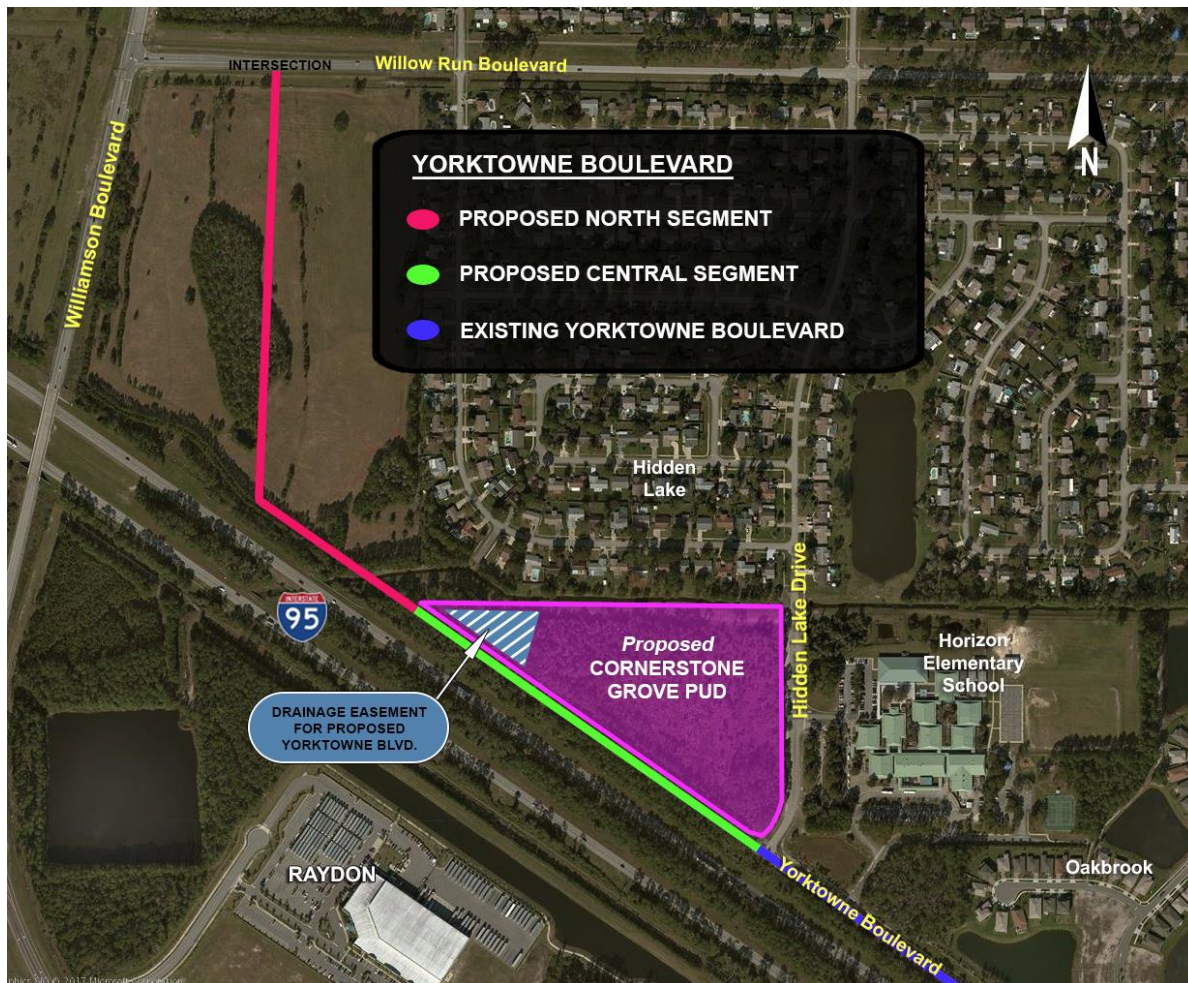


Figure 6. Yorktowne Blvd. Extension

The central segment, adjacent to the west boundary of the subject property, is +/- 1,600 feet from Hidden Lakes Drive to the south end of the former Nautica Lakes development. As part of the previous Villa of Key Largo MDA, the property owner dedicated a 100' right-of-way for this segment to the City and granted an easement at northwest corner of the subject property for stormwater associated with the Yorktowne Boulevard extension. The City has completed roadway design plans for this segment and there is currently money budgeted for construction of the central segment.

The north segment is +/- 2,000 feet from Willow Run Boulevard to the south side of the B-19 Tributary #1 crossing. The 100' right-of-way for this segment is not currently dedicated to the City. The current property owner of the property the north segment would be located on has completed roadway design plans but a funding source has not been identified at this time for the north segment and no private development has been proposed.

Open Space:

For a PUD, the LDC requires a minimum sixty percent (60%) of the overall PUD to be open space, at least twenty percent (20%) of which must be common open space. According to the LDC and past approved PUDs, open space includes, but is not limited to, tree and environmental preservation areas, water bodies, community gardens and

common area parcels and portions of the rights-of-way that are pervious, and are not developed with impervious surface unless part of common open space. Common open space may include impervious areas developed with recreational facilities, clubhouses, docks, walkways, community gardens, preservation of natural resources and natural features, and related parking and support features.

The applicant states that the proposed CDP design contains sufficient, well-placed open space including conservation areas to prevent an unattractive, overbuilt environment. The CDP includes conservation land, recreation areas, sidewalks, picnic/play areas with parking, a 50-foot buffer/canal easement along the north boundary and a 10-foot buffer and 6-foot tall white PVC fence along the Hidden Lake Drive, Yorktowne Boulevard rights-of-way, and the north boundary line adjacent to lots.

Parking

The proposed development will comply with the parking requirements in the City's LDC for duplexes. The proposed CDP provides 2 garage parking spaces for each duplex lot along with 1 visitor parking space. According to the LDC, a minimum of 2 parking spaces are to be provided for each unit along with 32 visitor parking spaces.

Tree Preservation, Landscaping, and Wetlands

The proposed development will comply with the landscape and screening requirements of the City's LDC such as right-of-way and perimeter buffers, tree preservation, and a 6-foot tall PVC fence adjacent to Hidden Lakes Drive and the future Yorktowne Boulevard. A formal review of the landscaping and design of the fence will occur with the review of the subdivision plat and plans to verify compliance with the MDA and the LDC.

The proposed MDA requires any proposed development to comply with the existing City regulations pertaining to protected wildlife species, wetlands and tree preservation. Any wetland impacts identified during subdivision plan review will require permitting and appropriate mitigation through St. Johns River Water Management District (SJRWMD).

Potable Water, Sanitary Sewer, and Reclaimed Water

The proposed development will comply with the requirements of the LDC for improvements related to water, sewer, and reclaimed water. Potable water, sanitary sewer and reclaimed water lines are available and connections will be made from Hidden Lake Drive.

Stormwater Management

The stormwater drainage infrastructure for this project will be in the form of a retention pond. The stormwater drainage design will be reviewed with the submittal of the subdivision plans. Per the City's Land Development Code (LDC), the applicant will be required to construct on-site stormwater facilities, designed to accommodate and treat the 25-year, 24-hour storm event, without causing flooding to adjacent properties or polluting the receiving water bodies.

The drainage area shown on the CDP will provide stormwater drainage for the entire 13-acre property and will also be required to meet the stormwater requirements of the St. Johns River Water Management District (SJRWMD). If the PUD zoning amendment is

approved, formal engineered drainage plans are required to be submitted as part of subdivision plat and plans application.

Schools

The Volusia County School District determined that the adopted level of service will be met and capacity exists in the schools for the estimated students to be generated by the proposed subdivision.

STAFF DEVELOPMENT REVIEW COMMITTEE REVIEW:

The Staff Development Review Committee (SDRC) has reviewed the proposed MDA and CDP and there are no remaining comments that need to be addressed.

RECOMMENDATION:

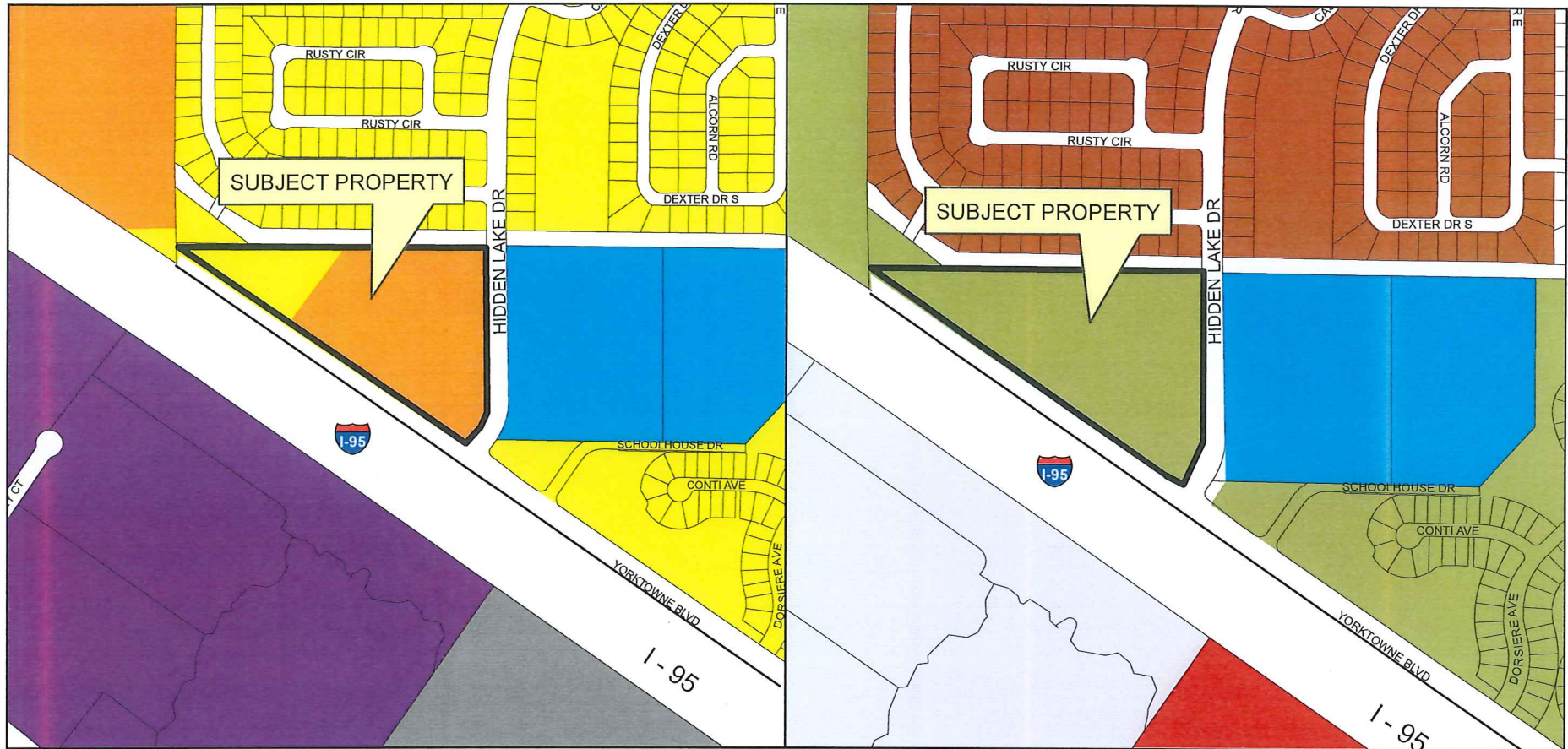
Staff recommends **approval** of the Cornerstone Grove PUD Master Development Agreement and Conceptual Development Plan, subject review by the City Attorney as to legal form and content.

ATTACHMENTS:

1. Exhibit 1 - See Ordinance No. 2017-5
2. Exhibit 2 - Current Zoning and Future Land Use Maps of the subject property and adjacent properties.

EXHIBIT 1

See Ordinance No. 2017-5 for the Cornerstone Grove Master Development Agreement
and Conceptual Development Plan



FUTURE LAND USE

- Public/Institutional
- Suburban Residential (2-4 Units/Acre)
- Urban Medium Density Residential (4-8 Units/Acre)
- Planned Community
- Warehouse/Industrial

ZONING

- GPU Government/Public Use
- R-8SF Single Family Residential
- PC-A Planned Community-Agricultural
- PUD Planned Unit Development
- PCD Planned Commercial Development

LOCATION MAP - CASE NO. 16-40000007

DEPARTMENT OF COMMUNITY DEVELOPMENT





CITY COUNCIL AGENDA ITEM

REQUESTED COUNCIL MEETING DATE 03/07/2017

Consent item: No

SUBJECT: (I24) Discussion Regarding Lease with Smokey Hunt Club

DEPARTMENT: City Manager

GOAL: 3 - Quality of Life

RECOMMENDED MOTION:

SUMMARY: The City of Port Orange and Volusia County have leased lands bordered by I-4, Tomoka Farms Road and Pioneer Trail to the Smokey Hunt Club, Inc. since 1995 through various lease amendments and extensions. These leases are, "for recreational, non-commercial hunting and fishing in strict accordance with the laws of the State of Florida and the United States of America." The current lease was for five years (ending on July 31, 2016). However, the agreement also included the ability of all parties to extend the lease annually in one year increments for up to five (5) additional years. Hunting in this area is necessary to control feral hog, wild turkey, and deer populations as a requirement of the City's state and federal permits for the mitigation bank areas included on this property.

All parties agreed to and signed an amendment and an option to extend the lease for one year on July 21, 2016. This is the first extension of five (5), one-year extensions and ends on July 31, 2017. The annual revenue due to the City as per the lease for this year totals \$78,408.83.

During City Council approval of this one-year extension, Council was concerned about whether any permanent structures have been erected in violation of the lease agreement. Public Utilities has completed a survey of the leased area to the Hunt Club and found approximately 3 structures that appear to have been constructed that are considered permanent. There is no documentation authorizing this construction.

The City has provided its findings to the County to obtain concurrence on the permanent structures found off of Shunz Road (within the leased area). If the County agrees, the City and County will provide a letter to the Smokey Hunt Club to request a remedy within 30 days. If Smokey Hunt Club does not comply, both Managing Agencies (the City and the County) can move to cancel the lease. Staff will continue to update Council as this situation progresses.

Regarding the current lease, the extension ends in approximately 5 months and it will take a significant amount of time to either approve a second extension or advertise and award a new lease agreement. Therefore staff would like some direction now to begin moving in either direction.

Whether or not the Smokey Hunt Club is responsive to our requests, staff recommends going out to bid. There are a number of enhancements staff would like to include in a new lease and going out for bid would be a good opportunity to test the market and provide contractual enhancements. Choosing to extend the contract or go out to bid will also depend on the will of our other Managing Partner (Volusia County).

Project No.: Funding Account No.:

ATTACHMENTS:

1.	Executed Extension to Smokey Hunt Club Lease	Executed Hunt Club Lease 2016.pdf
2.	Original Smokey Hunt Club Lease 2011	Aug 2011 Smokey Hunt Club Lease.pdf

Alan Rosen	Created/Initiated - 02/02/2017
Lynn Stevens	Approved - 02/13/2017
Jake Johansson	Approved - 02/15/2017
Robin Fenwick	Final Approval - 02/15/2017

HUNTING LEASE

This Hunting Lease Agreement ("Lease") is made and entered into as of this 21st day of July, 2016, by and between the COUNTY OF VOLUSIA, a political subdivision of the State of Florida, whose mailing address is 123 West Indiana Avenue, DeLand, Florida 32720 ("County"), and the CITY OF PORT ORANGE, a municipal corporation, whose mailing address is 1000 City Center Circle, Port Orange, Florida 32119 ("City") (the City and County are hereinafter collectively called the "Managing Agencies" for the lands described in paragraph 1 below), and SMOKEY HUNT CLUB, INC., a Florida corporation, whose mailing address is 840 Gray Road, Cocoa, Florida 32926 ("Lessee").

1. **Burdened Premises.**

- A. *Lease Area.* Subject to the terms and conditions set forth in this Lease, Managing Agencies doe hereby grant to Lessee this Lease and the right to use the Burdened Premises ("Premises") for recreational, non-commercial hunting and fishing in strict accordance with the laws of the State of Florida and the United States of America, as may be found upon and harvested from the following Lease Area as described in Exhibit "A" attached hereto (hereinafter the "Premises").
- B. *Scheduled Hunt Area.* Managing Agencies have designated a portion of the Premises, as described in Exhibit "B" attached hereto, as a "Scheduled Hunting Area." The Scheduled Hunt Area will be restricted periodically subject to those rules and regulations set forth in sub-paragraph 5.C herein.
- C. *Primitive Hunt Area.* Managing Agencies have designated a portion of the Premises, as described in Exhibit "C" attached hereto, as a "Primitive Hunting Area."

2. **Lease Term.** Unless sooner canceled as hereinafter provided, the term of this Lease shall commence August 1, 2011 and terminate on July 31, 2016. The parties mutually agree to extend term of this Lease by one (1) year commencing on August 1, 2016 and terminating on July 31, 2017, as per the parties' original agreement to extend annually in one year increments for up to five (5) additional years.
3. **Rent.** Lessee shall pay to the Managing Agencies an annual rent of One Hundred Five Thousand One Hundred Ninety-Two and 27/100 (\$105,192.27) Dollars ("Rent"), or such greater or lesser amount as determined herein. Rent shall be paid on or before the first day of July of every year over the term of this Lease.

It is the understanding of the Parties that the Rent shall be computed at the rate specified in Exhibit "D" attached hereto and incorporated herein.

If any land is subsequently excluded from this Lease by sale, conveyance, or partial cancellation, the Rent shall be adjusted accordingly and the Lessee shall receive a pro rata refund for any Rent that has been paid in advance for the portion excluded. Any said refund shall be determined by the Managing Agencies, based on the ownership of the land. A determination of this amount shall be made by prorating any prepaid Rent on a daily basis at the Lease term rate specified in Exhibit "D" herein for each acre excluded from the Lease.

4. **On-Site Management.** The Port Orange City Forester and the County of Volusia Land Manager shall be designated to oversee Lease activities on-site. The revenue shall be paid to the County of Volusia and to the City of Port Orange based on the total acreage of the wholly owned and jointly owned lands held by the respective Managing Agencies.

5. **Acceptance and Use of Premises.**

- A. *Acceptance and Use.* It is understood that the Premises consists of mostly undeveloped and untamed land, and the Lessee has had an opportunity to inspect the Premises and accepts the Premises in an "as-is" condition, and further, the Lessee understands that hunting is a dangerous activity and that there may be hazards (known and unknown, hidden and observable), including but not limited to, dangers such as holes, cracks, openings in the earth, fence wire, snakes, wells, swamps, brush, and other growth, ponds, harmful plants, wild or poisonous animals, insects, reptiles, unauthorized or careless persons on the land, other hunters, or other risks that may be dangerous and cause injury and/or death and that Lessee assumes all such risks as its own responsibility, without liability or recourse against Managing Agencies, their officers, employees, and agents.

Lessee covenants to use the same in accordance with all applicable laws with respect to the use or occupancy of the property. Lessee agrees to make no illegal, unlawful or improper use of said land. Lessee covenants and agrees to use said Premises for hunting, picnicking and fishing recreation by its members and their guests. Lessee will neither use nor suffer the same to be used for any other purposes. Lessee shall do nothing to interfere in any way with Managing Agencies' use of the Premises for forestry, silviculture, water production, wetland mitigation, prescribed burning, gopher tortoise mitigation, habitat enhancement/restoration and reforestation. The hunting and fishing rights granted to Lessee are on condition that Lessee will so exercise said rights as not to interfere with these stipulated activities upon said lands. All prescribed burning will be conducted under the supervision of Managing Agencies or their designated representatives.

Lessee is expressly prohibited from allowing the operation and use of motorcycles, mopeds and all-terrain vehicles on any part of the Premises for racing or contests of any type. Such vehicles may be used by Lessee's members and their guests for purposes of transportation around the Premises so long as they are used in a manner not to cause damage within the Premises.

Lessee shall not conduct any activity or use the Premises in any way inconsistent with any and all provisions of the Port Orange Mitigation Bank, as authorized under SJRWMD permit number 4-127-64024-1 and U.S. Army Corps of Engineers permit number 2003-7849, and upon notice to Lessee, in accordance with any permit issued subsequent to this lease.

No timber, plants, minerals, sand or forest products may be removed from the Premises by Lessee without the express written consent of Managing Agencies, excluding legal game and fire wood for camp fires. Excavation, chopping, and clearing are prohibited without the express written consent of Managing Agencies. Grading and road repair shall be allowed, within the road area previously disturbed.

- B. *Construction, Alteration, and Improvements.* Lessee shall not construct any improvements on the Premises without the written consent by Managing Agencies. If such construction is approved by Managing Agencies, Lessee covenants that it shall promptly pay any material man or contractor performing any work upon the Premises and covenants and agrees to hold Managing Agencies harmless for any obligation or expense therein. Lessee may make such additions and improvements to the Premises as are first approved in writing by the Managing Agencies. All

such improvements shall be at the sole expense and risk of Lessee and be in compliance with all applicable land development, zoning, building and other laws, ordinances and codes. In the event of the termination of this Lease for any reason, the Lessee shall have thirty (30) days thereafter to remove any improvements and/or alterations it has placed upon the Premises. Any such Lessee improvements or alterations not so removed shall become the property of the Managing Agencies with no obligation to compensate the Lessee therefor.

- C. *Scheduled Hunt Area.* Lessee shall not use or access the Scheduled Hunt Area on weekdays (Monday through Friday) and on days when the Port Orange Police Department Shooting Range has scheduled long range firearms training. City shall provide Lessee with periodic schedules, via electronic mail, of the City's use of the Shooting Range for long range firms training ("Schedule"). Lessee shall confirm receipt of the Schedule by return confirmation to the City via electronic mail. Lessee shall coordinate and distribute the Schedule to all members for notice of the times for permitted use within the Scheduled Hunt Area. No hunting shall occur within the Scheduled Hunt Area except as authorized herein and by the Schedule.

6. **Release and Indemnification.** As further consideration for the rights and privileges granted herein, Lessee agrees to the following:

- A. *Release.* That although Managing Agencies may have a greater knowledge of the Premises than Lessee, that it is impracticable and virtually impossible for Managing Agencies to list and/or to physically show Lessee each and every potential hazard on the Premises and Lessee enters onto said Premises despite same and at Lessee's own risk and without liability to Managing Agencies, their officers, employees, and agents.
- B. *Indemnification.* Lessee agrees to release, defend, indemnify and hold harmless Managing Agencies, its officers, employees and agents, from and against any and all liability, claims, fines, settlements, damages, demands, suits or causes of action of whatsoever nature, including but not limited to reasonable attorneys' fees, arising out of bodily injury to, illness or death of any person, including Lessee's members, damage to property of any person, legal entity, or third party, in any occurrence incident to or arising out of or relating to this Lease or any activities occurring upon the Premises, whether by Lessee or otherwise; the performance or non-performance by Lessee of its obligations hereunder; a breach of any term, provision or warranty contained in this Lease; or any violation of any laws, regulations, statutes, or ordinances related to Lessee's obligations or performance hereunder.
- C. *Members and Guests.* All members, guests and invitees of Lessee entering the Premises for any purpose shall, before entering, sign an agreement, the form of which is attached hereto as Exhibit "E", agreeing to comply with the terms of this Lease and to indemnify and hold harmless Managing Agencies against any and all claims, demands, causes of action, suits or judgments and all expenses and fees incurred in collection therewith for death or injuries to persons, or loss or damage to property, arising out of or in any manner connected with the occupancy or use of the premises by such member, guest or invitee of the Lessee. In the event of any such claim, demand or suit, notice shall promptly be given to the Managing Agencies and the Managing Agencies shall have the right to defend or settle the same in its discretion. This release shall further provide that the member, guest or invitee relinquishes and releases all claims of every nature which he or his heirs, successors or assigns shall have arising out of any occurrence upon or related to the premises. Each signature on the agreement shall be notarized.

D. *Insurance.* Lessee agrees to purchase and maintain, at its expense, public liability insurance, insuring Managing Agencies and Lessee against claims for bodily injury, personal injury and property damage, with limits of not less than One Million (\$1,000,000.00) Dollars per occurrence for damage occurring to any person or property upon or about the Premises during the Lease term, and further agrees that Managing Agencies shall be named as an additional insured in such policy as it may apply to the real property herein described. The coverage and form of said insurance policy must be satisfactory to Managing Agencies. All insurance policies provided for in this Lease shall contain a provision that the policies cannot be canceled without thirty (30) days written notice to Managing Agencies and all such insurance shall be affected under enforceable policies issued by insurers of recognized responsibility, licensed to do business in the State of Florida. At least fifteen (15) days prior to the expiration date of any policy, the original renewal policy for such insurance shall be delivered by Lessee to Managing Agencies. Within fifteen (15) days after the premium on any policy shall become due and payable, Managing Agencies shall be furnished with satisfactory evidence of its payment. Lessee shall provide Managing Agencies with a complete copy of the insurance policy in force during any period of this Lease.

7. **Assignment and Subletting.** Lessee may not assign this Lease or sublet any part of the Premises.

8. **Termination.**

A. Managing Agencies may terminate or cancel this Lease for a violation of its terms by Lessee, a member of the Lessee, or a guest of a member.

B. Managing Agencies shall individually have the discretionary right to terminate and cancel this Lease for any reason upon providing the Lessee written notice at least ninety (90) days prior to the noticed termination date. In the event that Managing Agencies terminate the Lease for reasons not related to a violation of the Lease by Lessee, then Managing Agencies shall prorate the Rent and the annual period of the Lease. Managing Agencies shall return the prorated portion of the Rent in the amount representing the annual period cancelled.

C. Lessee may terminate this Lease if by reason of a sale of a portion of the Premises the remainder of the Premises will no longer serve the Lessee's intended purpose.

D. To exercise the above options: the party shall give written notice to the other which notice shall specify the reason or reasons for the exercise of the option.

E. Cancellation or termination under this Paragraph 8 shall become effective sixty (60) days after the mailing of the notice of termination.

F. In the event of termination under this Paragraph 8, any unearned Rent shall be refunded to the Lessee in accordance with the terms of Paragraph 3, but no compensation shall be payable by Managing Agencies for any improvements made by the Lessee.

9. **Termination in the Event of Sale.** In the event either of the Managing Agencies enters into a contract to sell all or any part of the Premises, the Managing Agencies shall promptly advise Lessee thereof in writing and, upon the closing of the sale, this Lease shall terminate as to the portion of the Premises which is sold unless the buyer of the property assumes the Lease. In the event of termination under this Paragraph 9, any unearned Rent shall be refunded to the Lessee in accordance with the terms of Paragraph 3 but no compensation shall be payable by Managing Agencies for any improvements made by the Lessee.

10. **Default by Lessee.** The failure of Lessee to pay any of the sums herein provided or to keep, fulfill and perform any or the terms and provisions of the Lease on its part to be kept and performed, time being of the essence hereof, shall constitute a breach of this Lease at the option of Managing Agencies, so as to terminate all rights, privileges and interests of the Lessee herein. With respect to default of any of the provisions of this Lease by the Lessee, except for nonpayment, Managing Agencies shall provide to Lessee written notice of any breach of the Lease term(s) and or condition(s) and Lessee shall have thirty (30) days to correct the condition, or commence and diligently pursue corrective action if the condition cannot be corrected in thirty (30) days. Failure of Lessee to complete the correction within a reasonable time as determined by Managing Agencies shall constitute a breach of this Lease.

In the event of a breach of this Lease, Lessee will pay to Managing Agencies all costs and other expenses, including reasonable attorneys' fees, which may be incurred by Managing Agencies in enforcing their rights hereunder, together with such other actual damages as Managing Agencies may actually sustain by reason of said breach, and Managing Agencies may, in such event, declare the term ended and may reenter and take possession of the Premises. All rights, remedies and privileges of Managing Agencies shall be cumulative, and in the event of a breach, the election or enforcement of one or more shall not be deemed to be a waiver of any or all others.

11. **Quiet Enjoyment and Right of Use.** Managing Agencies covenant that, if Lessee shall pay and otherwise perform all of the agreements herein, Lessee shall peaceably and quietly have, hold, possess and use the Premises for and during the term hereof without any hindrance by Managing Agencies. Managing Agencies shall have the right of ingress and egress to, from, and upon the Premises for all purposes necessary to their full, quiet enjoyment of the rights conveyed herein. Managing Agencies shall have the right to enter and occupy the Premises for all purposes necessary to meet their designated responsibilities, including protection of the Premises. Managing Agencies shall have authority and shall, through their agents, officers and employees, take all reasonable measures to provide security against property damage, property degradation, and unauthorized uses or any use thereof not in conformance with this Lease. Lessee acknowledges that Managing Agencies may grant other persons, organizations, or entities the right to use the Premises for any purpose, other than hunting.
12. **Notices.** All notices required or permitted shall be in writing and mailed by Certified United States Mail, postage prepaid, return receipt requested, addressed to the other party at the address as stated herein, or to such other address as any party may designate by notice complying with the details of giving notice. Each such notice shall be deemed delivered on the date upon which the return receipt is signed or delivery is refused or the notice is designated by the postal authorities as not deliverable.
13. **Hunting.** This Lease specifically grants to Lessee full hunting and fishing privileges on the Premises. The hunting and fishing privileges herein granted are to be exercised in strict accordance with the laws of the State of Florida and the United States of America, and the rules and regulations of the Florida Fish and Wildlife Conservation Commission ("FWCC"), or any other duly constituted body having authority to make rules and regulations pertaining to the hunting, taking or catching of game birds, game animals and fish. Hunting seasons will coincide with those established by the FWCC. Harvesting records will be maintained noting kill date, weight, condition, and sex of each animal harvested. This data will be included with each annual report submitted to Managing Agencies. Should wildlife populations decrease, the allowable take will be adjusted to maintain healthy populations.

14. **Hunting Rules and Regulations.** At a minimum, Lessee's hunting rules and regulations shall encompass the following:
- A. *Dogs.* Dogs will not be allowed other than for bird hunting until the opening of dog season. All dogs shall be vaccinated for rabies prior to being brought onto the Premises and shall display valid rabies tag at all times.
 - B. *Hunt Club Membership.* Membership will be limited to a maximum of one member for every one hundred seventy-five (175) acres of the Premises. Membership applications will require the applicant to fill out a questionnaire of whether he/she has ever been charged or convicted of any violation of any laws, rules or regulations of the Florida Fish and Wildlife Conservation Commission or its predecessors or successors, or any violation of any law, rule, ordinance or regulation related to hunting, wildlife preservation, fishing, or game laws. A sample Membership Application is attached as Exhibit "F" hereto. Lessee will use this information for denial or approval of membership. When granting membership, Lessee shall not discriminate as prohibited by federal, state and local laws.
 - C. *Guests.* Members can only have one (1) guest at a time, per day, and no hunting guest shall be allowed to hunt more than a total of six (6) days per season. All guests will be required to sign liability releases as referenced in sub-paragraph 6.C., above, and this is the responsibility of the member and must be witnessed by the member. Lessee shall provide Managing Agencies with copies of its membership list and its rules and regulations, which shall be updated on an annual basis.
 - D. *General Rules and Restrictions.* Lessee, its members and their guests, shall comply with the following hunting rules and restrictions within the Premises.
 - 1. Hunter orange must be worn during deer season. This is during the deer season only, not in bow or spring gobbler season.
 - 2. Turkey beards must be retained for sex evidence in spring gobbler season.
 - 3. All game, deer, turkey, and hogs are required to be weighed, photographed, sex identified and condition measured and recorded on game harvest reports. The game harvest reports [prepared by hunt club - submitted to FWCC] will be submitted to the Managing Agencies and the Wildlife Biologist after each hunting season for review and to determine if the populations are sustainable and healthy.
 - 4. No hunting or discharging of a firearm or primitive weapon on or across any road, or in the vicinity of any occupied shelter or structure at any time; this includes any well building, utility pump house, storage facility, control unit, or any building or facility where employees or contractors of the Managing Agencies may be working or might possibly be entering or exiting, any day of the week at any time.
 - 5. Hunting access will be limited to existing major roads within the Primitive Hunt Area. Fire lanes and trails are closed to vehicular access and all-terrain vehicles are not permitted off the existing roads.
 - 6. A buffer zone has been established within the boundaries of the Premises:
 - a. No hunting within three hundred (300') feet of the perimeter boundary of the Premises.

- b. Hunting is restricted to primitive weapons and shot guns within one thousand three hundred twenty (1320') feet of the no hunting perimeter described above. For identification purposes, the Florida Power & Light easement closely defines the three hundred (300') feet primitive weapons/archery-only buffer zone on a portion of the Premises along the eastern boundary line.
7. Feral hog hunting will be open [to take] year round by trapping and modern gun, subject to those hunting restrictions stated herein.
15. **Care of Premises.**
- A. *Maintenance.* Lessee shall, at its sole expense, keep and maintain all fences and gates in their present condition or as subsequently repaired or replaced by Managing Agencies.
- B. *Safeguarding.* The Lessee will provide oversight and reasonable patrolling of the leased premises in order to exclude trespassers; observe and report to the Managing Agencies any and all trespass occurrences; and be on the lookout at all times for any fire which may occur on the premises. In the event of a fire on the premises, the Lessee or any of its members having knowledge of the fire will immediately notify the Managing Agencies, the State Forestry Service and such other governmental agencies as may be able to afford assistance.
16. **Right of Entry.** Managing Agencies, their agents, officers and employees, may at any time enter the Premises for the purpose of inspecting the same or showing the Premises, or portions thereof, to prospective buyers, and shall have the right to use the Premises for any purpose not inconsistent with this Lease. Lessee shall give to Managing Agencies keys to all locks installed by Lessee.
17. **Successors and Assigns.** This Lease shall be binding upon and inure to the benefit of the successors and assigns of Managing Agencies. Lessee shall execute this Lease in triplicate, and upon execution by all Parties any of the three may be considered an original. Each member, guest or invitee of Lessee who is permitted to use the Premises shall agree to be bound by the terms of this Lease, which the Lessee is obligated to perform.
18. **Severability.** In the event one or more clauses of this Lease are declared invalid, void, unenforceable or illegal, that shall not affect the validity of the remaining portions of the Lease.
19. **Force Majeure.** No party to this Lease shall be liable for non-performance of any obligation herein if such non-performance is caused by Force Majeure. "Force Majeure" means an unforeseeable cause beyond the control of and without the negligence of the party claiming Force Majeure, including but not limited to fire, flood, acts of God, war, acts of terrorism or other unforeseeable accidents.
20. **Recording.** This Lease shall not be recorded. If it is recorded, the Lessee shall, upon demand, execute and deliver a quitclaim deed to Managing Agencies. If Lessee fails to do so, Lessee shall pay all expenses of a suit to expunge the Lease from the public records, including reasonable attorneys' fees.

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IN WITNESS WHEREOF, the parties hereto have executed this Lease, by and through their duly authorized representatives, on the respective dates below.

Witnesses:

Cynthia K Rivera
Cynthia K. Rivera
Printed Name

Frances Gosnell
Frances Gosnell
Printed Name

Attest:

James T. Dinneen
County Manager

Witness:

MARJA D. KOLONISKI
MARJA D. KOLONISKI
Printed Name

Witnesses:

Cynthia K. Rivera
Cynthia K. Rivera
Printed Name
Frances Gosnell
Frances Gosnell
Printed Name

City of Port Orange, a municipal corporation

By:

Allen Green
Allen Green, Mayor

Attest:

Robin L. Fenwick
Robin L. Fenwick, CMC, City Clerk

Date:

6-21-16

County of Volusia, a political subdivision of the State of Florida

By:

Jason P. Davis
County Chair

Date:

7-21-16

Smokey Hunt Club, Inc., a Florida corporation

By:

Robert B. Thomas

Attest:

Patricia B. Thomas
Secretary

Date:

6-22-16

EXHIBIT "A"

LEASED PREMISES

PORTIONS OF TOWNSHIP 16 SOUTH, RANGE 32 EAST; TOWNSHIP 16 SOUTH, RANGE 31 EAST; AND TOWNSHIP 17 SOUTH, RANGE 32 EAST, VOLUSIA COUNTY, FLORIDA, AS FOLLOWS:

A PORTION OF SECTION 17, TOWNSHIP 16 SOUTH, RANGE 32 EAST, SECTION 18, TOWNSHIP 16 SOUTH, RANGE 32 EAST AND SECTION 13, TOWNSHIP 16 SOUTH, RANGE 31 EAST, VOLUSIA COUNTY, FLORIDA, DESCRIBED AS FOLLOWS: FROM THE INTERSECTION OF THE EAST LINE OF THE SOUTHEAST $\frac{1}{4}$ OF SAID SECTION 17 AND NORTHERLY RIGHT OF WAY LINE OF SHUNZ ROAD, A 200 FOOT RIGHT OF WAY AS DESCRIBED IN DEED RECORDED IN OFFICIAL RECORDS BOOK 2537, PAGE 1319, OF THE PUBLIC RECORDS OF VOLUSIA COUNTY, FLORIDA, AS THE POINT OF BEGINNING, RUN SOUTH $01^{\circ}09'24''$ EAST, ALONG SAID EAST LINE, 2229.85 FEET TO THE SOUTHEAST CORNER OF SAID SECTION 17; THENCE SOUTH $89^{\circ}36'00''$ WEST ALONG THE SOUTH LINE OF SAID SECTION 17, A DISTANCE OF 2652.78 FEET TO THE SOUTH $\frac{1}{4}$ CORNER OF SAID SECTION 17; THENCE SOUTH $89^{\circ}34'03''$ WEST, ALONG THE SOUTH LINE, 2653.58 FEET TO THE SOUTHEAST CORNER OF SAID SECTION 18; THENCE SOUTH $88^{\circ}51'25''$ WEST ALONG THE SOUTH LINE OF SAID SECTION 18, A DISTANCE OF 2664.69 FEET TO THE SOUTH $\frac{1}{4}$ CORNER OF SAID SECTION 18; THENCE SOUTH $89^{\circ}42'03''$ WEST ALONG SAID SOUTH LINE, 2665.19 FEET TO THE SOUTHEAST CORNER OF SECTION 13; THENCE SOUTH $89^{\circ}11'48''$ WEST ALONG THE SOUTH LINE OF SAID SECTION 13, A DISTANCE OF 1535.55 FEET TO THE SOUTHEASTERLY RIGHT OF WAY LINE OF INTERSTATE 4 (S.R. 400), A 300 FOOT RIGHT OF WAY; THENCE NORTH $39^{\circ}51'26''$ EAST ALONG SAID SOUTHEASTERLY RIGHT OF WAY LINE THE FOLLOWING COURSES AND DISTANCES: NORTH $39^{\circ}51'26''$ EAST, 4391.35 FEET; NORTH $82^{\circ}07'51''$ EAST, 371.65 FEET; NORTH $39^{\circ}51'26''$ EAST, 400.00 FEET; NORTH $02^{\circ}24'59''$ WEST, 371.65 FEET; NORTH $39^{\circ}51'26''$ EAST, 1651.56 FEET TO THE NORTH LINE OF SAID SECTION 18; THENCE DEPART SAID SOUTHEASTERLY RIGHT OF WAY LINE, NORTH $88^{\circ}36'48''$ EAST ALONG NORTH LINE OF SAID SECTION 18, A DISTANCE OF 2320.32 FEET TO THE NORTHWEST CORNER OF SAID SECTION 17; THENCE NORTH $89^{\circ}26'55''$ EAST ALONG NORTH LINE OF SAID SECTION 17, A DISTANCE OF 1158.89 FEET; THENCE DEPART SAID NORTH LINE SOUTH $01^{\circ}09'14''$ EAST, 3101.62 FEET TO THE NORTHERLY RIGHT OF WAY LINE OF SAID SHUNZ ROAD AND THE BEGINNING OF A NON TANGENT CURVE CONCAVE SOUTHERLY, HAVING A RADIUS OF 2100.00 FEET, A CENTRAL ANGLE OF $11^{\circ}01'48''$ AND A CHORD BEARING OF NORTH $83^{\circ}12'24''$ EAST; THENCE EASTERLY ALONG THE ARC OF SAID CURVE, 404.27 FEET; THENCE NORTH $88^{\circ}43'18''$ EAST ALONG SAID NORTHERLY RIGHT OF WAY LINE, 2218.74 FEET TO THE BEGINNING OF A CURVE, CONCAVE SOUTHERLY HAVING A RADIUS OF 5100.00 FEET AND A CENTRAL ANGLE OF $04^{\circ}53'20''$; THENCE EASTERLY ALONG THE ARC OF SAID CURVE, 435.17 FEET; THENCE SOUTH $86^{\circ}23'22''$ EAST, ALONG SAID NORTHERLY RIGHT OF WAY LINE, 1051.53 FEET TO THE POINT OF BEGINNING;

TOGETHER WITH:

A PARCEL OF LAND BEING A PORTION OF THE SOUTHWEST $\frac{1}{4}$ OF SECTION 11, A PORTION OF THE WEST $\frac{1}{2}$ OF SECTION 14, A PORTION OF THE SOUTH $\frac{1}{2}$ OF SECTION 15, AND A PORTION OF THE SOUTH $\frac{1}{2}$ OF SECTION 16, ALL BEING IN TOWNSHIP 16 SOUTH, RANGE 32 EAST, VOLUSIA COUNTY, FLORIDA, AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS: AS A POINT OF BEGINNING COMMENCE AT THE SOUTHWEST CORNER OF SECTION 11, THENCE ALONG THE WEST LINE OF SAID SECTION 11 RUN N $03^{\circ}22'05''$ W, A

DISTANCE OF 1391.99 FEET TO A POINT ON THE SOUTHERLY RIGHT OF WAY LINE OF SHUNZ ROAD (A 200 FOOT RIGHT OF WAY); THENCE ALONG SAID SOUTHERLY LINE N 88°45'25" E, A DISTANCE OF 1459.81 FEET TO A POINT ON THE WESTERLY PRESCRIPTIVE RIGHT OF WAY LINE OF TOMOKA FARMS ROAD (AS RECORDED IN MAP BOOK 1, PAGES 23 THROUGH 39 OF THE PUBLIC RECORDS OF VOLUSIA COUNTY, FLORIDA); THENCE ALONG SAID WESTERLY PRESCRIPTIVE RIGHT OF WAY LINE THE FOLLOWING 45 COURSES AND DISTANCES; S 18°10'45" E, A DISTANCE OF 58.46 FEET; THENCE S 18°03'52" E, A DISTANCE OF 200.00 FEET; THENCE S 18°27'56" E, A DISTANCE OF 100.00 FEET; THENCE S 18°24'30" E, A DISTANCE OF 100.00 FEET; THENCE S 17°50'07" E, A DISTANCE OF 100.00 FEET; THENCE S 17°57'00" E, A DISTANCE OF 100.00 FEET; THENCE S 18°03'52" E, A DISTANCE OF 200.00 FEET; THENCE S 17°50'07" E, A DISTANCE OF 100.00 FEET; THENCE S 17°32'56" E, A DISTANCE OF 100.00 FEET; THENCE S 23°15'52" E, A DISTANCE OF 100.40 FEET; THENCE S 17°32'56" E, A DISTANCE OF 100.00 FEET; THENCE S 10°42'54" E, A DISTANCE OF 100.84 FEET; THENCE S 15°04'04" E, A DISTANCE OF 88.49 FEET; THENCE S 08°53'42" E, A DISTANCE OF 100.10 FEET; THENCE S 08°12'30" E, A DISTANCE OF 100.05 FEET; THENCE S 06°50'02" E, A DISTANCE OF 100.00 FEET; THENCE S 06°56'55" E, A DISTANCE OF 100.00 FEET; THENCE S 06°05'21" E, A DISTANCE OF 800.01 FEET; THENCE S 06°22'32" E, A DISTANCE OF 100.00 FEET; THENCE S 05°48'09" E, A DISTANCE OF 100.00 FEET; THENCE S 06°22'32" E, A DISTANCE OF 100.00 FEET; THENCE S 06°08'47" E, A DISTANCE OF 100.00 FEET; THENCE S 06°36'17" E, A DISTANCE OF 100.00 FEET; THENCE S 05°48'09" E, A DISTANCE OF 100.00 FEET; THENCE S 06°22'32" E, A DISTANCE OF 400.00 FEET; THENCE S 05°48'09" E, A DISTANCE OF 100.00 FEET; THENCE S 06°22'32" E, A DISTANCE OF 100.00 FEET; THENCE S 05°48'09" E, A DISTANCE OF 100.00 FEET; THENCE S 06°22'32" E, A DISTANCE OF 600.00 FEET; THENCE S 05°48'09" E, A DISTANCE OF 100.00 FEET; THENCE S 06°39'43" E, A DISTANCE OF 200.00 FEET; THENCE S 05°48'09" E, A DISTANCE OF 100.00 FEET; THENCE S 05°34'24" E, A DISTANCE OF 100.01 FEET; THENCE S 06°36'17" E, A DISTANCE OF 100.00 FEET; THENCE S 06°56'55" E, A DISTANCE OF 100.00 FEET; THENCE S 06°22'32" E, A DISTANCE OF 100.00 FEET; THENCE S 06°39'43" E, A DISTANCE OF 200.00 FEET; THENCE S 06°22'32" E, A DISTANCE OF 100.00 FEET; THENCE S 06°39'43" E, A DISTANCE OF 200.00 FEET; THENCE S 10°14'17" E, A DISTANCE OF 108.68 FEET; THENCE S 08°35'15" E, A DISTANCE OF 101.12 FEET; THENCE S 16°32'44" E, A DISTANCE OF 200.01 FEET; THENCE S 19°07'23" E, A DISTANCE OF 400.24 FEET; THENCE S 17°24'18" E, A DISTANCE OF 100.00 FEET; THENCE S 14°55'03" E, A DISTANCE OF 75.90 FEET; THENCE DEPARTING SAID PRESCRIPTIVE RIGHT OF WAY LINE RUN THE FOLLOWING 20 COURSES AND DISTANCE ALONG A FENCE LINE; S 88°53'10" W, A DISTANCE OF 514.92 FEET; THENCE S 88°09'06" W, A DISTANCE OF 410.91 FEET; THENCE S 88°34'20" W, A DISTANCE OF 166.19 FEET; THENCE S 87°59'19" W, A DISTANCE OF 330.63 FEET; THENCE S 88°34'57" W, A DISTANCE OF 167.79 FEET; THENCE S 87°45'50" W, A DISTANCE OF 161.70 FEET; THENCE S 88°02'21" W, A DISTANCE OF 330.52 FEET; THENCE S 88°58'14" W, A DISTANCE OF 85.62 FEET; THENCE S 88°05'28" W, A DISTANCE OF 148.69 FEET; THENCE S 87°35'15" W, A DISTANCE OF 94.48 FEET; THENCE S 87°24'39" W, A DISTANCE OF 165.06 FEET; THENCE S 88°53'05" W, A DISTANCE OF 94.15 FEET; THENCE S 88°48'57" W, A DISTANCE OF 1067.37 FEET; THENCE S 83°55'42" W, A DISTANCE OF 138.00 FEET; THENCE S 87°54'50" W, A DISTANCE OF 242.71 FEET; THENCE S 84°59'48" W, A DISTANCE OF 88.03 FEET; THENCE S 88°29'38" W, A DISTANCE OF 328.93 FEET; THENCE S 88°05'05" W, A DISTANCE OF 329.56 FEET; THENCE S 87°31'46" W, A DISTANCE OF 327.03 FEET; THENCE S 00°51'47" E, A DISTANCE OF 37.05 FEET TO A POINT ON THE SOUTH LINE OF AFORESAID SECTION 15; THENCE ALONG SAID SOUTH SECTION LINE S 88°36'04" W, A DISTANCE OF 2667.00 FEET TO THE SOUTHWEST CORNER OF SAID SECTION 15; THENCE ALONG THE SOUTH LINE OF AFORESAID SECTION 16, S 88°18'43" W, A DISTANCE OF 5239.77 FEET TO THE SOUTHWEST CORNER OF SAID SECTION 16; THENCE ALONG THE WEST LINE OF SAID SECTION N 01°54'16" W, A DISTANCE OF 2029.42 FEET TO THE AFOREMENTIONED SOUTHERLY RIGHT

OF WAY LINE OF SHUNZ ROAD; THENCE ALONG SAID RIGHT OF WAY LINE S 87°08'28" E, A DISTANCE OF 2459.30 FEET TO THE POINT OF CURVATURE OF A CURVE TO THE LEFT, HAVING A RADIUS OF 2300.00 FEET, A CENTRAL ANGLE OF 15°53'15" AND A CHORD BEARING OF N 84°54'55" E, THENCE RUN EASTERLY ALONG THE ARC OF SAID CURVE A DISTANCE OF 637.77 FEET; THENCE N 76°58'17" E, A DISTANCE OF 1787.41 FEET TO THE POINT OF CURVATURE OF A CURVE TO THE LEFT, HAVING A RADIUS OF 2100.00 FEET, A CENTRAL ANGLE OF 12°34'01" AND A CHORD BEARING OF N 70°41'17" E; THENCE RUN NORTHEASTERLY ALONG THE ARC OF SAID CURVE A DISTANCE OF 460.60 FEET TO AN INTERSECTION WITH THE WESTERLY SECTION LINE OF AFORESAID SECTION 15; THENCE ALONG SAID WESTERLY LINE S 00°58'36" E, A DISTANCE OF 673.58 FEET; THENCE DEPARTING SAID SECTION LINE RUN N 88°36'04" E, A DISTANCE OF 2679.80 FEET; THENCE N 88°36'04" E, A DISTANCE OF 2685.82 FEET TO THE EAST LINE OF SAID SECTION 15; THENCE ALONG SAID EAST LINE N 00°55'57" W, A DISTANCE OF 3725.42 FEET TO THE NORTHEAST CORNER OF SAID SECTION 15 ALSO BEING THE SOUTHWEST CORNER OF SAID SECTION 11 AND THE POINT OF BEGINNING;

TOGETHER WITH:

A PORTION OF SECTIONS 10 AND 15, TOWNSHIP 16 SOUTH, RANGE 32 EAST OF VOLUSIA COUNTY, FLORIDA, DESCRIBED AS FOLLOWS: FROM THE NORTHEAST CORNER OF SAID SECTION 15 AS THE POINT OF BEGINNING, RUN S 00°55'57" E, ALONG THE EAST LINE OF SAID SECTION 15, A DISTANCE OF 2707.39 FEET TO THE NORTHEAST CORNER OF THE SOUTHEAST ¼ OF SAID SECTION 15; THENCE CONTINUE S 00°55'57" E, ALONG SAID EAST LINE, A DISTANCE OF 1018.03 FEET; THENCE DEPARTING SAID EAST LINE, S 88°36'04" W, PARALLEL TO THE SOUTH LINE OF SAID SECTION 15, A DISTANCE OF 2685.82 FEET TO THE WEST LINE OF SAID SOUTHEAST ¼ OF SAID SECTION 15; THENCE CONTINUE S 88°36'04" W, A DISTANCE OF 2679.80 FEET TO THE WEST LINE OF SAID SECTION 15; THENCE N 00°58'36" W, ALONG SAID WEST LINE, A DISTANCE OF 673.56 FEET TO THE SOUTHERLY LINE OF WILLOW RUN BOULEVARD EXTENSION WEST (A 200 FOOT EASEMENT FOR ROADWAY AND UTILITY PURPOSES AS RECORDED IN OFFICIAL RECORDS BOOK 2806, PAGE 1370 OF THE PUBLIC RECORDS OF VOLUSIA COUNTY, FLORIDA) ALSO KNOWN AS SHUNZ ROAD, AND A POINT ON THE ARC OF A CURVE, CONCAVE NORTHWESTERLY, HAVING A RADIUS OF 2100.00 FEET, A CENTRAL ANGLE OF 15°21'08", AND A CHORD BEARING OF NORTH 56°43'44" EAST; THENCE NORTHEASTERLY ALONG THE ARC OF SAID CURVE, A DISTANCE OF 562.69 FEET TO THE SOUTH LINE OF THE NORTHWEST ¼ OF SAID SECTION 15; THENCE CONTINUE ALONG SAID ARC, AND SAID EASEMENT LINE, THROUGH A CENTRAL ANGLE OF 08°12'58", A DISTANCE OF 301.13 FEET TO THE POINT OF TANGENCY OF SAID CURVE; THENCE CONTINUE ALONG SAID EASEMENT LINE THE FOLLOWING COURSES AND DISTANCES: N 40°50'13" E, A DISTANCE OF 2976.78 FEET TO THE EAST LINE OF THE AFORESAID NORTHWEST ¼ OF SAID SECTION 15; THENCE CONTINUE N 40°50'13" E, A DISTANCE OF 410.96 FEET TO THE SOUTH LINE OF THE SOUTHEAST ¼ OF SAID SECTION 10; THENCE CONTINUE N 40°50'01" E, A DISTANCE OF 1092.02 FEET TO THE POINT OF CURVATURE OF A CURVE, CONCAVE SOUTHEASTERLY, HAVING A RADIUS OF 1900.00 FEET, A CENTRAL ANGLE OF 47°55'13", AND A CHORD BEARING OF N 64°47'49.5" E; THENCE EASTERLY ALONG THE ARC OF SAID CURVE, A DISTANCE OF 1589.09 FEET TO THE POINT OF TANGENCY OF SAID CURVE; THENCE N 88°45'25" E, A DISTANCE OF 225.93 FEET TO THE EAST LINE OF SAID SECTION 10; THENCE DEPARTING THE AFORESAID EASEMENT LINE, S 03°22'05" E, ALONG THE EAST LINE OF SAID SECTION 10, A DISTANCE OF 1391.99 FEET TO THE POINT OF BEGINNING;

TOGETHER WITH:

THE WEST ONE HALF (W½) OF SECTION 22, TOWNSHIP 16 SOUTH, RANGE 32 EAST, EXCEPT, BEGINNING AT THE NORTH QUARTER CORNER OF SAID SECTION 22, TOWNSHIP 16 SOUTH, RANGE 32 EAST RUN S 00°22'38" E ALONG THE EAST LINE OF THE NORTHWEST ONE QUARTER OF SAID SECTION 22 A DISTANCE OF 2613.69 FEET TO A ¾ INCH IRON PIPE; THENCE RUN N 01°13'33" W ALONG THE WESTERLY MONUMENTED SUBDIVISION LINE OF TOMOKA FARMS, A PLAT AS RECORDED IN MAP BOOK 22 AT PAGES 168 AND 169 OF THE PUBLIC RECORDS OF VOLUSIA COUNTY, FLORIDA A DISTANCE OF 2613.78 FEET; TO THE NORTH LINE OF SAID SECTION 22, THENCE RUN N 89°20'09" E ALONG SAID NORTH SECTION LINE A DISTANCE OF 38.75 FEET TO THE POINT OF BEGINNING;

TOGETHER WITH:

ALL OF SECTION 21, TOWNSHIP 16 SOUTH, RANGE 32 EAST;

TOGETHER WITH:

ALL OF SECTION 20, TOWNSHIP 16 SOUTH, RANGE 32 EAST;

TOGETHER WITH:

ALL OF SECTION 19, TOWNSHIP 16 SOUTH, RANGE 32 EAST;

TOGETHER WITH:

ALL OF SECTION 24, TOWNSHIP 16 SOUTH, RANGE 31 EAST, LYING SOUTH OF INTERSTATE 4 (STATE ROAD 400);

TOGETHER WITH:

ALL OF THAT PROPERTY LYING SOUTH OF INTERSTATE 4 (STATE ROAD 400) IN THE SOUTHEAST ¼ OF THE SOUTHEAST ¼ OF SECTION 23, TOWNSHIP 16 SOUTH, RANGE 31 EAST;

TOGETHER WITH:

ALL OF THAT PROPERTY LYING SOUTH OF INTERSTATE 4 (STATE ROAD 400) IN THE SOUTHEAST ¼ OF THE SOUTHEAST ¼ OF SECTION 27, TOWNSHIP 16 SOUTH, RANGE 31 EAST;

TOGETHER WITH:

ALL OF SECTION 26, TOWNSHIP 16 SOUTH, RANGE 31 EAST LYING SOUTH OF INTERSTATE 4 (STATE ROAD 400);

TOGETHER WITH:

ALL OF SECTION 25, TOWNSHIP 16 SOUTH, RANGE 31 EAST;

TOGETHER WITH:

ALL OF SECTION 30, TOWNSHIP 16 SOUTH, RANGE 32 EAST;

TOGETHER WITH:

ALL OF SECTION 29, TOWNSHIP 16 SOUTH, RANGE 32 EAST;

TOGETHER WITH:

ALL OF SECTION 28, TOWNSHIP 16 SOUTH, RANGE 32 EAST;

TOGETHER WITH:

THE NORTHWEST ONE QUARTER (NW¼) AND THE NORTH ONE HALF OF THE SOUTHWEST ONE QUARTER (N½ OF THE SW¼) AND THE SOUTHEAST ONE QUARTER OF THE SOUTHWEST ONE QUARTER (SE¼ OF THE SW¼) AND THE SOUTHWEST ONE QUARTER OF THE SOUTHWEST ONE QUARTER (SW¼ OF THE SW¼) LESS AND EXCEPT THE SOUTH THREE QUARTERS OF THE EAST ONE HALF OF THE SOUTHWEST ONE QUARTER OF THE SOUTHWEST ONE QUARTER (S¾ OF THE E½ OF THE SW¼ OF THE SW¼) AND EXCEPT THE WEST 200 FEET OF THE EAST 860 FEET OF THE SOUTH 990 FEET OF THE SOUTHWEST ONE QUARTER OF THE SOUTHWEST ONE QUARTER AND ALSO EXCEPT THE NORTH 200 FEET OF THE EAST 860 FEET OF THE SOUTH 1190 FEET OF THE SOUTHWEST ONE QUARTER OF THE SOUTHWEST ONE QUARTER OF SECTION 27, TOWNSHIP 16 SOUTH, RANGE 32 EAST;

TOGETHER WITH:

THE SOUTHEAST ONE QUARTER OF THE NORTHWEST ONE QUARTER (SE¼ OF THE NW¼) EXCEPT THE NORTH 8 CHAINS OF THE WEST 4 CHAINS THEREOF AND THE SOUTHWEST ONE QUARTER OF THE NORTHWEST ONE QUARTER (SW¼ OF THE NW¼) EXCEPT THE NORTHEAST ONE QUARTER (NE¼) THEREOF, AND THE SOUTHWEST ONE QUARTER OF SECTION 34, TOWNSHIP 16 SOUTH, RANGE 32 EAST, LESS AND EXCEPT THOSE LANDS DEEDED PER OFFICIAL RECORD BOOK 3276, PAGE 0077 OF THE PUBLIC RECORDS OF SAID VOLUSIA COUNTY; SAID EXCEPTION CONTAINING 199.56 ACRES, MORE OR LESS;

TOGETHER WITH:

ALL OF SAID SECTION 33, TOWNSHIP 16 SOUTH, RANGE 32 EAST;

TOGETHER WITH:

ALL OF SECTION 32, TOWNSHIP 16 SOUTH, RANGE 32 EAST;

TOGETHER WITH:

ALL OF SECTION 31, TOWNSHIP 16 SOUTH, RANGE 32 EAST;

TOGETHER WITH:

ALL OF SECTION 36, TOWNSHIP 16 SOUTH, RANGE 31 EAST;

TOGETHER WITH:

ALL OF SECTION 4, TOWNSHIP 17 SOUTH, RANGE 32 EAST;

TOGETHER WITH:

ALL OF SECTION 3, TOWNSHIP 17 SOUTH, RANGE 32 EAST, EXCEPTING THEREFROM THE NORTH 330 OF SAID SECTION;

TOGETHER WITH:

ALL OF SECTION 10, TOWNSHIP 17 SOUTH, RANGE 32 EAST, LESS AND EXCEPT THAT PORTION LYING SOUTHEASTERLY OF THE SOUTHERLY RIGHT OF WAY LINE OF STATE ROAD 40-A (A 100 FOOT WIDE RIGHT OF WAY ACCORDING TO DEED RECORDED IN OFFICIAL RECORDS BOOK 3131, PAGE 1822 OF THE PUBLIC RECORDS OF VOLUSIA COUNTY, FLORIDA), BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS: AS A POINT OF REFERENCE, COMMENCE AT THE NORTHEAST CORNER OF SAID SECTION 10; THENCE S 01°10'35" E ALONG THE EAST LINE OF THE NORTHEAST ¼ OF SAID SECTION 10 FOR A DISTANCE OF 2341.08 FEET TO A POINT IN SAID SOUTHERLY RIGHT OF WAY LINE, SAID POINT BEING THE POINT OF BEGINNING; THENCE CONTINUE S 01°10'35" E ALONG SAID EAST LINE A DISTANCE OF 304.08 FEET TO THE SOUTHEAST CORNER OF THE NORTHEAST ¼ OF SAID SECTION 10; THENCE S 01°10'54" E ALONG THE EAST LINE OF THE SOUTHEAST ¼ OF SAID SECTION 10 FOR A DISTANCE OF 2645.16 FEET TO THE SOUTHEAST CORNER OF THE SOUTHEAST ¼ OF SAID SECTION 10; THENCE S 88°01'59" W ALONG THE SOUTH LINE OF SAID SOUTHEAST ¼ A DISTANCE OF 2655.92 FEET TO THE SOUTHWEST CORNER OF SAID SOUTHEAST ¼; THENCE S 88°01'42" W ALONG THE SOUTH LINE OF THE SOUTHWEST ¼ OF SAID SECTION 10 FOR A DISTANCE OF 1629.89 FEET TO A POINT IN THE SOUTHERLY RIGHT OF WAY LINE OF SAID STATE ROAD 40-A, SAID POINT BEING THE POINT OF CURVATURE OF A CURVE CONCAVE NORTHWESTERLY, HAVING A RADIUS OF 2050.00 FEET, A CHORD BEARING OF N 37°06'49" E, A CHORD DISTANCE OF 368.77 FEET; THENCE NORTHEASTERLY ALONG THE ARC OF SAID CURVE THROUGH A CENTRAL ANGLE OF 10°19'15", FOR AN ARC DISTANCE OF 369.27 FEET TO THE POINT OF TANGENCY; THENCE CONTINUE ALONG SAID SOUTHERLY RIGHT OF WAY LINE N 31°57'11" E A DISTANCE OF 1187.21 FEET TO THE POINT OF CURVATURE OF A CURVE CONCAVE SOUTHEASTERLY, HAVING A RADIUS OF 1950.00 FEET, A CHORD BEARING OF N 49°24'32" E, A CHORD DISTANCE OF 1169.88 FEET; THENCE NORTHEASTERLY ALONG THE ARC OF SAID CURVE THROUGH A CENTRAL ANGLE OF 34°54'41", FOR AN ARC DISTANCE OF 1188.17 FEET TO THE POINT OF TANGENCY; THENCE CONTINUE ALONG SAID SOUTHERLY RIGHT OF WAY LINE N 66°51'52" E A DISTANCE OF 1942.22 FEET TO THE POINT OF CURVATURE OF A CURVE CONCAVE SOUTHEASTERLY, HAVING A RADIUS OF 9950.00 FEET, A CHORD BEARING OF N 68°22'07" E, A CHORD DISTANCE OF 522.37 FEET; THENCE NORTHEASTERLY ALONG THE ARC OF SAID CURVE THROUGH A CENTRAL ANGLE OF 03°00'30", FOR AN ARC DISTANCE OF 522.43 FEET TO THE POINT OF TANGENCY; THENCE CONTINUE ALONG SAID SOUTHERLY RIGHT OF WAY LINE N 69°52'22" E A DISTANCE OF 225.47 FEET TO CLOSE ON THE POINT OF BEGINNING.

TOGETHER WITH:

THE EAST ONE HALF OF THE NORTHEAST ONE QUARTER (E½ OF THE NE¼) OF SAID SECTION 9, TOWNSHIP 17 SOUTH, RANGE 32 EAST;

LESS AND EXCEPT:

A PORTION OF THE EAST ½ OF THE NORTHEAST ¼ OF SECTION 9, TOWNSHIP 17 SOUTH, RANGE 32 EAST AND A PORTION OF THE NORTHWEST ¼ OF SECTION 10, TOWNSHIP 17 SOUTH, RANGE 32 EAST, VOLUSIA COUNTY, FLORIDA, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS: BEGIN AT THE NORTHWEST CORNER OF SAID SECTION 10, THENCE ALONG THE NORTH LINE OF SAID SECTION 10 N 89°08'22" E, 114.10 FEET TO THE APPROXIMATE CENTERLINE OF A DIRT ROAD; THENCE ALONG SAID CENTERLINE THE FOLLOWING COURSES: S 24°33'02" E 403.94 FEET; THENCE S 33°09'59" E, 496.21 FEET; THENCE S 31°46'56" E, 347.95 FEET; THENCE S 30°43'20" E, 282.76 FEET; THENCE S 12°53'21" E, 276.95 FEET; THENCE S 19°01'14" E, 231.14 FEET; THENCE S 21°07'52" E, 222.48 FEET; THENCE DEPART SAID CENTERLINE N 89°47'39" W, 1519.25 FEET; THENCE N 04°12'23" W, 346.28 FEET; THENCE N 26°28'24" W, 379.35 FEET; THENCE N 03°52'27" W, 388.74 FEET; THENCE N 24°21'24" W, 268.89 FEET; THENCE N 09°21'27" W, 693.73 FEET TO THE NORTH LINE, THE NORTHEAST ¼ OF SAID SECTION 9; THENCE ALONG SAID NORTH LINE N 89°27'09" E;

TOGETHER WITH:

THAT PORTION OF THE WEST ½ OF SECTION 10, TOWNSHIP 17 SOUTH, RANGE 32 EAST, VOLUSIA COUNTY, FLORIDA BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS: BEGINNING AT A POINT ON THE NORTH LINE OF SAID SECTION 10, SAID POINT BEING ON THE WESTERLY RIGHT OF LINE OF THAT CERTAIN FLORIDA POWER AND LIGHT COMPANY EASEMENT, RECORDED IN OFFICIAL RECORDS BOOK 678, PAGE 503 AND OFFICIAL RECORDS BOOK 756, PAGE 67 OF THE PUBLIC RECORDS OF VOLUSIA COUNTY, FLORIDA; THENCE RUN S 01°17'44" E ALONG THE WESTERLY RIGHT OF LINE OF SAID FLORIDA POWER AND LIGHT COMPANY EASEMENT, A DISTANCE OF 3044.08 FEET MORE OR LESS TO A POINT IN THE CENTERLINE OF OLD PIONEER TRAIL, A PRESCRIPTIVE RIGHT OF WAY; THENCE RUN S 33°04'30" W ALONG THE CENTERLINE OF SAID OLD PIONEER TRAIL, A DISTANCE OF 449.39 FEET MORE OR LESS TO A POINT IN THE CENTERLINE OF AN UNNAMED DIRT ROAD; THENCE TRAVERSING THE CENTERLINE OF SAID UNNAMED DIRT ROAD FOR THE FOLLOWING COURSES AND DISTANCES: RUN S 86°42'57" W, A DISTANCE OF 208.94 FEET; THENCE RUN N 82°03'03" W, A DISTANCE OF 227.63 FEET; THENCE RUN N 60°26'51" W, A DISTANCE OF 196.85 FEET; THENCE RUN N 52°46'26" W, A DISTANCE OF 213.91 FEET; THENCE RUN N 26°57'30" W, A DISTANCE OF 539.59 FEET; THENCE RUN N 19°51'39" W, A DISTANCE OF 518.84 FEET; THENCE RUN N 21°20'57" W, A DISTANCE OF 360.14 FEET; THENCE RUN N 19°14'27" W, A DISTANCE OF 231.14 FEET; THENCE RUN N 13°06'30" W, A DISTANCE OF 276.95 FEET; THENCE RUN N 30°56'27" W, A DISTANCE OF 282.76 FEET; THENCE RUN N 32°00'05" W, A DISTANCE OF 347.95 FEET; THENCE RUN N 33°23'08" W, A DISTANCE OF 496.21 FEET; THENCE RUN N 24°46'11" W, A DISTANCE OF 403.94 FEET TO A POINT ON THE NORTH LINE OF SAID SECTION 10, TOWNSHIP 17 SOUTH, RANGE 32 EAST; THENCE RUN N 88°30'35" E ALONG SAID NORTH LINE OF SECTION 10, A DISTANCE OF 2415.89 FEET, MORE OR LESS, TO A POINT ON THE WESTERLY RIGHT OF WAY LINE OF THAT CERTAIN FLORIDA POWER AND LIGHT COMPANY EASEMENT, RECORDED IN OFFICIAL RECORDS BOOK 678, PAGE 603 AND OFFICIAL RECORDS BOOK 756, PAGE 67 OF THE PUBLIC RECORDS OF VOLUSIA COUNTY, FLORIDA AND THE POINT OF BEGINNING.

EXHIBIT "B"

SCHEDULED HUNT AREA

PORTION OF TOWNSHIP 17 SOUTH, RANGE 32 EAST, VOLUSIA COUNTY, FLORIDA,
AS FOLLOWS:

ALL OF SECTION 4, TOWNSHIP 17 SOUTH, RANGE 32 EAST;

TOGETHER WITH:

ALL OF SECTION 3, TOWNSHIP 17 SOUTH, RANGE 32 EAST, EXCEPTING THEREFROM THE
NORTH 330 OF SAID SECTION;

TOGETHER WITH:

ALL OF SECTION 10, TOWNSHIP 17 SOUTH, RANGE 32 EAST, LESS AND EXCEPT THAT
PORTION LYING SOUTHEASTERLY OF THE SOUTHERLY RIGHT OF WAY LINE OF STATE
ROAD 40-A (A 100 FOOT WIDE RIGHT OF WAY ACCORDING TO DEED RECORDED IN
OFFICIAL RECORDS BOOK 3131, PAGE 1822 OF THE PUBLIC RECORDS OF VOLUSIA
COUNTY, FLORIDA), BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS: AS A POINT
OF REFERENCE, COMMENCE AT THE NORTHEAST CORNER OF SAID SECTION 10; THENCE
S 01°10'35" E ALONG THE EAST LINE OF THE NORTHEAST ¼ OF SAID SECTION 10 FOR A
DISTANCE OF 2341.08 FEET TO A POINT IN SAID SOUTHERLY RIGHT OF WAY LINE, SAID
POINT BEING THE POINT OF BEGINNING; THENCE CONTINUE S 01°10'35" E ALONG SAID
EAST LINE A DISTANCE OF 304.08 FEET TO THE SOUTHEAST CORNER OF THE NORTHEAST
¼ OF SAID SECTION 10; THENCE S 01°10'54" E ALONG THE EAST LINE OF THE SOUTHEAST
¼ OF SAID SECTION 10 FOR A DISTANCE OF 2645.16 FEET TO THE SOUTHEAST CORNER OF
THE SOUTHEAST ¼ OF SAID SECTION 10; THENCE S 88°01'59" W ALONG THE SOUTH LINE
OF SAID SOUTHEAST ¼ A DISTANCE OF 2655.92 FEET TO THE SOUTHWEST CORNER OF
SAID SOUTHEAST ¼; THENCE S 88°01'42" W ALONG THE SOUTH LINE OF THE SOUTHWEST
¼ OF SAID SECTION 10 FOR A DISTANCE OF 1629.89 FEET TO A POINT IN THE SOUTHERLY
RIGHT OF WAY LINE OF SAID STATE ROAD 40-A, SAID POINT BEING THE POINT OF
CURVATURE OF A CURVE CONCAVE NORTHWESTERLY, HAVING A RADIUS OF 2050.00
FEET, A CHORD BEARING OF N 37°06'49" E, A CHORD DISTANCE OF 368.77 FEET; THENCE
NORTHEASTERLY ALONG THE ARC OF SAID CURVE THROUGH A CENTRAL ANGLE OF
10°19'15", FOR AN ARC DISTANCE OF 369.27 FEET TO THE POINT OF TANGENCY; THENCE
CONTINUE ALONG SAID SOUTHERLY RIGHT OF WAY LINE N 31°57'11" E A DISTANCE OF
1187.21 FEET TO THE POINT OF CURVATURE OF A CURVE CONCAVE SOUTHEASTERLY,
HAVING A RADIUS OF 1950.00 FEET, A CHORD BEARING OF N 49°24'32" E, A CHORD
DISTANCE OF 1169.88 FEET; THENCE NORTHEASTERLY ALONG THE ARC OF SAID CURVE
THROUGH A CENTRAL ANGLE OF 34°54'41", FOR AN ARC DISTANCE OF 1188.17 FEET TO
THE POINT OF TANGENCY; THENCE CONTINUE ALONG SAID SOUTHERLY RIGHT OF WAY
LINE N 66°51'52" E A DISTANCE OF 1942.22 FEET TO THE POINT OF CURVATURE OF A
CURVE CONCAVE SOUTHEASTERLY, HAVING A RADIUS OF 9950.00 FEET, A CHORD
BEARING OF N 68°22'07" E, A CHORD DISTANCE OF 522.37 FEET; THENCE
NORTHEASTERLY ALONG THE ARC OF SAID CURVE THROUGH A CENTRAL ANGLE OF
03°00'30", FOR AN ARC DISTANCE OF 522.43 FEET TO THE POINT OF TANGENCY; THENCE
CONTINUE ALONG SAID SOUTHERLY RIGHT OF WAY LINE N 69°52'22" E A DISTANCE OF
225.47 FEET TO CLOSE ON THE POINT OF BEGINNING.

TOGETHER WITH:

THE EAST ONE HALF OF THE NORTHEAST ONE QUARTER ($E\frac{1}{2}$ OF THE $NE\frac{1}{4}$) OF SAID SECTION 9, TOWNSHIP 17 SOUTH, RANGE 32 EAST;

LESS AND EXCEPT:

A PORTION OF THE EAST $\frac{1}{2}$ OF THE NORTHEAST $\frac{1}{4}$ OF SECTION 9, TOWNSHIP 17 SOUTH, RANGE 32 EAST AND A PORTION OF THE NORTHWEST $\frac{1}{4}$ OF SECTION 10, TOWNSHIP 17 SOUTH, RANGE 32 EAST, VOLUSIA COUNTY, FLORIDA, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS: BEGIN AT THE NORTHWEST CORNER OF SAID SECTION 10, THENCE ALONG THE NORTH LINE OF SAID SECTION 10 N $89^{\circ}08'22''$ E, 114.10 FEET TO THE APPROXIMATE CENTERLINE OF A DIRT ROAD; THENCE ALONG SAID CENTERLINE THE FOLLOWING COURSES: S $24^{\circ}33'02''$ E 403.94 FEET; THENCE S $33^{\circ}09'59''$ E, 496.21 FEET; THENCE S $31^{\circ}46'56''$ E, 347.95 FEET; THENCE S $30^{\circ}43'20''$ E, 282.76 FEET; THENCE S $12^{\circ}53'21''$ E, 276.95 FEET; THENCE S $19^{\circ}01'14''$ E, 231.14 FEET; THENCE S $21^{\circ}07'52''$ E, 222.48 FEET; THENCE DEPART SAID CENTERLINE N $89^{\circ}47'39''$ W, 1519.25 FEET; THENCE N $04^{\circ}12'23''$ W, 346.28 FEET; THENCE N $26^{\circ}28'24''$ W, 379.35 FEET; THENCE N $03^{\circ}52'27''$ W, 388.74 FEET; THENCE N $24^{\circ}21'24''$ W, 268.89 FEET; THENCE N $09^{\circ}21'27''$ W, 693.73 FEET TO THE NORTH LINE, THE NORTHEAST $\frac{1}{4}$ OF SAID SECTION 9; THENCE ALONG SAID NORTH LINE N $89^{\circ}27'09''$ E;

TOGETHER WITH:

THAT PORTION OF THE WEST $\frac{1}{2}$ OF SECTION 10, TOWNSHIP 17 SOUTH, RANGE 32 EAST, VOLUSIA COUNTY, FLORIDA BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS: BEGINNING AT A POINT ON THE NORTH LINE OF SAID SECTION 10, SAID POINT BEING ON THE WESTERLY RIGHT OF LINE OF THAT CERTAIN FLORIDA POWER AND LIGHT COMPANY EASEMENT, RECORDED IN OFFICIAL RECORDS BOOK 678, PAGE 503 AND OFFICIAL RECORDS BOOK 756, PAGE 67 OF THE PUBLIC RECORDS OF VOLUSIA COUNTY, FLORIDA; THENCE RUN S $01^{\circ}17'44''$ E ALONG THE WESTERLY RIGHT OF LINE OF SAID FLORIDA POWER AND LIGHT COMPANY EASEMENT, A DISTANCE OF 3044.08 FEET MORE OR LESS TO A POINT IN THE CENTERLINE OF OLD PIONEER TRAIL, A PRESCRIPTIVE RIGHT OF WAY; THENCE RUN S $33^{\circ}04'30''$ W ALONG THE CENTERLINE OF SAID OLD PIONEER TRAIL, A DISTANCE OF 449.39 FEET MORE OR LESS TO A POINT IN THE CENTERLINE OF AN UNNAMED DIRT ROAD; THENCE TRAVERSING THE CENTERLINE OF SAID UNNAMED DIRT ROAD FOR THE FOLLOWING COURSES AND DISTANCES: RUN S $86^{\circ}42'57''$ W, A DISTANCE OF 208.94 FEET; THENCE RUN N $82^{\circ}03'03''$ W, A DISTANCE OF 227.63 FEET; THENCE RUN N $60^{\circ}26'51''$ W, A DISTANCE OF 196.85 FEET; THENCE RUN N $52^{\circ}46'26''$ W, A DISTANCE OF 213.91 FEET; THENCE RUN N $26^{\circ}57'30''$ W, A DISTANCE OF 539.59 FEET; THENCE RUN N $19^{\circ}51'39''$ W, A DISTANCE OF 518.84 FEET; THENCE RUN N $21^{\circ}20'57''$ W, A DISTANCE OF 360.14 FEET; THENCE RUN N $19^{\circ}14'27''$ W, A DISTANCE OF 231.14 FEET; THENCE RUN N $13^{\circ}06'30''$ W, A DISTANCE OF 276.95 FEET; THENCE RUN N $30^{\circ}56'27''$ W, A DISTANCE OF 282.76 FEET; THENCE RUN N $32^{\circ}00'05''$ W, A DISTANCE OF 347.95 FEET; THENCE RUN N $33^{\circ}23'08''$ W, A DISTANCE OF 496.21 FEET; THENCE RUN N $24^{\circ}46'11''$ W, A DISTANCE OF 403.94 FEET TO A POINT ON THE NORTH LINE OF SAID SECTION 10, TOWNSHIP 17 SOUTH, RANGE 32 EAST; THENCE RUN N $88^{\circ}30'35''$ E ALONG SAID NORTH LINE OF SECTION 10, A DISTANCE OF 2415.89 FEET, MORE OR LESS, TO A POINT ON THE WESTERLY RIGHT OF WAY LINE OF THAT CERTAIN FLORIDA POWER AND LIGHT COMPANY EASEMENT, RECORDED IN OFFICIAL RECORDS BOOK 678, PAGE 603 AND OFFICIAL RECORDS BOOK 756, PAGE 67 OF THE PUBLIC RECORDS OF VOLUSIA COUNTY, FLORIDA AND THE POINT OF BEGINNING.

EXHIBIT "C"

Primitive Hunt Area

PORTIONS OF TOWNSHIP 16 SOUTH, RANGE 32 EAST AND TOWNSHIP 16 SOUTH, RANGE 31 EAST DESCRIBED AS FOLLOWS:

A PORTION OF SECTION 17, TOWNSHIP 16 SOUTH, RANGE 32 EAST, SECTION 18, TOWNSHIP 16 SOUTH, RANGE 32 EAST AND SECTION 13, TOWNSHIP 16 SOUTH, RANGE 31 EAST, VOLUSIA COUNTY, FLORIDA, DESCRIBED AS FOLLOWS: FROM THE INTERSECTION OF THE EAST LINE OF THE SOUTHEAST $\frac{1}{4}$ OF SAID SECTION 17 AND NORTHERLY RIGHT OF WAY LINE OF SHUNZ ROAD, A 200 FOOT RIGHT OF WAY AS DESCRIBED IN DEED RECORDED IN OFFICIAL RECORDS BOOK 2537, PAGE 1319, OF THE PUBLIC RECORDS OF VOLUSIA COUNTY, FLORIDA, AS THE POINT OF BEGINNING, RUN SOUTH $01^{\circ}09'24''$ EAST, ALONG SAID EAST LINE, 2229.85 FEET TO THE SOUTHEAST CORNER OF SAID SECTION 17; THENCE SOUTH $89^{\circ}36'00''$ WEST ALONG THE SOUTH LINE OF SAID SECTION 17, A DISTANCE OF 2652.78 FEET TO THE SOUTH $\frac{1}{4}$ CORNER OF SAID SECTION 17; THENCE SOUTH $89^{\circ}34'03''$ WEST, ALONG THE SOUTH LINE, 2653.58 FEET TO THE SOUTHEAST CORNER OF SAID SECTION 18; THENCE SOUTH $88^{\circ}51'25''$ WEST ALONG THE SOUTH LINE OF SAID SECTION 18, A DISTANCE OF 2664.69 FEET TO THE SOUTH $\frac{1}{4}$ CORNER OF SAID SECTION 18; THENCE SOUTH $89^{\circ}42'03''$ WEST ALONG SAID SOUTH LINE, 2665.19 FEET TO THE SOUTHEAST CORNER OF SECTION 13; THENCE SOUTH $89^{\circ}11'48''$ WEST ALONG THE SOUTH LINE OF SAID SECTION 13, A DISTANCE OF 1535.55 FEET TO THE SOUTHEASTERLY RIGHT OF WAY LINE OF INTERSTATE 4 (S.R. 400), A 300 FOOT RIGHT OF WAY; THENCE NORTH $39^{\circ}51'26''$ EAST ALONG SAID SOUTHEASTERLY RIGHT OF WAY LINE THE FOLLOWING COURSES AND DISTANCES: NORTH $39^{\circ}51'26''$ EAST, 4391.35 FEET; NORTH $82^{\circ}07'51''$ EAST, 371.65 FEET; NORTH $39^{\circ}51'26''$ EAST, 400.00 FEET; NORTH $02^{\circ}24'59''$ WEST, 371.65 FEET; NORTH $39^{\circ}51'26''$ EAST, 1651.56 FEET TO THE NORTH LINE OF SAID SECTION 18; THENCE DEPART SAID SOUTHEASTERLY RIGHT OF WAY LINE, NORTH $88^{\circ}36'48''$ EAST ALONG NORTH LINE OF SAID SECTION 18, A DISTANCE OF 2320.32 FEET TO THE NORTHWEST CORNER OF SAID SECTION 17; THENCE NORTH $89^{\circ}26'55''$ EAST ALONG NORTH LINE OF SAID SECTION 17, A DISTANCE OF 1158.89 FEET; THENCE DEPART SAID NORTH LINE SOUTH $01^{\circ}09'14''$ EAST, 3101.62 FEET TO THE NORTHERLY RIGHT OF WAY LINE OF SAID SHUNZ ROAD AND THE BEGINNING OF A NON TANGENT CURVE CONCAVE SOUTHERLY, HAVING A RADIUS OF 2100.00 FEET, A CENTRAL ANGLE OF $11^{\circ}01'48''$ AND A CHORD BEARING OF NORTH $83^{\circ}12'24''$ EAST; THENCE EASTERLY ALONG THE ARC OF SAID CURVE, 404.27 FEET; THENCE NORTH $88^{\circ}43'18''$ EAST ALONG SAID NORTHERLY RIGHT OF WAY LINE, 2218.74 FEET TO THE BEGINNING OF A CURVE, CONCAVE SOUTHERLY HAVING A RADIUS OF 5100.00 FEET AND A CENTRAL ANGLE OF $04^{\circ}53'20''$; THENCE EASTERLY ALONG THE ARC OF SAID CURVE, 435.17 FEET; THENCE SOUTH $86^{\circ}23'22''$ EAST, ALONG SAID NORTHERLY RIGHT OF WAY LINE, 1051.53 FEET TO THE POINT OF BEGINNING; LESS AND EXCEPT THAT PORTION OF SECTION 17, TOWNSHIP 16 SOUTH, RANGE 32 EAST SOUTH OF SAID RIGHT OF WAY OF SHUNZ ROAD, A 200 FOOT RIGHT OF WAY AS DESCRIBED IN DEED RECORDED IN OFFICIAL RECORDS BOOK 2537, PAGE 1319, OF THE PUBLIC RECORDS OF VOLUSIA COUNTY, FLORIDA;

TOGETHER WITH:

ALL OF SECTION 19, TOWNSHIP 16 SOUTH, RANGE 32 EAST;

TOGETHER WITH:

ALL OF SECTION 30, TOWNSHIP 16 SOUTH, RANGE 32 EAST;

TOGETHER WITH:

ALL OF SECTION 31, TOWNSHIP 16 SOUTH, RANGE 32 EAST;

TOGETHER WITH:

ALL OF SECTION 36, TOWNSHIP 16 SOUTH, RANGE 31 EAST;

TOGETHER WITH:

THE EAST ½ OF SECTION 25, TOWNSHIP 16 SOUTH, RANGE 31 EAST;

TOGETHER WITH:

THE EAST ½ OF SECTION 24, TOWNSHIP 16 SOUTH, RANGE 31 EAST, LYING SOUTH OF INTERSTATE 4 (STATE ROAD 400);

TOGETHER WITH:

ALL OF SECTION 20, TOWNSHIP 16 SOUTH, RANGE 32 EAST, EXCEPTING THE EAST 875 FEET.

EXHIBIT "D"

	Wholly Owned City	City Portion of Joint	County Portion of Joint	Wholly County	Total
Acres	7,222	3,214	3,214	1,316	11,752
Cost per Acre	\$8.81804	\$4.5815	\$4.5815	\$9.163	
Lease	\$63,683.88	\$14,724.94	\$14,724.94	\$12,058.51	\$105,192.27
Annual Lease Billed By City	\$78,408.83				
Annual Lease Billed by County	\$26,783.45				
Total Annual Lease	\$105,192.27				

Note: These payments reflect a negotiated reduction in overall leased area in conjunction with an increased per acre cost of 7.8%. The increase of 7.8% per acre cost reflects the cumulative increase in CPI-U South Urban from January 2011 through December 2015 as allowed for in paragraph 2 of the original lease signed in 2011.

MEMBER AND/OR GUEST LIABILITY RELEASE
2016-2017 HUNTING SEASON



SMOKEY HUNT CLUB, INC.

840 Gray Rd, Cocoa, FL 32926

SmokeyHuntClub@gmail.com

www.smokeyhuntclub.com

Robert B Thomas, Sr | President 407-467-0087

Ricky E Brooks, Jr | Vice-president 407-467-0093

I, _____, hereby acknowledge I have knowingly and willingly entered the property known as SMOKEY HUNT CLUB (referred to herein as the "Hunting Lease") and have become a Party bound by the terms and conditions of the Hunting Lease Agreement between Lessor and Lessee, dated _____. I understand the terms, provisions and conditions of the SMOKEY HUNT CLUB, INC. Rules and will abide by its terms, provisions, and conditions.

I further acknowledge and understand no warranty, either expressed or implied, is made by SMOKEY HUNT CLUB, INC. as to the condition of the Hunting Lease located in Volusia County, Florida, or any roads, buildings, gates or other improvements located thereon. This document is sufficient warning ^{that} dangerous conditions, risks and hazards may exist. My presence and activities on the Hunting Lease expose me and my property to dangerous conditions, risks, and hazards, including but not limited to: venomous snakes, insects and spiders; blinds and tree stands; erosion and the general condition of the land, both on and off roadways, creating rough, hazardous and dangerous driving and walking conditions; animals both wild and domestic that may be diseased and/or potentially dangerous; and persons with firearms both on or off the Hunting Lease. I hereby expressly assume all such dangers, risks and hazards.

In consideration for the right to enter the Hunting Lease, I hereby release and agree to protect, indemnify and hold harmless Lessor, SMOKEY HUNT CLUB, and the CITY OF PORT ORANGE, FLORIDA, and the COUNTY OF VOLUSIA, and the CITY OF DAYTONA BEACH, and any of their respective agents, employees and assigns, from and against any and all claims, demands, causes of action and damages, including attorney fees, resulting from any accident, incident or occurrence arising out of, incidental to, or in any way resulting from the use of the Hunting Lease and all improvements thereon, whether or not caused by Lessor's or SMOKEY HUNT CLUB's negligence or gross negligence. This Release applies during the time I am permitted on the Hunting Lease. I hereby further covenant and agree that I, my heirs, successors and assigns will not make any claim or institute any suit or action at law or in equity against Lessor or its agents, representatives, employees, successors in interest or office~~r~~ or assigns.

As used in this Release, the terms *I*, *my person* and *myself* include minors in my care while on the Hunting Lease.

Member or Guardian: _____ Date: _____
signature

Printed Name: _____

Guest: _____ Date: _____
signature

Printed Name: _____

Witness: _____ Date: _____
signature

Printed Name: _____



APPLICATION FOR MEMBERSHIP
2016-2017 HUNTING SEASON

SMOKEY HUNT CLUB, INC.

840 Gray Rd, Cocoa, FL 32926

SmokeyHuntClub@gmail.com

www.smokeyhuntclub.com

Robert B Thomas, Sr | President 407-467-0087

Ricky E Brooks, Jr | Vice-president 407-467-0093

Membership: \$3,150.00 | Associate (*optional*): additional \$300.00

Deposits by April 1, 2016: \$500.00 | Remaining dues by May 1, 2016

Current and potential new members **MUST** submit the following by May 1, 2016:

1. Completed Application;
2. Liability Release;
3. Copy of current Driver's License; and
4. Membership Dues.

Dues are non-refundable and Memberships are non-transferable. Incomplete applications will be rejected. If payment arrangements have been agreed upon with the Club President or Vice-president, all dues **MUST** be paid before the member is allowed to hunt.

Complete the following:

Name: _____ Mobile Phone: _____
 Home Phone: _____ Work Phone: _____
 Address: _____
 eMail Address: _____
 Driver's License #: _____ Date of Birth: _____
 Gate Key ID #(s): _____
 Vehicle Year/Make/Model: _____ License Plate #: _____

If applicable:

Associate Member Name: _____
 Driver's License #: _____ Date of Birth: _____
 Spouse's Name: _____
 Dependent Child's Name (& Age): _____

By signing this application, I confirm that all information is true and correct. I have read and understand the rules as written for the 2016-2017 season, and I agree to abide by all Smokey Hunt Club rules and regulations now in force and hereafter adopted. I understand that Members may be subject to random search while on club property.

Member or Guardian: _____ Date: _____
signature

Printed Name: _____

HUNTING LEASE

THIS LEASE, made this 4th day, of August, 2011, by and between the COUNTY OF VOLUSIA, a political subdivision, with it's primary office in Deland, FL., whose mailing address is 123 W Indiana Ave, Deland, Florida 32720, and the CITY OF PORT ORANGE, a Florida municipality, whose mailing address is 1000 City Center Circle, Port Orange, Florida 32119, hereinafter called the "Managing Agencies" for the lands described in paragraph 1 below, and whose address is 840 Gray Road, Cocoa, Florida 32926, hereinafter called the Lessee.

WITNESSETH:

1. Description of Premises. In consideration of the covenants herein contained on the part of the Lessee to be kept and performed, the Managing Agencies do hereby lease unto the Lessee and the Lessee does hereby rent from the Managing Agencies that certain real property located in Volusia County, Florida, as described in "**Exhibit A**" attached hereto, and hereinafter the "Premises".
2. Lease Term. Unless sooner canceled as hereinafter provided, the term of this lease shall commence August 1, 2011 and terminate on July 31, 2016., This agreement may be extended annually in one year increments for up to (5) additional years, upon mutual consent of the Lessee and the Managing Agencies. Increases in the price may be adjusted commencing at the first renewal period beginning August 1, 2016), based on the cumulative increase in the Consumer Price Index (CPI) for the Southern States between January 1, 2011 and December 31, 2015.
3. Rental. The Lessee shall pay to the Managing Agencies an annual rental of \$104,550.00 or such greater or lesser amount determined as herein provided. The annual rental shall be paid by July 1st of every year over the term of this agreement.

It is the understanding of the parties that the rental shall be computed at the rate of \$8.50 for each acre of land that is available to the Lessee under this lease. The number of acres initially assumed to be available is 12,300. The legal description and map of the acreage is attached hereto as "**Exhibit A**". An adjustment will be made in the initial annual rent if either party shall show, within sixty- (60) days after the execution of this lease, that the acreage involved is more or less than 12,300.

If any land is subsequently excluded from this lease by sale or partial cancellation, the rent shall be adjusted accordingly and the Lessee shall receive a pro rata refund for any rent that has been paid in advance for the portion excluded. Any said refund shall be determined by the managing parties, based on the ownership of the land. A determination of this amount shall be made by prorating any prepaid rent on a daily basis at the lease term rate of \$8.50 for each acre excluded from the lease.

4. The Port Orange City Forester and The County Of Volusia Land Manager shall be designated to oversee lease activities on-site. The revenue shall be paid to the County of Volusia and to the City of Port Orange based on the total acreage of the wholly owned and jointly owned lands held by the respective Managing Agencies.

5. Acceptance and Use of Premises: The Lessee has inspected the premises and accepts them as is. The Lessee covenants to use the same in accordance with all applicable laws with respect to the use or occupancy of the property. The Lessee agrees to make no illegal, unlawful or improper use of said land. The lessee shall not construct any improvements on the rental property without the written consent by the Managing Agencies. If such construction is approved by the Managing Agencies, the Lessee covenants that it shall promptly pay any material man or contractor performing any work upon the rental premises and covenants and agrees to hold the Managing Agencies harmless for any obligation or expense therein. The Lessee covenants and agrees to use said premises for hunting, picnicking and fishing recreation by its members and their guests. The Lessee will neither use nor suffer the same to be used for any other purposes. The Lessee will hold the Managing Agencies harmless and indemnified at all times against any loss, cost, damage or expense by reason of any accident, loss, casualty or damage resulting to any person or property through any use or misuse of said property or by reason of any act or thing done or undone on or about said property. The Lessee shall do nothing to interfere in any way with the Managing Agencies' use of the property for forestry, silviculture, water production, wetland mitigation and gopher tortoise mitigation. In addition, the Lessee is expressly prohibited from allowing the operation and use of motorcycles, mopeds and all-terrain vehicles on any part of the leased premises for racing or contests of any type. Such vehicles may be used by the Lessee's members and their guests for purposes of transportation around the leased premises so long as they are used in a manner not to damage the property.
6. Indemnification and Insurance: The Lessee agrees to indemnify and hold harmless the Managing Agencies, its officers, employees and agents, as to any acts or omissions by the Lessee, its employees, agents, members, guests or invitee. The Lessee agrees to purchase and maintain at its expense public liability insurance, insuring Managing Agencies and Lessee against claims for bodily injury, personal injury and property damage, with limits of not less than \$1,000,000.00 per occurrence for damage occurring to any person or property upon or about the premises during the lease term, and further agrees that the Managing Agencies shall be named as an additional insured in such policy as it may apply to the lands herein described. The coverage and form of said insurance policy must be satisfactory to the Managing Agencies. All insurance policies provided for in this lease shall contain a provision that the policies cannot be canceled without thirty- (30) days written notice to the Managing Agencies and all such insurance shall be affected under enforceable policies issued by insurers of recognized responsibility, licensed to do business in the state of Florida. At least fifteen (15) days prior to the expiration date of any policy, the original renewal policy for such insurance shall be delivered by the Lessee to the Managing Agencies. Within fifteen (15) days after the premium on any policy shall become due and payable, the Managing Agencies shall be furnished with satisfactory evidence of its payment. The Lessee shall provide the Managing Agencies with a complete copy of the insurance policy in force during any period of this lease.
7. Assignment and Subletting: The Lessee may not assign this lease or sublet any part of said premises.

8. Alterations and Improvements: The Lessee may make such additions and improvements to the property as are first approved in writing by the Managing Agencies. All such improvements shall be at the sole expense and risk of the Lessee and be in compliance with all applicable land development, zoning, building and other laws, ordinances and codes. In the event of the termination of this lease for any reason, the Lessee shall have thirty (30) days thereafter to remove any improvements it has placed upon the property. Any such Lessee improvements not so removed shall become the property of the Managing Agencies with no obligation to compensate the Lessee therefor.
9. Options to Terminate Lease:
- (a) The Managing Agencies may terminate or cancel this lease for a violation - of its terms by the Lessee, a member of the Lessee, or a guest of a member.
 - (b) The Managing Agencies shall individually have the discretionary right to terminate and cancel this lease for any reason upon providing the Lessee written notice at least ninety (90) days prior to the noticed termination date. In the event that the Managing Agencies terminate the lease for reasons not related to a violation of the lease by Lessee, then the Managing Agencies shall prorate the annual payment and the annual period of the lease. The Managing Agencies shall return the prorated portion of the annual payment in the amount representing the annual period cancelled.
 - (c) The Lessee may terminate this lease if by reason of a sale of a portion of the premises, the remainder of the property will no longer serve the Lessee's intended purpose.
 - (d) To exercise the above options; the party shall give written notice to the other which notice shall specify the reason or reasons for the exercise of the option.
 - (e) A cancellation or termination under this paragraph 9 shall become effective sixty-(60) days after the mailing of the notice of termination.
 - (f) In the event of termination under this paragraph 9, any unearned rent shall be refunded to the Lessee in accordance with the terms of paragraph 3 but no compensation shall be payable by the Managing Agencies for any improvements made by the Lessee.
10. Termination in the Event of Sale: In the event either of the Managing Agencies enters into a contract to sell all or any part of the property, the Managing Agencies shall promptly advise the Lessee thereof in writing and, upon the closing of the sale, this lease shall terminate as to the portion of the premises which is sold unless the buyer of the property assumes the lease. In the event of termination under this paragraph 10, any unearned rent shall be refunded to the Lessee in accordance with the terms of paragraph 3 but no compensation shall be payable by the Managing Agencies for any improvements made by the Lessee.
11. Default of Lessee: The failure of the Lessee to pay any of the sums herein provided or to keep, fulfill and perform any of the terms and provisions of the lease on its part to be kept and performed, time being of the essence hereof, shall constitute a breach of this lease at the option of the Managing Agencies, so as to terminate all rights, privileges and interests of the Lessee herein. With respect to default of any of the provisions of this lease by the

Lessee, except for nonpayment, the Managing Agencies shall provide to the Lessee written notice of any breach of the lease term(s) and or condition(s) and the Lessee shall have thirty (30) days to correct the condition, or commence and diligently pursue corrective action if the condition cannot be corrected in 30 days. Failure of the Lessee to complete the correction within a reasonable time as determined by the Managing Agencies shall constitute a breach of this lease.

In the event of a breach of this lease, the Lessee will pay to the Managing Agencies all costs and other expenses, including attorney's fees, which may be incurred by the Managing Agencies in enforcing its rights hereunder, together with such other actual damages as the Managing Agencies may actually sustain by reason of said breach, and the Managing Agencies may, in such event, declare the term ended and may reenter and take possession of said premises. All rights, remedies and privileges of the Managing Agencies shall be cumulative, and in the event of a breach, the election or enforcement of one or more shall not be deemed to be a waiver of any or all others.

12. Quiet Enjoyment and right of use: The Managing Agencies covenant that, if the Lessee shall pay and otherwise perform all of the agreements herein, the Lessee shall peaceably and quietly have, hold, possess and use the leased premises for and during the term hereof without any hindrance by the Managing Agencies. The Managing Agencies shall have the right of ingress and egress to, from, and upon the leased premises for all purposes necessary to their full, quiet enjoyment of the rights conveyed herein. The Managing Agencies shall have the right to enter and occupy the property for all purposes necessary to meet their designated responsibilities, including protection of the property. The Managing Agencies shall have authority and shall, through their agents and employer, take all reasonable measures to provide security against property damage, property degradation, and unauthorized uses or any use thereof not in conformance with this lease. The lessee acknowledges that the Managing Agencies may grant other persons, organizations, or entities the right to use the leased premises for any purpose, other than hunting.
13. Notices: All notices required or permitted shall be in writing, mailed by certified mail, postage prepaid, return receipt requested, addressed to the other party at the address as stated herein, or to such other address as any party may designate by notice complying with the details of giving notice. Each such notice shall be deemed delivered on the date upon which the return receipt is signed or delivery is refused or the notice is designated by the postal authorities as not deliverable.
14. Hunting: This lease specifically includes to the Lessee the full hunting and fishing privileges on the Premises. The hunting and fishing privileges herein granted are to be exercised in strict accordance with the laws of the State of Florida and the United States of America and the rules and regulations of the Florida Fish and Wildlife Conservation Commission, or any other duly constituted body having authority to make rules and regulations pertaining to the hunting, taking or catching of game birds, game animals and fish. All hunting shall be in accordance with the Lessee's hunting rules and regulations.
15. Lessee's Hunting rules and regulations: At a minimum the lessee's shall encompass the following Bylaws or Hunting rules and regulations;
 - (a). Dogs- Dogs will not be allowed other than for bird hunting until the opening of dog season. All dogs shall be vaccinated for rabies prior to being brought onto the premises and shall display valid rabies tag at all times.

- (b) Membership- Membership will be limited to a maximum of one member for every 175 acres of the leased premises. Membership applications will require the applicant to fill out a questionnaire of whether he/she has ever been charged or convicted of any violation of any laws, rules or regulations of the Florida Fish and Wildlife Conservation Commission or its predecessors or successors, or any violation of any law, rule, ordinance or regulation related to hunting, wildlife preservation, fishing, or game laws. Membership application is attached as "**Exhibit B**". The lessee will use this information for denial or approval for membership. When granting membership, Lessee shall not discriminate as prohibited by federal, state and local laws.
- (c) Guests- Members can only have one (1) guest at a time per day and no hunting guest shall be allowed to hunt more than a total of six (6) days per season. All guests will be required to sign liability releases and this is the responsibility of the member and must be witnessed by the member. Attached hereto as "**Exhibit C**".
- (d) General rules of all hunts:
 - 1. Hunter orange must be worn during deer season. This is during the deer season only, not in bow or spring gobbler season.
 - 2. Turkey beards must be retained for sex evidence in spring gobbler season.
 - 3. All game, deer, turkey, and hogs are required to be weighed, photographed, sex identified and condition measured and recorded on game harvest reports. The game harvest reports will be submitted to the Managing Agencies and the Wildlife Biologist after each hunting season for review and to determine if the populations are sustainable and healthy.

16. Ecosystems management: The parties understand that the Managing Agencies are engaged in the preparation of a Management Plan and interlocal agreement which may include, but not limited to, forest silviculture activities, wetland mitigation, wetland enhancement/restoration, gopher tortoise mitigation, prescribed burning, habitat enhancement/restoration and reforestation. The hunting and fishing rights granted to the Lessee are on condition that the Lessee will so exercise said rights as not to interfere with these stipulated activities upon said lands. All prescribed burning will be conducted under the supervision of the Managing Agencies or their designated representatives.

Lessee shall not conduct any activity or use the Premises in any way inconsistent with any and all provisions of the Port Orange Mitigation Bank, as authorized under SJRWMD permit number 4-127-64024-1 and ACOE permit number 2003-7849, and upon notice to Lessee, in accordance with any permit issued subsequent to this lease.

No timber, plants, minerals, sand or forest products may be removed from said premises by the Lessee without the express written consent of the Managing Agencies excluding legal game and fire wood for camp fires. Excavation, chopping, and clearing are prohibited without the express written consent of the Managing Agencies. Grading and road repair shall be allowed, within the road area previously disturbed.

17. Care of Premises:

- (a) Maintenance: The Lessee shall, at its sole expense, keep and maintain all fences and gates in their present condition or as subsequently repaired or replaced by the Managing Agencies.
- (b) Safeguarding: The Lessee will provide oversight and reasonable patrolling of the leased premises in order to exclude trespassers; observe and report to the Managing Agencies any and all trespass occurrences; and be on the lookout at all times for any fire which may occur on the premises. In the event of a fire on the premises, the Lessee or any of its members having knowledge of the fire will immediately notify the Managing Agencies, the State Forestry Service and such other governmental agencies as may be able to afford assistance.

18. Right of Entry: The Managing Agencies, its agents, officers and employees, may at any time enter the leased premises for the purpose of inspecting the same or showing the leased premises to prospective buyers, and shall have the right to use the property for any purpose not inconsistent with this lease. The Lessee shall give to the Managing Agencies keys to all locks installed by the Lessee.

19. Liability of Members and Guests: All members, guests and invitee of the Lessee entering the leased premises for any purpose shall, before entering said premises, sign an agreement on the form attached hereto as "**Exhibit C**" agreeing to comply with the terms of this lease and to indemnify and hold harmless the Managing Agencies against any and all claims, demands, causes of action, suits or judgments and all expenses and fees incurred in connection therewith for death or injuries to persons, or loss or damage to property, arising out of or in any manner connected with the occupancy or use of the premises by such member, guest or invitee of the Lessee. In the event of any such claim, demand or suit, notice shall promptly be given to the Managing Agencies and the Managing Agencies shall have the right to defend or settle the same in its discretion. This release shall further provide that the member, guest or invitee relinquishes and releases all claims of every nature which he or his heirs, successors or assigns shall have arising out of any occurrence upon or related to the premises. Each signature on the agreement shall be notarized.

The Lessee shall provide the Managing Agencies with copies of its membership list and its rules and regulations, which shall be updated on an annual basis.

20. Successors and Assigns: This lease shall be binding upon and inure to the benefit of the successors and assigns of the Managing Agencies. Lessee shall execute this Lease in triplicate, and upon execution by all Parties, any of the three may be considered an original. Each member, guest or invitee of the Lessee who is permitted to use the Premises shall agree to be bound by the terms of this lease, which the Lessee is obligated to perform.

21. Severability: In the event one or more clauses for this lease are declared invalid, void, unenforceable or illegal, that shall not affect the validity of the remaining portions of the lease.

22. Force Majeure: No party to this lease shall be liable for non-performance of any obligation under this lease if such non-performance is caused by Force Majeure. "Force Majeure" means an unforeseeable cause beyond the control of and without the negligence of the party claiming Force Majeure, including but not limited to fire, flood, acts of God, war, acts of terrorism, or other unforeseeable accidents.
23. Recording: This lease shall not be recorded. If it is recorded, the Lessee shall, upon demand, execute and deliver a quitclaim deed to the Managing Agencies. If the Lessee fails to do so, the Lessee shall pay all expenses of a suit to expunge the lease from record, including reasonable attorney's fees. IN WITNESS WHEREOF, the parties hereto have executed this Lease, by and through their duly authorized representatives, on the respective dates below.

Witnesses:

Cynthia K. Rivera
Cynthia K. Rivera
Printed Name
Robin Fenwick
Robin Fenwick
Printed Name

Mary A. Zimmerman
Mary A. Zimmerman
Printed Name
Debra R. Somerford
Debra R. Somerford
Printed Name

City of Port Orange, a Florida municipality

By: Allen Green
Allen Green, Mayor

By: Kenneth W. Parker
Kenneth W. Parker, City Manager

Date: 6/28/11

County of Volusia, a political subdivision

By: Frank T. Bruno
Frank T. Bruno, County Chair
Volusia County

Attest: James Dinneen
James Dinneen, County Manager

Date: 08/04/2011

Smokey Hunt Club, Inc., a Florida Corporation

By: Kevin R. Thomas
Kevin R. Thomas, President

Attest: Patricia B. Thomas
Patricia Thomas, Secretary/Treasurer

Date: 6/27/11

Robert B. Thomas
Robert B. Thomas
Printed Name
Kevin R. Thomas
Kevin R. Thomas
Printed Name

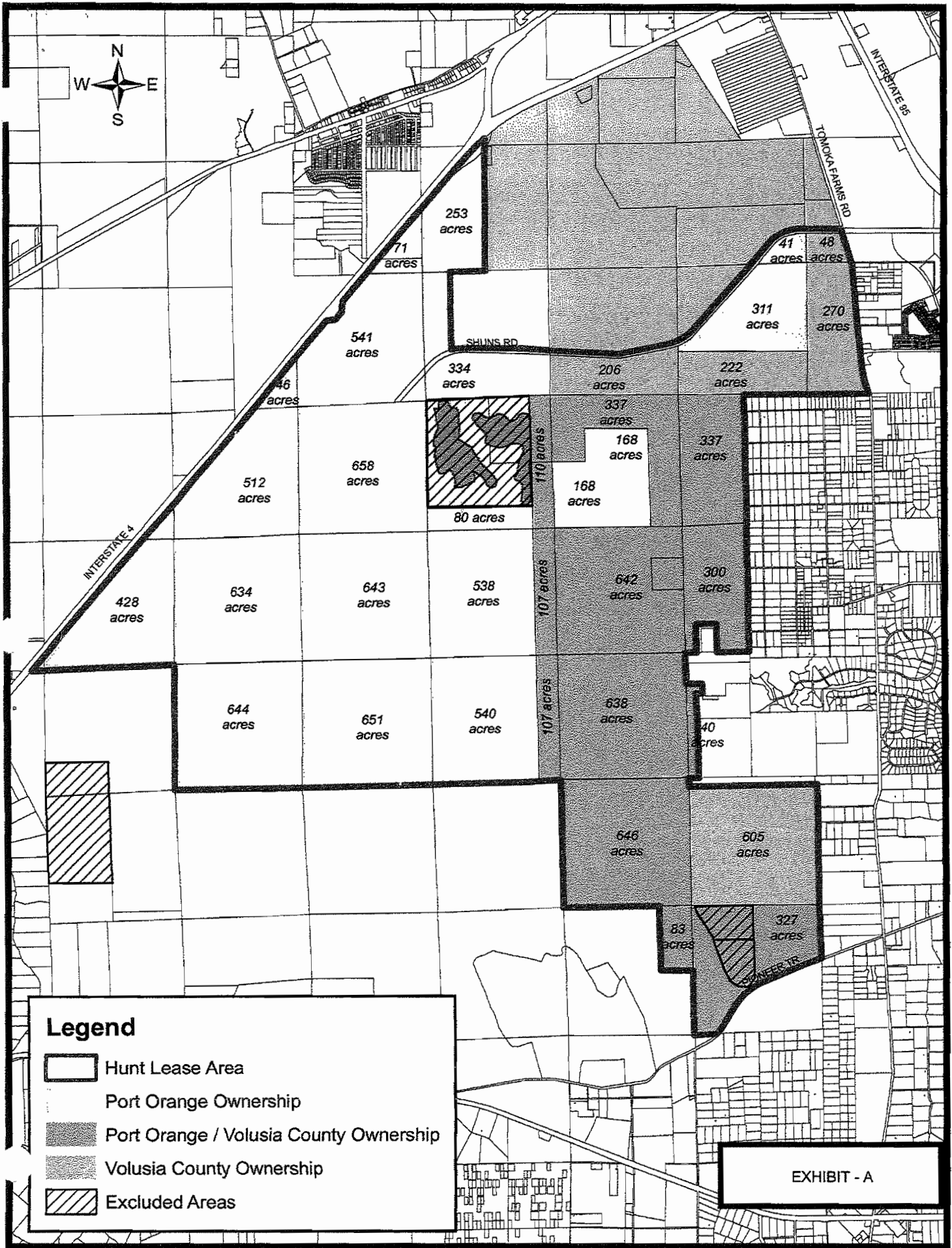


EXHIBIT "A"

Legal Description of Hunting Lease Lands

Volusia County
Parcel Identification Numbers

Portions of Township 16 South, Range 32 East, Volusia County, Florida as follows:

6207-00-00-0011/31	Southerly 600 feet of and Easterly 2455 feet of Section 7 East of State Road 400 (I-4);
6208-00-00-0010	West 1/2 of Section 8, East of State Road 400 (I-4);
6210-00-00-0030	Southeasterly 1/4 of Section 10 South of Shunz Road (a 200-ft. Right-of-Way per OR Book 2537 PG 1320;
6211-00-00-0060	Southwesterly 1/4 of Section 11 West of Tomoka Farms Road and Southerly of Shunz Road;
6214-00-00-0010	West 1/2 of Section 14 West of Tomoka Farms Road;
6215-00-00-0040	All of Section 15 lying East of Shunz Road
6216-00-00-0030	All of Section 16 lying South of Shunz Road
6217-00-00-0010/20	All of Section 17 lying North of and South of Shunz Road, except the Northeasterly 287.75 acres lying North of Shunz Road conveyed to City of Daytona Beach per Quit-Claim Deed at OR Book 6291 PG 3409;
6218-00-00-0010	All of Section 18 lying southeasterly of State Road 400 (I-4) and except abandoned rest area adjacent to State Road 400;
6219-00-00-0010/11	All of Section 19;
6220-00-00-0010-40	Southerly 615 ft +/- (80 acres) and the Easterly 875 ft +/- (110 acres) of Section 20;
6221-00-00-0010/20	All of Section 21;
6222-00-00-0020	West 1/2 of Section 22, except the following: Beginning at the North Quarter Corner of said Section 22, Township 16 South, Range 32 East, run S 00°22'36" E along the East line of the Northwest 1/4 of said Section 22, a distance of 2613.89 feet to a ¾-inch iron pipe; thence run N 01°13'33"W along the westerly monumented subdivision line of Tomoka Farms, a plat as recorded in Map Book 22, Pages 168-169, Public Records of Volusia County, Florida, a distance of 2613.78 feet; to the North line of said Section 22; thence run N89°20'09"E along said North Section Line a distance of 38.75 feet to the Point of Beginning;
6227-00-00-0010	Portion of Section 27 described as follows: The Northwest 1/4 and the North 1/2 of the SW 1/4 and the SE 1/4 of the SW 1/4 and the SW 1/4 of the SW 1/4, less and except the South 3/4 of the East 1/2 of the SW 1/4 of the SW 1/4, and except the West 200 feet of the East 860 feet of the South 990 feet of the SW 1/4 of the SW 1/4, and also except the North 200 feet of the East 860 feet of the South 1190 feet of the SW 1/4 of the SW 1/4 of said Section 27;
6228-00-00-0010/20	All of Section 28;

6229-00-00-0010/20	All of Section 29;
6230-00-00-0010/11	All of Section 30;
6231-00-00-0010/11	All of Section 31;
6232-00-00-0010/20	All of Section 32;
6233-00-00-0010	All of Section 33;
6234-00-00-0070	Portion of Section 34 described as follows: The SE 1/4 of the NW 1/4 except the North 8 chains of the West 4 chains thereof and the SW 1/4 of the NW 1/4 except the NE 1/4 thereof, and the SW 1/4 of said Section 34, less and except those lands deeded per OR Book 3276, Pg 77 of the Public Records of Volusia County, Florida (exception containing 199.56 acres +/-);

Portions of Township 17 South, Range 32 East, Volusia County, Florida as follows:

7203-00-00-0010	All of Section 3 except the North 330 feet;
7204-00-00-0010	All of Section 4;
7209-00-00-0020	East 1/2 of NE 1/4 of Section 9;
7210-00-00-0010	All of Section 10 North of County Road 415 (Pioneer Trail); Except 125 acres +/- described in Interlocal Agreement for gun, trap, and skeet range uses, said Agreement recorded in OR Book 5885, Page 1111, overall parcel described at Page 1119;

Portions of Township 16 South, Range 31 East, Volusia County, Florida as follows:

6113-00-00-0010	Portion of the East 1/2 of Section 13 Southeasterly of State Road 400 (1-4);
6124-00-00-0040	All of Section 24 Southeasterly of State Road 400;
6125-00-00-0010	All of Section 25;
6126-00-00-0010	All of Section 26 Southeasterly of State Road 400;
6127-00-00-0030	All portion of Section 27 lying South of State Road 400 in the SE 1/4 of the SE 1/4 of Section 27;
6136-00-00-0010	All of Section 36.

All references above to OR Book and Page numbers are for documents filed for recording in the Public Records of Volusia County, Florida.

EXHIBIT B

Information required for membership in hunting club with privileges under Hunting

Lease with _____.

NAME: _____

RESIDENCE ADDRESS: _____

MAILING ADDRESS: _____

RESIDENCE TELEPHONE: (_____) _____ - _____

OCCUPATION: _____

BUSINESS ADDRESS: _____

BUSINESS TELEPHONE: (_____) _____ - _____

DATE OF BIRTH: ____/____/____

1. Have you ever been charged or convicted of any violation of any laws, rules or regulations of the Florida Fish and Wildlife Conservation Commission or its predecessors or successors, or any violation of any other law, rule, ordinance or regulations related to hunting, wildlife preservation, fishing, or game laws?

_____ Yes _____ No

2. If YES, please describe, in detail, each incident. (Attach supplemental sheets, if necessary.) Include description of court, county and state, date of incident and date charge filed, fine, sentence, or other disposition of charge:

I HEREBY CERTIFY that the above information is true and correct and is given to approve me as a Member of a hunting club with privileges under a Hunting Lease with

_____.

Signature

EXHIBIT C

AGREEMENT: The undersigned member, guest or invitee of _____, hereby agrees to comply with all the terms of the lease of said CLUB with the CITY OF PORT ORANGE, FLORIDA, and THE COUNTY OF VOLUSIA, as the Managing Agencies, and to indemnify and hold harmless said Managing Agencies against any loss or liability that may be incurred by said Managing Agencies because of any act or omission of the undersigned, or a guest or an invitee of the undersigned, upon the demised premises. The undersigned, for himself and his heirs, successors and assigns, further agrees to relinquish and release the Managing Agencies, its officers, employees and agents, from all claims which the undersigned may have or may hereafter accrue arising out of any occurrence upon or related to the premises described in said lease.

Signature

Name

Date

STATE OF FLORIDA
COUNTY OF VOLUSIA

The foregoing instrument was acknowledged before me this _____ day of _____, 2011,

by _____.

Notary Public, State of Florida at Large

My Commission expires:



CITY COUNCIL AGENDA ITEM

REQUESTED COUNCIL MEETING DATE 03/07/2017

Consent item: No

SUBJECT: (I25) Financial Report - January 2017

DEPARTMENT: Finance

GOAL:

RECOMMENDED MOTION:

SUMMARY: This report will be provided once complete.

Project No.: Funding Account No.:

ATTACHMENTS:

Robin Fenwick
Tracey Riehm
Jake Johansson
Robin Fenwick

Created/Initiated - 02/23/2017
Approved - 02/24/2017
Approved - 02/24/2017
Final Approval - 02/24/2017
